

1 PLACE: Dobbs Building, Raleigh, North Carolina
2 DATE: Tuesday, May 30, 2023
3 TIME: 2:15 p.m. - 4:30 p.m.
4 DOCKET NO: E-7, Sub 1281
5 BEFORE: Commissioner Kimberly W. Duffley, Presiding
6 Chair Charlotte A. Mitchell
7 Commissioner ToNola D. Brown-Bland
8 Commissioner Daniel G. Clodfelter
9 Commissioner Jeffrey A. Hughes
10 Commissioner Floyd B. McKissick, Jr.
11 Commissioner Karen M. Kemerait

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IN THE MATTER OF:
Application of Duke Energy Carolinas, LLC,
for Approval of CPRE Program Compliance Report
and CPRE Program Cost Recovery Rider Pursuant to
N.C.G.S. § 62-110.8 and Commission Rule R8-71

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P R O C E E D I N G S

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2 Good afternoon. Let's come to order and
3 please go on the record. I am Kimberly W. Duffley,
4 and with me today are Commission Chair Charlotte A.
5 Mitchell and Commissioners ToNola D. Brown-Bland,
6 Daniel G. Clodfelter, Jeffrey A. Hughes, Floyd B.
7 McKissick, Jr., and Karen M. Kemerait.

8 I now call for hearing, at this time, Docket
9 No. E-7, Sub 1281, which is the Application of Duke
10 Energy Carolinas or DEC for Approval of the CPRE Cost
11 Recovery Rider and the 2022 CPRE Compliance Report.
12 Pursuant to North Carolina General Statute Section
13 § 62-110.8 and Commission Rule R8-71.

14 On February 28th, 2023, DEC filed its
15 Application for Approval of the CPRE Cost Recovery
16 Rider and the 2022 CPRE Compliance Report, along with
17 the testimony and exhibits of Angela M. Taber and
18 Christy J. Walker, portions of which were filed as
19 confidential.

20 On March 16th, 2023, the Commission issued
21 an Order Scheduling a Remnant Hearing Requiring Filing
22 of Testimony Establishing Discovery Guidelines and
23 requiring Public Notice. Timely petitions to
24 intervene in this docket were filed by the Carolina

1 Utility Customers Association, Incorporated,
2 hereinafter, CUCA and the Carolina Industrial Group
3 For Fair Utility Rates III, hereinafter, CIGFUR III.
4 The Commission granted these petitions to intervene.
5 The intervention and participation by the Public Staff
6 is recognized pursuant to North Carolina General
7 Statute Section § 62-15.

8 On April 24th, 2023, CIGFUR III caused to be
9 filed a Notice of Appearance for Douglas Connant.

10 On April 3rd, 2023, DEC filed supplemental
11 testimony and exhibits of Angela M. Taber and Christy
12 J. Walker, parts of which were prefiled as
13 confidential.

14 On May 13th, 2023, the Public Staff filed
15 the direct testimony of Darrus K. Cofield, Public
16 Utility Regulatory Analyst Accounting Division and
17 Jeff Thomas, Engineer with the Energy Division of the
18 Public Staff, portions of which were prefiled as
19 confidential.

20 On May 18th, 2023, DEC filed the rebuttal
21 testimony of Angela M. Taber and Matthew Holstein,
22 portions of which were prefiled as confidential.

23 On May 23rd, 2023, the Public Staff filed a
24 Motion for Substitution of Witness and Adoption of

1 Testimony, and the testimony of James S. McLawhorn,
2 portions of which were prefiled as confidential.

3 On May 24th, 2023, DEC and Public Staff
4 filed Joint Motion to excuse witnesses Christy Walker
5 and Darrus Cofield, which was allowed by Commission
6 Order on May 26, 2023.

7 Today, on May 30th, 2023, the Public Staff
8 filed the updated confidential version of the
9 testimony of James S. McLawhorn so that the record may
10 accurately reflect the public and confidential
11 information within his testimony.

12 In compliance with the State Ethics Act, I
13 remind Members of the Commission of our responsibility
14 to avoid conflicts of interest and inquire, at this
15 time, whether any member has a known conflict of
16 interest with respect to the matter before us in this
17 proceeding.

18 (No response)

19 COMMISSIONER DUFFLEY: Let the record
20 reflect that no conflicts have been identified. I now
21 call for appearances of counsel.

22 MS. TOON: Good afternoon. Thank you. My
23 name is Lawdawn Toon, Associate General Counsel, on
24 behalf of the Applicant Duke Energy Carolinas, LLC.

1 COMMISSIONER DUFFLEY: Good afternoon.

2 MR. BREITSCHWERDT: Good afternoon,
3 Presiding Commissioner Duffley, Commissioners, Brett
4 Breitschwerdt with the Law Firm of McGuireWoods, on
5 behalf of the Applicant. With me today are Kristin
6 Athens and Mason Manny, also with McGuireWoods.

7 COMMISSIONER DUFFLEY: Good afternoon.

8 MR. FELLING: Good afternoon, Commissioner
9 Duffley and members of the Commission, Tom Felling and
10 Robert Josey with the Public Staff, here on behalf of
11 the Using and Consuming Public.

12 COMMISSIONER DUFFLEY: Good afternoon.

13 MR. TRATHEN: Good afternoon. Marcus
14 Trathen on behalf of the Carolina Utility Customers
15 Association.

16 COMMISSIONER DUFFLEY: Good afternoon.

17 MS. CRESS: Good afternoon. Christina Cress
18 here on behalf CIGFUR III.

19 COMMISSIONER DUFFLEY: Good afternoon. Any
20 other appearance?

21 (No response)

22 COMMISSIONER DUFFLEY: Are there any
23 preliminary matters before we begin?

24 MR. BREITSCHWERDT: Commissioner Duffley,

1 just very briefly, the Company has conferred with the
2 Public Staff and with counsel for CUCA and CIGFUR, and
3 no parties have examination for the Company's direct
4 case, and so the rebuttal panel of Witnesses Holstein
5 and Tabor, we would plan to present after the Public
6 Staff case, and at that time, we'd also present the
7 direct and supplemental testimony of Witness Tabor, if
8 that's acceptable to the Commission.

9 COMMISSIONER DUFFLEY: That's acceptable.

10 MR. BREITSCHWERDT: Thank you.

11 COMMISSIONER DUFFLEY: No objections to
12 that. Okay. Any other preliminary matters?

13 MR. FELLING: Just for clarification, we had
14 a pending motion to substitute James McLawhorn for
15 Jeff Thomas and wanted to, if that needed Commission
16 attention at this time.

17 COMMISSIONER DUFFLEY: It does. And without
18 objection, that motion will be allowed.

19 MR. FELLING: Thank you.

20 COMMISSIONER DUFFLEY: And moving to public
21 witnesses, Mr. Josey and Mr. Felling, have you
22 identified any public witnesses that wish to present
23 testimony this afternoon.

24 MR. FELLING: We have not.

1 for the record, please.

2 A James S. McLawhorn. My business address is 430
3 North Salisbury Street, Raleigh, North Carolina,
4 and I am the Director of the Public Staff's
5 Energy Division.

6 Q Are you aware that on May 9th, 2023, Public Staff
7 Witness Jeff Thomas prepared and caused to be
8 prefiled direct testimony in this docket
9 consisting of 17 pages and one exhibit?

10 A Yes.

11 Q And was that testimony and exhibit prepared with
12 your knowledge and under your supervision as
13 Mr. Thomas' supervisor.

14 A Yes, it was.

15 Q And are you aware of any changes or corrections
16 to that prefiled direct testimony?

17 A I am not.

18 Q And on May 23rd, 2023, did you adopt Mr. Thomas'
19 prefiled direct testimony and exhibit as your
20 own, and through counsel, moved the Commission to
21 be substituted as a witness in place of
22 Mr. Thomas for the purposes of this hearing?

23 A Yes.

24 Q On May 30, 2023, did you file an update to that

1 prefiled direct testimony to ensure that the
2 record accurately reflected the public and
3 confidential information in your testimony?

4 A Yes.

5 Q Do you have any changes or corrections to that
6 prefiled direct testimony?

7 A No, I do not.

8 Q And if you were asked the same -- those same
9 questions today while testifying from the witness
10 stand, would your answers be the same?

11 A Yes, they would.

12 MR. FELLING: Commissioner Duffley, at this
13 time, I move that the prefiled direct testimony of
14 Public Staff Witness James McLawhorn be entered into
15 the record as if given orally from the stand, and that
16 McLawhorn Exhibit 1 be marked for identification as
17 prefiled.

18 COMMISSIONER DUFFLEY: And my papers have --
19 there's an Appendix A as well. Is that accurate?

20 MR. FELLING: Yes. Thank you, and
21 Appendix A as well.

22 COMMISSIONER DUFFLEY: And you want to mark
23 that?

24 MR. FELLING: Yes, please. Thank you.

1 COMMISSIONER DUFFLEY: Okay. So the direct
2 testimony of James McLawhorn, containing confidential
3 information filed on May 30th, 2023, consisting of 17
4 pages, will be copied into the record as if given
5 orally from the stand. Appendix A and Exhibit 1 will
6 be marked for identification as they were when
7 prefiled.

8 (WHEREUPON, McLawhorn Exhibit 1
9 was identified as it was marked
10 when prefiled.)

11 (WHEREUPON, the prefiled direct
12 testimony and Appendix A of James
13 S. McLawhorn is copied into the
14 record as if given orally from
15 the stand.)
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BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 1281

In the Matter of)	TESTIMONY OF
Application of Duke Energy Carolinas,)	JAMES S. MCLAWHORN
LLC, for Approval of CPRE Program)	PUBLIC STAFF –
Compliance Report and CPRE Cost)	NORTH CAROLINA
Recovery Rider Pursuant to N.C.G.S §)	UTILITIES COMMISSION
62-110.8 and Commission Rule R8-71)	

MAY 30, 2023

1 **Q. Please state your name, business address, and present**
2 **position.**

3 A. My name is James S. McLawhorn. My business address is 430 North
4 Salisbury Street, Dobbs Building, Raleigh, North Carolina. I am the
5 director of the Energy Division of the Public Staff – North Carolina
6 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 make recommendations to the
11 Commission regarding the Public Staff's investigation of the application
12 for recovery of costs associated with the implementation of the
13 Competitive Procurement of Renewable Energy (CPRE) Program filed
14 by Duke Energy Carolinas, LLC (DEC or the Company) on February 28,
15 2023. My review also includes the supplemental testimony and exhibits
16 filed by DEC on May 3, 2023 (Supplemental Filing).

17 The Public Staff Energy Division's specific responsibilities in this
18 CPRE rider proceeding are to: (1) review the Company's application
19 and proposed rates for compliance with N.C. Gen. Stat. § 62-110.8
20 and Commission Rule R8-71; (2) review the CPRE Compliance
21 Report and address any deficiencies pursuant to Commission Rule
22 R8-71(h) and Commission Orders; and (3) make recommendations

1 regarding changes to the Company's calculations of the proposed
2 rates.

3 **Q. How is your testimony organized?**

4 A. My testimony summarizes the CPRE Program Rider request and the
5 CPRE Compliance Report and presents the results of the Public
6 Staff's investigation.

7 **Q. Are you recommending any adjustments in your testimony?**

8 A. Yes. I am recommending that a portion of liquidated damages
9 associated with a contested Power Purchase Agreement (PPA)
10 termination be credited to ratepayers in the Experience Modification
11 Factor Period (January 1, 2022, through December 31, 2022) (EMF
12 Period).

13 A. Overview of DEC's CPRE Rider Request

14 **Q. What costs does DEC seek to recover associated with the CPRE
15 program implementation?**

16 A. As described in the direct and supplemental testimony of DEC
17 witness Walker, DEC seeks to recover a net total of \$365,777 in
18 implementation costs (system) incurred during the EMF Period
19 These costs include internal company labor and associated costs,
20 outside consulting and legal services, and a \$75,767 credit reflecting
21 Independent Administrator (IA) fees associated with Tranche 3 that

1 were inadvertently included in DEC's 2022 CPRE Rider. DEC has
2 also included a \$5.4 million credit to ratepayers reflecting: (1)
3 liquidated damages associated with projects that had their PPAs
4 terminated; and (2) Change Of Control fees collected from market
5 participants (MPs) in the EMF Period.¹ DEC forecasts ongoing
6 system implementation costs of \$388,648 from September 1, 2023,
7 through August 31, 2024, (Billing Period) associated with internal
8 labor and external consulting.

9 **Q. Please explain the liquidated damages credit DEC proposes to**
10 **flow back to customers.**

11 A. During the EMF Period, one Tranche 2 facility terminated its PPA,
12 and pursuant to the terms of the PPA, provided liquidated damages
13 to DEC. The 75 MW solar facility located in Spartanburg, South
14 Carolina is owned by JSD Flatwood PV-2, LLC. A mutual termination
15 agreement was executed on March 10, 2022, which acknowledged
16 that the developer had decided to cease the development and
17 construction of the facility. The developer was responsible for, and
18 paid, liquidated damages of **[BEGIN CONFIDENTIAL]** [REDACTED]
19 **[END CONFIDENTIAL]**. At a levelized price of **[BEGIN**

¹ Section 24.6 of the Power Purchase Agreement (PPA) states that "Without limiting Buyer's rights under this Section 24, to the extent Buyer agrees to a request from Seller for one or more consent(s) to Assignment or Change of Control under this Agreement, Seller shall pay Buyer ten thousand dollars (\$10,000) prior to Buyer processing Seller's request."

1 **CONFIDENTIAL** [REDACTED] **[END CONFIDENTIAL]**, this
2 facility represented the most expensive Tranche 2 facility (excluding
3 network upgrades) that was awarded a PPA. DEC states that
4 because this one-time credit is not associated with ratepayer
5 revenues, it is not included in the EMF Period interest calculation,
6 pursuant to N.C.G.S. § 62-130(e).²

7 **Q. How does DEC allocate these implementation costs and one-**
8 **time credits?**

9 A. In its application, DEC allocates implementation costs to NC retail
10 customer classes using a weighted average of the energy and
11 capacity allocation factors (“Composite Factor”), calculated
12 separately for the EMF Period and the Billing Period, as described
13 by witness Walker on page 9 of her direct testimony.

14 **Q. What costs does DEC seek to recover that are associated with**
15 **purchases of energy and capacity from winning projects?**

16 A. Within the EMF Period, DEC seeks recovery of \$19.9 million in
17 system purchased power costs associated with operational Tranche
18 1 and 2 projects, which generated 525,629 MWh (an increase of

² “In all cases where the Commission requires or orders a public utility to refund moneys to its customers which were advanced by or overcollected from its customers, the Commission shall require or order the utility to add to said refund an amount of interest at such rate as the Commission may determine to be just and reasonable; provided, however, that such rate of interest applicable to said refund shall not exceed ten percent (10%) per annum.”

1 271% over DEC's 2022 CPRE Rider), which equates to an average
2 cost of \$37.87 per MWh. The North Carolina retail portion of this total
3 revenue requirement is \$13.3 million.

4 DEC estimates that during the Billing Period it will incur a total of
5 approximately \$37.3 million (system) in purchased and generated
6 power costs, consisting of \$5.3 million in capacity and \$32 million in
7 energy costs associated with an estimated 962,960 MWh of
8 generation from Tranche 1 and Tranche 2 projects, which equates to
9 an average cost of \$38.69 per MWh. The North Carolina retail portion
10 of these total costs is approximately \$24.9 million. The Public Staff
11 has reviewed DEC's forecasts of Billing Period expenses and finds
12 them reasonable, while also noting that continued project delays
13 associated with Tranche 2 facilities may result in over-recovery in
14 DEC's 2024 CPRE rider EMF Period.

15 **Q. Please provide an overview of DEC's CPRE compliance report.**

16 A. DEC filed its 2022 CPRE Compliance Report pursuant to
17 Commission Rule R8-71(h) and included information required for
18 calendar year 2022. The Compliance Report provides an overview
19 of activity in Tranches 1, 2, and 3. The Compliance Report also
20 provides average pricing for each of the selected proposals, avoided
21 cost thresholds, costs and authorized revenue, network upgrade
22 costs on a per-project basis, and a certification from the IA stating

1 that its evaluation process for Tranche 3 treated all participants
2 equitably and was unaware of any bias towards or against any
3 participant.

4 **Q. Does the Compliance report provide any information on the**
5 **status of the 30% utility-owned limit in N.C.G.S. § 62-110.8(b)(4)?**

6 A. Yes, the Compliance Report designates each facility as either a PPA
7 or utility-owned; however, it does not identify Duke Energy affiliates,
8 which are to be included within the 30% limit.³ The Public Staff found
9 that in Tranches 1, 2, and 3, approximately 14% of capacity procured
10 is owned by DEC, Duke Energy Progress, LLC (DEP; collectively
11 with DEC, Duke), or Duke Energy affiliates. When considering the
12 facilities that have terminated their CPRE PPAs, that figure rises to
13 approximately 19%. The Public Staff finds that Duke has not
14 exceeded the 30% statutory limit, and further, that even if additional
15 projects withdraw that cause the 30% limit to be exceeded, the
16 statute would not be violated.

17 **Q. Does the Public Staff believe DEC's CPRE compliance report**
18 **satisfies the requirements of Commission Rule R8-71(h)?**

19 A. Yes. Based upon the Public Staff's review, DEC's CPRE Compliance
20 Report provides adequate information that satisfies both the

³ See the Commission's February 21, 2018 Order Modifying and Approving Joint CPRE Program in Dockets E-7 Sub 1156, and E-2 Sub 1159, at 3.

1 requirements of Commission Rule R8-71(h) and the Commission's
 2 February 21, 2018 *Order Modifying and Approving Joint CPRE*
 3 *Program* in Docket Nos. E-7, Sub 1156, and E-2, Sub 1159 (CPRE
 4 Order).

5 B. CPRE Rider Investigation

6 Q. **Please summarize the overall status of CPRE projects.**

7 A. The CPRE Program has, unfortunately, experienced significant
 8 project delays, withdrawals, and terminations in recent years. Duke's
 9 PPA terminations are entirely in DEC, which procured the majority of
 10 CPRE capacity. As shown in Table 1 below, out of the 1,024 MW of
 11 projects that signed PPAs with DEC in Tranches 1 and 2, only 320
 12 MW (24%) have achieved commercial operation, and 350 MW (34%)
 13 have terminated their PPA. In addition, several other facilities have
 14 delayed their in-service dates.

15 *Table 1: Overview of DEC CPRE Project Status.*

DEC	Selected	Terminated	Active	Terminated %	In Service	In Service %
Tranche 1:	435	40	395	9%	270	62%
Tranche 2:	589	310	279	53%	50	8%
Tranche 3:	155	0	155	0%	0	0%
Total	1,179	350	829	30%	320	27%

1 **Q. How are DEC ratepayers affected by these terminations and**
2 **delays?**

3 A. The cost of each CPRE facility, inclusive of network upgrades, was
4 below the avoided cost as calculated at the time, pursuant to statute.
5 Therefore, a withdrawal or delay in the commercial operation of a
6 CPRE facility increases costs for ratepayers.⁴ In addition, CPRE
7 facilities are necessary to meet the carbon reduction targets from
8 N.C.G.S. § 62-110.9 (HB 951); any delay in interconnecting these
9 resources risks creating a cascading delay that may impact the
10 interconnection of other Carbon Plan resources procured in the
11 ongoing 2022 Solar Procurement, the 2023 Solar Procurement, and
12 beyond.

13 However, CPRE facilities that terminate their PPA must pay
14 liquidated damages, which flow back to DEC ratepayers in this
15 proceeding, reducing the revenue requirement of the CPRE Rider.

16 **Q. What liquidated damages has DEC included in this proceeding?**

17 A. In its initial filing, DEC included liquidated damages and change of
18 control fees in the EMF Period of approximately \$5.4 million.
19 However, during its investigation the Public Staff found that DEC had

⁴ For example, the CPRE Tranche 3 Final Report, filed by the IA on April 17, 2023 in Docket No. E-7, Sub 1156, estimates nominal savings of \$9.7 million over 20 years associated with the 155 MW procured at an average cost of \$38.71 per MWh in Tranche 3.

1 assessed other facilities for liquidated damages in 2023. DEC's
2 Supplemental Filing includes [BEGIN CONFIDENTIAL] ██████
3 ██████ [END CONFIDENTIAL] of liquidated damages that it has
4 received in 2023 from [BEGIN CONFIDENTIAL] ██████
5 ██████ [END CONFIDENTIAL] as a credit to Billing Period
6 costs. DEC included these liquidated damages in its Supplemental
7 Filing at the request of the Public Staff, and the impact of these
8 credits reduced the total CPRE rider by approximately 50% for each
9 rate class.

10 **Q. Is the Public Staff making any adjustments to the Company's**
11 **Application in this proceeding?**

12 A. Yes. On August 23, 2022, DEC issued a letter to the 75 MW Wilkes
13 Solar facility, which was selected as a winning bid in Tranche 2,
14 notifying it of contract default and liquidated damages of [BEGIN
15 CONFIDENTIAL] ██████ [END CONFIDENTIAL]. However,
16 Wilkes Solar disputed this default, stating that DEC caused
17 unreasonable delays in completing required interconnection studies,
18 which allegedly delayed the project's interconnection by at least two
19 years, resulting in the project no longer being economically viable.

20 DEC attempted informal resolution with Wilkes Solar but was
21 unsuccessful. It then attempted to pursue enforcement of its
22 liquidated damages obligation under the PPA. However, the

1 performance assurance provided by Wilkes Solar was in the form of
2 a parent company guaranty, which expired on December 31, 2021,
3 and was no longer enforceable at the time of Wilkes' PPA termination
4 and default. Due to the dispute over termination fault and the
5 unenforceable guaranty, DEC concluded that the cost of litigation
6 was unduly risky, would face substantial challenges, and, even if
7 DEC prevailed, recovery of the funds was not guaranteed. Thus,
8 DEC has so far decided not to pursue liquidated damages from
9 Wilkes Solar.

10 **Q. Was a guaranty an acceptable form of performance assurance**
11 **in CPRE Tranche 2?**

12 A. Yes. The Tranche 2 RFP stated that Step 2 proposal security could
13 be provided "in the form of (i) cash; (ii) a Surety Bond; or (iii) a Letter
14 of Credit."⁵ In addition, section 5.7 of the CPRE Tranche 2 PPA
15 states:

16 Seller shall ensure that the Performance Assurance in
17 the required amount remains in full force, and effect,
18 and outstanding for the duration required by this
19 Agreement. All applicable Performance Assurance, in
20 the amount required pursuant to the terms of this
21 Agreement, shall remain in full force, and effect, and
22 outstanding for the benefit of Buyer until sixty (60) days
23 following the later of: (a) the end of the Term or (b) the
24 date on which Seller has fully satisfied all obligations to
25 Buyer under this Agreement (the "Security Period"). If
26 at any time any Performance Assurance fails to meet
27 any of the requirements under this Agreement, Seller

⁵ Tranche 2 RFP, attached as McLawhorn Exhibit 1, at 7.

1 shall replace such Performance Assurance with
2 alternative Performance Assurance that meets each of
3 the requirements under this Agreement. Seller will be
4 solely responsible for any and all costs incurred with
5 providing and maintaining any Performance Assurance
6 to the full amount required by this Agreement. If Seller
7 fails to replace, renew, or otherwise maintain the
8 required Performance Assurance as and when
9 required by this Agreement, then Buyer: (a) shall be
10 entitled to draw and retain hereunder the full amount of
11 the Performance Assurance; (b) shall not be obligated
12 to make any further payments to Seller until Seller shall
13 have provided Buyer with the replacement
14 Performance Assurance; and, (c) shall be entitled to
15 give Seller notice of an Event of Default and pursue the
16 termination rights and remedies provided for in this
17 Agreement.⁶

18 **Q. Given the terms of the RFP and PPA, why was the guaranty**
19 **allowed to expire?**

20 A. The expiration of the guaranty appears to be the result of an
21 oversight by DEC. Its credit department entered the guaranty into its
22 tracking system but did not enter an expiration date. Thus, the
23 tracking system did not automatically flag that the guaranty was
24 expiring and needed to be renewed. DEC stated that it has audited
25 all CPRE facilities and confirmed that they are properly recorded in
26 their credit tracking system, but has not implemented any process
27 changes, as it views the Wilkes Solar incident as isolated and states
28 that the existing process has historically performed well.

⁶ Filed in Docket E-7, Sub 1159 on September 16, 2019.

1 **Q. Is the Public Staff making any recommendations regarding this**
2 **loss of guaranty?**

3 A. Yes. The Public Staff recommends that the Commission direct DEC
4 to credit ratepayers 50% of the liquidated damages in the EMF
5 Period, or **[BEGIN CONFIDENTIAL]** █████ █████ **[END**
6 **CONFIDENTIAL]**, that it could have obtained from Wilkes Solar. I
7 have provided this recommendation to Public Staff accounting
8 witness Cofield.

9 **Q. Please explain the justification for this adjustment.**

10 A. The Public Staff is not making a judgment as to whom was at fault
11 for the PPA termination, which would determine whether or not
12 Wilkes Solar is responsible for paying liquidated damages. However,
13 the lack of an expiration date in the tracking system would have
14 made recovering liquidated damages from Wilkes Solar more
15 difficult, if not impossible, even if DEC was not found to be the
16 defaulting party. The Public Staff is not recommending that DEC
17 pursue liquidated damages due to the facts of the matter and due to
18 the risk that litigation costs might exceed the liquidated damage
19 revenue. However, the Public Staff does not believe that DEC
20 ratepayers should bear the full cost of DEC's error.

1 Q. Does the total revenue requirement DEC seeks to recover in this
2 proceeding exceed the cost cap established by N.C.G.S. § 62-
3 110.8(g)?

4 A. No. The total revenue requirements sought for recovery in this
5 proceeding are less than 1% of DEC's total North Carolina retail
6 jurisdictional gross revenues for 2022.

7 Q. Does the Public Staff have any information regarding the
8 accuracy of network upgrade costs used in the CPRE evaluation
9 process?

10 A. Yes. While DEC is not seeking recovery of any network upgrade
11 costs in this proceeding, the Public Staff has monitored the latest
12 network upgrade costs for CPRE winning projects to determine if
13 they are reasonably accurate relative to the initial estimates used in
14 the evaluation process. Overall, the Public Staff found that the
15 difference between network upgrade estimates used in the
16 evaluation and the most recent network upgrade costs was
17 significant.

18 Across all Tranche 1 and 2 winning projects that have not withdrawn,
19 the total initial network upgrade cost estimates used in the evaluation
20 process was [BEGIN CONFIDENTIAL] [REDACTED] [END
21 CONFIDENTIAL]. The most recent estimate to interconnect these
22 same projects is [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED]

1 [REDACTED] [END CONFIDENTIAL]. Across all
2 Tranche 1 and 2 projects that have achieved commercial operation,
3 the initial network upgrade cost estimates used in the evaluation
4 process was [BEGIN CONFIDENTIAL] [REDACTED] [END
5 CONFIDENTIAL], and the in-service upgrade costs for these in-
6 service projects are [BEGIN CONFIDENTIAL] [REDACTED]
7 [REDACTED] [END CONFIDENTIAL].

8 The Public Staff is investigating the reasonableness and prudence
9 of these network upgrade costs associated with in-service projects
10 in DEC's current general rate case in Docket No. E-7, Sub 1276.
11 However, at this time it does not appear that any individual project's
12 upgrade cost has exceeded 125% of its initial estimate, which would
13 invoke the Commission's "limit in the nature of a presumption that
14 costs in excess of 25% of the estimated costs, are unreasonably
15 incurred and not recoverable."⁷

⁷ See the Commission's Order Modifying and Accepting CPRE Program Plan, filed in Docket Nos. E-2, Sub 1159 and E-7, Sub 1156, at 18, on July 2, 2019.

1 C. Public Staff Recommendations

2 **Q. What are your recommendations to the Commission regarding**
 3 **DEC's application?**

4 A. The Public Staff recommends that the Commission accept the rates
 5 as proposed in Table 3 below, which are the rates filed by DEC in its
 6 Supplemental Filing plus the addition of the aforementioned
 7 liquidated damages credit.

8 **Q. What rates has DEC requested for its EMF and CPRE rider?**

9 A. In its Supplemental Testimony, DEC requested the following charges
 10 (excluding regulatory fee). The EMF Rate includes an interest
 11 component.

12 *Table 2: DEC's CPRE Rider Request - May 3, 2023 Supplemental Filing (cents per kWh)*

Customer Class	EMF Rate	CPRE Rider Rate	Total CPRE Rate
Residential	(0.0128)	0.0271	0.0143
General Service	(0.0141)	0.0261	0.0120
Industrial	(0.0093)	0.0253	0.0160

1 **Q. What rates does the Public Staff propose for DEC's EMF and**
 2 **CPRE rider?**

3 A. The Public Staff recommends the Commission adopt the following
 4 CPRE rider rates, which reflect DEC's Supplemental Filing and the
 5 Public Staff's recommended adjustment, as discussed herein.

6 *Table 3: Public Staff's Proposed Rates (cents per kWh)*

Customer Class	EMF Rate	CPRE Rider Rate	Total CPRE Rate
Residential	(0.0153)	0.0271	0.0118
General Service	(0.0165)	0.0261	0.0096
Industrial	(0.0113)	0.0253	0.0140

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

8 A. Yes, it does.

QUALIFICATIONS AND EXPERIENCE**JAMES S. MCLAWHORN**

I graduated with honors from North Carolina State University with a 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 Electric Division of the Public Staff in November of 1988. I became Director of the Electric Division in October of 2006, and, with the merger of the Electric and Natural Gas Divisions, I assumed my present position as Director of the Energy Division in August of 2020. It is my responsibility to supervise the review of, and make policy recommendations to Public Staff senior management on, all electric and natural gas utility matters that come before the Commission.

