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January 24, 2022

VIA ELECTRONIC FILING

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

**Re: Duke Energy Carolinas, LLC's Response to Joint Motion for
Reconsideration
Docket No. E-7, Sub 1155**

Dear Ms. Dunston:

Enclosed for filing in the above-referenced docket please find Duke Energy Carolinas, LLC's Response to Joint Motion for Reconsideration.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Kendrick C. Fentress". The signature is written in a cursive, flowing style.

Kendrick C. Fentress

Enclosure

cc: Parties of Record

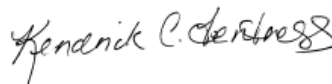
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Jan 24 2022

CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Carolinas, LLC's Response to Joint Motion for Reconsideration in Docket No. E-7, Sub 1155 has been served by electronic mail, hand delivery, or by depositing a copy in the United States Mail, 1st Class Postage Prepaid, properly addressed to parties of record.

This the 24th day of January, 2022.



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**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-7, SUB 1155

In the Matter of:)	
)	DUKE ENERGY CAROLINAS,
Application of Duke Energy Carolinas,)	LLC'S RESPONSE TO JOINT
LLC for Approval of Residential New)	MOTION FOR RECONSIDERATION
Construction Program)	

NOW COMES Duke Energy Carolinas, LLC ("DEC" or the "Company") by and through counsel, and responds to the Joint Motion for Reconsideration ("Joint Motion") filed in the above-captioned docket on December 30, 2021 by Public Service Company of North Carolina, Incorporated d/b/a Dominion Energy North Carolina ("PSNC") and Piedmont Natural Gas Company, Inc. ("Piedmont") (PSNC and Piedmont, collectively "the LDCs"). Specifically, the LDCs petition the Commission to reconsider one facet of the Commission's *Order Requiring Implementation of Revised RNC Program and Renewal of Offer to Joint Market*, issued in this docket on November 8, 2021 ("RNC Order"). The RNC Order approved DEC's Residential New Construction Program ("RNC"), as revised by DEC in its September 21, 2020 filing with the Commission ("Revised RNC Program"). The LDCs argue that the Commission erroneously shifted the burden of proof to the LDCs and approved the HERO-Plus component of the Revised RNC Program, even though, in the view of the LDCs, DEC failed to meet its burden of proof. The LDCs' Joint Motion does not present sufficient grounds to justify the Commission's reconsideration of its determination in the RNC Order; accordingly, the Commission should deny the Joint Motion.

BACKGROUND

DEC filed an application for approval of the initial RNC program in the above-captioned docket on September 21, 2017. In its application, DEC indicated that the RNC program met the requirements of Commission Rule R8-68 for a new energy efficiency program. DEC described the RNC program as providing incentives to residential builders to encourage the use of energy efficient building practices and equipment/appliances for new home construction. Eligibility for the incentives would be based on the High Efficiency Residential Option (“HERO”) standard and upon requirements for energy efficient appliances. The application described three types of incentives that would be offered to builders and/or owners of new homes. First, for whole-house measures where the home is built to HERO standards, the RNC program included whole house incentives (“WHI”) for a high energy residential option up to \$750. Second, where the home is built to HERO standards, and modeled annual kilowatt-hour (“kWh”) savings are confirmed by a Home Energy Rating System rater, the builder could receive up to \$0.90 per kWh saved and may also offer the initial homeowner a guarantee on the total annual electric heating, ventilation and air conditioning energy consumption for up to three years. Third, where central air conditioning with a Seasonal Energy Efficiency Ratio (“SEER”) of 15 or higher is installed, and/or a similarly rated air source heat pump is installed, the builder could receive equipment incentives up to \$300.

After reviewing the application, the Public Staff of the North Carolina Utilities Commission (“Public Staff”) filed comments on October 23, 2017, recommending approval of the RNC program.

After the RNC program was filed for approval, the LDCs discussed with DEC their concerns that the RNC program's incentives would have the effect of incenting fuel choice, i.e., homebuilders would choose to develop new homes enabled for electric heat pumps and hot water heating but not similarly enabled for the use of gas to heat the home and hot water.