I have testified previously before the Commission in numerous proceedings.

1 MR. FELLING: Thank you. Mr. McLawhorn is
2 now available for cross-examination.

3 COMMISSIONER DUFFLEY: No cross?

4 MR. TRATHEN: I have no cross from the
5 Company, although we reserve the right to ask
6 questions if the Commission asks questions.

7 COMMISSIONER DUFFLEY: Okay. Any
8 Commissioner questions? Chair Mitchell.

9 CHAIR MITCHELL: Good afternoon,
10 Mr. McLawhorn. Just a few for you.

11 EXAMINATION BY CHAIR MITCHELL:

12 Q With respect to liquidated damages, your
13 testimony, as I understand it, indicates that the
14 FPE would be responsible for payment of the
15 liquidated damages because it would be the
16 contracting party. Is that correct? In this
17 case it would be Wilkes Solar that you-all had
18 investigated.

19 A Well, it would be Wilkes Solar or their designee.
20 In this case, they had -- their parent company,
21 DESRI, I'm not exactly sure how you pronounce it,
22 was the party that they had designated as
23 responsible or as the guarantor.

24 COMMISSIONER DUFFLEY: And I just want to

1 make all the parties aware there's confidential
2 information in this case. I don't know if the name of
3 the company is confidential or not, but the
4 Commission's going to relying on the parties to
5 indicate when we need to go into confidential session
6 on these questions.

7 THE WITNESS: Commissioner Duffley and the
8 Company will correct me. My understanding is that the
9 only confidential portion of my testimony are the
10 actual dollar amounts that were involved, and if the
11 Company will correct me if that's not true.

12 MR. BREITSCHWERDT: That's generally
13 correct, based on the efforts of the Public Staff to
14 refile Mr. McLawhorn's testimony.

15 COMMISSIONER DUFFLEY: Okay. Thank you.

16 CHAIR MITCHELL: And my question -- I don't
17 intend to elicit confidential information. I just
18 want to ask about process, and am not as interested,
19 at this point, in the actual numbers.

20 BY CHAIR MITCHELL:

21 Q But the Public Staff provides testimony about the
22 challenges that the Company might face in
23 attempting to recover liquidated damages from
24 Wilkes Solar? Do you recall that testimony?

1 A Yes, in this particular case, because there's a
2 dispute among the parties as to who was
3 responsible for delays, at which the Public Staff
4 is not taking a position, and then because of the
5 expiration of the Guaranty.

6 Q Okay. You also provide some testimony regarding
7 additional liquidated damages that the Company
8 had recovered related to another project. Do you
9 remember that testimony?

10 A Yes.

11 Q Okay. So are you aware of whether the Company
12 has had problems or encountered challenges
13 recovering liquidated damages from market
14 participants, other than Wilkes Solar?

15 A I am not aware that they have. I mean, I don't
16 know exactly, you know, how difficult it was but
17 they have reflected a number of instances of
18 liquidated damages, both in this case and in a
19 prior CPRE case in which they did recover
20 liquidated damage.

21 Q Okay. So the Public Staff isn't concerned that
22 given the contractual terms and conditions
23 related to liquidated damages, the Company would
24 encounter unnecessary or unreasonable challenges

1 and recovering those liquidated damages when it
2 needed to?

3 A At this point, I don't have any reason to believe
4 that in general.

5 Q Okay.

6 A There are some particular issues with this one
7 PPA that was signed.

8 Q Okay. What can you tell me, if anything, about
9 the expiration on the Guaranty in this case? Is
10 it typical that there be an expiration date on a
11 guaranty? And if so, was the term of
12 effectiveness of this Guaranty commercially
13 reasonable?

14 A My reading of the documents is that it is not
15 required that there be a termination date, but
16 there's an Exhibit 6 to the Purchase Power
17 Agreement that the seller assigns, and they can
18 place an expiration date in there. We have or I
19 have reviewed, in this case, a number of signed
20 and executed PPA's, and this is the only one I
21 have seen that actually had a date inserted. And
22 they are the others, at least what was provided
23 to us by the Company. It was left blank.

24 Q And when you say "a date inserted," a date --

1 what type of date and inserted where?

2 A An expiration date for the Guaranty. Now, it's
3 very clear in the provisions that the seller must
4 maintain a form of guaranty to protect the
5 Company and to protect the Company's ratepayers
6 in the event of default. And if there is an
7 expiration of that, then the seller, which is
8 Wilkes Solar, in this case, must make provision
9 to provide replacement guaranty, whether it would
10 be an extension of the current guarantor or it
11 would be some other provision.

12 That the issue in this case, as I
13 see it, the PPA was signed on October 15th of
14 2020, and the Guaranty by -- I'm going to just
15 call it DESRI. I don't know if that's the
16 correct pronunciation -- was designated to expire
17 on December 31st, 2021, which was just a little
18 over 14 months after the PPA was signed, which
19 is -- in the grand scheme of these CPRE projects,
20 there's a very short time frame.

21 In fact, the Company itself has
22 stated and the Company Witness Cathcart in the
23 2021 CPRE proceeding filed supplemental
24 testimony. And in that, he said that the DEC did

1 not expect any of the Tranche 2 projects, the
2 winning projects, would achieve commercial
3 operation in less than 24 months from the time
4 that the Interconnection Agreement was signed.

5 And here, we've got just a little
6 over 14 months from the signing of the PPA, and
7 it's about another six months until you get the
8 Interconnection Agreement. So, certainly, there
9 was a provision for Wilkes to replace that
10 Guaranty, but in my mind, such a short period of
11 time, that should have been a red flag to the
12 Company.

13 Q Okay. Thank you for that additional information.
14 That's helpful. And the Company has provided
15 some testimony about some I.T. fixes that it's
16 looking into to try to prevent this type of
17 situation going forward. And it indicated also,
18 at least by read of the testimony, is that this
19 was an unusual occurrence, the failure of this
20 information be keyed into its system.

21 But my question for you is, did
22 you-all do any thinking or discussing, and by
23 you-all, I mean Public Staff and the Company,
24 about other types of either requiring financial

1 assurance to be in place for a longer period of
2 time or indefinitely, and perhaps requiring
3 certain types of financial assurance that
4 wouldn't expire, like cash in the bank or some
5 other type of more liquid assurance?

6 A Well, the short answer to your question is no.
7 There is nothing wrong with the type of assurance
8 that Wilkes provided -- well, let me back up on
9 that. The type of assurance that Wilkes provided
10 was provided for through the CPRE process, so it
11 was an acceptable form of guaranty. The issue
12 with me is the short time period why that wasn't
13 questioned upfront.

14 Q Okay. Switching gears just a little bit, and I
15 think Commissioner Duffley has questions for you
16 on this topic, so I will just ask you a few.
17 You-all provided -- Public Staff provided
18 testimony regarding the number of projects that
19 have withdrawn from the CPRE Tranches, and I
20 guess in all of those projects were to be located
21 in the DEC service area?

22 A The vast majority were, yes.

23 Q Can you give us any -- what can you tell us about
24 why those projects have withdrawn from the CPRE?

1 A Let me get my schedule out.

2 COMMISSIONER DUFFLEY: Mr. McLawhorn, do we
3 have that schedule or is this your personal schedule?

4 THE WITNESS: Yeah, this was something I
5 prepared for testimony.

6 COMMISSIONER DUFFLEY: Okay. Thank you.

7 THE WITNESS: I'm certainly happy to make it
8 available to the Commission and if you'd like to have
9 it. It is a list of winning projects from Tranche 1
10 and Tranche 2 and of the CPRE, and what their current
11 status is. And so for Tranche 1, I see 10 projects,
12 and there are two that currently the PPA has been
13 terminated prior to commercial operation. In
14 Tranche 2, I count -- I also count 10 projects, and of
15 that, 5 of the 10 have terminated prior to commercial
16 operation.

17 BY CHAIR MITCHELL:

18 Q So what can you tell us -- I mean, what do you
19 know about why these projects have terminated
20 their PPAs?

21 A We don't always know the exact reason. I
22 think -- and in the case of Wilkes, they said
23 that the delays -- and again, not taking sides
24 for who is to blame, but they're saying the

1 delays in getting the interconnection or in
2 getting the upgrades, the interconnection
3 facilities in place, had caused the project to no
4 longer be financially viable, so the delays, the
5 costs have gone up, that sort of thing.

6 And I probably would -- this would
7 be speculation. I think some of the projects may
8 have seen the opportunity to withdraw and bid
9 into the 2023 solicitation for Carbon Plan
10 projects, but that's speculation on my part. I
11 don't know that for a fact.

12 Q Okay. So I think I recall testimony in Duke's
13 rebuttal on Wilkes Solar, and I may be
14 misremembering this, but regarding Wilkes Solar's
15 participation and solicitation conducted by the
16 Company going forward, do you remember testimony
17 to that effect?

18 A Yes.

19 Q That it would not be -- that Wilkes Solar would
20 be precluded from going forward?

21 A Yes.

22 Q Is that -- could you --

23 A I remember that, yes.

24 Q Do you and I remember that testimony the same

1 way?

2 A I think so, yes.

3 Q Okay. Does the Public Staff agree with that
4 position the Company's taking?

5 A We have concerns about that. I think that maybe
6 that -- again, we're not negotiating directly, so
7 I defer somewhat to Duke on that, but if we start
8 eliminating bidders, that may -- it's possible it
9 could have a chilling effect on some of the bids.
10 That doesn't mean there aren't some individual
11 bidders that may be -- that are not warranted,
12 but I hesitate to make a blanket statement. Yes,
13 cut them out, don't let them bid anymore. I do
14 have concerns about that.

15 Q Okay. Does the Public Staff have concerns about
16 these withdrawals from the CPRE Tranches and the
17 sort of -- the lack of solar being placed in
18 service during certain time periods as the
19 Company have planned for with respect to, you
20 know, procurement and procurement targets that
21 have been established for '22, '23 and going
22 forward? And just to be clear with my question,
23 I mean, the Company was planning for certain
24 levels of solar to be in service by certain

1 dates, and now we're seeing this -- these
2 withdrawals from CPRE, which is necessarily going
3 to affect these levels of solar that the Company
4 had been planning for. What do we do about that?

5 A Well, it is definitely disappointing that within
6 the CPRE, with the number of winning bids that
7 have withdrawn, because as the Commission is
8 aware, those bids were selected because they were
9 below avoided costs, and so that was going to be
10 a direct savings to customers in the
11 solicitations going forward to meet the
12 requirements of the Carbon Plan. There's no such
13 requirement that the bids have to be below
14 avoided cost. And as a result, I mean, I don't
15 think you'd actually have to be a genius to
16 figure out the bids are probably going to be
17 higher than that.

18 So whether that's -- it's going to
19 be a problem with bidders withdrawing in the
20 future, I don't -- if they withdrew solely so
21 they could rebid in the future solicitations and
22 get a higher price, then there's no particular
23 reason to think that they will withdraw again.
24 But, again, that's requiring some speculation.

1 But yes, it's disappointing, the results, no
2 question.

3 Q Right. Right. And -- all right. I'll just
4 leave that alone for now. Let's see. I think
5 that covers me, Mr. McLawhorn, but let me just go
6 back through my notes to make sure. I did note
7 your testimony on network upgrades, and you-all
8 noticed some slight increase in costs in network
9 upgrades. Anything else that you want to say
10 about that or any concerns beyond what you've
11 stated in your testimony?

12 A I don't think we consider it to be a slight
13 increase. It's pretty significant.

14 Q Okay.

15 A And it's just something that we'll be monitoring
16 going forward, but I don't really have any --
17 Public Staff doesn't have anything further to say
18 about it, at this point.

19 Q And just for purposes of refreshing recollection,
20 am I correct that in the CPRE paradigm, network
21 upgrade costs are imputed to the bidder for the
22 purposes of that avoided cost threshold?

23 A I believe that's correct, yes.

24 Q Okay.

1 CHAIR MITCHELL: Thank you, Mr. McLawhorn.
2 I have nothing further.

3 COMMISSIONER DUFFLEY: Commissioner
4 Brown-Bland?

5 (No response)

6 COMMISSIONER DUFFLEY: Commissioner
7 Clodfelter?

8 EXAMINATION BY COMMISSIONER CLODFELTER:

9 Q Mr. McLawhorn, I got a couple of follow-up
10 questions on a topic that Chair Mitchell opened
11 with you. And just to follow along with me, you
12 might want to look at page 11 of your testimony
13 where you quote from Section 5.7 of the Tranche 2
14 PPA. Do you have that?

15 A Yes.

16 Q I also have the full PPA in front of me but I
17 think you've quoted it correctly. The PPA
18 requires that the term of the Performance
19 Assurance extend until 60 days after the later of
20 the expiration of the term or the date on which
21 the seller has fully satisfied all obligations to
22 buyer onto the Agreement. Do you see that?

23 A Yes.

24 Q That's consistent with your understanding of what

1 the PPA requires?

2 A Yes.

3 Q And subject to check, and I think you confirmed
4 this with your answer to Chair Mitchell. The
5 Guaranty given, in this case, did not comply with
6 that provision of the PPA, did it? It expired on
7 the earlier of a date certain or the date on
8 which Wilkes Solar had fully satisfied all
9 obligations under the Agreement, correct?

10 A Yes, but my understanding is that had Duke
11 notified the seller in advance, they would have
12 had the opportunity to extend the date and that
13 would have satisfied this requirement. That's my
14 understanding. I'm not an attorney reading --
15 knowing all the nuances of legal documents, but
16 that's my understanding.

17 Q I'll get to the notice question in just a minute,
18 but at least on its face, the Guaranty that was
19 delivered did not conform to Section 5.7 of the
20 PPA, correct?

21 A I guess hindsight, it didn't. I mean, it's
22 difficult to note going in when the commercial
23 operation date is going to be, so I'm not --

24 Q Which is why Duke asked for it, a Performance

1 Assurance that protects it against that very
2 risk, isn't it?

3 A Yes.

4 Q Well, in the course of your review of the matter,
5 did you develop any understanding as to why, in
6 this particular instance, Duke did not require
7 compliance with Section 5.7 of the PPA?

8 A Duke was unaware that it was expiring because
9 they did not enter the date in their tracking
10 system when they put the information about this
11 PPA in there, so they never were notified.

12 Q Mr. McLawhorn, I'm asking you a slightly
13 different question, not about the clerical error
14 in missing the expiration date but about the
15 front end, acceptance of the Guaranty as being
16 sufficient. Did you come to any understanding
17 about why Duke accepted the Guaranty in the first
18 place?

19 A I'm -- no, I didn't. And as I responded to Chair
20 Mitchell, that was a red -- would have been a red
21 flag to me that this was in there, and for such a
22 short period of time if I had been in Duke's
23 shoes.

24 Q Do you know whether this Guaranty receives any

1 special review by a credit department or by a
2 legal department at Duke?

3 A The testimony of Duke indicates that they do
4 review -- their legal and credit departments do
5 review this. I can't testify as to this specific
6 PPA. I think that's their general practice.

7 Q I understand the testimony about the general
8 practice. I was just trying to figure out what
9 you may have discovered, if anything, in the
10 course of your review of the matter following
11 this specific case?

12 A I do not, no.

13 Q Okay. Thank you. I do want to look with you,
14 again, at Exhibit 1 to your testimony; and I
15 believe I had it marked here a minute ago, so I'm
16 going to flip back again. It's page -- it's
17 Exhibit 1 Annex D, D, page 31 of the 37. That's
18 the form of the surety bond that Duke has
19 prescribed as acceptable.

20 A Yes.

21 Q And if you look with me at the bottom of that
22 page, 31 of 37, paragraph 5, and we can both
23 read. I'll save you the trouble and read it for
24 you. It says that the obligation is effective at

1 the beginning of the surety bond effective date
2 provided that if the bond remains in effect after
3 one year following the surety bond effective
4 date, the bidder may cancel the bond after such
5 one year period by giving Duke Energy at least 45
6 days prior written notice of the cancellation
7 date. Do you see that landing language?

8 A Yes.

9 Q From your investigation of this matter, did you
10 make any determination about whether or not any
11 notification was provided to Duke Energy prior to
12 the expiration of this Guaranty?

13 A Our investigation indicated that there was no
14 additional notification provided to Duke. Duke
15 did not discover that it had expired until after
16 the expiration date.

17 Q You would agree with me, though, this provision
18 of this exhibit contemplates that the notice is
19 to be provided by the parties seeking to cancel
20 and that those should go to Duke, not come from
21 Duke, correct?

22 A Correct.

23 COMMISSIONER CLODFELTER: Thank you. That's
24 all I have.

1 COMMISSIONER DUFFLEY: Commissioner
2 McKissick.

3 EXAMINATION BY COMMISSIONER MCKISSICK:

4 Q Just a couple of questions and following up on a
5 similar line of questions asked by Chair Mitchell
6 and Commissioner Clodfelter. When I look back to
7 this original Power Purchase Agreement, it looks
8 like it was executed on or about October 14th of
9 2020. Is that right?

10 A I had October 15th but I could be off a date.

11 Q Yeah. Well 14th, 15th, thereabouts. And of
12 course attached to it, I think it was at
13 Exhibit 6 was this -- what I would call standard
14 form guarantied type agreement.

15 A Yes.

16 Q And on that particular form, if you look to, I
17 guess, the time frame within which the Guaranty
18 would be effective, it does not provide a date.
19 The term of guaranty, I guess it's Section 11.

20 A It does not, but if you -- the Company in their
21 rebuttal testimony provided on Exhibit 2 which is
22 that same --

23 Q Sure.

24 A -- form, and it does include the December 31st,

1 2021 date.

2 Q But that particular document you're referring to,
3 and I have a copy of it, that wasn't executed
4 until a week later, was it? Wasn't that executed
5 on or about the 21st of October, whereas the
6 Agreement itself was executed about a week
7 earlier, about the 14th or 15th?

8 Q That may be true, okay. That document does
9 actually say October 21st, that particular
10 document.

11 Q Therefore, one could reasonably conclude that
12 when the Power Purchase Agreement was executed,
13 it was not a contemporaneous guaranty agreement
14 executed, provided at or about the same time?
15 That would have had that termination date. Would
16 that be a correct assumption to reach?

17 A I'm not sure. It does reference a background
18 statement. It references the PPA dated
19 October 15th. But you're right, the Guaranty
20 Agreement above does say October 21st of 2020.

21 Q Now, do you know whether it's typical in these
22 type of transactions, if a guaranty is provided,
23 that the Guaranty would come in a week later as
24 opposed to being provided and executed and

1 delivered at or about the time the Power Purchase
2 Agreement was executed?

3 A I would not have thought so but I don't know. I
4 did not ask Duke that particular question.

5 Q You didn't ask Duke that question?

6 A I did not.

7 Q And as it relates to the reason that this project
8 did not move forward, did you make any inquiries
9 of Duke or Wilkes as to why they decided that
10 they would abandon the project?

11 A We did not talk to Wilkes Solar since the PPA was
12 already terminated. We had the information
13 provided by Duke that there was a dispute about
14 who was responsible for the delays, and Wilkes
15 said it was Duke's fault and Duke said it was
16 not. And, nevertheless, Wilkes had indicated
17 that they wished to withdraw, terminate the PPA.

18 Q All right. Other than just having those
19 conversations with Duke, that was the extent to
20 which you made inquiries about the reason the
21 project did not move forward?

22 A We didn't reach out to Wilkes. I don't know that
23 they would have been obligated to respond to the
24 Public Staff since they were no longer in

1 agreement with Duke in place.

2 Q But other than conversations with Duke, that
3 would have been the extent of it?

4 A Yeah. Duke's the only other party involved.

5 COMMISSIONER McKISSICK: I think that
6 probably would be the extent of the questions. I
7 would -- I think other things would get into the
8 actual numbers, so I'm going to avoid doing that,
9 avoid going into confidential session. Thank you.

10 THE WITNESS: Okay.

11 COMMISSIONER DUFFLEY: Good afternoon.

12 EXAMINATION BY COMMISSIONER DUFFLEY:

13 Q So I'm just going to ask the question one more
14 time about any further explanation as to why the
15 CPRE Program has experienced significant delays,
16 withdrawals, and terminations.

17 A No. I mean, I could speculate but I don't think
18 the sellers are obligated to say why they
19 withdraw.

20 Q Okay. And so could we talk about -- you
21 mentioned the 2023 solar procurement, but I'd
22 like to go back to the 2022 solar procurement.
23 What are the material differences between the --
24 just material differences in the PPA from the

1 CPRE process and the 2022 solar procurement
2 process?

3 A I was not prepared to answer that question. I am
4 not aware of any particular differences between
5 the two. I'm sure there are some.

6 Q Okay. And I'll ask -- maybe I'll ask the Company
7 but would you agree, subject to check, the year
8 terms maybe different? CPRE has a 20-year term
9 and the 2022 solar procurement has a 25-year
10 term?

11 A Yes.

12 Q Are avoided costs going up or down?

13 A Well, we'll soon find out but I would say that
14 they're probably going up.

15 Q Okay. And then you mentioned, when Chair
16 Mitchell was asking you questions in Tranche 1,
17 we had 10 projects that were award contracts, two
18 PPAs have been terminated. Do you have on your
19 chart the amount of megawatts?

20 A Yes. One -- the first one -- this is Tranche 1.

21 Q Um-um, correct.

22 A Oakboro, and that was 40 megawatts. I'm sorry,
23 maybe I wasn't supposed to say the name. And
24 then the other one that was terminated was

1 75 megawatts.

2 Q And just total megawatts per Tranche 2, you
3 stated that five PPAs have been terminated?

4 A Yes.

5 Q I'm going to make you do math. Approximately,
6 what's the total megawatts that have fallen out
7 of the second Tranche?

8 A Okay. Approximately 300 megawatts.

9 Q Okay. And then I am going to request, if it
10 needs to be confidential, a late-filed exhibit to
11 really gain an understanding of the total CPRE
12 generating capacity that have been adjusted for
13 project terminations. So what is the total CPRE
14 Program generating capacity under project, both
15 in service and in development for both DEP and
16 DEC, as well as the PPAs, the same information
17 for the PPAs that have been terminated? And
18 then, a total -- a breakdown of total contracted
19 generating capacity by each Tranche, by Tranches
20 as well as termination by Tranche, if you would.

21 A Okay.

22 Q Thank you. So Public Staff is seeking an
23 adjustment, that the amount of the adjustment's
24 not confidential, correct?

1 A No, I think it is.

2 Q Oh. I mean, not the dollar amount but the
3 percentage?

4 A No, that's not confidential.

5 Q So the Public Staff's seeking DEC to credit
6 50 percent of the liquidated damage, is that it
7 could have obtained. What authority is Public
8 Staff using to seek this adjustment?

9 A Well, while there is no way to know for certain
10 that Duke would have been able to collect the
11 liquidated damages, the fact that the Guaranty
12 was allowed to expire without Duke notifying the
13 customer that they were in default if they didn't
14 extend it, sort of removed any possibility of
15 being able to attempt to recover the liquidated
16 damages. So because we couldn't know with
17 100 percent certainty that Duke would, in fact,
18 have been able to, we thought some lesser amount
19 than the full amount was appropriate.

20 Q Okay. And are you saying or asserting that DEC
21 has acted imprudently? I'm just trying to gain
22 knowledge or information about what the standard
23 is that Public Staff was using.

24 A Well, I think that we believe, I believe, that by

1 allowing this, such a short -- clearly, Duke said
2 they made an error by not entering the expiration
3 date in their tracking system, in which case they
4 would have been notified that it was about to
5 expire, but I have concerns that they ever
6 allowed such a short date to be put in place to
7 begin with. To me, that should have been a red
8 flag for the Company.

9 Q And again, but are you stating this error is --
10 rises to the level of imprudent behavior?

11 A I believe that the Company should have been more
12 diligent in their efforts when they were signing
13 this PPA and the Guaranty.

14 Q And so let's do talk about liquidated damages.
15 What's your understanding -- I read your
16 testimony about some of what you think liquidated
17 damages are for, but can you state, again, to me
18 what do you think the liquidated damages
19 represents in these contracts?

20 A It's a protection for both the Company and
21 ultimately the Company's customers against
22 default. Duke is going to have to replace, in
23 this case, the capacity of Wilkes Solar and it'll
24 be replaced through the future solicitations.

1 And I believe it'll be at a higher cost, so there
2 is harm that has occurred to Duke's customers,
3 and the liquidated damages would have helped
4 offset a portion of that.

5 In fact, we did calculation of the
6 benefits that would have accrued to customers
7 from this particular PPA over the 20-year life
8 and brought it back to a net-present value basis,
9 and that would have been approximately equal to
10 the liquidated damages. So if Duke had been able
11 to recover those, customers would have
12 essentially been held harmless.

13 Q Okay. And then how do you respond to DEC stating
14 in their rebuttal testimony that it's speculative
15 to assume that but for the data entry error, DEC
16 would have recovered the amount in liquidated
17 damages from Wilkes Solar?

18 A Well, my response is we're not assuming that they
19 absolutely would have. We don't know the failure
20 to recognize the expiration date has removed that
21 possibility. They could not have recovered those
22 because they missed that.

23 Q Okay. And do you think the fact that the seller
24 did not maintain Performance Assurance for the

1 duration required by the Agreement, is the seller
2 in default for that failure?

3 A I believe they are. And had Duke notified them
4 before the expiration of the Guaranty, if they
5 had refused to extend the Guaranty, then Duke --
6 my understanding is Duke would have had a legal
7 claim for the seller being in default, and it
8 would have strengthened their case.

9 Q Okay. Thank you. And so -- I'm going to go a
10 little off topic with the Carbon Plan. So we
11 have stated a target amount in the Carbon Plan
12 for solar, correct?

13 A Yes.

14 Q And do you remember what that is? Subject to
15 check, is it 2,350 megawatts?

16 A That sounds correct.

17 Q And so is the baseline -- what amount of the CPRE
18 Program, contracted megawatts, was considered in
19 the Carbon Plan as a baseline for the
20 establishment of the procurement number of 2,350,
21 if you know?

22 A I don't recall exactly how the CPRE numbers
23 factored into that, but just, for instance, if
24 Duke had assumed at the time that Wilkes Solar or

1 any of these other projects that were terminated
2 in Tranche 2 were going to be operational in
3 commercial operation, that would either have
4 reduced that number or if they assumed that they
5 weren't going to be in operation, then the amount
6 of megawatts that have to be procured would
7 increase. Now, whether the 2,350 - I believe it
8 was - whether that includes an assumed amount of
9 termination within the CPRE or what level of
10 termination, PPA terminations it assumed, I'm not
11 certain, at this time.

12 Q Okay. Thank you. And so the Commission has
13 obviously issued a CPCN to Wilkes Solar. What,
14 if anything, do you think the Commission -- I
15 heard you testify, felt that Wilkes Solar has
16 defaulted in one way or another on this PPA, so
17 what -- do you have any recommendations for the
18 Commission as to what to do with respect to the
19 CPCN as it relates to this case?

20 A I don't know what Wilkes Solar's future plans are
21 for that CPCN. Certainly, the Commission, I
22 think, would be within its rights to revoke the
23 CPCN if you felt that you no longer had
24 confidential in Wilkes Solar's ability to

1 complete the project. I don't have any
2 particular knowledge of Wilkes Solar or their
3 parent company's financial viability and
4 intentions in the future.

5 So, I mean, I hesitate to start
6 making recommendations about this project
7 terminated, you know, bar them from participating
8 in any future RFPs, this one did, bar them,
9 because after a while, you're limiting your pool
10 which is going to drive costs up.

11 Q Thank you for that. I think one last question.
12 So on page 27 of DEC's rebuttable, they indicated
13 that the Public Staff's adjustment, in this case,
14 is not a typical adjustment, and I just wanted to
15 obtain your response to that. Do you agree,
16 disagree? Would you like to speak to it?

17 A Can you point me to the exact line?

18 Q Sure.

19 A I've got the rebuttal.

20 Q It's on page 27. I'm trying to do everything
21 electronically, so you'll have to bear with me.

22 A Okay. I see it. It's on line 19. Well, they go
23 on over to page 28 which is all part of the
24 discussion and say there will not be any direct

1 replacement power costs for the lost energy
2 production anticipated to be delivered by Wilkes.
3 And, I guess, I disagree with that statement
4 because the capacity and the generation from it
5 will have to be made up somewhere else, I mean,
6 in order to meet our carbon reduction goals, so
7 there will have to be another project or some
8 other effort that makes up the cost or the
9 generation, the energy that Wilkes Solar was
10 going to produce. And that's going to have a
11 cost, and we expect that that cost will be above
12 avoided cost, at this point, or it's likely to
13 be.

14 COMMISSIONER DUFFLEY: Okay. Any follow-up
15 on my questions?

16 (No response)

17 COMMISSIONER DUFFLEY: Okay. Questions
18 on -- thank you for your testimony. Questions on
19 Commission questions?

20 MR. BREITSCHWERDT: I just have a few.

21 EXAMINATION BY MR. BREITSCHWERDT:

22 Q Good afternoon, Mr. McLawhorn.

23 A Good afternoon.

24 Q I'm going to start with a couple questions that

1 Commissioner Mitchell -- or really just one-line
2 questions that Commissioner Mitchell asked you,
3 or Chair Mitchell, excuse me, asked you at the
4 outset. So she asked you if based on the Public
5 Staff's investigation, this wasn't -- the quote I
6 have is an unusual occurrence. Do you recall
7 that line of questioning?

8 A Yes.

9 Q And based on the Public Staff's investigation,
10 isn't it a fact that you did not identify any
11 other Purchase Power Agreements where the Company
12 had security that was not able to be exercised
13 upon in the same manner that's occurred of Wilkes
14 Solar?

15 A We did not discover any others but I would say
16 that we did -- also did not discover any other
17 PPAs that had been signed that had such a short
18 expiration date for the Guaranty.

19 Q And did you --

20 A By Wilkes Solar.

21 Q Excuse me, I spoke -- did you specifically audit
22 for that? Did you ask that discovery?

23 A We asked for copies of the PPAs from the Company
24 and the ones that were provided to us did not

1 have expiration dates.

2 Q And could that be because those other
3 counter-parties submitted letters of credit
4 versus parent guaranties?

5 A It could be.

6 Q Okay.

7 A That doesn't change the fact that Wilkes Solar
8 was a very short period of time and there was no
9 way that it was going to achieve commercial
10 operation before it expired.

11 Q I appreciate your opinion on that but would you
12 agree that your role with the Public Staff -- I
13 think the question asked earlier was whether it
14 was commercially reasonable to accept that term
15 of guaranty. Would you agree that's not within
16 your core area of expertise to evaluate the term
17 of guaranties or other security instruments to
18 determine whether they're commercially
19 reasonable?

20 A We are not involved in the negotiations between
21 the Company and sellers.

22 Q Thank you.

23 A That's correct.

24 Q So turning to some questions that Commissioner

1 Mitchell and Commissioner Duffley had about
2 whether Wilkes Solar should be allowed to bid in
3 the future Duke RFPs, do you recall those?

4 A Yes.

5 Q And you seem to be -- and my paraphrasing -- of
6 two minds of it's unfair for them to not meet
7 their obligation through this PPA, but at the
8 same time, you had some concerns about limiting
9 the pool of potential counter-parties. Is that
10 fair --

11 A Yes.

12 Q -- to potential sellers and bidders in the RFP?

13 A Yes.

14 Q Do you think it's a topic that the Company and
15 the Public Staff should explore as part of the 23
16 RFPs to make sure that we have effective terms of
17 security in place and to minimize the risk of
18 this type of circumstance happening again?

19 A I think we would definitely like to minimize the
20 risk of this happening again and Public Staff is
21 always willing to work with the Company.

22 Q Great. And there's a comment proceeding that's
23 open now to provide comments on the contract
24 documents in that RFP, and we've been working

1 constructively, the Public Staff, through that
2 process?

3 A Yes.

4 Q Great. Thank you. Commissioner Clodfelter asked
5 you a few questions about Section 5.7 of the PPA.
6 Do you recall that?

7 A Yes.

8 Q And at the risk of a second lawyer asking a
9 non-lawyer a question about a contractual
10 privilege in a Power Purchase Agreement, I'm
11 going to take a run at it because it is in your
12 testimony. Would you mind? I think it's on
13 page 9.

14 A I'm there.

15 Q All right. Thank you. Excuse me, page 11.

16 A Page 11.

17 Q And so, just, reviewing this provision, would you
18 agree that this -- the intent of the provision is
19 to ensure that Performance Assurance remains, and
20 I quote lines 29 -- or excuse me, 21 to 22, *shall*
21 *remain in full force and effect and outstanding*
22 *for the benefit of the buyer until --*
23 paraphrasing, *the end of the term.*

24 A Yes.

1 Q And there's --

2 A Or the date on which the seller has satisfied all
3 obligations.

4 Q Thank you. And so there's nothing prescriptive
5 in the Agreement that suggest that a single
6 security instrument needs to cover the full
7 duration of the contract term?

8 A Can you ask that again? I'm sorry.

9 Q Sure. So turning to page 12, line 2, it
10 contemplates -- or line 1 and 2 contemplates the
11 potential for replacement performance. That the
12 counter-parties shall replace such Performance
13 Assurance with alternative Performance Assurance
14 that meets each of the requirements under this
15 Agreement.

16 So, is it -- would it be
17 reasonable to expect that the Company could
18 accept a security instrument with the
19 understanding that that might expire within the
20 term, but as long as it was replaced
21 contemporaneous with or in advance of when that
22 security instrument expired, that would be
23 reasonable and consistent with this provision?

24 A It's reasonable. I suppose it would have been

1 reasonable if it had expired a week after it
2 was -- if there was a date that was a week after
3 it was signed, it doesn't seem like it would be
4 something that the Company would want to enter
5 into, but you could certainly read it that way.

6 Q Thank you. And Commissioner McKissick asked you
7 some questions about the timing of the Company
8 accepting the pre-COD Performance Assurance and
9 seems to be focused on that timing relative to
10 execution of the PPA. Do you recall that?

11 A Yes.

12 Q And I believe you have a copy of the PPA with
13 you?

14 A I do.

15 Q Okay. If you'll just briefly turn to Section 5.1
16 and review that Section, just the first two or
17 three lines of it, please.

18 A It's titled "pre-COD Performance Assurance
19 Requirements"?

20 Q Yes, sir.

21 A Did you want me to read that out loud or just
22 read --

23 Q Just review it. And if you'd agree that it
24 provides that the Company can accept from the

1 counter-party Performance Assurance within five
2 business days of when the contract is executed.

3 A Yes, it does say that.

4 Q Thank you.

5 MR. BREITSCHWERDT: No further questions.
6 Appreciate it, Mr. McLawhorn.

7 COMMISSIONER DUFFLEY: Redirect?

8 MR. FELLING: Just briefly.

9 EXAMINATION BY MR. FELLING:

10 Q Mr. McLawhorn, in a few of the questions, in
11 response to a few questions of the questions you
12 were asked from Commissioners but Commissioner --
13 Chair Mitchell's question comes to mind about the
14 term of the Guaranty, and your response was that
15 it was a red flag for you, the term of the
16 Guaranty. Can you just expand on that? Why was
17 that 14-month term a red flag in your mind?

18 A Well, I mean I would wonder why knowing that
19 based on the Company's own testimony, it was
20 going to take 24 to probably 30 months for the
21 project to become commercially operational, why
22 the Company would want to accept a term that was
23 so short, unless -- specifically unless, you
24 know, the Company had provided for some other

1 form of guaranty to take its place.

2 Q Do you know from -- have you reviewed the RFP
3 that has been issued in the CPRE, RFP Tranche 2?

4 A I've reviewed it. I don't have it memorized.

5 Q Okay. And to your knowledge, is there an
6 expectation contained in that RFP on when a
7 project would have the expectation of reaching
8 commercial operation, at the very earliest? And
9 if you could, if it'll help, this is on -- you
10 have the RFP attached to your testimony.

11 A Yes.

12 Q If you'll turn to page 17 -- actually, page 19 of
13 37 of your exhibit, if you look at the
14 interconnection timeline, that might refresh your
15 memory.

16 A Yes. It says typically an Interconnection
17 Agreement is achieved 4 to 6 months after the
18 System Impact Study, and then commercial
19 operation of the interconnection facilities is
20 achieved 18 to 24 months after execution of the
21 Interconnection Agreement.

22 And as I mentioned before in the
23 2021 CPRE case, DEC's Witness Cathcart stated in
24 his supplemental testimony that the Tranche 2

1 projects would require approximately 24 months
2 from the IA execution to achieve commercial
3 operation.

4 Q And thank you. You went to exactly where I was
5 going to go to with that. To your knowledge, on
6 reviewing everything that you've reviewed in
7 preparation for your testimony today, at the time
8 that Witness Cathcart's testimony was filed, and
9 you can give that date, but do you know if DEP --
10 DEC reached out to Wilkes Solar to discuss that?

11 MR. BREITSCHWERDT: Objection. I think --
12 none of the Commissioners raised any questions about
13 the CPRE Tranche 2 RFP, and this is the second
14 question in this line that's focused on something
15 that's beyond the scope of Commissions' questions.

16 COMMISSIONER DUFFLEY: Mr. Felling.

17 MR. FELLING: Commissioner Duffley, this is
18 directly in response to the question that was asked
19 about the reasonableness of the Guaranty, and the term
20 that was asked, and his response to that being a red
21 flag. This is just further expanding on that.

22 COMMISSIONER DUFFLEY: Okay.
23 Mr. Breitschwerdt, I'm going to allow it.

24 BY MR. FELLING:

1 A Could you ask the question again?

2 Q Just in terms of at that time that that testimony
3 was filed, do you know whether DEC reached out to
4 Wilkes Solar to discuss whether that Performance
5 Assurance would be renewed?

6 A I don't. The testimony, the supplemental
7 testimony was filed on May 3rd, 2021. As I
8 mentioned, the PPA was signed October 15th, and I
9 believe, as Commissioner McKissick pointed out to
10 me, the Guaranty was signed on October 21st, so
11 it was just a few months after the Guaranty, when
12 it was executed, when Mr. Cathcart filed his
13 testimony, but I don't know that they reached out
14 to Wilkes at that time.

15 Q And in response to Commissioner Duffley's
16 question that you received on the authority to
17 make the adjustment that you made, would you
18 agree that the implementation costs that DEC is
19 seeking to recover, in this case, and all CPRE
20 Rider dockets, assume that the Program would
21 interconnect and provide energy to the Using and
22 Consuming Public?

23 A Yes. And, in fact, there have been costs
24 incurred by the Company for this and other

1 projects that have already been recovered from
2 ratepayers, administrative costs, legal fees.

3 Q Is it your understanding -- in following up on
4 that, is it your understanding that liquidated
5 damages and the PPA are there to help defray some
6 of those impletion costs?

7 A Yes.

8 Q The project as that comes along?

9 A Yes.

10 MR. FELLING: No further questions.

11 COMMISSIONER DUFFLEY: And actually, while I
12 was listening, I have one more question for you,
13 Mr. McLawhorn.

14 EXAMINATION BY COMMISSIONER DUFFLEY:

15 Q So getting back to the amount of megawatts that
16 dropped out or terminated Tranche 1 and
17 Tranche 2, it was estimated maybe puts
18 375 megawatts 400 megawatts. Would you view that
19 as a substantial part of each Tranche or both
20 Tranches or would you view that as kind of
21 typical for RFPs and signing contracts that some
22 drop out? I just kind of want to get a flavor
23 from the Public Staff as to whether the Public
24 Staff views that as a significant termination

1 amount or not.

2 A Well, there were two projects out of ten in
3 Tranche 1, so, I mean, I -- I mean, obviously,
4 there's always a risk that somebody's going to
5 drop out. That's why you have the provisions in
6 there. So not happy to see anybody drop out, but
7 I don't know that I would call two out of ten
8 disturbing, but five out of ten in Tranche 2 is
9 definitely, you know, concerning.

10 Q And in your opinion, do you think -- what do you
11 think the future holds? Do you think this is
12 something that will continue or this was a
13 one-time situation?

14 A I -- I would not want to speculate on that. I
15 certainly hope it was a one-time situation, but
16 it's going to be very difficult to meet our
17 Carbon Plan goals if we're going to lose
18 50 percent of all of our winning bids going
19 forward.

20 Q And have you discussed with the Company or
21 amongst yourselves of ways to have all of our
22 winning bidders move forward?

23 A Well, I think, as Mr. Breitschwerdt indicated, we
24 are having conversations with the Company. I

1 don't know that we've reached any definitive
2 conclusions, or not as he said, as he asked me,
3 and so that's something we'll be continuing to
4 look at as we move forward. It is concerning.

5 Q Okay. Thank you. And Commission on that series
6 of questions, Commissioner questions?

7 MR. FELLING: No questions?

8 COMMISSIONER DUFFLEY: Okay. Thank you,
9 Mr. McLawhorn, for your testimony today.

10 THE WITNESS: Thank you.

11 COMMISSIONER DUFFLEY: We appreciate it.
12 And you may step down, be excused. I'll take motions.

13 MR. FELLING: Thank you, Commissioner
14 Duffley. At this time, the Public Staff would move
15 that the exhibit, Exhibit 1 attached to
16 Mr. McLawhorn's prefiled testimony be entered into the
17 record and marked for identification as premarked.

18 COMMISSIONER DUFFLEY: And Appendix A as
19 well?

20 MR. FELLING: Yes. I keep forgetting that.
21 Thank you.

22 COMMISSIONER DUFFLEY: Hearing no objection,
23 the motion is allowed. Did we want to move in the
24 other Public Staff testimony at this point?

1 MR. FELLING: Yes. I would move that the
2 prefiled testimony be admitted into the record at the
3 appropriate time. Oh. And are you referring to
4 Mr. Cofield's prefiled testimony?

5 COMMISSIONER DUFFLEY: Yes.

6 MR. BREITSCHWERDT: Commissioner Duffley, if
7 it's helpful, I think both the Public Staff Witness
8 Cofield as well as Company Witness Walker's prefiled
9 testimony exhibits were moved into the record by the
10 Commission's Order issued.

11 COMMISSIONER DUFFLEY: Via the Order?

12 MR. BREITSCHWERDT: Yes, ma'am.

13 COMMISSIONER DUFFLEY: Okay. Thank you for
14 that, Mr. Breitschwerdt.

15 MR. BREITSCHWERDT: Issued May 26th.

16 (WHEREUPON, McLawhorn Exhibit 1
17 and Cofield Exhibit 1 was
18 admitted as it was marked when
19 prefiled.)

20 (WHEREUPON, the prefiled direct
21 testimony of Darrus K. Cofield
22 and Appendix A is copied into the
23 record as if given orally from
24 the stand.)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 1281

In the Matter of)
Application of Duke Energy Carolinas, LLC,)
for Approval of CPRE Program Compliance)
Report and CPRE Cost Recovery Rider)
Pursuant to N.C.G.S § 62-110.8 and)
Commission Rule R8-71)
) TESTIMONY OF
) DARRUS K. COFIELD
) PUBLIC STAFF –
) NORTH CAROLINA
) UTILITIES COMMISSION

May 9, 2023

1 **Q. Please state your name, business address, and present**
2 **position.**

3 A. My name is Darrus K. Cofield. My business address is 430 North
4 Salisbury Street, Raleigh, North Carolina. I am a Public Utility
5 Regulatory Analyst in the Accounting Division of the Public Staff -
6 North Carolina Utilities Commission

7 **Q. Please briefly state your qualifications and duties.**

8 A. My qualifications and duties are included in Appendix A to my
9 testimony.

10 **Q. What is the purpose of your testimony?**

11 A. The purpose of my testimony is to present the results of the Public
12 Staff's investigation regarding the CPRE EMF Rider revenue
13 requirements and calculations proposed by Duke Energy Carolinas,
14 LLC (DEC or the Company) in its application filed in this proceeding
15 on February 28, 2023 (Application) and the Company's supplemental
16 testimony and exhibits filed on May 3, 2023 (Supplemental), based on
17 the incremental CPRE Program implementation costs and revenue
18 requirements incurred and revenues recorded during the January 1,
19 2022, through December 31, 2022 period (CPRE EMF period or test
20 period).

21 North Carolina Gen. Stat. § 62-110.8 states that "[e]ach electric
22 public utility shall file for Commission approval a program for the

1 competitive procurement of energy and capacity from renewable
2 energy facilities with the purpose of adding renewable energy to the
3 State's generation portfolio in a manner that allows the State's
4 electric public utilities to continue to reliably and cost-effectively
5 serve customers' future energy needs.”

6 North Carolina Gen. Stat. § 62-110.8(g) further states that “[a]n
7 electric public utility shall be authorized to recover the costs of all
8 purchases of energy, capacity, and environmental and renewable
9 attributes from third-party renewable energy facilities” procured
10 pursuant to the statute, “and to recover the authorized revenue of
11 any utility-owned assets pursuant to [the statute] through a
12 Competitive Procurement of Renewable Energy (CPRE) annual rider
13 approved by the Commission and reviewed annually.” Commission
14 Rule R8-71 also provides the following: (1) that the CPRE rider will
15 be recovered over the same period as the utility’s fuel and fuel-
16 related cost rider; and (2) that the costs or authorized revenue will be
17 modified through the use of a CPRE Program experience
18 modification factor (CPRE EMF) rider. The CPRE EMF rider is
19 utilized to “true-up” the recovery of reasonable and prudently
20 incurred CPRE Program costs incurred during the test period
21 established for each annual rider proceeding.

1 **Q. Please explain the CPRE EMF riders proposed by DEC in this**
2 **proceeding.**

3 A. In its Application, DEC proposed CPRE EMF decrement riders in
4 cents per kilowatt-hour (kWh), excluding North Carolina regulatory
5 fee for each North Carolina retail customer class as follows:

6 Residential (0.0083) cents per kWh

7 General Service/Lighting (0.0093) cents per kWh

8 Industrial (0.0091) cents per kWh

9 DEC also proposed EMF interest decrement riders for each North
10 Carolina retail customer class as follows:

11 Residential (0.0003) cents per kWh

12 General Service & Lighting (0.0006) cents per kWh

13 Industrial (0.0007) cents per kWh

14 The Company's riders were calculated by dividing the "Total CPRE
15 EMF Amount including Contract Fees," as shown on Walker Exhibit
16 No. 4 for each customer class, by DEC's North Carolina projected
17 billing period megawatt-hours (MWh) retail sales of 23,477,265 MWh
18 for residential, 24,077,007 MWh for general service/lighting class,
19 and 13,270,457 MWh for the industrial class.

20 In the Company's supplemental filing on May 3, 2023, the Company
21 updated its proposed CPRE EMF decrement riders in cents per

1 kilowatt-hour (kWh), excluding North Carolina regulatory fee for each
 2 North Carolina retail customer class as follows:

3 Residential	(0.0119) cents per kWh
4 General Service/Lighting	(0.0129) cents per kWh
5 Industrial	(0.0087) cents per kWh

6 DEC also proposed EMF interest decrement riders for each North
 7 Carolina retail customer class as follows:

8 Residential	(0.0009) cents per kWh
9 General Service & Lighting	(0.0012) cents per kWh
10 Industrial	(0.0006) cents per kWh

11 The Company filed supplemental testimony and exhibits to reflect (1)
 12 the impact of a correction made to the CPRE Revenues Realized
 13 during the test period and (2) the inclusion of credits for liquidated
 14 damages of terminated CPRE PPAs in the billing period. The
 15 Company's revised riders were calculated by dividing the "Total
 16 CPRE EMF Amount including Contract Fees," as shown on Walker
 17 Exhibit No. 4 for each customer class, by DEC's N.C. projected billing
 18 period megawatt-hours (MWh) retail sales of 23,477,265 MWh for
 19 residential, 24,077,007 MWh for general service/lighting class, and
 20 13,270,457 MWh for the industrial class.

1 **Q. Please describe the Public Staff's investigation of the CPRE**
2 **EMF Riders.**

3 A. The Public Staff's investigation included procedures intended to
4 evaluate whether the Company properly determined its per books
5 CPRE costs and revenues during the test period. These procedures
6 included a review of the Company's filing and other Company data
7 provided to the Public Staff. The Public Staff also reviewed certain
8 specific types of expenditures impacting the Company's test year
9 CPRE Program implementation costs, including Company internal
10 labor, and outside services expenses.

11 **Q. What CPRE EMF Riders are you proposing for DEC'S customer**
12 **classes in this proceeding?**

13 A. Based on Public Staff witness Thomas' recommendation regarding
14 his proposed adjustment, I have calculated the EMF rates for each
15 North Carolina retail customer class shown on Cofield Exhibit 1.

16 I am recommending that DEC's CPRE EMF riders for each customer
17 class be calculated based on a total of over-recoveries and contract
18 fees of (3,380,686) for the residential class, (3,679,203) for the
19 general service/lighting class, and (1,424,197) for the industrial
20 class, interest on over collection in the amount of \$(215,702) for the
21 residential class, \$(281,344) for the general service/lighting class,
22 and \$(79,320) for the industrial class, and North Carolina retail
23 projected billing period retail sales of 23,477,265 MWh for the

1 residential class, 24,077,007 MWh for the general service/lighting
2 class, and 13,270,457 MWh for the industrial class, as proposed by
3 the Company. These amounts produce EMF decrement riders before
4 interest for each North Carolina retail customer class as follows,
5 (excluding the North Carolina regulatory fee):

6 Residential	(0.0144) cents per kWh
7 General Service/Lighting	(0.0153) cents per kWh
8 Industrial	(0.0107) cents per kWh

9 I also calculated EMF interest decrement riders in cents per kilowatt-
10 hour (kWh), for each North Carolina retail customer class, as follows
11 (excluding the regulatory fee):

12 Residential	(0.0009) cents per kWh
13 General Service & Lighting	(0.0012) cents per kWh
14 Industrial	(0.0006) cents per kWh

15 I have provided these amounts to Public Staff witness Thomas for
16 incorporation into his recommended final CPRE factors.

17 **Q. Does this conclude your testimony?**

18 A. Yes, it does.

APPENDIX A**QUALIFICATIONS AND EXPERIENCE****DARRUS K. COFIELD**

I am a graduate of Capella University, with a Master of Business Administration with a concentration in Finance, and of East Carolina University, with a Bachelor of Science Degree in Economics and Business minor.

I joined the Public Staff on January 9, 2023, and my current duties consist of: (1) the examination and analysis of testimony, exhibits, books and records, and other data presented by utilities and other parties involved in Commission proceedings; and (2) the preparation and presentation to the Commission of testimony, exhibits, and other documents in those proceedings. I have worked on water and sewer contiguous extension applications, electric securitization riders, electric affiliate and land sales contracts, and electric rate cases.

Prior to joining the Public Staff, I worked for the North Carolina Department of State Treasurer as a Financial Analyst for the State and Local Government Commission. I have over five years of governmental finance experience assisting municipalities, counties, school boards, and other governmental units with the financing of projects throughout the State of North Carolina. Those projects consisted of Installment Purchase Contracts, USDA Revenue Bond, Revenue Bond, State Revolving Loans, State Obligation Bonds, and several other financing instruments.

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(WHEREUPON, Walker Exhibit 1 was admitted as it was marked when prefiled.)

(WHEREUPON, the prefiled direct and supplemental testimony of Christy J. Walker is copied into the record as if given orally from the stand.)

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-7, SUB 1281

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)
)
)
Application of Duke Energy Carolinas, LLC)
Pursuant to G.S. 62-110.8 and Commission)
Rule R8-71 for Approval of CPRE)
Compliance Report and CPRE Cost)
Recovery Rider)

**DIRECT TESTIMONY OF
CHRISTY J. WALKER**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Christy J. Walker, and my business address is 526 South Church
3 Street, Charlotte, North Carolina.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am a Rates and Regulatory Strategy Manager for Duke Energy Carolinas,
6 LLC (“DEC” or the “Company”).

7 **Q. PLEASE BRIEFLY SUMMARIZE YOUR EDUCATIONAL AND**
8 **PROFESSIONAL BACKGROUND.**

9 A. I received a Bachelor of Science Degree in Accounting from the West
10 Virginia University. I am a certified public accountant licensed in the state
11 of North Carolina. I began my career with Duke Energy in 2001. Since that
12 time, I have held various manager and analyst positions within the
13 Accounting Department before transitioning to the Rates Department. My
14 current role is Rates and Regulatory Strategy Manager.

15 **Q. WHAT ARE YOUR CURRENT RESPONSIBILITIES AT DEC?**

16 A. I am responsible for providing guidance on compliance with, and cost
17 recovery related to, the program for competitive procurement of renewable
18 energy (“CPRE Program”) established by North Carolina General Statute
19 (“N.C. Gen. Stat.”) § 62-110.8 and applicable to both DEC and Duke
20 Energy Progress, LLC (“DEP”) (together, the “Companies”).

1 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE NORTH**
2 **CAROLINA UTILITIES COMMISSION?**

3 A. Yes. I filed testimony in the Companies' CPRE Rider proceedings in
4 Docket Nos. E-7, Sub 1262, E-2, Sub 1296 and E-2, Sub 1275.

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

6 A. The purpose of my testimony is to describe the calculation of, and present
7 the support for, DEC's CPRE Program rider ("Rider CPRE") filed for
8 recovery of CPRE Program-related costs under N.C. Gen. Stat. § 62-
9 110.8(g). I present the information and data required by North Carolina
10 Utilities Commission ("Commission") Rule R8-71 as set forth in Walker
11 Exhibit Nos. 1 through 6.

12 N.C. Gen. Stat. § 62-110.8(g) authorizes recovery of CPRE Program
13 costs, including authorized revenue for Company-owned facilities, and
14 limits the annual increase in the aggregate amount of these costs that are
15 recoverable by an electric public utility from its North Carolina retail ("NC
16 Retail") customers to an amount not to exceed one percent (1%) of the
17 electric public utility's total NC Retail jurisdictional gross revenues for the
18 preceding calendar year. Rule R8-71(j)(2) states "[t]he Commission shall
19 permit each electric public utility to charge an increment or decrement as a
20 rider to its rates to recover in a timely manner the reasonable and prudent
21 costs incurred and anticipated to be incurred to implement its CPRE
22 Program and to comply with G.S. 62-110.8." Rule R8-71(j)(5) describes
23 the CPRE Program experience modification factor ("EMF") component of

1 the CPRE Program rider as the difference between CPRE Program costs
2 actually incurred and CPRE Program revenues actually realized during the
3 EMF test period, representing a true-up increment or decrement related to
4 CPRE Program revenues collected during the EMF test period. In this
5 CPRE Program rider filing, the rider proposed by the Company includes
6 both an EMF rider component to adjust for the difference in DEC's costs
7 incurred compared to revenues realized during the EMF test period, as well
8 as a prospective billing period rider component to collect costs forecasted
9 to be incurred during the prospective twelve-month period over which the
10 proposed CPRE Program rider will be in effect.

11 **Q. PLEASE IDENTIFY THE EMF TEST PERIOD AND THE**
12 **PROSPECTIVE BILLING PERIOD APPLICABLE TO THE CPRE**
13 **PROGRAM RIDER PROPOSED BY THE COMPANY.**

14 A. The test period used in supplying the information and data included in my
15 testimony and exhibits is the twelve months beginning on January 1, 2022
16 and ending on December 31, 2022 ("Test Period" or "EMF Period"), and
17 the billing period for the CPRE Program rider requested in the Company's
18 application is the twelve months beginning on September 1, 2023 and
19 ending on August 31, 2024 ("Billing Period").

20 **Q. PLEASE DESCRIBE THE EXHIBITS TO YOUR TESTIMONY.**

21 A. Walker Confidential Exhibit No. 1 identifies purchased power costs and
22 authorized revenue on a system basis, in both the EMF Period and in the
23 Billing Period for facilities that were selected in Tranches 1 and 2 of the

1 CPRE Program. Stanly Solar LLC, Pinson, Stony Knoll Solar and Sugar
2 Solar, LLC achieved commercial operation during the EMF period. Broad
3 River Solar and Speedway Solar achieved commercial operation in
4 December 2021 but were not included in DEC's 2022 CPRE Rider filing,
5 and are therefore included in this 2023 CPRE Rider filing.

6 Walker Confidential Exhibit No. 2 identifies DEC's total CPRE
7 Program implementation costs, on a system basis, for both the EMF Period
8 and the Billing Period.

9 Walker Exhibit No. 3 shows the calculation of the Rider CPRE
10 amounts for the Billing Period proposed by customer class: residential,
11 general service and lighting, and industrial. The Rider CPRE rates per
12 customer class for purchased and generated power are determined by
13 dividing the sum of the Billing Period costs allocated to the class by the
14 forecasted Billing Period kilowatt hour (kWh) sales for the customer class,
15 resulting in a cents per kWh rate. The Rider CPRE rates per customer class
16 for implementation costs are determined by dividing the sum of the Billing
17 Period costs allocated to the class, by the forecasted Billing Period kWh
18 sales for the customer class.

19 Walker Exhibit No. 4 shows the calculation of the Rider CPRE
20 amounts for the EMF Period proposed by customer class: residential,
21 general service and lighting, and industrial. The EMF Period rider amount
22 represents the difference between CPRE Program costs incurred and CPRE
23 Program rider revenues collected for the EMF Period. The Company over-

1 collected about \$1.8 million during the EMF Period. In addition, the
2 Company received \$5.4 million in one-time revenues related to liquidated
3 damages and change of control fees during the test period. The Company is
4 crediting DEC North Carolina retail customers an allocable share of these
5 revenues, approximately \$3.6 million, through its proposed EMF rates.
6 These credits are not considered a refund of amounts advanced by
7 customers and accordingly are not included in the computation of interest
8 on the over-collection. The Rider CPRE rates per customer class, in cents
9 per kWh, are determined by dividing the sum of the EMF Period amounts
10 for each customer class by the forecasted Billing Period kWh sales for the
11 customer class.

12 Walker Exhibit No. 5 summarizes the components of the proposed
13 “Rider CPRE (NC)” calculated in Walker Exhibit Nos. 3 and 4. It shows
14 the total proposed CPRE Program rider as the sum of the estimated CPRE
15 Program rider and the CPRE Program EMF rider applicable to the Billing
16 Period.

17 Walker Exhibit No. 6 is the tariff sheet for the Rider CPRE. The
18 applicable regulatory fee factor is applied to each rate per customer class
19 described above to determine the final rates proposed by customer class, as
20 displayed on Walker Exhibit No. 6.

1 **Q. WERE THESE EXHIBITS PREPARED BY YOU OR AT YOUR**
2 **DIRECTION AND UNDER YOUR SUPERVISION?**

3 A. Yes.

4 **Q. WHAT COSTS ARE INCLUDED IN DEC'S PROPOSED RIDER**
5 **CPRE?**

6 A. The proposed Rider CPRE is designed to recover DEC's costs to implement
7 the CPRE Program pursuant to N.C. Gen. Stat. § 62-110.8, in compliance
8 with the requirements of Commission Rule R8-71. As described above,
9 Rider CPRE includes the CPRE Program EMF component to recover the
10 difference between the implementation costs and purchased or generated
11 power costs incurred, and revenues realized, during the EMF Period. The
12 costs incurred during the EMF Period are presented in this filing to
13 demonstrate their reasonableness and prudence as provided in Commission
14 Rule R8-71(j). The proposed Rider CPRE also includes a prospective
15 component to recover the costs expected to be incurred for the Billing
16 Period.