On June 7, 2019, DEC filed a motion requesting that the Commission allow DEC to withdraw its application in this docket. Prior to the Commission issuing an order on the Company's Motion to Withdraw, however, numerous parties expressed support for the RNC program. More than 50 consumer statements of position generally expressing support for the RNC program or a similar measure were filed in this docket. Many, but not all, were from residential housing construction professionals. On August 7, 2019, the Southern Alliance for Clean Energy filed a letter in support of the RNC program and requested that the Commission reject DEC's motion to withdraw the application. On August 16, 2019, the North Carolina Sustainable Energy Association ("NCSEA") and the North Carolina Building Performance Association ("NCBPA") filed letters similar to that of SACE. On November 19, 2019, NCBPA filed additional support for DEC's RNC program.

On November 25, 2019, the Commission issued an order scheduling a hearing on DEC's motion to withdraw. On January 27, 2020, the hearing commenced. DEC's witnesses Timothy J. Duff and Robert P. Evans testified, followed by the LDCs' witnesses, Bruce P. Barkley for Piedmont, and William A. McAulay for PSNC. DEC's witnesses responded to Commission questions about the LDCs' concerns that the proposed RNC program would cause unfair and destructive competition against them. At the close of the

hearing, the Commission asked parties to file briefs and proposed orders by February 26, 2020.

On February 25, 2020, DEC filed a motion for extension, which the Commission granted on February 26, 2020, making March 5, 2020 the due date for proposed orders. On March 5, 2020, DEC and the Public Staff filed a joint proposed order recommending that DEC be allowed to withdraw the RNC program and be required to re-file, within 90 days, either a new program explaining how it will mitigate the LDCs' concerns or an explanation of reasons for not re-filing the program.

On June 23, 2020, the Commission issued its *Order Holding in Abeyance Decision on Motion to Withdraw Program and Requiring Filing of Proposed Modified Program* (the "Abeyance Order"). In the Abeyance Order, the Commission concluded that DEC had filed its proposed RNC program in good faith as a cost-effective energy efficiency program and that it did not design the program to encourage fuel switching or promote unfair competition. The Commission determined that concerns about losses in the LDCs' new residential market share merited further consideration and analysis. The Commission stated that its challenge was to balance the benefits of an electric energy efficiency program, which is supported by a statutory mandate and similar to a successful RNC program in the Duke Energy Progress, LLC ("DEP") service territory, with the need to prevent unfair or destructive competition between electric and natural gas utilities. The Commission directed DEC and the LDCs to continue to work together to find common ground in promoting fair and profitable competition between electric and natural gas utilities. The Commission further directed that, within 90 days of the date of its Abeyance

Order, DEC should file a modified RNC program that was appropriate for achieving energy efficiency savings and addressing the LDCs' fuel choice concerns.

After discussions with the LDCs did not result in consensus, DEC filed a revised RNC program ("Revised RNC Program") for its approval on September 21, 2020. In response to the LDCs' concerns, DEC voluntarily modified the incentive levels as follows: (1) the Whole House HERO incentive was lowered from a maximum of a flat payment of up to \$750 to a maximum of up to \$650; (2) the per kWh incentive option for Whole House HERO for non-space heating savings, including hot water, lights and appliances savings was lowered from up to \$0.90 per kWh saved to up to \$0.75 per kWh saved; (3) the per kWh home heating savings for homes with electric heat was lowered from up to \$0.75 per kWh saved to up to \$0.40 per kWh saved. The per kWh home heating savings incentive for homes with natural gas heating was not changed and remained at \$0.70 per kWh saved.

The LDCs acknowledged that the Revised RNC Program was "an improvement" over the initial RNC program, but they still expressed concerns.¹ After the filing of the Revised RNC Program, the LDCs, the Public Staff, and DEC continued their discussions, but they were unable to agree on any additional modifications to the Revised RNC Program that would completely satisfy the LDCs' concerns.