17 The costs the Company proposes to recover are described in the
18 direct testimony of Company Witness Tabor, and detailed in Walker
19 Confidential Exhibits No. 1 and 2. The costs that are included for recovery
20 in this proposed CPRE Program rider are the energy and capacity
21 components of purchased or generated power as well as incremental internal
22 Company labor, contract labor including legal fees, and other related costs
23 of implementing the CPRE Program. As discussed later in my testimony,

1 for Company-owned facilities, costs to be recovered are “authorized
2 revenue” as allowed under N.C. Gen. Stat. § 62-110.8(g).

3 Fees paid to the Independent Administrator (“IA”) and costs incurred by the
4 Company’s designated evaluation team for bid evaluation work are not
5 included for recovery in the proposed CPRE Program rider and are instead
6 being recovered through the CPRE Tranche 3 Proposal Fee, Non-
7 Refundable Fee, and Winner’s Fee.

8 **Q. HAS THE COMPANY MADE ANY ADJUSTMENTS RELATED TO**
9 **ITS 2022 CPRE RIDER FILING?**

10 A. Yes, in its 2022 CPRE Program rider filing, DEC inadvertently included
11 \$75,767 of system-level IA fees associated with its Tranche 3 RFP.¹
12 Accordingly, Walker Confidential Exhibit No. 2 includes a credit for these
13 Tranche 3 IA fees in the determination of EMF Period implementation
14 costs.

15 **Q. PLEASE DESCRIBE THE METHOD USED BY DEC TO**
16 **ALLOCATE CPRE PROGRAM COSTS AMONG CUSTOMER**
17 **CLASSES FOR THE PURPOSE OF CALCULATING THE CPRE**
18 **PROGRAM RIDER FOR EACH CUSTOMER CLASS.**

19 A. Walker Exhibit Nos. 3 and 4 show the calculation of the Rider CPRE for
20 each customer class for the Billing Period and EMF Period, respectively.
21 CPRE Program costs, including purchased and generated power costs and
22 implementation costs, are incurred by the Company in its efforts to procure

¹ See DEC’s Competitive Procurement of Renewable Energy Cost Recovery and Compliance Report – Rider Correction, Docket No. E-7, Sub 1262 (filed Sept. 19, 2022).

1 capacity and energy from renewable energy facilities, pursuant to N.C. Gen.
2 Stat. § 62-110.8.

3 The capacity component of purchased power and generation cost is
4 allocated to NC Retail and among customer classes based on the final 2021
5 cost of service production plant allocators since the 2022 cost of service
6 study is not available as of the time of this filing. During the Billing Period,
7 when DEC computes its actual CPRE capacity related costs for comparison
8 to capacity related revenues realized, DEC will use the production plant
9 allocator from the 2022 cost of service study in determining North Carolina
10 retail's share of actual costs by customer class. Also, when the 2022
11 production plant allocator becomes known, DEC may elect to make a
12 supplemental filing to adjust its proposed Billing Period rates, if the
13 estimated rates are materially impacted. The energy component of
14 purchased power and generation cost is allocated to each customer class
15 based on MWh sales by class.

16 To allocate the reasonable and prudent implementation costs
17 incurred and anticipated to be incurred to implement its CPRE Program the
18 Company is using a composite capacity and energy allocation factor derived
19 from the allocations of purchased and generated power amounts described
20 above.

1 **Q. HOW DOES THE COMPANY PROPOSE TO RECOVER ENERGY**
2 **AND CAPACITY ASSOCIATED WITH COMPANY-OWNED**
3 **FACILITIES?**

4 A. The costs associated with Company-owned CPRE facilities, Gaston and
5 Maiden Creek Solar Power Plants, have been included at the price those
6 facilities bid into the Tranche 1 RFP and were determined by the IA to be
7 among the most cost-competitive resources.

8 In this rider filing, the Company is seeking recovery for all energy
9 generated by both the Gaston and Maiden Creek Solar Power Plants during
10 the Billing Period using the allocation methods described above.

11 **Q. IS THE COMPANY REQUESTING RECOVERY OF**
12 **AUTHORIZED REVENUE FOR UTILITY-OWNED FACILITIES**
13 **ON A MARKET BASIS IN LIEU OF COST-OF-SERVICE BASED**
14 **RECOVERY AS PROVIDED BY NC GEN. STAT. § 62-110.8?**

15 A. Yes. In Docket Nos. E-7, Sub 1247 and E-7, Sub 1262, the Commission
16 approved DEC's request to recover costs for DEC-owned Gaston and
17 Maiden Creek Solar Power Plants, on a market basis in lieu of cost-of-
18 service recovery. Specifically, the Commission authorized recovery of the
19 costs associated with these facilities at the \$/MWh price at which those
20 facilities bid into CPRE Tranche 1 RFP and were selected by the
21 Independent Administrator.

1 **Q. IS THE ANNUAL INCREASE IN COSTS THE COMPANY**
2 **PROPOSES TO RECOVER WITH ITS PROPOSED CPRE**
3 **PROGRAM RIDER AND EMF RIDER WITHIN THE LIMIT**
4 **ESTABLISHED IN N.C. GEN. STAT. § 62-110.8?**

5 A. Yes. N.C. Gen. Stat. § 62-110.8(g) limits the annual increase in costs
6 recoverable by an electric public utility to (1%) of the electric public utility's
7 total North Carolina retail jurisdictional gross revenues for the preceding
8 calendar year. Further, Rule R8-71 provides that “[t]he annual increase in
9 the aggregate costs recovered under G.S. 62-110.8(g) in any recovery
10 period from its North Carolina retail customers shall not exceed one percent
11 (1%) of the electric public utility’s North Carolina retail jurisdictional gross
12 revenues for the preceding calendar year as determined as of December 31
13 of the previous calendar year. Any amount in excess of that limit shall be
14 carried over and recovered in the next recovery period when the annual
15 increase in the aggregate amount of costs to be recovered is less than one
16 percent (1%)”. The increase in aggregate costs DEC seeks to recover
17 pursuant to its proposed CPRE Program rider and CPRE Program EMF
18 rider is less than the statutory maximum.

19 **Q. HOW DOES DEC PROPOSE TO COLLECT THE CPRE**
20 **PROGRAM RIDERS FROM EACH CUSTOMER CLASS?**

21 A. DEC’s proposed Rider CPRE is attached as Walker Exhibit No. 6. As
22 shown on the rider, DEC proposes that a cents per kWh rate be applied to
23 all NC Retail kWh sales for the twelve-month Billing Period.

1 **Q. WHAT IS THE CPRE PROGRAM RIDER PROPOSED BY THE**
 2 **COMPANY FOR EACH CUSTOMER CLASS?**

3 A. The Company proposes the following CPRE Program rider to be effective
 4 September 1, 2023, and to remain in effect for the twelve-month Billing
 5 Period ending August 31, 2024.

6 *Excluding regulatory fee:*

Cents per kWh					
Customer class	CPRE Program EMF rider	CPRE Program rider	Total CPRE Program rider	Current total CPRE Program rider	CPRE Program rider decrease
Residential	(0.0086)	0.0426	0.0340	0.0368	0.0028
General Service	(0.0099)	0.0410	0.0311	0.0348	0.0037
Industrial	(0.0098)	0.0397	0.0299	0.0339	0.0040

7 *Including regulatory fee:*

Cents per kWh					
Customer class	CPRE Program EMF rider	CPRE Program rider	Total CPRE Program rider	Current CPRE Program rider	CPRE Program rider decrease
Residential	(0.0086)	0.0426	0.0340	0.0369	0.0029
General Service	(0.0099)	0.0410	0.0311	0.0348	0.0037
Industrial	(0.0098)	0.0397	0.0299	0.0339	0.0040

8 *Totals may not foot due to rounding*

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

10 A. Yes.

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 1281

In the Matter of)
)
)
 Application of Duke Energy Carolinas, LLC)
 Pursuant to G.S. 62-110.8 and Commission)
 Rule R8-71 for Approval of CPRE)
 Compliance Report and CPRE Cost)
 Recovery Rider)

**SUPPLEMENTAL
 TESTIMONY OF
 CHRISTY J. WALKER**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Christy J. Walker, and my business address is 526 South Church
3 Street, Charlotte, North Carolina.

4 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS**
5 **PROCEEDING?**

6 A. Yes, on February 28, 2023, I caused to be pre-filed with the North Carolina
7 Utilities Commission (“Commission”) my direct testimony, six exhibits and
8 six supporting workpapers.

9 **Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL**
10 **TESTIMONY IN THIS PROCEEDING?**

11 A. The purpose of my supplemental testimony is to present revised rates
12 reflecting the impacts related to two updates to numbers presented in my
13 direct exhibits and workpapers.

14 The first update relates to revising the CPRE revenues realized during the
15 Test Period. Walker Exhibit No. 4, Line 31 incorrectly reported these
16 revenues. In revising these revenues, the Company’s over-collection of Test
17 Period CPRE Program expenses increased. Therefore, this revision lowers
18 the Company’s proposed CPRE Rider amount to be billed during the 12-
19 month Billing Period of September 1, 2023 to August 31, 2024.

20 The second update relates to the inclusion of contractual liquidated damages
21 for terminated CPRE PPAs and is presented in Walker Revised Workpaper
22 No. 5. The Company received these liquidated damages after the end of the
23 Test Period but before the Billing Period. In normal circumstances, these

1 revenues would have been applied against CPRE Program costs in the
2 Company's 2024 CPRE Rider proceeding. However, the Company, in
3 consultation with Public Staff, has agreed to apply the revenues associated
4 with these liquidated damages as offsets to Billing Period CPRE Program
5 costs for the immediate benefit of customers. Therefore, this update further
6 lowers the Company's proposed CPRE Rider amount to be billed during the
7 Billing Period.

8 **Q. ARE YOU INCLUDING ANY EXHIBITS TO YOUR**
9 **SUPPLEMENTAL TESTIMONY?**

10 A. Yes. My supplemental testimony includes four revised exhibits and two
11 revised workpapers originally included with my direct testimony in this
12 proceeding.

13 **Q. WERE THESE REVISED EXHIBITS AND WORKPAPERS**
14 **PREPARED BY YOU OR AT YOUR DIRECTION AND UNDER**
15 **YOUR SUPERVISION?**

16 A. Yes. The revised exhibits and workpapers were prepared at my direction
17 and under my supervision. Descriptions of the exhibits and workpapers are
18 as follows:

- 19 • Walker Revised Exhibit No. 3 – Allocation of Prospective Billing
20 Period CPRE Charges to Customer Classes
- 21 • Walker Revised Exhibit No. 4 – Allocation of EMF Period CPRE
22 Charges to Customer Classes

- 1 • Walker Revised Exhibit No. 5 – Summary of CPRE Proposed
- 2 Rider Components
- 3 • Walker Revised Exhibit No. 6 – Proposed Rider CPRE (NC)
- 4 • Walker Revised Workpaper No. 5 – Contract Fees Being Credited
- 5 in CPRE Rider
- 6 • Walker Revised Workpaper No. 6 – 1% Calculation Test

7 **Q. WHY IS THE COMPANY UPDATING THE CPRE**
8 **(OVER)/UNDER COLLECTION?**

9 A. Subsequent to its direct filing, the Company became aware that it had
10 incorrectly reported CPRE revenues realized during the test period.
11 Therefore, Walker Revised Exhibit Nos. 4, 5, and 6, as well as Walker
12 Revised Workpaper No. 6, reflect this update to the correct revenues
13 realized during the test period.

14 **Q. WHY IS THE COMPANY UPDATING THE BILLING PERIOD**
15 **COSTS?**

16 A. The Company collected total liquidated damages in the amount of
17 \$13,710,000 from certain CPRE purchased power agreement counter-
18 parties as described in witness Tabor's supplemental testimony. Since the
19 receipt of these payments occurred outside of the EMF Period and the
20 Prospective Billing Period, these credits were not originally included in my
21 direct testimony, exhibits and workpapers. However, after discussion with
22 the Public Staff, the Company has agreed to include the collection of these
23 liquidated damages in this CPRE Rider for immediate benefit to customers.

1 Walker Revised Exhibits Nos. 3, 5, and 6 as well as Walker Revised
2 Workpaper Nos. 5 and 6, reflect this update to Billing Period costs.

3 **Q. WHAT IS THE RATE IMPACT OF THE UPDATES TO THE CPRE**
4 **(OVER)/UNDER COLLECTION AND PROSPECTIVE BILLING**
5 **PERIOD COSTS?**

6 A. As a result of including liquidated damages in the Billing Period, the
7 proposed rates for the Residential, General Service/Lighting and Industrial
8 customer classes have decreased. As a result of the revised CPRE
9 (over)/under collection, the proposed rates for the Residential and General
10 Service/Lighting customer classes have decreased and the proposed rates
11 for the Industrial class increased.

12 The components of the CPRE Program rider to be effective
13 September 1, 2023, and to remain in effect for the twelve-month Billing
14 Period ending August 31, 2024, are revised as follows:

15 *Excluding regulatory fee:*

Cents per kWh					
Customer class	CPRE Program EMF rider	CPRE Program rider	Total CPRE Program rider	Current total CPRE Program rider	CPRE Program rider decrease
Residential	(0.0128)	0.0271	0.0143	0.0368	(0.0225)
General Service & Lighting	(0.0141)	0.0261	0.0120	0.0348	(0.0228)
Industrial	(0.0093)	0.0253	0.0160	0.0339	(0.0179)

1 *Including regulatory fee:*

Cents per kWh					
Customer class	CPRE Program EMF rider	CPRE Program rider	Total CPRE Program rider	Current total CPRE Program rider	CPRE Program rider decrease
Residential	(0.0128)	0.0271	0.0143	0.0369	(0.0226)
General Service & Lighting	(0.0141)	0.0261	0.0120	0.0348	(0.0228)
Industrial	(0.0093)	0.0253	0.0160	0.0339	(0.0179)

2 *Totals may not foot due to rounding*

3 **Q. DOES THIS CONCLUDE YOUR PRE-FILED SUPPLEMENTAL**
 4 **TESTIMONY?**

5 A. Yes.

1 COMMISSIONER DUFFLEY: Okay. You may call
2 your witnesses.

3 MR. BREITSCHWERDT: Thank you, presiding
4 Commissioner Duffley. The Company calls Witnesses
5 Tabor and Holstein to the stand. While they're
6 approaching, just as a preliminary matter, we've
7 passed out summaries. We understand the Commissions'
8 preference is not to read those. We'll accept those
9 into the record.

10 One other logistical issue is when we
11 prefiled the Company's rebuttal testimony. In the
12 filing letter and in the testimony, we identified that
13 Rebuttal Exhibits 1 and 4 contain confidential
14 information and was filed under seal. There was one
15 piece of confidential information in Exhibit 3 --
16 excuse me, Exhibit 2 that was also filed under seal.
17 That was the Guaranty Agreement, so it was
18 appropriately filed and redacted, but that wasn't
19 appropriately reflected in the witness' testimony, so
20 we're going to clean that up here at the outset and
21 ask the Commission to accept it as it was filed with
22 the Commission.

23 COMMISSIONER DUFFLEY: Okay. Thank you for
24 that. Okay, the swearing, left hand on the bible,

1 raise your right hand.

2 ANGELA M. TABOR;

3 MATTHEW HOLSTEIN;

4 being duly sworn,

5 testified as follows:

6 MR. BREITSCHWERDT: So before moving the
7 witness' testimony in, if I could, if we could move
8 the Company's Application in as into the record,
9 please.

10 COMMISSIONER DUFFLEY: Yes. The Application
11 of DEC for Approval of the CPRE Cost Recovery Rider
12 and the 2022 CPRE Compliance Report, pursuant to North
13 Carolina General Statute Section § 62-110.8 and
14 Commission Rule R8-71, filed on February 28, 2023
15 consisting of 17 pages, will be admitted into
16 evidence.

17 (WHEREUPON, the Application of
18 Duke Energy Carolinas was
19 admitted and received into
20 evidence.)

21 MR. BREITSCHWERDT: Thank you. And if it's
22 acceptable to the Commission, we'll ask Ms. Tabor to
23 move her direct and supplemental testimony into the
24 record, and then ask Mr. Holstein to move the joint

1 rebuttal testimony into the record.

2 COMMISSIONER DUFFLEY: Without objection,
3 that motion's allowed.

4 MR. BREITSCHWERDT: Thank you.

5 DIRECT-EXAMINATION BY MR. BREITSCHWERDT:

6 Q Good morning, Ms. Tabor. How are you?

7 A Good afternoon.

8 Q Or excuse me, good afternoon. It's been a day.

9 COMMISSIONER McKISSICK: That's all right.

10 Q It's been afternoon for a while. All right.

11 Would you please state your name and business
12 address, for the record.

13 A My name is Angela M. Tabor and I am located at
14 410 South Wilmington Street in Raleigh, North
15 Carolina.

16 Q And by whom are you employed and what capacity?

17 A I am a Renewable Compliance Manager for Duke
18 Energy Carolinas within the Business Development
19 and Compliance Department.

20 Q Thank you. And did you cause to be prefiled in
21 this docket on February 28th 12 pages of direct
22 testimony and one exhibit which was the Company's
23 2022 CPRE Compliance Report?

24 A Yes.

1 Q And your exhibit contained confidential
2 information?

3 A Yes.

4 Q And do you have any changes or corrections to
5 your direct testimony today?

6 A No.

7 Q All right. Turning to your supplemental
8 testimony, did you cause to be prefiled in this
9 docket on May 3rd, 2023, 7 pages of supplemental
10 direct testimony?

11 A Yes.

12 Q And that supplemental direct testimony contain
13 confidential information?

14 A Yes.

15 Q And do you have any changes or corrections to
16 your supplemental direct testimony today?

17 A No.

18 Q And if I were to ask you those same questions
19 that appear in your direct and -- your
20 supplemental direct testimony today, would your
21 answers be the same?

22 A Yes, they would.

23 Q And you've prepared a summary of your direct and
24 supplemental testimony together for the

1 Commission?

2 A Yes.

3 MR. BREITSCHWERDT: Thank you. And
4 Commissioner Duffley, at this time, I'd move
5 Ms. Tabor's prefiled direct and supplemental testimony
6 into the record as well as her summary, as if given
7 orally from the stand. I would also move Ms. Tabor's
8 Direct Exhibit 1 be marked for identification as
9 prefiled maintaining confidential information under
10 seal, and then at the appropriate time accepted into
11 the record.

12 COMMISSIONER DUFFLEY: Okay. So the direct
13 confidential testimony of Angela Tabor containing --
14 that does contain confidential information that was
15 filed on February 28th, 2023, consisting of 17 pages,
16 will be copied into the record as if given orally from
17 the stand. Exhibit 1 will be marked for
18 identification as it was when prefiled. The
19 supplemental testimony of Angela M. Tabor containing
20 confidential information, filed on May 3rd, 2023,
21 consisting of 7 pages, will be copied into the record
22 as if given orally from the stand. The summary will
23 be copied into the record as if given orally from the
24 stand.

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MR. BREITSCHWERDT: Thank you.

(WHEREUPON, Tabor Exhibit 1 is marked for identification as prefiled and received into evidence.)

(WHEREUPON, the prefiled direct and supplemental testimony and summary of Angela M. Tabor is copied into the record as if given orally from the stand.)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 1281

In the Matter of)
)
)
 Application of Duke Energy Carolinas, LLC)
 Pursuant to G.S. 62-110.8 and Commission)
 Rule R8-71 for Approval of CPRE)
 Compliance Report and CPRE Cost)
 Recovery Rider)

**DIRECT TESTIMONY OF
ANGELA M. TABOR**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Angela M. Tabor, and my business address is 410 South Wilmington
3 Street, Raleigh, North Carolina.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am a Renewable Compliance Manager for Duke Energy Carolinas, LLC (DEC or the
6 Company) within the Business Development & Compliance Department.

7 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL AND PROFESSIONAL
8 BACKGROUND.**

9 A. I received a Bachelor of Science in Mechanical Engineering from North Carolina State
10 University. I am a licensed Professional Engineer in North Carolina. I worked as a
11 mechanical engineer from 2001 to 2002 and 2004-2010 at Black & Veatch. I worked
12 as a hardware engineer at Lockheed Martin Aeronautics from 2002-2004. In 2010, I
13 joined Progress Energy as a Senior Auditor working on the Operational Audit team. In
14 2012, after the merger of Duke Energy and Progress Energy, I worked in the NERC
15 Corporate Compliance group managing audits with external regulators. In 2018, I
16 became a Wholesale Renewable Manager in the Distributed Energy Technology
17 Department working with interconnection customers of the Companies. In October of
18 2021, I moved to my current position as Renewable Compliance Manager in the
19 Business Development & Compliance Department.

20 **Q. WHAT ARE YOUR CURRENT RESPONSIBILITIES AT DUKE ENERGY?**

21 A. In my current position, I am responsible for the development and implementation of
22 the competitive procurement of renewable energy program (“CPRE Program”)
23 established by Session Law 2017-192’s (“House Bill 589” or the “Act”) enactment of

1 North Carolina General Statute (“N.C. Gen. Stat.”) § 62-110.8 and applicable to both
2 Duke Energy Carolinas, LLC (“DEC” or “the Company”), and Duke Energy Progress,
3 LLC (“DEP” and together with DEC, “the Companies”). My responsibilities include
4 compliance with CPRE Program requirements as well as interface with the North
5 Carolina Utilities Commission (“Commission”) approved CPRE Program independent
6 administrator, Accion Group, LLC (“Accion Group”, “Independent Administrator”, or
7 “IA”), on behalf of DEC and DEP.

8 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE NORTH CAROLINA**
9 **UTILITIES COMMISSION?**

10 A. Yes. I filed testimony in the Companies’ CPRE Rider proceedings in Docket Nos. E-
11 7, Sub 1262 and E-2, Sub 1296.

12 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

13 A. The purpose of my testimony is to describe DEC’s activities in connection with
14 implementation of the CPRE Program and to describe DEC’s costs incurred to
15 implement the CPRE Program and to comply with N.C. Gen. Stat. § 62-110.8 during
16 the twelve months beginning on January 1, 2022 and ending on December 31, 2022
17 (“EMF Period” or “Test Period”). My testimony also supports DEC’s purchased power
18 and generated power costs projected to be incurred during the CPRE Program rider
19 billing period, which is the twelve-month period beginning on September 1, 2023 and
20 ending on August 31, 2024 (“Billing Period”).

21 **Q. ARE YOU SUBMITTING ANY EXHIBITS WITH YOUR TESTIMONY?**

22 A. Yes. My testimony includes one exhibit. Tabor Exhibit No. 1 is the Company’s 2022
23 CPRE Compliance Report, which is being submitted in this docket in compliance with

1 Commission Rule R8-71(h). The Compliance Report describes the Company's and
2 DEP's ongoing joint efforts to procure renewable energy resources under the CPRE
3 Program and ongoing actions to comply with the requirements of N.C. Gen. Stat. § 62-
4 110.8 during the reporting period, including a summary of key activities during the
5 reporting period, costs incurred to administer the CPRE Program, cost incurred and
6 fees collected by the Independent Administrator, and the current status of CPRE
7 Program requirements.

8 **Q. WAS THIS EXHIBIT PREPARED BY YOU OR AT YOUR DIRECTION AND**
9 **UNDER YOUR SUPERVISION?**

10 A. Yes. Tabor Exhibit No. 1 was prepared by me or under my supervision. Tabor Exhibit
11 No. 1, along with one of the appendices to Tabor Exhibit No. 1, contains confidential
12 and proprietary information and is being filed with the Commission under seal. A
13 redacted version suitable for public filing is attached to my testimony.

14 **Compliance with CPRE Program Requirements**

15 **Q. PLEASE PROVIDE BACKGROUND REGARDING THE ESTABLISHMENT**
16 **OF THE CPRE PROGRAM.**

17 A. On July 27, 2017, House Bill 589 was signed into law, thereby enacting several
18 amendments to the Public Utilities Act. Part II of the Act enacted N.C. Gen. Stat. § 62-
19 110.8, which mandates that Duke obtain Commission approval to implement a CPRE
20 Program to competitively procure 2,660 megawatts ("MW") of additional renewable
21 energy resource capacity (subject to adjustment) over a 45 month period commencing
22 from the date of Commission approval of the CPRE Program, to be accomplished
23 through a series of distinct Requests for Proposals ("RFPs") referred to as "Tranches."

1 N.C. Gen. Stat. § 62-110.8(g) establishes an annual CPRE rider cost recovery
2 mechanism to recover the costs incurred by DEC and DEP to implement the CPRE
3 Program.

4 **Q. HAS THE COMPANY RECENTLY FILED AN UPDATED 2022 CPRE**
5 **PROGRAM PLAN?**

6 A. Yes. The Company filed an updated CPRE Program Plan on September 1, 2022 in
7 Docket E-100, Sub 186, as required by Commission Rule R8-71(g). As explained in
8 the CPRE Program Plan, the Companies procured 1,185 MW through the Tranche 1
9 and Tranche 2 solicitations completed in 2018 and 2020, and DEC procured an
10 additional 155 MW of new CPRE Program capacity through the Tranche 3 solicitation.
11 As further explained in the CPRE Program Plan, the Companies are seeking to procure
12 441 MW of unawarded CPRE Program MW through the 2022 Solar Procurement, to
13 fulfill the remaining capacity requirements of N.C. Gen. Stat. § 62-110.8.¹ Notably,
14 the Commission has determined that regardless of whether the Companies procure the
15 total 441 MW of unawarded CPRE Program MW through the 2022 Solar Procurement,
16 the CPRE Program will be closed out upon the conclusion of the 2022 Solar
17 Procurement.²

¹ On November 1, 2022, the Commission granted the Companies authority to procure the remaining CPRE Program MW through the 2022 Solar Procurement Program. *Order Permitting Additional CPRE Program Procurement and Establishing Target Procurement Volume for the 2022 Solar Procurement*, Docket No. E-2, Subs 1159 and 1297 and E-7, Subs 1156 and 1268.

² *Order Permitting Additional CPRE Program Procurement and Establishing Target Procurement Volume for the 2022 Solar Procurement*, at 7, Docket No. E-2, Subs 1159 and 1297 and E-7, Subs 1156 and 1268 (Nov. 1 2022).

1 **Q. PLEASE ELABORATE ON THE CURRENT STATUS OF CPRE TRANCHE 3.**

2 A. Two projects totaling 155 MW ultimately completed the Tranche 3 bid evaluation
 3 process, both of which were determined to be bid winners announced in July 2022. The
 4 contracting phase for these projects concluded in August 2022, and both CPRE winners
 5 signed CPRE Tranche 3 PPAs. Those projects are now continuing with project
 6 development and interconnection study through the Tranche 3 Resource Solicitation
 7 Cluster, with both projects having completed Phase I and Phase II Study. A summary
 8 and timeline of CPRE Tranche 3 Milestone activities completed in 2022 are shown
 9 below:

CPRE Tranche 3 Milestones in 2022	
CPRE Tranche 3 Bid Window open	01/05/2022
CPRE Tranche 3 Bid Window closed	02/03/2022
Step 1 Ranking	03/31/2022
CPRE Tranche 3 Projects Winners Selected	07/29/2022
CPRE Tranche 3 PPAs signed	08/30/2022
Phase 2 RSC Study begins	08/31/2022

10

11 **Q. YOU MENTION AN ADDITIONAL CPRE PROCUREMENT BEING**
 12 **COMPLETED THROUGH THE 2022 SOLAR PROCUREMENT. PLEASE**
 13 **ELABORATE ON THIS ADDITIONAL CPRE PROCUREMENT, AND THE**
 14 **STATUS OF SUCH PROCUREMENT.**

15 A. As outlined in the CPRE Program Plan Update and mentioned above, the Companies
 16 are undertaking an additional competitive procurement of renewable energy capacity
 17 to procure the remaining 441 MW of unawarded CPRE Program capacity pursuant to
 18 N.C. Gen. Stat. § 62-110.8 through the 2022 Solar Procurement, which additional

1 procurement the Commission approved on November 1, 2022.³ Procuring the
 2 remaining CPRE Program MW through the 2022 Solar Procurement allows the
 3 Companies to focus resources on a single procurement of solar and most efficiently
 4 transition to procurements pursuant to HB 951.