On January 19, 2021, the LDCs filed joint comments, noting that a homebuilder would receive \$471 more incentive if a home is built as an all-electric, as opposed to a home with a gas furnace and gas water heater. The LDCs also recommended that the Commission require DEC to eliminate the HERO-Plus incentive because it encourages homebuilder selection of electric over natural gas for space and water heating. The Public

¹ Joint Comments of Piedmont Natural Gas Company, Incorporated, and Public Service Company of North Carolina, Incorporated ("LDCs' Comments"), Docket No. E-7, Sub 1155 at 6.

Staff and NCSEA, however, each filed separate comments that supported approval of the Revised RNC Program and argued that the evidence in the record did not show that it promoted unfair or discriminatory competition.

On February 16, 2021, DEC filed a Motion for Leave to File Reply Comments and Reply Comments. On February 24, 2021, the Commission granted the motion and accepted the Reply Comments. DEC's Reply Comments noted that with respect to the initial RNC program, several commenters, including home builders, believed it to be fuel agnostic. Nevertheless, DEC had modified the RNC Program to fortify its fuel agnosticism and to address the LDCs' concerns about competition resulting from the incentives. To that end, DEC had reduced the incentive per kWh on electric space heating measures by over 50%, meaning that a kWh saving associated with an electricity-consuming appliance that has a natural gas consuming appliance substitute would receive a far lower incentive than an efficient electric appliance that did not have a natural gas substitute. The Reply Comments also stated that the LDCs' assertions that certain locations were adversely impacted by the similar DEP RNC Program appeared conclusory and unsupported by the facts. For example, DEC had found information that the more remote location of the natural gas pipeline, rather than DEP's incentives, may have influenced a builder's choice than DEP's RNC program.

On November 8, 2021, the Commission issued its RNC Order. The RNC Order reflected the Commission's comprehensive review of the relevant information in the record, including information related to whether the Revised RNC Program promoted unfair or destructive competition between DEC and the LDCs. The Commission based its findings and conclusions in the RNC Order on DEC's Application, the pleadings, the

testimony at the hearing, DEC's and the Public Staff's Joint Proposed Order, the Revised RNC Program, the parties' comments and reply comments, and the whole record in this matter. RNC Order at 13. Based on its review of the relevant evidence under Commission Rule R8-68, the Commission found that it had not been clearly shown that the RNC Program, as modified by DEC (Revised Program) will result in fuel switching or that it will promote unfair or destructive competition. RNC Order at 14. The Commission also found that DEC presented prima facie evidence that the Revised Program is not likely to promote unfair or destructive competition between DEC and the LDCs and that the LDCs did not come forward with sufficient evidence that shows otherwise. RNC Order at 31.

LEGAL STANDARD

An aggrieved party may also seek reconsideration of a Commission order pursuant to N.C. Gen. Stat. § 62-80, which provides:

The Commission may at any time upon notice to the public utility and to the other parties of record affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision made by it. Any order rescinding, altering or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original orders or decisions.

The Commission's decision to rescind, alter, or amend an order upon reconsideration is within the Commission's discretion. *State ex rel. Utilities Comm'n v. MCI Telecommunications Corp.*, 132 N.C. App. 625, 630, 514 S.E.2d 276, 280 (1999). The Commission cannot, however, arbitrarily or capriciously rescind, alter or amend a prior order. Rather, there must be some change in circumstances or a misapprehension or disregard of a fact that provides a basis for the Commission to rescind, alter or amend a prior order. *State ex rel. Utilities Comm'n v. North Carolina Gas Service*, 128 N.C. App. 288, 293-294, 494 S.E.2d 621, 626, rev. denied, 348 N.C. 78, 505 S.E.2d 886 (1998).

ARGUMENT

DEC filed its Revised RNC Program under Commission Rule R8-68. Rule R8-68(e) outlines the scope of review for energy efficiency programs that offer incentives, and provides, in pertinent part, the following guidelines:

In determining whether to approve in whole or in part a new measure or program or changes to an existing measure or program, the Commission *may consider any information it determines to be relevant*, including any of the following issues:

(4) Whether the proposed measure or program *promotes unfair or destructive competition or is inconsistent with the public policy of the State as set forth in G.S. 62-2 and G.S. 62-140[.]*

Commission Rule R8-68(e) and (e)(4) (emphasis added). The Rule provides that the Commission has wide discretion in considering the issues in the scope of review. In this case, the Commission carefully and methodically reviewed the relevant evidence, weighing the LDCs' support for their claim against the evidence in the record that showed DEC's Revised RNC Program did not promote unfair or destructive competition.

Despite the RNC Order's comprehensive review of the evidence in the record, the LDCs contend that reconsideration of the Commission's approval of the HERO-Plus component of the Revised RNC Program is warranted for two reasons: (i) the Commission misapplied the applicable burden of proof to the LDCs and (ii) DEC failed to meet its burden of proof in showing the HERO-Plus incentive would not promote unfair or destructive competition. To support their allegations, the LDCs selectively identify several sentences or phrases from the thirty-three page RNC Order² to show that, contrary to the

² The thirty-three pages referred to here do not include the dissenting opinion.

Commission's express statement otherwise, it improperly assigned the burden of proof to the LDCs and argue that the evidence submitted by DEC was lacking. Their arguments, however, are misguided. The Commission did not misapply the burden of proof in approving the HERO-Plus component of the Revised RNC Program. What's more, its conclusion that DEC had presented prima facie evidence that the RNC Program is not likely to promote unfair or destructive competition is sound and based on the substantial relevant evidence in the record. Lastly, the LDCs' Joint Motion for Reconsideration ("Joint Motion") fails to show a change in circumstances, or a misapprehension or disregard of fact compelling the Commission to rescind, alter or amend its RNC Order.

A. The Commission Did Not Improperly Place the Burden of Proof on the LDCs.

The LDCs cherry-pick a few sentences and phrases from the Commission's detailed and thorough RNC Order to support their claim that the Commission improperly imposed the burden of proof on them to show that the Revised RNC Program "promotes unfair or destructive competition or is inconsistent with the public policy of this State[.]" First, they cite Finding of Fact No. 13, which states that "It has not been clearly shown that the RNC Program as modified by DEC (Revised Program), will result in fuel switching from natural gas to electricity or that it will promote unfair or destructive competition." They also cite a portion of the RNC Order that states that

DEC noted that although Attachment H, Response No. 6, lists communities and homes that the LDC has provided locations that they believe were impacted by DEP's RNC Program, the LDCs have not provided sufficient support for their assertions that DEP's Program impacts builders' choices between electricity and gas.

Joint Motion at 8, *citing* the RNC Order at 10. They summarily argue that the use of the word "parties" in the Commission's statement "the Commission concludes that the

evidence presented by the parties does not show that the Revised Program is likely to result in fuel switching from natural gas to electricity, or that it will promote unfair or destructive competition” yields no other conclusion than the Commission imposed “some part” of the burden of proof on the LDCs. Finally, the LDCs assert that the Commission’s determination “that DEC presented prima facie evidence that the Revised Program is not likely to promote unfair or destructive competition between DEC and the LDCs, and that the LDCs did not come forward with sufficient evidence that shows otherwise” directly contradicts that DEC had the burden of proving the lack of unfair or destructive competition. Joint Motion at 8.

The Commission’s discussion of its evaluation of the LDCs’ evidence and arguments in the sentences cited by the LDCs does not mean that it shifted the burden of proof. Reading those sentences in the context of the entire RNC Order shows that the Commission instead carefully considered the LDCs’ evidence and arguments but did not find them sufficient to overcome the evidence showing the Revised RNC Program did not promote unfair or destructive competition. In other words, the Commission did what it is required to do. It is required to “summarize the arguments made by parties to the case so that a reviewing court will be able to ‘ascertain the controverted questions presented in the proceedings.’” *State ex rel. Utils. Comm’n v. N.C. Textile Mfrs. Ass’n*, 313 N.C. 215, 227, 328 S.E. 2d 264, 272 (1985), quoting, [*Utils Comm’n. v. Conservation Council*, 312 N.C. at 59, 62, 320 S.E. 2d 679, 682 \(1984\)](#). N.C. Gen. Stat. § 62-79 further requires that “All final orders and decisions of the Commission [...] be sufficient in detail to enable the court on appeal to determine the controverted questions presented in the proceedings.” Therefore, fulfilling its requirements in referring to the insufficiency of the LDCs’

arguments and evidence in its discussion and conclusions does not mean that the Commission erroneously placed the burden of proof on the LDCs. It clearly did not.