5 On June 20, 2022 the Companies issued the 2022 Solar Procurement. Below
 6 follows a timeline regarding 2022 Solar Procurement completed in 2022:

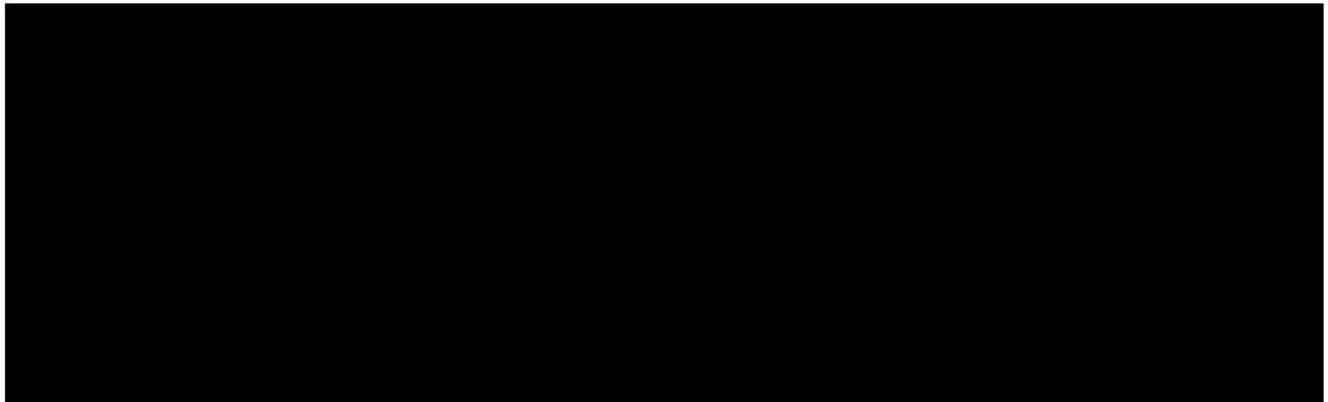
2022 Solar Procurement Milestones in 2022	
2022 SP Bid Window open	06/20/2022
2022 SP Bid Window closed for Third Party Market Participants	07/22/2022
Step 1 Ranking complete, invitation to Step 2	11/28/2022
Proposal Security due date for Step 2 proposals	12/22/2022
DISIS Phase 2 Study start	12/27/2022

7 The Phase 2 study is continuing and will be completed in May 2023.

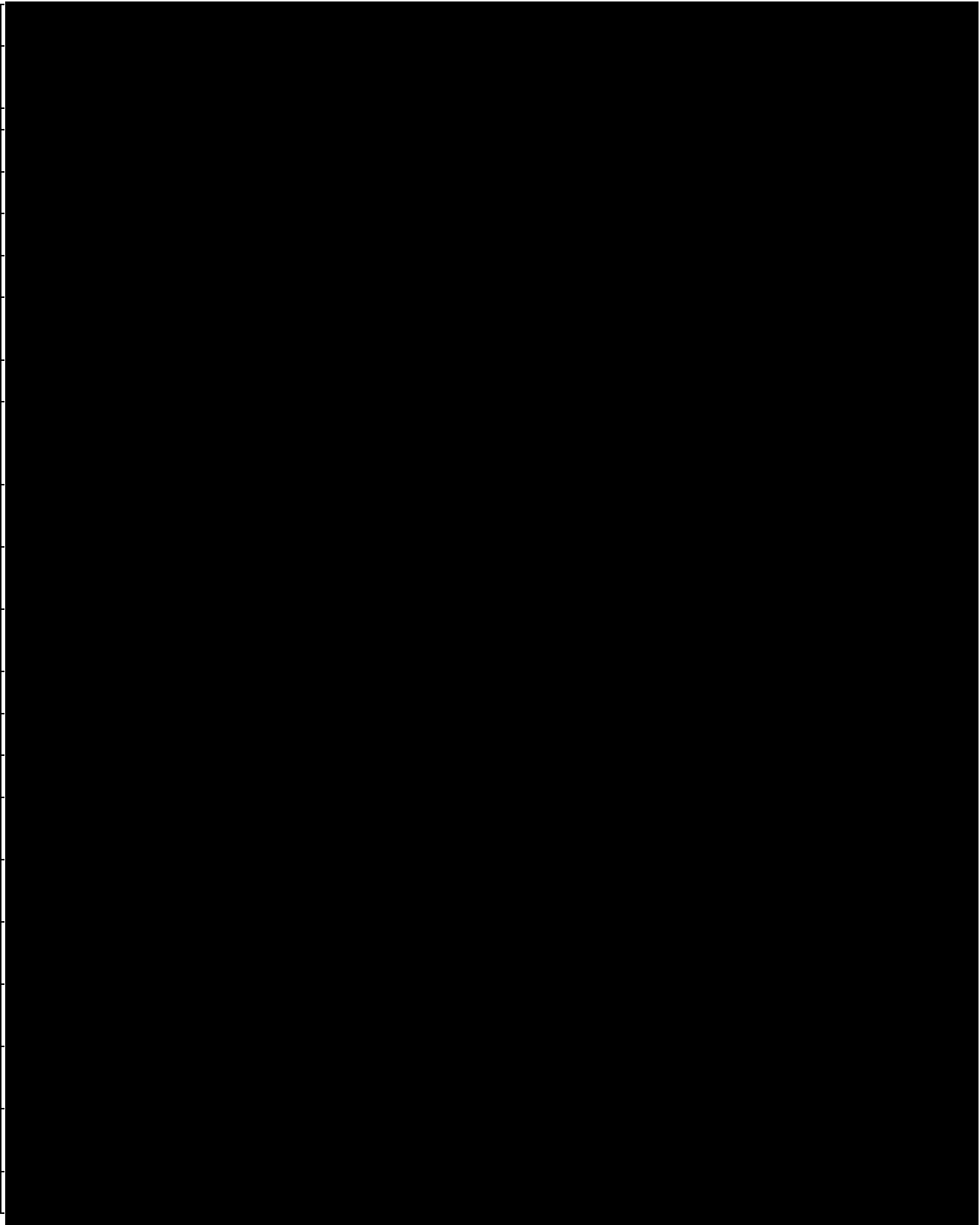
8 **Q. CAN YOU PROVIDE THE CURRENT EXPECTED COMMERCIAL**
 9 **OPERATION DATES FOR ALL TRANCHE 1, TRANCHE 2, AND TRANCHE**
 10 **3 WINNING PROPOSALS?**

11 A. Yes. As of the filing date in this docket, Tranche 1 and Tranche 2 winning projects
 12 have the following estimated commercial operation dates:

13 **BEGIN CONFIDENTIAL**



³ *Id.*



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1 Generation from winning projects currently in operation or forecasted to commence
2 operation by August 31, 2024, are included in the forecast billing period.

3 **Q. HAS DEC PREPARED THE ANNUAL CPRE COMPLIANCE REPORT AS**
4 **REQUIRED BY SECTION (H) OF THE CPRE RULE?**

5 A. Yes. DEC's annual CPRE Compliance Report for 2022 is attached as Exhibit 1 to my
6 testimony. DEC requests that the Commission find that the Company's ongoing
7 actions to implement the CPRE Program requirements, as described in the Compliance
8 Report, are reasonable and prudent, in accordance with NCUC Rule R8-71(i)(l).

9 **Costs of CPRE Program Compliance**

10 **Q. PLEASE DESCRIBE THE PERIOD OF COST RECOVERY UNDER**
11 **REVIEW IN THIS PROCEEDING.**

12 A. The CPRE Program rider authorized under subsection (j) of the CPRE Rule allows the
13 Company to establish "an increment or decrement as a rider to its rates to recover in a
14 timely manner the reasonable and prudent costs incurred and anticipated to be incurred
15 to implement its CPRE Program and to comply with N.C. Gen. Stat. § 62- 110.8."
16 Subsection (j)(3) of the CPRE Rule further provides that, "[u]nless otherwise ordered
17 by the Commission," the CPRE Program Rider test period shall be the same as the
18 annual fuel factor test period, which, for DEC, is the calendar year, January 1 through
19 December 31. The forecasted Billing Period is also the same as DEC's annual fuel
20 factor, extending September 1, 2023 to August 31, 2024.

1 **Q. IS DEC SEEKING RECOVERY OF INDEPENDENT ADMINISTRATOR**
2 **FEES IN THIS PROCEEDING?**

3 A. No. Although DEC has previously recovered Tranche 1 and Tranche 2 IA fees through
4 the CPRE Rider, any prospective cost for administering CPRE Tranche 3 will be
5 funded through the CPRE Tranche 3 Proposal Fees, non-refundable deposit fees, and
6 the Winner's Fees.

7 As explained by DEC Witness Walker, in its 2022 CPRE Program rider filing,
8 DEC inadvertently included \$75,767 of system-level IA fees associated with its
9 Tranche 3 RFP. Accordingly, the Company is including a credit for these Tranche 3
10 IA fees in the determination of EMF Period implementation costs.

11 **Q. IS THE COMPANY PROJECTING TO INCUR CPRE PROGRAM**
12 **PURCHASED POWER EXPENSES OR POTENTIAL AUTHORIZED**
13 **REVENUE OF UTILITY-OWNED CPRE ASSETS THAT WOULD BE**
14 **RECOVERABLE DURING THE BILLING PERIOD AT ISSUE IN THIS**
15 **PROCEEDING?**

16 A. Yes. Eight DEC projects selected in the Tranche 1 RFP and three DEC projects
17 selected in the Tranche 2 RFP are included in the billing period forecast. Estimated
18 purchased power expenses and authorized revenue of utility-owned CPRE asset
19 estimates are described in the direct testimony of Company Witness Walker and
20 detailed in Walker Exhibit No. 1.

1 **Q. PLEASE DESCRIBE THE CATEGORIES OF COSTS INCURRED OR**
2 **POTENTIALLY EXPECTED TO BE INCURRED TO IMPLEMENT THE**
3 **REQUIREMENTS OF THE CPRE PROGRAM.**

4 A. The following is a summary of the types of costs that were and will likely continue to
5 be incurred to implement the CPRE Program and comply with the procurement
6 requirements of N.C. Gen. Stat. § 62-110.8:

- 7 • Purchased power and potential authorized revenues of utility-owned generation
8 related to CPRE Program renewable resources
- 9 • Internal Company labor, contract labor including legal fees, and other related
10 costs of implementing the CPRE Program

11 **Q. PLEASE DESCRIBE THE COMPANY'S COSTS ASSOCIATED WITH THE**
12 **CPRE PROGRAM INCURRED DURING THE EMF PERIOD.**

13 A. DEC's costs associated with implementing its CPRE Program include internal labor
14 associated with development of the CPRE Program Plan and the Tranche 3 RFP
15 documents, as well as interaction with the Independent Administrator and the execution
16 of the Tranche 3 RFP process. In addition to internal labor, costs were incurred for
17 external legal support for CPRE program implementation.

18 **Q. PLEASE PROVIDE DETAIL FOR THE INTERNAL LABOR COSTS**
19 **INCURRED TO IMPLEMENT THE CPRE PROGRAM THAT WERE**
20 **INCURRED DURING THE EMF PERIOD.**

21 A. DEC includes only the incremental cost of CPRE Program compliance for recovery
22 through its CPRE rider. Company employees that work to implement the requirements

1 of N.C. Gen. Stat. § 62-110.8 charge only that portion of their labor hours to CPRE
2 accounting codes.

3 **Q. HOW ARE EXTERNAL CPRE-RELATED IMPLEMENTATION COSTS**
4 **BEING ALLOCATED BETWEEN DEC AND DEP?**

5 A. These costs have been allocated equally between DEC and DEP. While the overall
6 CPRE Program is expected to procure significantly more total megawatts for DEC
7 versus DEP, these costs related to implementing the CPRE Program are associated with
8 administrative activities that benefit DEC and DEP equally. Thus, the Company's
9 proposed CPRE rider in this docket appropriately reflects recovery of one half of the
10 shared outside administrative costs incurred.

11 **Q. ARE YOU SATISFIED THAT THE ACTUAL COSTS DEC HAS INCURRED**
12 **DURING THE EMF PERIOD ARE REASONABLE AND HAVE BEEN**
13 **PRUDENTLY INCURRED?**

14 A. Yes.

15 **Q. DOES THIS CONCLUDE YOUR PRE-FILED DIRECT TESTIMONY?**

16 A. Yes.

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 1281

In the Matter of)

)
Application of Duke Energy Carolinas, LLC)
Pursuant to G.S. 62-110.8 and Commission)
Rule R8-71 for Approval of CPRE)
Compliance Report and CPRE Cost)
Recovery Rider)

**SUPPLEMENTAL
TESTIMONY OF
ANGELA M. TABOR**



1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Angela M. Tabor, and my business address is 410 South
3 Wilmington Street, Raleigh, North Carolina.

4 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS**
5 **PROCEEDING?**

6 A. Yes. I filed direct testimony in this proceeding on March 1, 2023. My direct
7 testimony included an exhibit, Tabor Exhibit No. 1, which presented Duke
8 Energy Carolinas, LLC's ("DEC" or the "Company") Competitive
9 Procurement of Renewable Energy ("CPRE") Compliance Report, in
10 accordance with North Carolina Utilities Commission (the "Commission")
11 Rule R8-71(h).

12 **Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY**
13 **IN THIS PROCEEDING?**

14 A. The purpose of my testimony is to provide a supplemental update to the 2022
15 CPRE Compliance Report to address recent CPRE power purchase agreement
16 ("PPA") terminations and changes to certain CPRE PPA sellers' commercial
17 operation dates ("COD") having occurred since the Company's original
18 February 28, 2023 Application filing.

19 **Q. DOES YOUR SUPPLEMENTAL TESTIMONY INCLUDE ANY**
20 **EXHIBITS?**

21 A. No.

1 **Updates to the 2022 CPRE Compliance Report**

2 **Q. PLEASE EXPLAIN WHY THE COMPANY IS PROVIDING THIS**
3 **SUPPLEMENTAL UPDATE TO THE INFORMATION PRESENTED**
4 **IN THE COMPANY'S 2022 CPRE COMPLIANCE REPORT.**

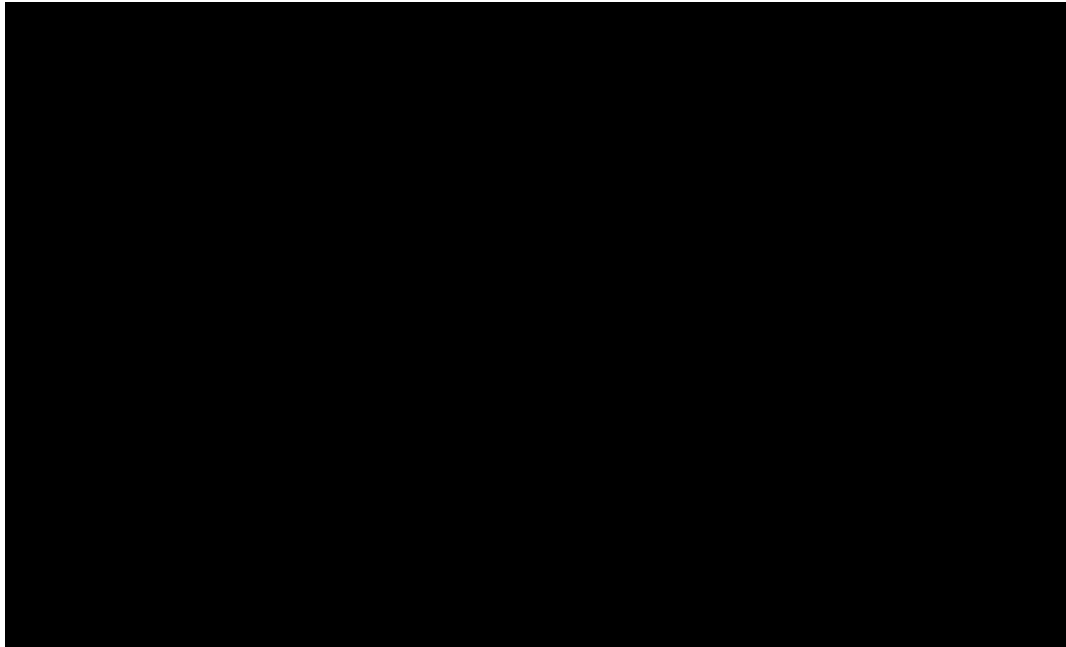
5 A. The Company is updating the summary of PPAs and utility-owned assets
6 procured during the CPRE Program as presented in Section II of the 2022
7 CPRE Compliance Report to account for three Tranche 2 PPA terminations
8 and changes in certain projects' estimated CODs having occurred after the
9 Company filed its original Application. After discussing these CPRE Tranche
10 2 PPA terminations and other recent developments with the Public Staff, the
11 Company is now accounting for the impacts of these contract terminations in
12 the CPRE Program Rider sponsored by Company Witness Christy J. Walker.

13 **Q. PLEASE ELABORATE ON THE THREE TRANCHE 2 PPA**
14 **TERMINATIONS.**

15 A. The following confidential table identifies the three Tranche 2 projects that
16 have terminated their PPAs and includes the dates those projects originally
17 entered into an interconnection agreement ("IA") with the Company, provided
18 notice of termination to the Company, and executed a Mutual Termination
19 Agreement with the Company. The confidential table also lists the liquidated
20 damages imposed and collected on these projects as remedy for their PPA
21 terminations. These liquidated damages are being credited to the 2023 CPRE
22 Rider, as further addressed by Witness Walker.

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Q. DID THESE PPA SELLERS ALSO TERMINATE THEIR INTERCONNECTION AGREEMENTS WITH THE COMPANY?

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A. No. Each of these PPA sellers indicated their intent to maintain and continue to perform under their IAs with the Company. The Company is now working with these Interconnection Customers to allow a limited extension of the IA in-service date and milestones for construction to allow the three project to bid into the DEC and Duke Energy Progress, LLC 2023 Solar Procurement. The Mutual Termination Agreement signed by the Company and these PPA sellers recognizes that this extension of the IA in-service date will be limited and not open-ended to avoid potential adverse impacts to later Interconnection Customers and clusters from projects squatting in the interconnection process without definitive offtake.

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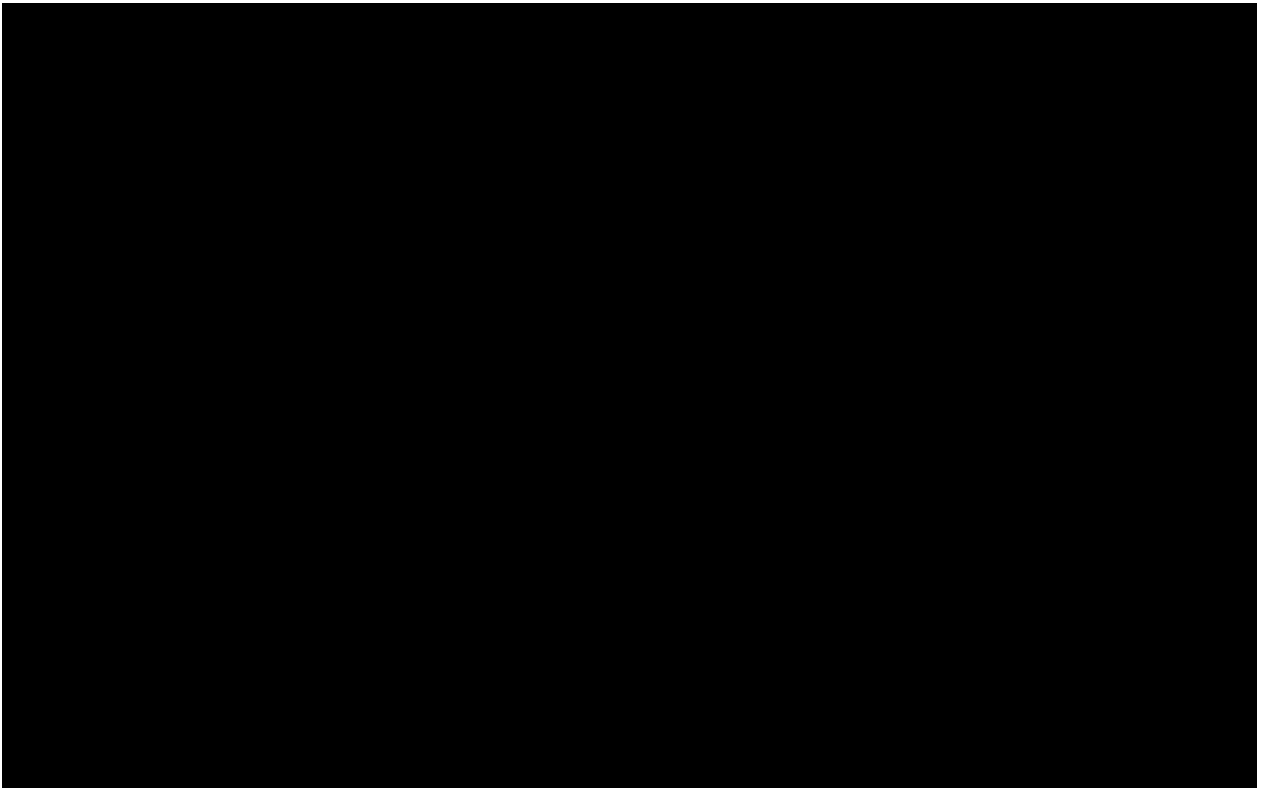
- 1 **Q. PLEASE ELABORATE ON THE RECENT CPRE TRANCHE 1 PPA**
2 **PROJECTS THAT HAVE FAILED TO ACHIEVE THEIR**
3 **CONTRACTED CODS AND HOW THESE CHANGES IMPACT THE**
4 **CURRENT OR FUTURE CPRE RIDERS.**
- 5 A. Two CPRE Tranche 1 projects have recently notified the Company of their
6 inability to achieve their required CODs under the terms of their CPRE PPAs
7 and Interconnection Agreements. In March of 2023, [BEGIN
8 CONFIDENTIAL ██████████ END CONFIDENTIAL] requested
9 additional time from the Company to meet its original COD, and is now
10 estimated to become operational in October 2023. This project paid Initial
11 Liquidated Damages on April 12, 2023 totaling [BEGIN CONFIDENTIAL
12 ██████████ END CONFIDENTIAL] as a remedy for this project not meeting
13 its original COD identified in its CPRE PPA. These damages are being
14 credited to the 2023 CPRE Rider, as further addressed by Witness Walker.
15 [BEGIN CONFIDENTIAL ██████████ END CONFIDENTIAL]
16 also failed to come online by its original March 1, 2023 COD. This project has
17 communicated to DEC and DEP that it intends to reach commercial operation
18 at a later date and remain a CPRE project. DEC and DEP are currently
19 engaged in discussions with the project to amend the project's IA and PPA
20 and determine an updated COD. The Company notes that the terms of the
21 Company's approved CPRE PPA provides for Initial Liquidated Damages as a
22 remedy for the project's failure to meet its original March 1, 2023 COD. This
23 project's Initial Liquidated Damages are to be determined through ongoing

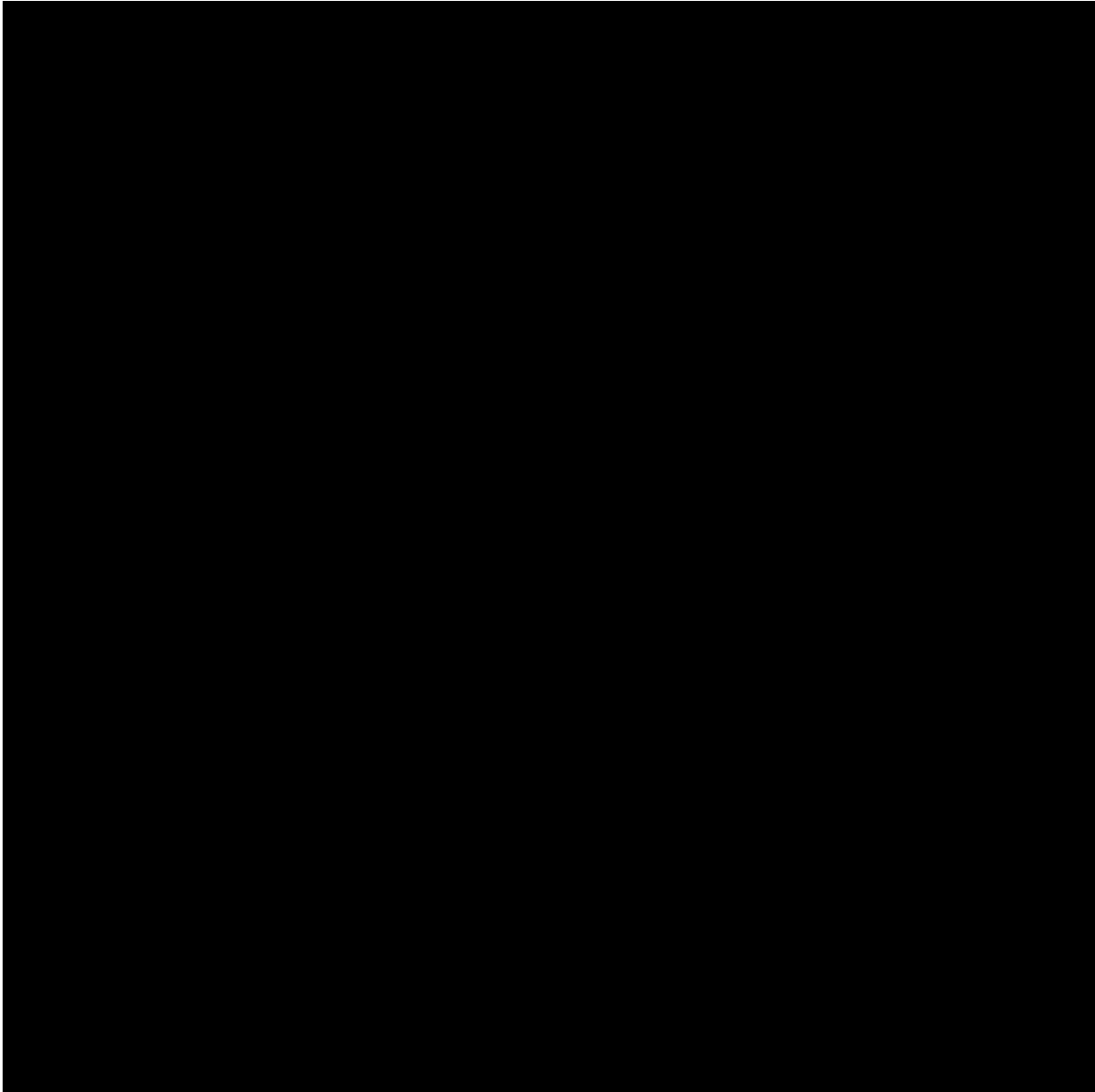
1 negotiations, and once received, such Initial Liquidated Damages will be
2 credited to customers through future CPRE Riders.

3 **Q. PLEASE PROVIDE THE COMMISSION WITH AN UPDATE TO THE**
4 **CPRE PROGRAM SUMMARY TABLE PRESENTED IN SECTION II**
5 **OF THE COMPLIANCE REPORT.**

6 A. The following table presents the current operational status of CPRE Tranche
7 1, Tranche 2 and Tranche 3 projects and highlights in yellow the changes
8 described above for certain projects that have either terminated their PPA or
9 extended their COD as compared to the table originally presented in Section II
10 of my Tabor Exhibit 1: 2022 CPRE Program Compliance Report filed with
11 the Company's Application.

12 **[BEGIN CONFIDENTIAL**





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END CONFIDENTIAL]

2 **Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL TESTIMONY?**

3 A. Yes.

1 BY MR. BREITSCHWERDT:

2 Q Ms. Tabor, just before turning it to
3 Mr. Holstein, you jointly sponsored prefiled
4 rebuttal testimony with Mr. Holstein, and you're
5 sponsoring that here today and you don't have any
6 changes or corrections beyond what Mr. Holstein
7 plans to present. Is that correct?

8 A Correct.

9 Q Thank you. Mr. Holstein, now turning to you,
10 sir, would you please state your name and
11 business address, for the record.

12 A My name is Matthew Holstein. My business address
13 is 525 South Tryon Street on the 16th floor of
14 the Duke Energy Plaza in Charlotte.

15 Q Thank you. And by whom are you employed, in what
16 capacity?

17 A I'm a finance manager responsible for the Credit
18 Risk Department at Duke Energy.

19 Q Thank you. And you, along with Ms. Tabor, caused
20 to be prefiled in the docket May 18th of this
21 year, 28 pages of joint rebuttal testimony as
22 well as four exhibits?

23 A Yes.

24 Q And Exhibits 1, 2, and 4 contain confidential

1 information which was filed under seal?

2 A Yes.

3 Q And do you have any changes or corrections to
4 your joint rebuttal testimony today?

5 A Yes, there are two corrections. First, on
6 page 5, on lines 7 and 8, should be revised to
7 identify that Exhibit 2 also contains
8 confidential information. The sentence should
9 now read: *Certain financial and project*
10 *information in Rebuttal Panel Exhibit 1, Rebuttal*
11 *Panel Exhibit 2, and Rebuttal Panel Exhibit 4, is*
12 *confidential and is being filed with the*
13 *Commission under seal.* Second, on page 20,
14 line 15, the word "system" should be deleted from
15 the confidential portion of my testimony.

16 Q Thank you. So subject to these corrections, if I
17 were to ask you the same questions that appear in
18 your joint rebuttal testimony today, would your
19 answers be the same?

20 A Yes.

21 Q Thank you. And you prepared a summary of your
22 joint rebuttal testimony for the Commission?

23 A Yes.

24 Q All right. Thank you.

1 MR. BREITSCHWERDT: And Commissioner
2 Duffley, at this time, I'd move joint rebuttal
3 testimony of Witnesses Tabor and Holstein be copied
4 into the record as if given orally from the stand.
5 I'd ask that the Rebuttal Panel Exhibits 1 through 4
6 be marked for identification as prefiled, including,
7 meaning all information prefiled as confidential under
8 seal in Exhibits 1, 2, and 4, and then be accepted
9 into the record at the appropriate time.

10 COMMISSIONER DUFFLEY: Okay. The joint
11 rebuttal testimony of Angela M. Tabor and Matthew
12 Holstein, containing confidential information filed on
13 May 18th, 2023, consisting of 28 pages, will be copied
14 into the record as if given orally from the stand.
15 The four exhibits will be marked for identification as
16 they were when prefiled, and well-noted that
17 Exhibits 1, 2, and 4 contain confidential information.

18 (WHEREUPON, Rebuttal Panel
19 Exhibits 1 - 4 are marked for
20 identification as prefiled.
21 Exhibits 1, 2, and 4 filed under
22 seal.)