Contrary to the LDCs' claims, the RNC Order complies with both the North Carolina General Statutes and Commission Rule R8-68. The Commission commenced its discussion of the evidence and conclusions supporting its determination that the Revised RNC Program will not promote unfair or destructive competition by stating that under N.C. Gen. Stat. § 62-65 its decision must be based on "substantial evidence." RNC Order at 24. The Commission found that no party disagreed that DEC's Revised RNC Program satisfies the criteria in Commission Rule R8-68(e)(1), (2), (3) and (5), in that it was in the public interest and encouraged energy efficiency. The Commission then stated that "The burden of proving that the Revised Program will not promote unfair or destructive competition between DEC and the LDCs is on DEC." RNC Order at 25. Based on the substantial, persuasive evidence presented in the record that the HERO-Plus incentive does not promote unfair or destructive competition, the Commission found and concluded that "DEC presented prima facie evidence that the Revised Program is not likely to promote unfair or destructive competition between DEC and the LDCs, and that the LDCs did not come forward with sufficient evidence that shows otherwise." RNC Order at 31. This conclusion does not evince that the Commission misapplied the burden of proof to the LDCs; rather, it demonstrates that the Commission reviewed the relevant evidence in DEC's Revised RNC Program application, the testimony its witnesses provided at the January 27, 2020 hearing, the comments of the parties, and the record as a whole. Based upon that extensive review, the Commission determined that DEC had submitted prima

facie evidence, which the LDCs were unable to effectively rebut or overcome, that the Revised RNC Program is not likely to promote unfair or destructive competition.

The LDCs allege, however, that the “absence” of evidence that the Revised RNC Program did not promote unfair or destructive competition submitted by DEC shows the Commission must have erroneously put the burden of proof on the LDCs. Joint Motion at 7. In support of their claim, the LDCs refer to only one portion of the evidence submitted by DEC – Attachment H to the Revised RNC Program filing. The LDCs first claim that the Public Staff characterized the data in Attachment H as “inconclusive and nearly impossible to verify.” Joint Motion at 7. In its comments, however, the Public Staff does not appear to refer to the whole of Attachment H as “inconclusive and nearly impossible to verify.” Instead the Public Staff appears to specifically refer to a subset of the information in Attachment H that cites “data on the number of homes in particular subdivisions where the installation or selection of natural gas service might have been adversely impacted by the DEP Program.” Public Staff Comments at 8-9. The Public Staff then states in its Comments that it was “not able to draw any discernable ‘causal effect’ or determine whether the DEP Program hindered the extension of natural gas utility service or in cases where gas service was already available, to forgo building homes that included natural gas appliances, based on this limited information.” Public Staff Comments at 9. The Public Staff’s Comments appear to describe the data that was included in Attachment H, Response 6. That data was supplied not by DEC but by the LDCs to show the effect, if any, from the very similar RNC Program on past new construction fuel choices in the DEP service territory.

The LDCs also misstate the RNC Order when they say that the Commission agreed that “the DEC data is not optimal[.]” Joint Motion at 7. The RNC Order instead states that the Commission agrees that “the *DEP* data is not optimal.” RNC Order at 27 (emphasis added). Therefore, the LDCs’ implication that the Commission discounted the whole of DEC’s evidence supporting its Revised RNC Program is not accurate. Although the Commission opined that data showing the fuel choices by developers prior to DEP’s RNC incentives could have been more helpful, it nonetheless did not find the evidence of DEP’s RNC program’s experiences to be irrelevant or unpersuasive, and it relied upon it in its conclusions.

The Commission also recounted the extensive evidence from DEC in its discussion of the facts of this case. The Commission had previously found, in the Abeyance Order, that DEC’s RNC program was filed in good faith to replicate the DEP RNC program, and that DEC believed that the program would serve the public interest. Additionally, the Commission found and concluded that DEC did not design the RNC program with the intent to encourage fuel switching or to promote unfair competition. Abeyance Order at 7. The Commission also reviewed the evidence in the record in its RNC Order. *See* RNC Order at 4-6 (discussing the Revised RNC Program filing and changes in incentive levels in response to the LDCs’ previously-stated concerns); 9-11, 17-18 (discussing that the RNC program was designed to be fuel agnostic, which was supported by several commenters to the docket, and that the reductions in the per kWh incentive in the Revised RNC Program were intended to pay less for savings associated with an electric space appliance that had a natural gas substitute); 23-24 (reviewing testimony from DEC witness Duff that DEC lowered the per kWh incentive on electric heating measures from the initial RNC program

and testimony from DEC witness Evans that more of the homes participating in the WHI measure are gas heated and that approximately half of the homes participating in the HERO Plus part of the Program are gas heating customers.) In fact, the Commission specifically highlighted that “the LDC witnesses did not disagree with witness Evans’s testimony.” RNC Order at 24. Uncontroverted evidence tending to show a 50/50 market share between natural gas and electric customers for an almost identical RNC program in the DEP service territory does not equate to an “absence” of evidence supporting DEC’s position, and it hardly suggests that the program resulted in destructive competition.

The LDCs also argue that even if DEC’s evidence had met the prima facie standard, DEC still had the ultimate burden of persuasion on the lack of unfair or destructive competition. Joint Motion at 9. The LDCs cite the Commission’s *Order Accepting Stipulation, Deciding Contested Issues, and Requiring Revenue Reduction*, Docket No. E-7, Subs 1146, 819, 1152, and 1110 at 266 (June 22, 2018)(“2018 Rate Case Order”) to support their claim that DEC bore the burden of proof, which includes the burden of production and the burden of persuasion. Joint Motion at 9. In the 2018 Rate Case Order, the Commission reviewed, among other things, the evidence submitted by DEC to show coal basin closure costs were reasonable and that a return was warranted. The Commission stated that it determined that

the Company [DEC] has met its burden – both the prima facie burden of production and the ultimate burden of persuasion – of showing that the coal ash basin closure costs it actually incurred from January 1, 2015 through December 31, 2017 are recoverable and that a return, but one reduced to recognize a mismanagement penalty, is warranted, and that the Commission *with contrasting evidence on the merits*, with exception addressed below, authorizes recovery.

2018 Rate Case Order at 266 (emphasis added). The Commission contrasted that evidence and argument with the evidence and arguments submitted by intervenors who opposed recovery. Upon review of the intervenors' evidence on the merits in the 2018 Rate Case, the Commission expressly found that DEC's evidence was not "seriously or credibly controverted by any Intervenor[.]" *Id.* In other words, the Commission weighed the intervenors' evidence against DEC's evidence and determined that the intervenors' evidence was unpersuasive and insufficient to overcome DEC's prima facie burden of production and its ultimate burden of persuasion. *Id.* In this case, the Commission followed the same procedure.

B. DEC Satisfied Its Burden of Proof.

The LDCs also contend that even if the evidence presented by DEC did meet the prima facie standard, DEC still did not meet its ultimate burden of proving that the HERO-component will not promote unfair or destructive competition. Joint Motion at 9. The LDCs' contention fails. The Commission reviewed the substantial evidence that the Revised RNC Program did not promote unfair or destructive competition and, after review, found the evidence offered by the LDCs to rebut or contradict the evidence supporting DEC's position to be insufficient or unpersuasive. RNC Order at 26, 28-29. As in the 2018 Rate Case Order discussed above, the Commission in this matter reviewed DEC's evidence with the contrasting evidence from the LDCs on the merits. Upon that review, the Commission determined that DEC had met its burden of proof.