23 (WHEREUPON, the prefiled joint
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and rebuttal testimony of Angela M. Tabor and Matthew Holstein is copied into the record as if given orally from the stand.)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 1281

In the Matter of)

Application of Duke Energy Carolinas, LLC)
Pursuant to G.S. 62-110.8 and Commission)
Rule R8-71 for Approval of CPRE)
Compliance Report and CPRE Cost)
Recovery Rider)

**REBUTTAL TESTIMONY
OF
ANGELA M. TABOR AND
MATTHEW HOLSTEIN FOR
DUKE ENERGY
CAROLINAS, LLC**



1 **Q. MRS. TABOR PLEASE STATE YOUR NAME, BUSINESS ADDRESS,**
2 **AND TITLE.**

3 A. My name is Angela M. Tabor, and my business address is 410 South
4 Wilmington Street, Raleigh, North Carolina. I am a Renewable Compliance
5 Manager for Duke Energy Carolinas, LLC (“DEC” or “the Company”) within
6 the Business Development & Compliance Department.

7 **Q. ARE YOU THE SAME ANGELA TABOR THAT PREVIOUSLY FILED**
8 **DIRECT AND SUPPLEMENTAL TESTIMONY IN THIS**
9 **PROCEEDING?**

10 A. Yes.

11 **Q. MR. HOLSTEIN, PLEASE STATE YOUR NAME, BUSINESS**
12 **ADDRESS, AND TITLE.**

13 A. My name is Matthew Holstein. My business address is 525 South Tryon Street,
14 DE Plaza 16th Floor, Charlotte, North Carolina 28202. I am a Finance Manager
15 who leads Duke Energy’s credit risk department.

16 **Q. PLEASE BRIEFLY SUMMARIZE YOUR EDUCATIONAL**
17 **BACKGROUND, BUSINESS BACKGROUND, AND PROFESSIONAL**
18 **QUALIFICATIONS.**

19 A. My educational background includes a Master of Science in Finance from
20 Purdue University and a Bachelor of Science in Business Administration from
21 Ohio Northern University. Professionally, I have worked in credit risk for ten
22 years, including nine years in the energy and utilities industry. From 2013-
23 2016, I worked as a Credit Risk Analyst for The Energy Authority. From 2016-

1 2018, I worked as a Credit Risk Analysis Manager for an Australian
2 construction and development company. I joined Duke Energy in 2018 as a
3 Credit Risk Analyst and continued in that role from 2018-2022. I recently
4 became Manager of the credit risk department in 2023.

5 **Q. WHAT ARE YOUR RESPONSIBILITIES IN YOUR CURRENT ROLE?**

6 A. I am responsible for managing the corporate credit risk activities for Duke
7 Energy. My responsibilities include all areas of potential credit risk except for
8 retail electric and gas receivables. The credit risk department analyzes
9 counterparty risk and exposure, implements risk mitigation tactics where
10 appropriate, and manages incoming credit support. The credit risk department
11 supports a wide range of activities at Duke Energy, including supply chain
12 operations, fuels and other commodity-based transactions and hedging activity,
13 renewables procurement including the CPRE process, Interconnection and
14 Transmission, and various business development opportunities.

15 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY BEFORE THE**
16 **COMMISSION?**

17 A. No.

18 **Q. WHAT IS THE PURPOSE OF THIS REBUTTAL TESTIMONY?**

19 A. The purpose of this testimony is to support the Company's request for full
20 recovery of DEC's reasonable and prudently incurred costs of implementing
21 the Competitive Procurement of Renewable Energy ("CPRE") Program as
22 authorized under Commission Rule R8-71(j) and to respond to the testimony of
23 Public Staff Witness Jeff Thomas. More specifically, the purpose of our rebuttal

1 testimony is to respond to Witness Thomas' recommendation that the
2 Commission require DEC to reduce its CPRE cost recovery by crediting to
3 customers an imputed disallowance of 50% of the default liquidated damages
4 ("LD") value that the Public Staff asserts DEC could have obtained from
5 defaulting Tranche 2 counter-party Wilkes Solar, LLC ("Wilkes Solar").

6 **Q. ARE YOU INCLUDING ANY EXHIBITS IN SUPPORT OF YOUR**
7 **TESTIMONY?**

8 A. Yes. The Panel is sponsoring the following Exhibits in support of our rebuttal
9 testimony:

- 10 • Rebuttal Panel Exhibit 1 is the CPRE Program Tranche 2 Renewable Power
11 Purchase Agreement entered into between DEC and Wilkes Solar dated
12 October 15, 2020 (the "PPA" or "Wilkes Solar PPA").¹
- 13 • Rebuttal Panel Exhibit 2 is the Guaranty Agreement of DESRI Portfolios,
14 LLC ("DESRI") dated October 21, 2020, that was submitted to DEC as
15 Performance Assurance on behalf of Wilkes Solar ("Guaranty").
- 16 • Rebuttal Panel Exhibit 3 is DEC's notice letter dated July 5, 2022 to Wilkes
17 Solar notifying it of its potential default under the terms of the PPA.
- 18 • Rebuttal Panel Exhibit 4 is the August 23, 2022 Notice of Default and
19 Termination issued by DEC to Wilkes Solar terminating the PPA as a result
20 of Wilkes Solar's Default under the terms of the PPA.

¹ Capitalized terms not otherwise defined in this testimony are intended to have the meaning ascribed to them in the Wilkes Solar PPA.

1 **Q. WERE THESE EXHIBITS PREPARED BY YOU OR AT YOUR**
2 **DIRECTION AND UNDER YOUR SUPERVISION?**

3 A. Yes. These exhibits were prepared by us or at our direction and under our
4 supervision.

5 **Q. DO ANY OF THE PANEL'S EXHIBITS CONTAIN CONFIDENTIAL**
6 **INFORMATION?**

7 A. Yes. Certain financial and project information in Rebuttal Panel Exhibit 1,
8 Rebuttal Panel Exhibit 2, and Rebuttal Panel Exhibit 4, is confidential
9 and is being filed with the Commission under seal.

10 **I. SUMMARY AND KEY POINTS OF REBUTTAL TESTIMONY**

11 **Q. PLEASE PROVIDE AN OVERVIEW OF YOUR JOINT REBUTTAL**
12 **TESTIMONY.**

13 A. The Panel's joint rebuttal testimony addresses DEC's recent experience with
14 project delays and PPA terminations in the CPRE Program. We then describe
15 how the commercial terms of the PPA manage these risks including by
16 establishing delay and default LDs as well as requiring the Seller to maintain
17 Performance Assurance to ensure that the Company can recover these LDs in
18 the event of Seller delay or termination of the PPA. Maintaining required
19 Performance Assurance is an express contractual obligation of the Seller under
20 the Commission-approved *pro forma* CPRE Program PPA.

21 Wilkes Solar failed to meet its contractual obligation to maintain active
22 Performance Assurance under the PPA and allowed the Guaranty provided by
23 DESRI to expire on December 31, 2021, without timely providing renewal or

1 replacement Performance Assurance. Wilkes Solar then abandoned the
2 interconnection process in April 2022 and subsequently notified DEC that it
3 would not construct the Facility as required under the PPA. After DEC's good-
4 faith efforts to informally negotiate mutual termination of the PPA were
5 unsuccessful, DEC provided Wilkes Solar written notice of termination of the
6 PPA on August 23, 2022.

7 Wilkes Solar has disputed its obligation to pay the owed default LDs
8 **[Begin Confidential]** [REDACTED], **[End Confidential]** as required by Section
9 20.5.1 of the PPA resulting from its pre-commercial operation date ("COD")
10 event of default. Wilkes Solar likely also does not have the assets to pay the
11 default LDs owed, which is why Performance Assurance is generally required
12 by the PPA. DESRI has taken the position that the Guaranty expired on
13 December 31, 2021 and is no longer effective.

14 Our testimony explains that due to a data entry error by the credit risk
15 department at the time the DESRI Guaranty was submitted by Wilkes Solar, the
16 expiry date of the Performance Assurance was not prospectively identified by
17 the Company as part of its normal security instrument management process.
18 Witness Holstein explains that this oversight was a 1 in 1,000 occurrence during
19 his tenure at Duke Energy and that the Company has robust business practices
20 and ongoing training of credit risk department employees responsible for
21 managing Performance Assurance and other security instruments. The
22 Company also undertook a reasonable process to evaluate the likely costs, risks,

1 and potential recoverability of pursuing legal action to enforce the Pre-COD
2 LD provision from the Wilkes Solar PPA.

3 We will explain that based on the Company's internal analysis, the
4 Company has determined that DEC would have a low probability of collecting
5 on any judgement obtained against Wilkes Solar. Whether claims could be
6 brought and an enforceable judgement obtained against DESRI is also a
7 complex question arising under New York law and, would likely not be
8 enforceable against DESRI because the Guaranty expired prior to Wilkes
9 Solar's default and the resulting termination of the PPA.

10 The Company disagrees with Witness Thomas' recommendation that a
11 50% "credit" or imputed disallowance of LDs owed but not paid under the now-
12 terminated PPA is fair to customers and would avoid customers bearing the full
13 cost of the unpaid LDs. First, Witness Thomas has not identified any specific
14 actions or failures by DEC that demonstrate unreasonable or imprudent
15 business practices or lack of reasonable management oversight and decision-
16 making based upon the facts known at the time the DESRI Guaranty was
17 submitted to DEC. It was not unreasonable for DEC to rely upon Wilkes Solar
18 to meet its contractual obligations to maintain Performance Assurance. It was
19 also reasonable for DEC to rely upon its established security tracking and data
20 management practices despite the error that occurred. Second, the Company
21 disagrees with Witness Thomas' recommendation because it is speculative to
22 assume that but for the data entry error DEC would have certainly recovered
23 **[Begin Confidential]** [REDACTED] **[End Confidential]** in LDs. Accurate data

1 entry into CIM would have strengthened DEC's claim against DESRI.
2 However, it would not have necessarily resulted in DEC recovering [Begin
3 Confidential] ██████████ [End Confidential] in LDs and Witness Thomas'
4 assumption to the contrary is not justified. Third, the Company also disagrees
5 with Witness Thomas' recommendation because there are no direct costs to
6 customers as a result of the termination of the PPA and Witness Thomas'
7 recommendation will, in effect, disallow other reasonable and prudently
8 incurred CPRE Program costs. Finally, due to anticipated costs and risks to
9 recovering the Pre-COD LDs from Wilkes Solar or DESRI, Witness Thomas
10 agrees with the Company that further efforts to collect the LDs are not likely to
11 be in the interest of DEC's customers.

12 **II. RECENT CPRE PPA TERMINATIONS AND THE ROLE OF**
13 **PERFORMANCE ASSURANCE**

14 **Q. DOES DEC AGREE WITH WITNESS THOMAS' TESTIMONY THAT**
15 **DEC HAS RECENTLY EXPERIENCED SIGNIFICANT PPA**
16 **TERMINATIONS AND DELAYS IN THE CPRE PROGRAM?**

17 A. Yes. We agree with Witness Thomas' testimony at page 8 that the CPRE
18 Program has experienced significant project delays, withdrawals, and
19 terminations over the past few years. As identified in the 2022 CPRE Program
20 Report presented by Witness Tabor and further addressed in Witness Tabor's
21 Supplemental Testimony, 6 out of 20 CPRE Program PPA projects totaling 350
22 MW have either notified DEC of their intent to terminate their CPRE Program
23 PPAs or have been terminated by DEC for failing to meet the required COD

1 under their respective PPAs. Another project has paid delay LDs under its
2 CPRE Program PPA to extend its COD, while DEC continues to negotiate with
3 yet another CPRE counterparty regarding potential amendments to its CPRE
4 Program PPA. In total, 40% of CPRE sellers have failed to meet their initially
5 contracted PPA COD obligations or have terminated their CPRE Program PPAs
6 within the past 14 months.

7 **Q. WHAT DOES DEC'S RECENT EXPERIENCE DEMONSTRATE?**

8 A. The Company's recent experience with the CPRE Program demonstrates that
9 independent power producer ("IPP") project developers faced with increased
10 project costs, execution risks, supply chain challenges, or other changing
11 market circumstances have the option and may elect to terminate their
12 contractual obligation to construct a generating facility and deliver power to the
13 Company if the project is no longer profitable. To be clear, IPP counterparties
14 can provide substantial value to customers through outsourcing development
15 and creating low cost purchased power options. However, they also introduce
16 increased risk where development cost is a primary driver as they are subject to
17 limited Commission oversight and have no public service obligation to
18 construct the facility to maintain reliable service. The Company's form of
19 CPRE Program PPA is designed to manage these commercial risks on behalf
20 of customers.

1 **Q. CAN YOU EXPLAIN HOW THE COMPANY'S PPAS ADDRESS THE**
2 **RISK OF PROJECT DEFAULT OR EARLY TERMINATION?**

3 A. LDs are used in complex commercial purchased power transactions such as the
4 CPRE Program PPAs to compensate the non-defaulting purchaser of power for
5 accepting the complex risks and incurring potential costs resulting from a PPA
6 Seller's failure to meet delivery obligations and/or termination of the PPA. LDs
7 are generally used to compensate the Company and its customers for the cost
8 of replacement for the contracted resources. It is often difficult to determine
9 the replacement cost at the time of contracting and LDs are used as proxy for
10 covering the risk of replacement power (whether through new purchased power
11 contracts or from utility-owned resources). DEC and DEP currently manage
12 approximately 200 negotiated PPAs in the Carolinas where LDs are used to
13 allocate risk and provide certainty to the parties.

14 In order to manage the risk against recovering the defined LDs in the
15 CPRE PPA, the Company requires counter-party Sellers to provide
16 "Performance Assurance" in an amount equal to the LDs. This Performance
17 Assurance requirement in the CPRE PPA provides security to the Company as
18 buyer in the case of a Seller default and subsequent early termination of the
19 PPA.

20 **Q. WHAT PROVISIONS OF THE CPRE PROGRAM PPA ADDRESS**
21 **CREDIT AND PERFORMANCE ASSURANCE?**

22 A. Referring to Rebuttal Panel Exhibit 1, Section 5 governs the "Credit and Related
23 Provisions" of the CPRE Program PPA. Section 5.1 requires the Seller to

1 provide to DEC “Pre-COD” Performance Assurance no later than 5 days after
2 contract execution. Section 5.2 then requires the Seller to maintain Performance
3 Assurance throughout the 20-year term of the CPRE PPA that is tied to the
4 capacity and energy to be delivered throughout the term. Performance
5 Assurance is defined in Section 1 of the CPRE PPA which establishes that
6 Seller may provide the required collateral in the form of either cash, Letter(s)
7 of Credit or a Guaranty that is acceptable to DEC as Buyer, in its sole discretion.

8 Section 20.5 establishes that Seller is liable to Buyer for damages if the
9 project fails to achieve the COD Milestone and also provides specified Pre-
10 COD LDs if a project fails to achieve its COD Milestone. The COD Milestone
11 is established in Exhibit 3 and is 90 days after the date upon which DEC delivers
12 Interconnection Facilities and System Upgrades enabling the Facility to
13 interconnect. Failure to achieve the COD Milestone is also an event of default
14 and is subject to termination of the PPA. However, Sellers are allowed to extend
15 their COD Milestone upon payment of LDs for up to 180 days past the COD
16 Milestone in the CPRE PPA. Failure to achieve the COD Milestone within the
17 180-day extension option period will result in an event of default and
18 termination of the PPA. As established in Section 20.5.4, the LDs are the sole
19 remedy for the Facility failing to achieve COD.

1 **Q. DOES THE CPRE PROGRAM PPA REQUIRE THE SELLER TO**
2 **MAINTAIN PERFORMANCE ASSURANCE THROUGHOUT THE**
3 **TERM OF THE AGREEMENT?**

4 A. Yes. As Witness Thomas highlights on pages 11-12 of his testimony, Section
5 5.7 requires Seller to ensure that the required Performance Assurance remains
6 in full force and effect for the duration of the CPRE PPA. Seller's failure to
7 maintain or replace Performance Assurance is an event of default under the
8 terms of the PPA.

9 **Q. PLEASE ADDRESS THE COMPANY'S BUSINESS PROCESSES FOR**
10 **MANAGING PERFORMANCE ASSURANCE FOR CPRE PPAs AS**
11 **WELL AS OTHER COMMERCIAL AGREEMENTS.**

12 A. The CPRE Program PPAs provided forms of Guaranty Agreement (Exhibit 6)
13 as well as other forms of Performance Assurance that that would be acceptable
14 to Duke Energy. PPA counterparties provide draft security forms to Duke
15 Energy's wholesale contracts group which forwards those drafts to Duke
16 Energy's credit risk department for review. The credit risk department will
17 engage Duke Energy's legal department if the counterparty (or its lending
18 institution) seeks edits to the standard forms. Once Duke Energy approves the
19 final form of Performance Assurance, the counterparty or its bank sends the
20 final executed security to the Company's credit risk department. The credit risk
21 department maintains digital copies of the provided security instrument on its
22 drives as well as physical copies of each security instrument in a locked

1 multiple occurrences of the addition of new security, expiration of old security,
2 and amendments to existing security.

3 **Q. HOW ARE CREDIT RISK EMPLOYEES TRAINED TO MANAGE**
4 **SECURITY?**

5 A. Duke Energy's credit risk department currently employs 4 people who have
6 been in their current roles for 4 to 11 years. The department maintains a library
7 of training and procedures documents that lay out the proper procedures for
8 managing security in CIM. Additionally, employees in the credit risk
9 department complete annual training on the Company's business processes and
10 must annually review and certify the continuing accuracy and completeness of
11 the Company's Credit Policy and Credit Risk Management Procedures
12 documents.

13 **Q. DO ALL SECURITY INSTRUMENTS INCLUDE AN EXPIRY DATE?**

14 A. No. It is common for security instruments and especially guaranty agreements
15 to contain no expiry date or set term. For example, [Begin Confidential] ■■■
16 ■■■ [End Confidential] security instruments currently managed in CIM
17 do not have a defined expiration date.

18 **III. WILKES SOLAR PPA DEFAULT AND DESRI PARENT**
19 **GUARANTY**

20 **Q. PLEASE DESCRIBE DEC'S COMMERCIAL ARRANGEMENT WITH**
21 **WILKES SOLAR UNDER THE CPRE PROGRAM.**

22 A. Wilkes Solar was a 75 MW solar facility being developed in Wilkes County,
23 North Carolina, that was selected as a non-late stage winning bid in the Tranche

1 2 RFP. DEC and Wilkes Solar entered into the 20-year term PPA on October
2 15, 2020. Pre-COD Performance Assurance was timely provided by DESRI on
3 behalf of Wilkes Solar in the form of a parent guaranty in the amount required
4 by the PPA: **[Begin Confidential]** [REDACTED] **[End Confidential]**.

5 **Q. PLEASE DESCRIBE THE CIRCUMSTANCES AROUND WILKES**
6 **SOLAR'S DEFAULT UNDER ITS PPA.**

7 A. CPRE projects were selected in the Tranche 2 RFP in mid-July 2020, and a PPA
8 was offered prior to interconnection study work being completed. After Wilkes
9 Solar was selected as a Tranche 2 winner, DEC continued to process the
10 project's interconnection request and completed a System Impact Study in May
11 2021. During this period, DEC and DEP were also proceeding through queue
12 reform and transitioning from a serial interconnection process to a cluster study
13 process. Wilkes Solar executed its Facilities Study agreement prior to the queue
14 reform notice date and elected to be studied in the Transitional Serial queue.
15 The Facilities Study results were provided to Wilkes on January 13, 2022. Per
16 the North Carolina Interconnection Procedures, a Construction Planning
17 Meeting was held on February 11, 2022 to discuss the costs of System Upgrades
18 and construction schedule for DEC to construct the required Upgrades.
19 Company personnel met with Wilkes and offered an Interconnection
20 Agreement consistent with CPRE Program where the Interconnection Facilities
21 were paid for by the customer and Duke Energy paid for the Network Upgrades
22 to be constructed.

1 Wilkes Solar failed to sign the Interconnection Agreement by the
2 required due date of April 18, 2022. The Company sent a cure letter allowing
3 five additional business days to sign the Interconnection Agreement. Wilkes
4 Solar again did not sign the tendered interconnection agreement and an
5 interconnection request withdrawal notice was sent to the interconnection
6 customer on April 29, 2022.

7 Wilkes Solar's failure to return the Interconnection Agreement as
8 required by the NC Interconnection Procedures resulted in an event of default
9 under Section 7.3.1 of the PPA.

10 **Q. DID DEC ATTEMPT TO ENGAGE WILKES SOLAR TO MUTUALLY**
11 **TERMINATE THE PPA AND TO THEN OBTAIN PAYMENT OF THE**
12 **LIQUIDATED DAMAGES OWED UNDER THE PPA AS A RESULT OF**
13 **WILKES SOLAR'S DEFAULT OF THE PPA?**

14 A. Yes. On May 11, 2022, Company representatives met with Wilkes Solar to discuss the
15 status of the PPA. In that meeting, Wilkes Solar made it clear that they wanted to
16 terminate the PPA. The Company agreed that it would send Wilkes Solar a draft
17 Termination Agreement. A draft termination agreement was sent on May 13, 2022. On
18 June 2, 2022, Wilkes Solar sent an email with a marked-up version of the draft
19 Termination Agreement. In that markup, Wilkes Solar proposed to delete the
20 provisions for Wilkes Solar to provide the Pre-COD LDs as required by Section 20.5.1
21 of the CPRE PPA. Wilkes Solar's primary justification for its unwillingness to pay
22 LDs, as conveyed by email on June 10, 2022, was that there were delays in the
23 interconnection process that caused the project increased costs and caused the project
24 to no longer be viable. On July 5, 2022, the Company sent Wilkes Solar a letter in

1 response to the June 10 email and provided notice to Wilkes Solar that the project was
2 in default of the PPA and, therefore, were required under the PPA to pay the **[Begin**
3 **Confidential]** [REDACTED] **[End Confidential]** in Pre-COD LDs. No payment of
4 the Pre-COD LDs was forthcoming, and, on August 23, 2022, the Company sent
5 Wilkes Solar a Notice of Default and Termination as referenced by Public Staff
6 Witness Thomas. This August 23, 2022 Letter is being submitted as Rebuttal Panel
7 Exhibit 4.

8 **Q. DID DEC’S PROCESSING OF WILKES SOLAR’S**
9 **INTERCONNECTION REQUEST UNREASONABLY DELAY COD AS**
10 **WILKES SOLAR ALLEGED?**

11 A. No. Wilkes Solar was proceeding through the interconnection study process in
12 2019-2022 just prior to the Company’s “queue reform” transition to annual
13 cluster studies. DEC made reasonable and non-discriminatory efforts to
14 complete the interconnection study process for Wilkes Solar based upon its
15 queue position and the project was not delayed or disadvantaged relative to any
16 other contemporaneous interconnection customers. Moreover, ongoing
17 challenges in the interconnection process were a well-understood risk for
18 market participants and did not create any specific force majeure event or right
19 to terminate the PPA. To the contrary, the required COD set forth in PPA
20 Exhibit 3 was specifically tied to completing the interconnection process and
21 the Company delivering the required Interconnection Facilities and System
22 Upgrades necessary to enable the Facility to deliver power.

1 **Q. PLEASE DESCRIBE THE CIRCUMSTANCES SURROUNDING THE**
2 **EXPIRY OF THE GUARANTY?**

3 A. After Wilkes Solar failed to execute its Interconnection Agreement, the
4 Company determined in early July 2022 that Paragraph 11 of the Guaranty
5 included an expiry date of December 31, 2021. Based on the credit risk
6 department's review of the situation, the Company determined that failure to
7 recognize the upcoming expiration of Wilkes Solar's Guaranty and subsequent
8 lack of demand for renewal was due to a data entry error in CIM. The employee
9 responsible for entering Guaranty information into CIM missed the expiration
10 date in the Wilkes Solar Guaranty form provided by DESRI and entered the
11 Guaranty in to CIM as though it had no expiration date. As a result, the Wilkes
12 Solar Guaranty did not show up on the 90 Day Report which would have led
13 the credit risk department employee responsible for managing expiring security
14 to proactively seek renewal or replacement security from Wilkes Solar.

15 **Q. DID WILKES SOLAR PROVIDE NEW PERFORMANCE ASSURANCE**
16 **PRIOR TO THE DECEMBER 31, 2021 EXPIRY DATE AS REQUIRED**
17 **BY SECTION 5.7 OF THE PPA?**

18 A. No. At no point did Wilkes Solar or DESRI contact the Company about the
19 expiring Guaranty or provide a renewal of the Guaranty or alternate
20 replacement security.

1 **Q. WAS WILKES SOLAR'S FAILURE TO MAINTAIN PERFORMANCE**
2 **ASSURANCE AN EVENT OF DEFAULT UNDER THE PPA?**

3 A. Yes. Wilkes Solar was obligated by Section 5.7 of the CPRE Program PPA to
4 maintain Performance Assurance throughout the term of the agreement. Wilkes
5 Solar failed to perform its contractual obligation to ensure its Performance
6 Assurance remained in full force and effect through COD and for the duration
7 of the term of PPA. It then defaulted under the PPA by not extending the
8 Guaranty beyond its expiration date to maintain Performance Assurance.

9 **Q. DOES DEC CONTINUE TO HAVE THE ABILITY TO PURSUE LDS**
10 **FROM WILKES SOLAR AND/OR DESRI AS GUARANTOR?**

11 A. Neither of us are attorneys and we are not rendering a legal opinion on behalf
12 of the Company. Given there is a three (3) year statute of limitations for
13 bringing claims arising out of contracts under North Carolina law and
14 considering that Wilkes Solar's default and the termination of the PPA occurred
15 in 2022, the Company could pursue enforcement of the PPA and demand
16 payment of LDs by Wilkes Solar. Based on the Company's internal analysis,
17 the Company has determined that DEC would have a low probability of
18 collecting on any judgement obtained against Wilkes Solar. This is because
19 special purpose entities formed for the purpose of developing greenfield solar
20 projects like Wilkes Solar typically do not hold material assets.

21 Whether claims could be brought and an enforceable judgement
22 obtained against DESRI is also a complex question arising under New York
23 law. DEC would face substantial challenges with respect to enforcement of the

1 Guaranty, due to the stated expiration date occurring prior to Wilkes Solar's
 2 default and the resulting termination of the PPA, and, thus, DEC may not be
 3 able to recover its liquidated damages from the guarantor.

4 **IV. RESPONSE TO PUBLIC STAFF'S PROPOSED IMPUTED**
 5 **DISALLOWANCE**

6 **Q. DOES DEC AGREE WITH WITNESS THOMAS'**
 7 **RECOMMENDATION THAT THE COMMISSION SHOULD ORDER**
 8 **DEC TO CREDIT RATEPAYERS 50% OF THE WILKES**
 9 **LIQUIDATED DAMAGES SUM?**

10 A. No. The data entry error was a unique and isolated event and does not suggest
 11 imprudent business practices or unreasonable processes for managing PPAs.
 12 DEC recognizes the important role of LDs in promoting counterparty
 13 performance (and minimizing the cost of litigation) under PPAs but believes
 14 Public Staff's recommended "adjustment" to impute a [Begin Confidential]
 15 [REDACTED] [End Confidential] disallowance is unreasonable, not
 16 supported by the facts, and should not be approved.

17 **Q. HOW SHOULD THE COMMISSION EVALUATE THIS**
 18 **RECOMMENDATION?**

19 A. Commission Rule R8-71(j)(2) provides that the Company should be permitted
 20 to recover its reasonable and prudent costs incurred in implementing the CPRE
 21 Program. In determining whether a utility's actions were reasonable and
 22 prudent, the Commission has recently considered: 1) whether the utility was

1 reasonable and prudent² based on the information known to it—or that it
 2 reasonably should have known—at the relevant time; and 2) whether there were
 3 repeated errors that the utility’s management failed to discover or failed to
 4 detect and address in a reasonable time or manner. In making this
 5 determination, the Commission has considered whether the mistake could have
 6 reasonably been prevented by the utility considering what it knew at the
 7 relevant time and whether the error resulted from unreasonable or imprudent
 8 management.³

9 **Q. MR. HOLSTEIN, PLEASE EXPLAIN WHY THE COMPANY’S**
 10 **PROCESS FOR MANAGING THE SECURITY WAS REASONABLE.**

11 A. The Company’s process for managing security has historically performed well.
 12 As I explain above, this is the only known case of an error in the CIM data entry
 13 process in my time at Duke Energy. Duke Energy has likely processed over
 14 1,000 security instruments and amendments during that period, making this at
 15 least a 1 in 1,000 occurrence. The success of DEC’s credit management process
 16 is further highlighted by DEC’s recent successful administration of 5 other
 17 CPRE Program PPA terminations where the counterparty defaulted and the
 18 Company collected LDs. As explained in the Supplemental Testimony filed by
 19 Witness Tabor and Witness Christy Walker, DEC’s process for managing

² The Commission has stated: “[T]he standard for determining the prudence of the Company’s actions should be whether management decisions were made in a reasonable manner and at an appropriate time on the basis of what was reasonably known or reasonably should have been known at that time . . . The Commission notes that this standard is one of reasonableness that must be based on a contemporaneous view of the action or decision under question. Perfection is not required. Hindsight analysis – the judging of events based on subsequent developments – is not permitted.” *Order Approving Fuel Charge Adjustment* at 24, Docket No. E-7, Sub 1163 (Aug. 20, 2018) (citations omitted).

³ *Id.* at 25.