The LDCs' Joint Motion ignores DEC's substantial evidence showing that the HERO-Plus incentive does not result in unfair or destructive competition against the LDCs. As discussed above, the RNC Order reviewed the evidence presented by DEC in its RNC

Application, its Revised RNC Program application with its reduced incentives, DEC's reply comments, and its witnesses at the January 27, 2020 hearing. RNC Order at 4-6; 22-24. DEC witness Duff testified at the January 27, 2020 hearing that the program managers who designed the RNC program worked with builders to purposefully design the program to be fuel neutral and to incent cost-effective energy efficiency savings. RNC Order at 18, citing Tr. at 17-20. The Commission also credited statements from DEC witness Evans at the January 27, 2020 hearing on DEP's relevant experience with its similar RNC program. As discussed above, his testimony was that approximately 66% of the new homes that participate in DEP's WHI choose gas heat, and that under the kWh incentive for the HERO-Plus feature of the Program, the result is about 50/50 of gas heating customers and electric heating customers. The LDC witnesses did not disagree with this testimony. RNC Order at 24, 27.

As noted above, a 50/50 market share for gas heating customers and for electric heating customers does not evince unfair or destructive competition between the electric utility and the natural gas companies. Additionally, the Commission relied upon the data DEC provided on the DEP RNC program showing that for years 2016-2019, 48.9% of the participating homes chose electric heat and 51.1% of the participating homes chose gas heat. When broken down further, DEC's evidence showed that homes under the HERO-Plus program, 51.9% chose electric heat and 48.1% chose gas heat. In comparison, 36.6% of the homes under the HERO Program chose electric heated homes and 64.4% chose gas heated homes. RNC Order at 27. This data also supports the Commission's determination that the Revised RNC Program does not promote unfair or destructive competition. RNC Order at 27-28.

The Commission further specifically credited the Public Staff's comments in support of the Revised RNC Program. The Public Staff noted that DEC's reduced HERO-Plus incentive in its Revised RNC Program was a reasonable concession addressing the LDCs' concerns about unfair or destructive competition. RNC Order at 28. Those comments provided that, based on the available evidence presented by DEC and other relevant evidence, the Revised RNC Program did not result in unfair or destructive competition. RNC Order at 28.

The LDCs essentially made three arguments to counter this evidence, which the Commission considered, but ultimately did not find sufficient or persuasive to overcome or outweigh DEC's evidence. First, the LDCs appear to assert that *any* evidence of competition equates to evidence of unfair or destructive competition. They alleged that their Exhibit 1, filed with their joint comments on January 19, 2021, demonstrated that the incentives offered under the HERO-Plus component of the RNC Program were higher for all-electric homes compared to homes using natural gas. Joint Motion at 9. Thus, they summarily assert that the record clearly established that, as illustrated by the effect of the HERO-Plus incentive on a sample home, DEC could not meet its burden of proving the HERO-Plus incentive will not promote unfair or destructive competition. *Id.* In reviewing the relevant evidence from the DEP RNC program, the Commission recognized that the kWh incentive in the DEP RNC program may have benefitted DEP in some circumstances, but it distinguished evidence of "healthy" competition from that of unfair or destructive competition. RNC Order at 26. The LDCs' respective Codes of Conduct do not prohibit and, in fact, contemplate competition between electric public utilities and natural gas companies. In short, Rule R8-68(e) does not require that the Commission rule out *all*

potential for competition between the two before approving a cost-effective energy efficiency programs that offer incentives for kWh savings. Rather, the Rule simply states that the Commission “*may* consider any information it determines to be relevant, and the Commission did just that.

Second, the LDCs alleged that the similar DEP RNC program had caused them to lose market share. In support of the LDCs’ concerns that they would lose market share if the initial RNC program were approved, the LDCs’ witnesses had cited “reports from the field” that experienced field people “do *feel* they have sustained loss of market share - not a “catastrophic” loss – but “some denigration.” RNC Order at 22 (emphasis added.). Piedmont witness Barkley conceded that he was “not sure we could ever say for sure because there may not be one factor that influences how a builder sets up a subdivision.” *Id.* Moreover, in response to DEC’s testimony that 50% - 60% of the homes in the DEP RNC program use natural gas, PSNC witness McAulay stated that he just didn’t know what the outcome would have been otherwise. Piedmont witness Barkley stated that there was no way to know. RNC Order at 24. The Commission gave some weight to this testimony, but ultimately determined that (as DEC had argued in its Reply Comments)³ that there are many factors, such as availability of natural gas or the customer’s preferences for cooking and water heating, that influence a developer’s or customer’s choice between electric and natural gas utility service. RNC Order at 26, 28.

Third, the LDCs argued that there were potential competitive disadvantages for the them when compared to the discrepancy between their annual budgets for funding energy

³ DEC’s Reply Comments at 8, explaining that its review showed that the unavailability of natural gas service due to distance to natural gas pipelines may drive decisions about whether to install natural gas instead of kWh incentives.

efficiency programs and the electric utilities' much larger annual budgets. RNC Order at 26. The LDCs' related concern was that the electric utilities were far larger with respect to capital investments and annual revenue streams than the LDCs. The Commission considered this argument but recognized that the electric utilities have an obligation to serve all persons in their assigned service territory, while LDCs do not. These types of inherent structural differences between the LDCs and the electric public utilities do not produce destructive competition, however, were insufficient to persuade the Commission to deny approval of a cost-effective energy efficiency program that was proven and well-accepted.

Although the Commission determined that relevant evidence in the record did not show that the Revised RNC Program promoted unfair and destructive competition, it accepted DEC's offer to work with an independent third-party evaluator to develop a component of the evaluation, measurement and verification ("EM&V") process that will assess builders' decisions to install natural gas in new homes. Ongoing data from the DEP RNC program supports the Commission's determination in this proceeding and may show a decreasing impact on natural gas installations. DEC will include this EM&V information in its annual DSM/EE rider filing. In summary, this outcome aligns with the State's policy goals stated in N.C. Gen. Stat. § 62-2(a)(10) (policy includes promoting energy efficiency); Senate Bill 3 (Sess. Law 2007-397) (An Act promoting, among other things, energy efficiency programs by electric power suppliers); and House Bill 951 (requires the Commission to take all reasonable steps to achieve a 70% reduction in carbon dioxide emissions in the State from electric public utilities' electric generating facilities from 2005 levels by the year 2030). As such, the RNC Order reflects the policy goals adopted by the

General Assembly and the Commission's balance of the interests of DEC, the LDCs, and ratepayers.

D. Conclusion

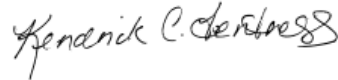
The voluminous record in this lengthy docket contains copious testimonial and documentary evidence supporting DEC's application for approval of the Revised RNC Program. For that matter, the record contains copious amounts of evidence submitted by the LDCs in support of their positions that the Revised RNC program should not be approved. Indeed, the record as a whole contains evidence submitted by all parties in the nature of rebuttal to the evidence from their adversaries. The Commission's RNC Order comprehensively summarizes this evidence. After these summaries, the Commission made findings of fact that address and resolve the contested evidence. Thereafter, the Commission in its order weighed the evidence presented by all parties and explained and justified its findings of fact and recited its conclusions of law. The Commission used the verb "weighs" time and again. The Commission followed its customary practice of structuring its orders in this fashion to comply with court-imposed requirements enabling review should the order be appealed to the appellate courts.

Contrary to the Joint Motion, the Commission did not resolve the issues in this docket on the basis of either a failure by any party to meet a burden of proof or on any party's failure to meet a burden of production, the few LDC references to isolated and out of context sentences notwithstanding. Instead, the Commission determined that DEC, and parties such as the Public Staff supporting DEC's position, prevailed in meeting a burden of persuasion on the ultimate issue in this docket, that the programs meet the requirements of the statutory and Commission rule for approval and that the LDCs failed to meet their

burden of persuading the Commission that the programs advanced should be disapproved.
The Commission correctly resolved the issues on the merits.

WHEREFORE, for the foregoing reasons, DEC respectfully requests that the
Commission issue an order denying the LDCs' Joint Motion for Reconsideration.

Respectfully submitted this the 24th day of January, 2022.



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