1 security has resulted in significant collections of LDs that are being credited to
2 customers in this Rider, totaling [Begin Confidential] [REDACTED]
3 [REDACTED] [REDACTED] [End
4 Confidential] collected in the 2023 rate period that DEC is voluntarily
5 accelerating in this 2023 Rider versus flowing back in the next EMF rider. As
6 Witness Thomas recognizes, the impact of making this adjustment would
7 reduce the total CPRE Rider by approximately 50% for each rate class.

8 Additionally, the Company's process for managing security is in line
9 with other peer utilities in the industry. I can confirm that the Company's
10 practices are substantially similar to those of The Energy Authority, which I
11 know from my prior experience working there from 2013-2016.

12 It is also not unreasonable for the Company to rely on a counterparty to
13 meet its contractual obligations under a contract. Contractually, the
14 responsibility of maintaining adequate Performance Assurance is on the
15 Seller—not the Company—under Section 5.7 of the PPA. As discussed above,
16 the Seller was in default at the time the security expired without renewal prior
17 to COD under Section 19.18 of the PPA. The Public Staff's proposed
18 disallowance would reduce DEC's otherwise reasonable and prudently incurred
19 CPRE costs. Adopting this recommendation would be tantamount to holding
20 the Company liable as a guarantor of Wilkes' performance under the PPA,
21 actions over which Company has no control.

1 **Q. CONSIDERING INFORMATION KNOWN TO DEC AT THE TIME OF**
2 **THE DATA ENTRY ERROR, WAS IT ALSO REASONABLE AND**
3 **PRUDENT FOR THE COMPANY TO RELY UPON ITS STANDARD**
4 **BUSINESS PRACTICES WHEN PROCESSING THE GUARANTY**
5 **PROVIDED AS WILKES SOLAR'S PERFORMANCE ASSURANCE?**

6 A. Yes. As stated above, this is the first known data entry error made utilizing the
7 Company's standard process for tracking security during my tenure at the
8 Company. Although it is not appropriate under the Commission's standard of
9 review to consider evidence occurring after the event in question, it is notable
10 that the Company audited all the Performance Assurance for CPRE Program
11 PPAs after discovering that the DESRI parent guaranty was erroneously
12 allowed to expire. No other expired PPA security instrument or data entry errors
13 in CIM were identified. There is no way to completely remove the potential for
14 human error from the Company's business processes, but the Company's track
15 record for accuracy and prudent decision-making is strong and suggests that it
16 was reasonable for the Company to rely on its standard practices when
17 processing the DESRI Guaranty provided by Wilkes Solar.

18 **Q. WITNESS THOMAS SUGGESTS AT PAGE 12 THAT DEC HAS NOT**
19 **IMPLEMENTED ANY PROCESS CHANGES AS A RESULT OF THE**
20 **WILKES SOLAR INCIDENT. PLEASE COMMENT.**

21 A. Witness Thomas does not dispute the Company's view that this event was an
22 isolated incident or provide any affirmative evidence that the current process
23 has not performed well, excepting the data entry oversight relating to the DESRI

1 Guaranty. Notwithstanding, the Company is exploring an update to CIM with
2 its IT department that could make this error even less likely to occur in the
3 future.

4 **Q. WHY HAS DEC NOT MORE ZEALOUSLY PURSUED LIQUIDATED**
5 **DAMAGES UNDER THE PPA IF WILKES SOLAR WAS AT FAULT**
6 **FOR TERMINATION?**

7 A. As explained above, special purpose entities formed for the purpose of
8 developing greenfield solar projects like Wilkes Solar do not hold material
9 assets. Therefore, the Company reasonably expects that it would have to rely
10 on the Guaranty and seek recovery from DESRI. However, the Company has
11 determined that the Guaranty has expired and DEC likely would not be able to
12 recover from DESRI for reasons that have nothing to do with whether Wilkes
13 Solar is liable for the payment of LDs under the terms of the PPA.

14 **Q. DID DEC REASONABLY EVALUATE THE COSTS, RISKS, AND**
15 **POTENTIAL RECOVERABILITY OF PURSUING LEGAL ACTION**
16 **TO ENFORCE PRE-COD LD PROVISIONS FROM THE WILKES**
17 **SOLAR PPA?**

18 A. Yes. Managers and employees from the Company's business development and
19 compliance department responsible for PPA administration and credit risk
20 department responsible for managing security obligations, with advice from the
21 Company's legal counsel, weighed the likely costs, risks, and potential
22 recoverability of pursuing legal action to enforce the Pre-COD LD provision
23 from the Wilkes Solar PPA. The Company determined that the cost of litigation

1 to obtain a judgement was potentially significant and ultimate recoverability of
2 any judgement obtained would be unduly risky as Wilkes Solar likely has no
3 material assets and DESRI has taken the position that the Guaranty has expired.

4 **Q. DID DEC ARRIVE AT A PRUDENT BUSINESS DECISION NOT TO**
5 **INITIATE LITIGATION TO ENFORCE THE PRE-COD LD**
6 **PROVISION FROM THE WILKES SOLAR PPA?**

7 A. Yes. Notably, Witness Thomas seems to agree on page 11 of his testimony,
8 asserting that “Public Staff is not recommending that DEC pursue liquidated
9 damages[.]”

10 **Q. DOES WITNESS THOMAS PRESENT ANY SPECIFIC EVIDENCE OR**
11 **ALLEGATION OF IMPRUDENCE?**

12 A. No. Despite thorough investigation of the matter, Witness Thomas fails to
13 demonstrate imprudence by DEC to justify imputed disallowance of reasonably
14 incurred CPRE implementation costs as a result of the Company’s failure to
15 collect LDs from Wilkes or DESRI. Reviewing Witness Thomas’s justification
16 for the proposed disallowance at page 13, Witness Thomas presents no evidence
17 to show that the occurrence of this isolated data entry error indicates that DEC’s
18 practice for tracking security is not reasonable and prudent. But for the data
19 entry error with the Guaranty, DEC’s credit risk department has successfully
20 managed large volumes of performance security without issues similar to the
21 one presented here. Accordingly, the Commission should reject the Public
22 Staff’s recommended disallowance.

1 **Q. DID WITNESS THOMAS QUANTIFY THE COSTS THE DATA**
2 **ENTRY ERROR ALLEGEDLY IMPOSED ON DEC'S CUSTOMERS?**

3 A. Witness Thomas seems to assume that the costs the data entry error imposed on
4 DEC's customers is the **[Begin Confidential]** [REDACTED] **[End**
5 **Confidential]** in LDs that DEC has not recovered from Wilkes Solar and/or
6 DESRI. Witness Thomas recommended adjustment is half of that amount as he
7 seems to recommend that it is appropriate for DEC and its customers to split
8 that cost.

9 **Q. IS IT APPROPRIATE FOR WITNESS THOMAS TO ASSUME THAT**
10 **THE COST DEC'S DATA ENTRY ERROR IMPOSED ON**
11 **CUSTOMERS IS THE FULL PPA LIQUIDATED DAMAGES IT HAS**
12 **NOT RECOVERED?**

13 A. No. It is not appropriate to conclude that had the Guaranty not expired, DEC
14 would have recovered **[Begin Confidential]** [REDACTED] **[End Confidential]**
15 in LDs that would have been credited to customers. While DEC has been
16 successful in enforcing its PPA rights to LDs with other CPRE Program
17 counterparties, it is speculative to conclude that but for DEC's data entry error,
18 DEC would have **[Begin Confidential]** [REDACTED] **[End Confidential]** in
19 hand today. An enforceable Guaranty would not have changed the fact that
20 Wilkes Solar did not enter commercial operation or that Wilkes Solar likely has
21 no assets with which to pay the Company LDs.

22 At best, an enforceable Guaranty would have strengthened DEC's
23 chances of recovering—likely from DESRI—the LDs Wilkes Solar owed to

1 DEC. There is no certainty, however, that DESRI would have voluntarily paid
2 the LDs. Unless DESRI voluntarily paid the LDs, it is likely DEC would have
3 had to initiate litigation to seek enforcement of the Guaranty. DEC would have
4 had to incur legal costs to enforce the Guaranty and it is also possible that DEC
5 would not prevail in obtaining a judgment against DESRI or enforcing that
6 judgment. Had the isolated data entry error in the credit risk department not
7 occurred, DEC would have a stronger claim against DESRI. It would not
8 necessarily have **[Begin Confidential]** [REDACTED] **[End Confidential]** that
9 it could credit to customers. For these reasons, it is speculative and
10 unreasonable to conclude that the data entry error by Duke Energy's credit risk
11 department imposed **[Begin Confidential]** [REDACTED] **[End Confidential]**
12 in costs on its customers.

13 **Q. DOES THE COMPANY AGREE WITH WITNESS THOMAS'**
14 **CHARACTERIZATION THAT THE DECISION BEFORE THE**
15 **COMMISSION IS WHETHER "DEC RATEPAYERS SHOULD BEAR**
16 **THE FULL COST OF DEC'S ERROR"?**

17 A. No. The Company disputes the premise that DEC ratepayers will bear **[Begin**
18 **Confidential]** [REDACTED] **[End Confidential]** in costs as a result of the
19 Wilkes Solar PPA termination and unrecovered LDs. Witness Thomas'
20 adjustment is not a typical recommendation that DEC should not be permitted
21 to recover unreasonable or imprudent costs incurred (e.g., purchased power
22 expense or program implementation costs) in implementing the CPRE Program.
23 Instead, Witness Thomas' adjustment imputes a disallowance for liquidated

1 damages not recovered as a result of PPA non-performance and termination by
2 the Seller. Said differently, the Company is no longer projecting any CPRE
3 PPA costs associated with Wilkes Solar and the Commission has now
4 determined the CPRE Program is concluded so there will not be any direct
5 replacement power costs for the lost energy production anticipated to be
6 delivered by Wilkes. While the Company does not dispute that replacement
7 energy will need to be generated or procured to cover the loss of the Wilkes
8 Solar PPA, the Company believes Witness Thomas' characterization is over-
9 simplified and not accurate.

10 **Q. DOES THIS CONCLUDE YOUR JOINT REBUTTAL TESTIMONY?**

11 **A.** Yes, it does.

1 MR. BREITSCHWERDT: Thank you. The Panel is
2 available for cross-examination and questions from the
3 Commission.

4 COMMISSIONER DUFFLEY: Any
5 cross-examination?

6 MR. FELLING: Not from the Public Staff, but
7 we would like to reserve the right to ask questions on
8 Commission questions.

9 COMMISSIONER DUFFLEY: Okay. Commissioner
10 questions? Chair Mitchell.

11 EXAMINATION BY CHAIR MITCHELL:

12 Q Good afternoon. You-all were in the room when I
13 asked Mr. McLawhorn several questions related to
14 the Wilkes Solar situation. Is that correct?

15 A (Mr. Holstein) Yes.

16 Q And did you hear his responses to those
17 questions.

18 A Yes.

19 Q Is there anything else you-all -- I mean, is
20 there anything you-all want to say, at this
21 point, either in response to questions I asked
22 him or in response to information he provided in
23 response to those questions?

24 A I have something I'd like to say, yeah. So to

1 the point of the Guaranty expiration date being
2 short, it's quite common for guarantors to
3 provide expiration dates on an annual basis and
4 frequently at the end of a fiscal year, so in
5 this case, December 31st. So it's not at all
6 uncommon for our credit risk department to see a
7 guaranty expiring 14 months into the future on
8 December 31st and see that as a red flag, because
9 that's something we see commonly. And it's
10 frequently renewed on an annual basis by the
11 guarantor, and contractually, that's what was
12 required under this PPA.

13 Q Your testimony -- and this is a confidential
14 number, so I'm trying to elicit any confidential
15 information from you-all, but your testimony
16 indicates that it's common for security
17 instruments to contain no expiration date, no set
18 term, I guess, just sort of be of an indefinite
19 term.

20 Is there any reason going forward,
21 for purposes of future procurements that the
22 Company may conduct, is there any reason not to
23 require that Performance Assurance that's
24 provided contain no expiration date?

1 A I think we would run into difficulties with some
2 of the developers in agreeing to something like
3 that. Although it is common to have no
4 expiration date on guaranties, there are a number
5 of entities that are very uncomfortable with that
6 concept, and would, thus, not be willing to do
7 so.

8 A (Ms. Tabor) And I just want to add one thing to
9 what Witness Holstein said there. Parent
10 guaranties are a form of security that we do
11 allow. It's not the only form. And in CPRE, we
12 had other projects that also had parent
13 guaranties, and we are looking at the use of, you
14 know, tools of continuous improvement, and we'll
15 talk about that. That's in our testimony as
16 well, but there are parent guaranties and they do
17 have different terms.

18 Q Okay. I believe it is in your testimony. Let me
19 get there. While I'm looking for my notes, can
20 you-all respond to the question that's been asked
21 regarding Wilkes Solar's participation in future
22 procurement that the Company might conduct?
23 What's the Company's position there?

24 A (Ms. Tabor) At this time, the Company is still

1 evaluating what the right approach is but we do
2 work with stakeholders and with Public Staff, and
3 we are in that process for the 2023 solar
4 procurement currently. We're at a point where
5 we've gotten some comments and feedback on the
6 documents that have been posted to the 2023 RFP's
7 website, and we'll be addressing those and
8 continuing to work with stakeholders.
9 Tentatively, we have the next stakeholder session
10 scheduled for mid June.

11 Q Okay. So your testimony on -- it's the rebuttal
12 testimony, page 9, looking at lines 13 through
13 20. Just let me know when y'all get there.

14 A (Mr. Holstein) I'm there.

15 Q Okay. You make the point that IPP
16 counter-parties can provide substantial value to
17 customers through outsourcing, development, and
18 creating low-cost purchased options, purchase
19 power options, I'm sorry. Did I read that
20 testimony correctly?

21 A Ms. Tabor) Yes.

22 Q After I've corrected myself. We've talked some.
23 There's been testimony today regarding the number
24 of market participants or bidders that have

1 withdrawn from the CPRE Tranches, and I think
2 your testimony indicates that there were three
3 Tranche 2 projects that have terminated their
4 PPAs and two CPRE Tranche 1 projects that failed
5 to achieve the CODs set forth in the contract.
6 Is that correct?

7 A I want to make one comment on that. For CPRE,
8 for Tranche 1, we've had one project that has
9 terminated and paid the LDs, and we have one
10 project that we're continuing to have discussions
11 with. I think we've preliminarily signaled that
12 we expected them to terminate because we know
13 there are challenges, but we are continuing to
14 have commercial discussions with that project to
15 find a path forward.

16 Q Okay. And so -- actually, I was going to ask you
17 about that, so I'm glad you provided that
18 additional information. So of those two, from
19 Tranche 1, one has terminated?

20 A Correct.

21 Q And one -- it remains a possibility.

22 A That's correct.

23 Q Okay. Good news. So, again, just back to your
24 testimony that IPP counter-parties can provide

1 substantial value to customers by creating low
2 cost purchase power options and sort of keeping
3 in mind the avoided cost threshold that was set
4 in this CPRE paradigm, and sort of looking ahead,
5 what are we going to do to ensure that there are
6 actually -- the IPP capacity that we are planning
7 for materializing and actually materializes, and
8 it materializes at lowest cost?

9 A So we continue to hold competitive procurements.
10 And so in the competitive procurement process, we
11 are evaluating the projects on economic and
12 non-economic factors. And we, for 2022, have
13 made offers to the projects that were selected
14 and we looked at the amount for the LDs as we
15 were coming up with any changes to the PPAs
16 between, you know, CPRE to 2022 to 2023, and we
17 continue to evaluate those.

18 The LDs are actually a little
19 higher when we get to the solar procurement for
20 '22 and '23 because the term is longer, and it is
21 based on the production of the facility over the
22 life of the facility. So going from a 20-year
23 term to a 25-year term, there is an increase in
24 the LDs for a project that would otherwise be the

1 same size.

2 Q I know that we are still -- thank you for your
3 testimony. I'm going to ask you one question
4 that sort of strays from the matters at hand, but
5 we are early in the 2022 procurement process, but
6 any signs of trouble with respect to the winning
7 bidders?

8 A No.

9 Q Okay.

10 CHAIR MITCHELL: I think that's everything
11 for me.

12 COMMISSIONER DUFFLEY: Commissioner
13 Brown-Bland?

14 (No response)

15 COMMISSIONER DUFFLEY: Commissioner
16 Clodfelter?

17 EXAMINATION BY COMMISSIONER CLODFELTER:

18 Q Good afternoon. I'm not sure which one of you
19 should answer, so whoever wants to take the
20 question can take the question. On your rebuttal
21 testimony, page 12, if you can get that for me,
22 and I'm looking at the answer you provide on
23 line 16 through 18. And the testimony says there
24 that the Credit Risk Department will engage Duke

1 Energy's legal department if the counter-party or
2 its lending institution seeks EDITs to the
3 standard forms.

4 My question about that statement
5 is when a counter-party, in this case a
6 guarantor, in this particular case, proposes a
7 defined expiration date for the Guaranty that is
8 sooner than the expected commercial operation
9 date, does that trigger a view by Duke legal?

10 A (Mr. Holstein) No. That would not be something
11 that necessarily would trigger Duke legal. It's
12 usually more of a change in provisions or the
13 insertion of a new clause in the Guaranty that
14 might have legal views required.

15 Q So that is not considered an EDIT to the standard
16 form?

17 A The standard form allows for an expiration date
18 if it should be in there, and it does not state
19 whether or not COD is a condition for whether or
20 not it would considered standard.

21 Q So does the Credit Risk Department, when
22 presented with a request for a defined expiration
23 date, consult with anyone else about how that
24 date stands relative to the expected commercial

1 operation date?

2 A It depends. So we'd usually be involved in
3 having discussions with whatever business unit
4 the Guaranty was covering a contract in relation
5 to. If we had a reason to be concerned, it would
6 come up. In this case, that wasn't one where we
7 felt like we had a reason to be concerned.

8 Q You anticipated my next question. So the
9 question was going to be did that occur in this
10 case?

11 A We did not have any discussion with legal about
12 the Guaranty expiration date in this case.

13 Q Well, what about with the business unit that was
14 overseeing the procurement process?

15 A If we had any, I may ask Ms. Tabor to weigh in
16 here, but my department does not have any email
17 histories that states that we had a back and
18 forth with them about that expiration date.

19 Q Who would have that, if there were any?

20 A Based on the date in which this guaranty was put
21 in place, it's most likely that our retention
22 policy does not have it any longer. So unless
23 Ms. Tabor's organization has the email history,
24 it's not clear.

1 Q If you were asked to make a search to see if
2 there was any discussion with the business unit
3 about whether this was an acceptable date
4 relative to the expected commercial operation
5 date, could someone make such assertion, at least
6 say we have something or we don't have something.
7 Could that be done?

8 A You know, we could ask the question to
9 Ms. Tabor's group. And I don't know how you
10 would want to respond but I can respond based on
11 your response here.

12 A (Ms. Tabor) Commissioner Clodfelter, I would say
13 that we looked, and we're not able to come across
14 any specific correspondence to answer that
15 question.

16 Q You've already done the search and the answer
17 came back negative. You're off the hook, for
18 that question, because we're going to go to
19 page 14 of your rebuttal testimony next. And I'm
20 going to ask you about some information that you
21 put in here in confidential, but I'm going to ask
22 the question in a way that -- I don't want an
23 answer that goes into confidential information,
24 but I want to refer you to the question on

1 line 13 and the answer to lines 14 through 16.

2 And you provide some information
3 there about the number of security instruments
4 that you've managed that do not have a defined
5 expiration date. And through the process of
6 arithmetic, I can calculate a number of those
7 that do have a defined expiration date. So,
8 understanding that letters of credit, by law,
9 must have an expiration date, so I've set those
10 aside in one category. They have to have an
11 expiration date. The law says they must.

12 So of the difference between the
13 two numbers you do provide there in the
14 confidential testimony, if you were asked to do
15 so, could you provide a breakdown of those that
16 constitute either cash deposit -- well, cash
17 deposit would not have an expiration date. I
18 don't have any of those you even have. Do you
19 get cash deposits?

20 A We do get cash deposits.

21 Q For the PPA Performance Assurances? Not for
22 proposal security but for PPA performance?

23 A I don't believe we're holding any related to the
24 CPRE process.

1 Q Okay. Let's leave cash aside. But for
2 guaranties and surety bonds, if you were asked to
3 do so, could you provide a breakdown of the
4 difference there as to those that -- guaranties
5 and surety bonds that do a have defined
6 expiration date?

7 A On the stand today, no, but we do have that
8 information available to us that we could
9 provide.

10 Q Okay. I think I would like to see that in a
11 late-filed exhibit. And if we could give a
12 categorization by expiration date of less than
13 a -- a year or less, an expiration date of more
14 than a year.

15 MR. BREITSCHWERDT: All right. Thank you.

16 COMMISSIONER CLODFELTER: And, again, I'm
17 not interested in letters of credit because I know
18 those have to have expiration dates.

19 MR. BREITSCHWERDT: Guaranties only.

20 COMMISSIONER CLODFELTER: Guaranties and
21 surety bonds.

22 MR. BREITSCHWERDT: And surety bonds. Thank
23 you.

24 COMMISSIONER DUFFLEY: Commissioner Hughes.

1 (No response)

2 COMMISSIONER DUFFLEY: Commissioner
3 McKissick.

4 EXAMINATION BY COMMISSIONER MCKISSICK:

5 Q Just one or two questions, and it goes back to
6 some of the questions asked of Mr. McLawhorn.
7 Of course the Power Purchase Agreement, in this
8 particular instance with Wilkes, was executed on
9 or about October 15th of 2020. Is that correct?

10 A (Ms. Tabor) Yes. And that's actually an exhibit
11 to the testimony?

12 Q Yes. I think you-all have it as an -- Exhibit 1
13 as a part of your joint rebuttal testimony.

14 A Yeah.

15 Q And of course it does have Exhibit 6 attached,
16 which is kind of a standard form guaranty, and it
17 does not contain any type of termination date or
18 anything like that, on that particular exhibit.
19 Is that correct?

20 A (Mr. Holstein) Yeah. So if you're looking at the
21 template guaranty form as part of the PPA --

22 Q Yeah.

23 A -- it contains a location from where one could be
24 input but not a date in the template from.

1 Q So there's no date attached to that particular
2 one.

3 A Correct.

4 Q And looking at the actual guaranty that came in,
5 it came in on the 21st of October. Is that
6 correct?

7 A I believe so.

8 Q And it did, in fact, have an expiration date
9 which would have been that December 31st of '21?

10 A Yes.

11 Q Now, I believe there was some discussion earlier
12 about Section 5.1 dealing with pre-COD.

13 A Yes.

14 Q Now, that does provide for a summation of, say, a
15 Performance Assurance within five days. Is that
16 correct?

17 A Correct.

18 Q But when that guaranty came in, that would have
19 been outside of the five days, wasn't it?

20 A The Section 5.1 references five business days.
21 I don't have the calendar in front of me but it
22 seems reasonable that that could have been within
23 five business days.

24 Q Okay. Now, let me ask you this. When it came

1 in, I guess what I'm understanding you to say,
2 the fact that it would have expired in about 14,
3 14 and a half months would not have been of
4 concern to you?

5 A Correct. Yeah. That's fairly common. We do get
6 a lot of companies that have policies against
7 providing expirations beyond the end of their
8 next fiscal year or beyond a certain date into
9 the future. So we do get guaranties that often
10 expire on December 31st, and it covers a term if
11 longer than the Guaranty's expiration date, in
12 which case they usually reach out to us and
13 provide updated security for the next year.

14 Q Now, would there not have been a good business
15 practice to at least have established a guaranty
16 period that would have likely, at least
17 coincided, or, you know, reasonably coincided
18 with the projected operations data in the
19 facility?

20 A I don't disagree with you that that would have
21 been, you know, an ideal situation or even the
22 ideal expiration would have been the end of the
23 PPA term, 20-plus years in the future. However,
24 it is, actually, fairly uncommon to get a

1 guaranty that expires 20 years into the future.
2 And like I said, it's not very uncommon for a
3 Company or a guarantor to issue a guaranty that
4 expires at the end of their next fiscal year from
5 the time in which it was sent to us.

6 Q Now, in the contract, there's a section that
7 deals with events of default. Is that correct?

8 A Yes, I believe so.

9 Q And if you look under Section 19.18, I'll give
10 you a second to get there. Let me know when
11 you're there. Are you there?

12 A I am there.

13 Q Under 19.18, it says, *Seller fails to provide,*
14 *replenish, renew or replace the Performance*
15 *Assurance in or otherwise fails to fully comply*
16 *with a credit-related requirement to this*
17 *Agreement, including without limitation of*
18 *Section 5 and any such failure's not cured within*
19 *five business days.*

20 Did you consider the expiration of
21 this performance instrument, you know, the
22 Guaranty Agreement as an event that would have
23 triggered a default?

24 A Yes, I would. Under the contract, the Guaranty

1 expiring is an event of default.

2 Q And did you take any actions, as a result of
3 that, to enforce the terms of the Agreement, in
4 terms of the remedies that could have been
5 pursued in terms of an event of default as
6 defined in the terms of the Agreement?

7 A At the time the Guaranty expired, we were not
8 aware due to the omission in our system, so we
9 didn't become aware of the Guaranty's expiration
10 until July of 2022, at which case the Guaranty
11 had already expired.

12 And as far as enforcing our LDs
13 under the Agreement, we have had discussions with
14 Wilkes Solar about those LDs. And I don't know,
15 Ms. Tabor, if you have anything else you want to
16 add to that, but I would say we have attempted to
17 collect on those LDs despite the expiration of
18 the guaranty.

19 Q And as I gather, you've been unsuccessful?

20 A (Ms. Tabor) That's correct. But I will note,
21 Commissioner McKissick, that in our letter of
22 default for the PPA that was sent out in August,
23 we did reserve our rights and remedies under the
24 PPA, and so there's still time. We're under

1 evaluation and there's still time for us to
2 further pursue. Just thus far, these are the
3 actions that we've taken.

4 Q And in that letter that you referred to, it seems
5 like you also identified several reasons that
6 would not have constituted a basis for them not
7 proceeding with this Agreement. Is that correct?

8 A Let me look at the letter.

9 Q Sure. I need to find it myself. I'm just going
10 by my recollection. And one letter I'm looking
11 at here now is one dated July 5th of '22, and it
12 says, *The obligations to construct a facility is*
13 *solely the responsibility of Wilkes. Nothing the*
14 *Agreement provides Wilkes' obligations to*
15 *construct, own, or operate the facility or*
16 *contingent on the results of the System Impact*
17 *Study, the availability or unavailability of tax*
18 *credits, or the overall cost of Wilkes to*
19 *construct a facility, and none of the items*
20 *listed in your email would constitute a permitted*
21 *excuse to perform under the terms of the*
22 *Agreement.* Do you see that language?

23 A Are you in the first paragraph on the July 5th
24 letter?

1 Q Yeah, first paragraph on the July 5th letter. I
2 think that's what I was thinking about when you
3 started referring to a letter. You and I think
4 there was another one here as well.

5 A Yeah. That's the one that I was referring to,
6 Exhibit 4.

7 Q Okay.

8 A Exhibit 3 was one of the letters --

9 Q Okay.

10 A -- when we were trying to work through mutual
11 termination of the PPA with the counter-party.
12 And Exhibit 4 --

13 Q Okay.

14 A -- is actually the --

15 Q The one -- I see that.

16 A -- the letter that we terminated, Notice of
17 Termination and Default of the PPA.

18 Q Yes. I see that one as well. Now, let me ask
19 you this. In that earlier letter, I guess, on
20 July 5th, you identify a number of reasons that
21 would not be a permitted excuse to perform.

22 Are those reasons that Wilkes had
23 referred to in communications with Duke, as a
24 result, you know, in terms of stating why they

1 were not proceeding? Because they are
2 specifically identified, that's why I raised that
3 question.

4 A Yes. They had brought up issues and delays in
5 our interconnection. And if we go back to the
6 testimony, I walk through the steps in how the
7 interconnection process works and how things were
8 going between Wilkes and Duke Energy and the
9 interconnection process. And we were treating
10 Wilkes Solar as we were treating other projects
11 that were going through the interconnection
12 process. It takes time to receive your study
13 results to get an Interconnection Agreement, to
14 come to terms on the Interconnection Agreement.
15 Duke offered, in April 2022, Interconnection
16 Agreement to Wilkes Solar and they declined to
17 sign that Interconnection Agreement, and they
18 were stating that there were delays caused by
19 Duke that then made their project not a viable
20 project. And, so, I think those are those
21 permitted excuses to perform that are then
22 referenced in this July 5th, 2022 letter.

23 Q Now, would it be Duke's contention that there
24 were no delays or were there delays that you had

1 called excusable delays?

2 A There were delays that Duke and the development
3 community were aware of, which are part of the
4 reasons that Duke moved away from a serial
5 interconnection queue to a cluster study model,
6 and so there was nothing that happened between
7 Duke Energy and Wilkes, any different than the
8 other customers that were going through the
9 interconnection queue. And so that is why -- you
10 know, where it says permitted, excused to
11 perform, again, there was no different treatment
12 between Wilkes Solar and other solar developers
13 that were moving through the serial queue.

14 Q So all other similar situated parties were
15 experiencing similar delays, and there was
16 nothing unique about Wilkes' circumstances?

17 A That's correct.

18 Q How long were the delays, if you know?

19 A My role in compliance and managing, you know, the
20 CPRE Program, there are pieces that I'm aware of,
21 but there's certainly pieces that are outside of
22 the scope of my responsibilities and probably
23 better to have someone answer, someone else
24 answer that specific question.

1 Q Very good. And let me ask you this. Have there
2 been other solar projects, you know, similarly
3 situated where there were guaranty agreements
4 signed, where there had been a default and you
5 made demand for liquidated damages?

6 A There were three other projects in Tranche 2 that
7 had parent guaranties as their security
8 instruments and those projects elected to
9 terminate the PPA and moved forward with payment
10 of the liquidated damages that were owed under
11 the PPA. And I don't know -- Mr. Holstein, is
12 there anything else you want to add there related
13 to parent guaranties?

14 A (Mr. Holstein) No. I think that's an accurate
15 description of the guaranties associated with the
16 CPRE process. There were three that we were able
17 to collect on.

18 Q Were any of those Guaranty Agreements expired?

19 A No.

20 COMMISSIONER McKISSICK: Thank you. I don't
21 have any further questions.

22 COMMISSIONER DUFFLEY: Commissioner Kemerait.

23 EXAMINATION BY COMMISSIONER KEMERAIT:

24 Q Yes. Just a follow-up on the questions about

1 what Solar's allegation that interconnection
2 delays were the reason that it terminated the
3 PPA, and I think this is on pages 16 and 17 of
4 your rebuttal testimony.

5 And I think that you provided
6 testimony to Commissioner McKissick that there
7 was no delays for Wilkes Solar that were in
8 excess of other projects in Tranche 2 of CPRE.
9 Is that right, that the delays were not more
10 excessive or longer for Wilkes Solar compared to
11 other projects in Tranche 2?

12 A (Ms. Tabor) Correct.

13 Q And then I saw on page 15 of your rebuttal
14 testimony that Wilkes Solar was actually studied
15 through the transitional serial process. Do you
16 know whether other projects in Tranche 2 were
17 studied in the cluster process as well or do you
18 have that information about which processes at
19 that time, Tranche 2 projects were studied?

20 A I don't have the specific breakout but I did look
21 at the projects in Tranche 2 and the timing of
22 their Interconnection Agreements, and there were
23 other projects that did not get an
24 Interconnection Agreement until queue 1 of 2022.

1 So there were some that did have to go through
2 the transitional serial process, and the
3 delineation point for projects to go and stay in
4 serial versus to move into transition serial was
5 the August 19th date when we transitioned for
6 queue reform, and so they did have their Facility
7 Study Agreement which allowed them that choice of
8 transition serial or transitional cluster, at a
9 moment in time.

10 Q And if for a project that -- my understanding is
11 a project that would be studied under the
12 transitional serial process would be studied --
13 I'm sorry, for a project that would be studied
14 under the transitional serial process, would be
15 studied in advance of projects that would be in
16 the transitional cluster or the cluster process.
17 Is that correct?

18 A That's correct.

19 Q So Wilkes Solar potentially would have been
20 studied in advance of any other project in the
21 transitional cluster or the cluster process?

22 A That's correct.

23 COMMISSIONER KEMERAIT: Okay. Thank you.

24 COMMISSIONER DUFFLEY: Commissioner

1 Clodfelter.

2 EXAMINATION BY COMMISSIONER CLODFELTER:

3 Q Sorry, folks. Come back to something. If you
4 had caught the expiration of the Guaranty, if it
5 had been logged in and it popped up, and you saw
6 it was coming up, you would have insisted, am I
7 correct, that it be renewed or else you wouldn't
8 have proceeded.

9 A (Mr. Holstein) Right. So we have a report
10 that -- it's called the 90-day report which tells
11 us any piece of security that's within 90 days of
12 its expiration date. At that point, we're not
13 worried when it's at 90 days, but once we get
14 inside 30 days, we're usually reaching out
15 proactively to try to get something renewed.

16 Q And if you don't get it renewed, you stop?

17 A Correct.

18 Q You come to a halt.

19 A We take whatever legal -- yeah, whatever actions
20 we -- we would explore whatever actions we --

21 Q You don't anything else on the project until you
22 get that --

23 A Most likely.

24 Q Until you get that issue cleared up.

1 A Yes

2 Q So if you were asked to do so, could you
3 accumulate your costs incurred after the
4 expiration date of this Guaranty in connection
5 with preparing and tendering and negotiation the
6 Interconnection Agreement and further work on
7 this project? If you were asked to do so, could
8 you provide that data?

9 A I don't --

10 Q What did you incur after the expiration of the
11 Guaranty?

12 A I don't know that I'm the right person to answer
13 that question. Ms. Tabor.

14 Q Well, those costs are collected and accumulated
15 internally somewhere because they're ultimately
16 charged back to the project.

17 A (Ms. Tabor) Commissioner Clodfelter, could I ask
18 for a clarifying?

19 Q Sure.

20 A So under interconnection and interconnection
21 costs, those are separate from the Power Purchase
22 Agreement and the Power Purchase Agreement costs.

23 Q Correct.

24 A So this Guaranty is meant to cover the Power

1 Purchase Agreement, and there's a letter of
2 credit or different instrument under
3 interconnection.

4 Q I understand.

5 A Okay.

6 Q My question is what internal cost did you incur
7 after the date of expiration of this Guaranty in
8 connection with this project?

9 A (Mr. Holstein) I don't know that we can
10 definitively say that there are direct costs that
11 we incurred as a result of this project. As far
12 as the calculation in direct cost, I'm not the
13 right person to answer that question. I don't
14 know if Ms. Tabor is either.

15 A (Ms. Tabor) I'm not the right person to answer
16 the question. I think --

17 Q I won't ask you to answer a question if you're
18 not the right person to answer. All right. I'll
19 think about that one. One last thing. It
20 occurred to me as I was thinking about the
21 question I just asked you, that the expiration of
22 this Guaranty actually says that the passage of
23 the date certain does not extend to any
24 outstanding obligations that had been incurred

1 prior to that point. In other words, those
2 continue to be guarantied, even after the date
3 certain. Were there any unpaid milestone
4 payments, progress payments, study payments,
5 Facility Study Agreement payments, anything else
6 that was due to you, that is still due to you,
7 and uncollected as of the date of the expiration
8 of the Guaranty?

9 A (Mr. Holstein) I'm not aware of any uncollected
10 payments to us outside of liquidated damages,
11 whether it be before or after the Guaranty had
12 accrued.

13 Q Yeah. Leaving aside liquidated damages, I
14 understand that's the issue that's the big one,
15 but the Guaranty specifically says that if
16 there's anything outstanding and due as of the
17 date of the expiration, that's still covered by
18 the Guaranty, and I just want to be sure all that
19 had been cleaned up and has been collected.

20 A Yes. I'm not aware of any outstanding dues to us
21 prior to the expiration.

22 Q Thank you. I promise not to come up a third
23 time.

24 COMMISSIONER DUFFLEY: Chair Mitchell.

1 EXAMINATION BY CHAIR MITCHELL:

2 Q I just want to make sure I understand your
3 testimony in response to Commissioner Kemerait
4 correctly. So Wilkes Solar was in the
5 Transitional Cluster Study. Is that correct?

6 A (Ms. Tabor) They were in the Transitional Serial
7 Study which preceded the Transition Cluster
8 Study.

9 Q Okay. So subsequent to making it through the
10 Transitional Serial Study, being tendered the
11 Interconnection Agreement, which Wilkes Solar did
12 not sign, has Wilkes Solar made another
13 interconnection request of the Company?

14 A No.

15 CHAIR MITCHELL: Okay. Thank you.

16 COMMISSIONER DUFFLEY: Commissioner
17 McKissick.

18 EXAMINATION BY COMMISSIONER MCKISSICK:

19 Q Just one quick question, without getting into any
20 of the numbers in this case. What methodology is
21 used to determine the amount of liquidated
22 damages that are appropriate for a specific Power
23 Purchase Agreement? How do you go about
24 establishing that number and that amount?

1 A (Ms. Tabor) So the liquidated damages is a
2 calculated amount based on the production of the
3 facility over the life of the charge. So for the
4 CPRE project, it's a 20-year term. And it's a
5 four percent production over that 20-year term to
6 calculate the amount for liquidated damage, and
7 it's included when the PPA is offered to the
8 counter-party for signature as part of the
9 exhibits.

10 Q So that's a consistent methodology that's used
11 with all of your Power Purchase Agreements?

12 A Yes, it is.

13 COMMISSIONER McKISSICK: Thank you. I was
14 just curious. I hadn't seen that explanation.

15 COMMISSIONER DUFFLEY: And to follow up with
16 that.

17 EXAMINATION BY COMMISSIONER DUFFLEY:

18 Q The pre-commercial operation date of liquidated
19 damages, how is that amount calculated?

20 A (Ms. Tabor) Tabor Commissioner Duffley, can you
21 point me to where you're looking at that?

22 Q Well, I saw the list, right, the production list
23 of liquidated damages. So is it the same
24 methodology?

1 A It's the same methodology for -- well, let me
2 turn to the PPA and the language in the PPA.

3 Q Let me know where you are when you get there.

4 A Commissioner Duffley, are you looking in
5 Section 5.2, page 13 of the PPA?

6 Q Yes.

7 A Okay.

8 Q Okay. That will explain it right there. So did
9 you hear how Public Staff described what the
10 liquidated damages were to be used for and do you
11 agree with the Public Staff's testimony on that
12 issue?

13 A Can you point me to the --

14 Q So he stated -- when I asked Public Staff on the
15 stand what they -- Public Staff feels is the
16 purpose of liquidated damages, and he responded
17 it is for replacement power, the higher cost to
18 have to replace the power and the capacity. And
19 do you agree with that statement and is there
20 anything you'd like to add to that?

21 A Let me look at a response that we provided on
22 liquidated damages. I thought I had a different
23 note here, but the -- it's probably in my
24 testimony. Give me just a moment. I'm sorry.

1 Q Take your time.

2 MR. BREITSCHWERDT: Ms. Tabor, in the
3 interest of time, page 10 may be a good place to start
4 your view.

5 A So in the rebuttal testimony on page 10, we
6 explained that LDs are used in these complex
7 commercial purchase transactions, such as the
8 CPRE Program, to compensate the non-defaulting
9 purchaser of power for accepting the complex risk
10 of incurring potential costs resulting from a PPA
11 seller's failure to meet delivery obligation
12 and/or termination of the PPA. They're generally
13 used to compensate the Company and its customers
14 for the cost of replacement for the contracted
15 resources.

16 It's difficult to determine the
17 replacement costs at the time that the
18 contracting LDs, and so they're used as a proxy.
19 And so, you know, they're meant to be something
20 that at the time of contract signature, you can
21 agree to with the counter-party, but as I state
22 here, you know, it's difficult to determine
23 exactly what that cost of replacement power is
24 going to be.

1 One of the pieces that has come
2 up, that I think is worth noting, is avoided
3 cost. And in the context of future procurements
4 and avoid cost for the 2022 solar procurement, we
5 are able to say that the 25-year avoid cost rate,
6 the projects, many of them, have come in under
7 avoided cost, just as a piece of information.

8 Q Thank you for that. So let's assume,
9 hypothetically, that the Guaranty had not
10 expired, how often does a guarantor not pay
11 liquidated damages in a similarly situated
12 situation to this, assuming that the guaranty had
13 not expired?

14 A (Mr. Holstein) Unfortunately, we don't have a lot
15 to pull from as far as renewals procuring
16 counter-parties who have defaulted providing a
17 guaranty. And the most recent Tranche, we had
18 the three counter-parties who did, and we were
19 successful in collecting on all threes, so that's
20 really all we can point to, at this point.

21 Q Okay, but can you broaden that out to a
22 non-third-party counter-parties? Just in
23 general, your work and the Credit Risk
24 Department. What percentage of guarantors don't

1 pay liquidated damages if it had not expired?

2 A I don't want to speculate too much here just
3 because -- so I've been in the Credit Risk
4 Department now at Duke for about five and a half
5 years now, and we have -- I'm not aware -- we've
6 definitely gone to court a couple times over
7 guaranties that we've tried to collect on. And I
8 know we've won in some case across the
9 enterprise, so I am aware there have been cases
10 where we have been fought on a valid guaranty.
11 There are plenty of other cases where we have not
12 been fought and LDs were just paid, so I don't
13 want to speculate and give an actual percentage
14 because I don't feel comfortable giving an
15 accurate one here, but I know we've seen both
16 outcomes.

17 Q Okay. Thank you for that. And then, if you
18 could turn to Exhibit 3 wherein -- I don't have
19 it pulled up in front of me, but DEC mentions a
20 termination agreement by mutual agreement, and my
21 question -- I probably missed it in reading
22 through the papers, but are the liquidated
23 damages less if you terminate the mutual
24 agreement? Is there some provision -- like the

1 extension for the commercial operation date,
2 there's a smaller number per liquidated damages?
3 I'm just wondering what the import is of
4 terminating, not by default but by mutual
5 agreement.

6 A (Ms. Tabor) What part of the mutual agreement is
7 the payment of the LDs that are owed under the
8 contract? So when we offer them the Mutual
9 Termination Agreement and they returned it to us
10 and struck out the LDs, we weren't able to
11 actually reach a mutual termination agreement
12 with the counter-party.

13 Q Okay. Thank you. And did you hear my question
14 to Public Staff about do you have any thoughts or
15 recommendation with respect to what, if anything,
16 the Commission should do with respect to Wilkes
17 Solar's CPCN?

18 A (Mr. Holstein) We did hear the question.

19 A (Ms. Tabor) Yeah, I did hear the question. I'm
20 sure I have -- I do not have a recommendation.

21 A (Mr. Holstein) Exactly.

22 Q Okay. Fair. And then I have a few Staff
23 questions. Thank you for the clarification about
24 Tranche 1. I think it would be helpful. I asked

1 Public Staff to prepare a late-filed exhibit
2 regarding everything that's happened within CPRE,
3 basically, and what contracts do you have signed,
4 who dropped out, so we have the full numbers of
5 what you can give to the Commission. And if
6 you'll work with Public Staff and the two of you
7 file a joint filing together so that we have the
8 most accurate information on that late-filed
9 exhibit that I requested or the Commission
10 requested.

11 And then, can you tell us, do you
12 have anything else to add? I know you've been
13 asked and we've heard lots of questions about the
14 reasons underlying PPA terminations. Do either
15 of you have any additional information regarding
16 the underlying reasons for these terminations?

17 A (Ms. Tabor) So for CPRE Tranche 1 to Tranche 2 to
18 where we are today, I think that we have seen the
19 market and feedback that we've received from the
20 market is that with Covid and the supply chain
21 challenges, and the ability to get solar panels
22 for the cost that you initially thought you might
23 be able to get solar panels for, there just have
24 been many market conditions that have shifted

1 over time.

2 And when you look at the timing,
3 specifically for CPRE Tranche 2, those bids came
4 in in March of 2020 before we all even knew what
5 was coming with Covid, and so I would say that
6 that is a big driver of what we have seen happen
7 specifically Tranche 2. And further, you know,
8 we don't anticipate that to just continue and to
9 continue to have cascading failures of projects.
10 We're committed to moving forward and working
11 towards the goals of the Carbon Plan. And we had
12 a robust response to our 2022 solar procurement,
13 and we hope to continue to have robust responses
14 to the procurements moving forward.

15 Q Okay. Thank you. And are there any other
16 additional anticipated PPA terminations that the
17 Commission's not aware of.

18 A (Ms. Tabor) I don't think there's anything you
19 guys aren't aware of. We're still working
20 through the one Tranche 1 project.

21 Q Okay. Thank you. So on page 12 of your rebuttal
22 testimony, going back to that Section 5.7,
23 what -- so I've heard testimony that the seller's
24 failure to maintain or replace a Performance

1 Assurance is a default under the PPA, so what
2 penalty or remedy is provided for this specific
3 event and is it any different than the later
4 default, potential default, I should say?

5 A (Ms. Tabor) I don't think it's any different. As
6 it says, we shall be entitled to draw and retain
7 the full amount of the Performance Assurance
8 which that's basically the LDs themselves. But I
9 will note that with the termination letter that
10 we sent in August of '22, we did retain all of
11 our rights and remedies under the PPA, so there
12 are more discussions that can be had at Duke with
13 management about steps. We still have time to do
14 that, so...

15 Q Okay. Thank you for that. Do you have anything
16 to add?

17 A (Mr. Holstein) No. I just -- just to kind of add
18 to what Ms. Tabor was saying, is, you know, she
19 mentioned there are steps that we can take.
20 There's a dispute resolution process that we can
21 potentially be going through with Wilkes Solar,
22 Wilkes Solar, the owner.

23 Q But you haven't availed yourself of that avenue
24 of relief, at this time, correct, the dispute

1 resolution or arbitration?

2 A (Mr. Holstein) We have not gone fully through
3 that process with them and we have not -- yeah,
4 we still retain the right to do so.

5 Q Thank you. On page 24 of your rebuttal
6 testimony, you state that the Company has
7 determined that the Guaranty has expired and DEC
8 likely would not be able to recover from DESRI
9 for reasons that have nothing to do with whether
10 Wilkes Solar is liable for the payment of
11 liquidated damages under the terms of the PPA.
12 Could you please elaborate on the reasons
13 underlying the Company's determination that it'll
14 be unable to recover from DESRI? Is it -- and I
15 guess it's a follow-up to that question. Is it
16 also related to the amount to pursue it, could
17 potentially equal the liquidated damages?

18 A (Mr. Holstein) I won't touch on exactly how much
19 it could potentially cost to pursue it, but the
20 reasons why we have come to the conclusion that
21 it may be difficult or imprudent to go after
22 Wilkes Solar, that these special purpose, hence,
23 these are often set up with no real assets behind
24 them until they begin or have a constructed asset

1 on the ground, so we think it's unlikely, not
2 necessarily impossible but unlikely that Wilkes
3 Solar has any real support behind it. So even if
4 we won a judgment against them, we may not be
5 able to collect much. And without the Guaranty
6 in place, we wouldn't have -- we've been advised
7 that it may be difficult to enforce our claims
8 against DESRI Portfolios or DESRI's renewables in
9 this case.

10 Q Okay. Thank you. And then if we could request a
11 copy of Greg Slovick's June 10th, 2022 email. I
12 guess that was to Scott Tharp as a late-filed
13 exhibit. And then are there other written
14 communications between Duke and/or its
15 representatives and Wilkes Solar and/or DESRI or
16 their representatives?

17 A (Ms. Tabor) Commissioner Duffley, can you repeat
18 the question one more time, please?

19 Q Sure. So in your exhibits, like Exhibit 3 and
20 Exhibit 4, there were exchange letters or e-mails
21 that were being exchanged between the Company and
22 Wilkes Solar. And so the question is, are there
23 other written communications regarding this
24 default or liquidated damages? Are there other

1 written communications between the Company and
2 Wilkes as well as are there other written
3 communications between the Company and DESRI or
4 Wilkes or DESRI's representatives?

5 A (Ms. Tabor) We can certainly go back and look for
6 additional -- these were the most pertinent
7 letters we felt like it was worth sharing, but we
8 can certainly go back and look at other
9 communications if that's an action we need to
10 take.

11 Q Yes. If you could provide any other pertinent
12 communications as a late-filed exhibit.

13 MR. BREITSCHWERDT: And Commissioner
14 Duffley, just a point of clarification. To the extent
15 they're substantive or material, that's what you're
16 looking for, not any --

17 COMMISSIONER DUFFLEY: Correct.

18 BY MR. BREITSCHWERDT: Okay. Thank you.

19 BY COMMISSIONER DUFFLEY:

20 Q And then the next question is does Duke Energy or
21 any of its affiliates have any other transactions
22 with Wilkes Solar or the DESRI Portfolios or
23 affiliates?

24 A (Mr. Holstein) I think some of the answers to

1 Tranche 1 and those were both online and
2 operating, and we have one for Tranche 2. I
3 think that they've experienced some delays that
4 we've -- will continue to share with you guys,
5 but there's only three projects versus, you know,
6 many more projects in DEC, so much more just
7 exposure and risk.

8 Q Okay. Thank you. Anything to add?

9 A (Mr. Holstein) No.

10 Q Okay. Thank you.

11 COMMISSIONER DUFFLEY: Any other follow-up?

12 (No response)

13 COMMISSIONER DUFFLEY: Okay. Questions on
14 Commission's questions?

15 MR. FELLING: Just a couple, Commissioner
16 Duffley.

17 EXAMINATION BY MR. FELLING:

18 Q Good afternoon, Mrs. Tabor and Mr. Holstein. I
19 don't think we've met. My name Tom Felling. I'm
20 an attorney with the legal division in the Public
21 Staff. I'll try to be brief here today. And I
22 think my questions are for you, Mr. Holstein, but
23 Mrs. Tabor, if you have a response, feel free to
24 please chime in.

1 I think the initial question from
2 Chair Mitchell -- and I think there were
3 follow-up questions as well, so this might go to
4 multiple questions, but Mr. Holstein, you were
5 asked to respond to any of the questions that
6 were posed to Mr. McLawhorn. And you gave a
7 response in that kind of general question that --
8 something to the effect that it was common for
9 guarantors to provide guaranties with annual
10 expiration dates, or something to that effect.
11 Do you recall that answer?

12 A Yes.

13 Q And that negotiation date in performance
14 guaranty, and in this particular case, the parent
15 guaranty, those are negotiable. Is that correct?

16 A (Mr. Holstein) Yes. They can be -- well, it
17 depends on what the underlying agreement is, but
18 it certainly can be negotiable.

19 Q Okay. And so if Duke had wanted to or if it
20 wanted to make -- push back on that 14-month
21 expiration, that's certainly a term that Duke
22 could have negotiated for, for a longer
23 expiration. Is that correct?

24 A Potentially.

1 Q And if a longer expiration date was not going to
2 be an option from DESRI, it's possible that Duke
3 could have sought another form of a Performance
4 Assurance. Is that correct?

5 A Correct.

6 MR. FELLING: Okay. No further questions.

7 COMMISSIONER DUFFLEY: Questions?

8 MR. BREITSCHWERDT: Just a few.

9 EXAMINATION BY MR. BREITSCHWERDT:

10 Q So Mr. Holstein, Commissioner McKissick asked you
11 a number of questions about Section 19.18 and the
12 default provisions of the PPA. Do you recall
13 those questions? And I don't think you need to
14 refer to it.

15 A Yes.

16 Q Okay. And you explained that's routine for
17 parent guaranties to extend only to the end of
18 the counter-parties' next fiscal year. That's
19 standard business practice in your industry.

20 A Yes, that is common.

21 Q And referring to the terms of the PPA in general,
22 while you're not an attorney, you are responsible
23 for managing the Credit Risk Department for Duke
24 Energy. Is that correct?

1 A Yes.

2 Q And based on your expertise and responsibility
3 managing the Credit Risk Department, is it your
4 understanding that the intent of this Section,
5 providing for Performance Assurance as well as
6 Section 5.1 that I discussed with Witness
7 McLawhorn earlier to mean that only the -- so
8 I'll put in quotes, *The ideal Performance*
9 *Assurance extending to the full 20-year term is*
10 *acceptable or could a shorter term that's renewed*
11 *during the term of the contract also be*
12 *acceptable under the term of the Company's*
13 *Purchase Power Agreement.*

14 A I believe that could be acceptable and that this
15 particular clause in the Agreement points to
16 that.

17 Q And that's how the Company's implemented the
18 Agreement?

19 A Correct.

20 Q Thank you. I think, Ms. Tabor, this is for you.
21 Commissioner McKissick also asked some questions
22 about Exhibit 3 which is the July 5th letter from
23 the Company to Wilkes Solar. Do you recall that.

24 A Yes.

1 Q And so reviewing that letter, one of the things
2 that we didn't touch on in that discussion was
3 the statement by Wilkes Solar about the
4 unavailability of tax credits. Do you recall
5 that?

6 A Yes.

7 Q Is it your recollection that one of the arguments
8 that Wilkes Solar brought forward was the delays,
9 the alleged delays in the interconnection process
10 had impacted their ability to obtain tax credits
11 to fund the project?

12 A Yes, that's my understanding of one of the
13 issues.

14 Q And is it fair to say developing the RFP, that
15 that was the responsibility of the bidder to
16 evaluate the assumptions on which they would be
17 able to finance and develop the project?

18 A Yes.

19 Q And as you said in that letter, that's no basis
20 for the counter-party to elect not to move
21 forward under that Purchase Power Agreement?

22 A That's correct.

23 Q Thank you. Commissioner Clodfelter asked a few
24 questions about the interconnection cost that

1 could have occurred. I think we refer to it as
2 post-default under the terms of the Agreement, so
3 after December 31st of 2021 when the Performance
4 Guaranty expired. Do you recall those questions?

5 A I do.

6 Q And it's fair to say, based on your general
7 understanding of the interconnection process,
8 that there were some administrative work that the
9 Company undertook to complete the Facility Study,
10 presumably hold a customer-options meeting in
11 advance of issuing the Interconnection Agreement,
12 and then issuing the Interconnection Agreement
13 during those four months in early 2022. Is that
14 fair?

15 A Yes, that's correct.

16 Q And so there would have been some administrative
17 costs that the Company presumably incurred that
18 could be developed if that was of interest to the
19 Commission to identify what those costs incurred
20 were under the interconnection process?

21 A That's correct. I believe we would need to
22 consult with the interconnection team to get
23 details, but I also believe that a final
24 accounting report has been completed for this

1 project.

2 Q Okay. And to be clear, under the Power Purchase
3 Agreement, the Company's not incurred any
4 PPA-related costs. There's not been any dollars
5 from Duke and customers to Wilkes Solar and
6 there's not any Wilkes Solar-related costs in
7 this revenue requirement in this case. Is that
8 accurate?

9 A Yes, that's correct. There are no costs directly
10 tied to the PPA.

11 Q Okay. And, in fact, there's also under the
12 interconnection process, there were separate
13 security that was required by Wilkes Solar to be
14 provided to the Company that the Company was able
15 to exercise upon. Is that accurate?

16 A Yes, that's correct.

17 Q And that was a letter of credit?

18 A That was, as far as I understand, a letter of
19 credit.

20 A (Mr. Holstein) Yes, there was a letter of credit,
21 yes.

22 Q And do you recall how much that was?

23 A (Mr. Holstein) 800,000.

24 Q Okay. So you were able to provide to -- for the

1 benefit of customers, \$800,000 resulting from
2 Wilkes Solar's default in the interconnection
3 process, separate and apart from the PPA pursuant
4 to the terms of the North Carolina
5 Interconnection Procedures?

6 A (Mr. Holstein) That is correct.

7 Q Okay. Thank you.

8 MR. BREITSCHWERDT: That's all I have.
9 Thank you.

10 COMMISSIONER DUFFLEY: Okay. Thank you for
11 your testimony. Commissioner Clodfelter.

12 EXAMINATION BY COMMISSIONER CLODFELTER:

13 Q Mr. Breitschwerdt, thank you for collecting the
14 information I was trying to get. I want to be
15 sure I understand it. Did you draw the \$800,000
16 LC to cover your admin costs post-expiration?

17 A (Mr. Holstein) The \$800,000 letter of credit was
18 drawn to cover whatever admin or related costs
19 would have occurred under Interconnection
20 Agreement.

21 Q So what I was asking about, really, were those
22 admin costs that you incurred. I understand you
23 didn't execute an Interconnection Agreement but
24 the admin costs, and you covered those admin

1 costs by drawing on the LC?

2 A Correct, yes.

3 Q Got it.

4 COMMISSIONER CLODFELTER: Thank you.

5 COMMISSIONER DUFFLEY: Questions on the
6 Commission questions?

7 MR. BREITSCHWERDT: No. Thank you.

8 COMMISSIONER DUFFLEY: Okay. So thank you
9 both for your testimony today. You may step down and
10 you are excused.

11 MR. BREITSCHWERDT: Commissioner Duffley, at
12 this time, we'd ask the Company's Application and
13 exhibits be entered into the record, to the extent
14 that's not already been done.

15 COMMISSIONER DUFFLEY: To the extent that it
16 has not already been done, without objection, that
17 motion shall be allowed.

18 MR. BREITSCHWERDT: Thank you very much.

19 COMMISSIONER DUFFLEY: And what about the
20 exhibits?

21 MR. BREITSCHWERDT: The exhibits as well,
22 please.

23 COMMISSIONER DUFFLEY: Those will be allowed
24 without objection.

1 (WHEREUPON, Tabor Exhibit 1 and
2 Rebuttal Panel Exhibits 1 - 4 are
3 received into evidence.)

4 (Whereupon, the Application of
5 Duke Energy Carolinas was
6 previously entered into evidence
7 on page 106.)

8 COMMISSIONER DUFFLEY: Okay. Proposed
9 orders and legal briefs. The Commission legal team
10 would like a legal brief, briefing from the parties
11 and to answer these questions. So the brief, whether
12 there's precedent or a Commission decision to impose a
13 penalty on a utility similar to the Public Staff's
14 recommendation without first determining whether Duke
15 was at fault or Wilkes Solar defaulted, whether
16 Wilkes -- the second question's whether Wilkes Solar's
17 default or fault for the default is a condition
18 precedent to imposing a penalty on Duke for failing to
19 not note the expiration of the Guaranty.

20 Also is there a precedent or a remedy
21 provided in the CPRE PPA in the event that Wilkes
22 Solar's termination was the result of undue delay on
23 Duke's part. You could prepare a legal brief on those
24 questions, and then Proposed Orders as well as these

1 legal briefs 30 days from service of the transcript.

2 Does that meet everyone's agreement?

3 MR. BREITSCHWERDT: Yes.

4 MR. JOSEY: Yes.

5 COMMISSIONER DUFFLEY: Very good. Thank
6 you. And we'll be adjourned.

7 (Whereupon, the hearing is adjourned.)

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C E R T I F I C A T E

I, TONJA VINES, DO HEREBY CERTIFY that the proceedings in the above-captioned matter were taken before me, that I did report in stenographic shorthand the Proceedings set forth herein, and the foregoing pages are a true and correct transcription to the best of my ability.

Tonja Vines

Tonja Vines