

**Redline of  
Duke Energy Carolinas, LLC's  
Proposed Financing Order  
(Bond Team Proposal Included)**

**Docket No. E-2, Sub 1262  
Docket No. E-7, Sub 1243**

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. E-7, SUB 1243

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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

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HEARD: Thursday, January 28, 2021 at 10:00 a.m., held via  
Videoconference, and re-convened on Friday, January 29, 2021 at  
9:00 a.m., via Videoconference

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

**APPEARANCES:**

For Duke Energy Carolinas, LLC and Duke Energy Progress, LLC:

Lawrence B. Somers, Deputy General Counsel  
└ Duke Energy Corporation  
└ P.O. Box 1551 / NCRH 20  
└ Raleigh, North Carolina 27602-1551

~~Telephone: (919) 546-6722~~  
~~bo.somers@duke-energy.com~~

Camal O. Robinson, Associate General Counsel  
└ Duke Energy Corporation  
└ 550 S. Tryon Street  
└ Charlotte, North Carolina 28202

~~Telephone: (980) 373-2631~~

~~camal.robinson@duke-energy.com~~

James H. Jeffries IV  
~~McGuireWoods LLP~~  
~~201 North Tryon Street, Suite 3000~~  
~~Charlotte, North Carolina 28202-2146~~

~~Telephone: (794) 343-2348~~  
~~jjeffries@mcguirewoods.com~~

Kristin M. Athens  
~~McGuireWoods LLP~~  
~~501 Fayetteville ~~Street, St.~~, Suite 500~~  
~~Raleigh, North Carolina 27601~~

~~Telephone: (919) 835-5909~~  
~~kathens@mcguirewoods.com~~

— For the Using and Consuming Public:

Dianna W. Downey, Chief Counsel  
William E. Grantmyre, Counsel  
William E. H. Creech, Counsel  
Public Staff – North Carolina Utilities Commission ~~(“Public Staff”)~~,  
4326 Mail Service Center, Raleigh, North Carolina 27699

~~4326 Mail Service Center~~

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

Christina D. Cress, Bailey & Dixon, LLP, Post Office Box 1351,  
Raleigh, North Carolina ~~27699~~27602

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

<sup>1</sup>-See page 8 defining “Securitizable Balance.”

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

~~“(Up-front Financing Costs”);<sup>3</sup> incurred in connection with the issuance of Storm Recovery Bonds and on-going Financing Costs ~~“(as defined in Finding of Fact Paragraph 12 to be On-going Financing Costs”~~ and together with Up-front Financing Costs, ~~“Financing Costs”);<sup>4</sup> (5) for approval to create Storm Recovery Property, including the right to (i) impose, bill, charge, collect and receive nonbypassable Storm Recovery Charges sufficient to recover the principal of, and interest on, the Storm Recovery Bonds plus On-going Financing Costs; and (ii) obtain periodic formulaic adjustments to the Storm Recovery Charge as provided in this Financing Order; and (6) for approval of the tariff to implement the Storm Recovery Charge ~~“(Tariff”);~~~~~~

### **PROCEDURAL HISTORY**

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

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

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

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

<sup>3</sup>-Up-front Financing Costs are defined in the Evidence and Conclusions for Finding of Fact No. ~~69-11.~~

<sup>4</sup>-On-going Financing Costs are defined in the Evidence and Conclusions for Finding of Fact No. ~~23 & 245-8 & 12-18.~~

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

On March 25, 2020, in Docket No. E-7, Sub 1214, DEC and the Public Staff reached an Agreement and Stipulation of Partial Settlement (“~~DEC Settlement~~”)(First Stipulation) with respect to several revenue requirement issues presented byin the Company’s Application, including the ratemaking treatment of the deferred expenses associated with the Storms. Pursuant to the ~~DEC Settlement~~First Stipulation, the Company agreed to remove certain capital and operation and maintenance (“O&M”) costs (“Storm Expenses”) associated with the Storms from its revenue requirement in the 2019 DEC Rate Case and instead file a petition for a financing order under the Securitization Statute. For purposes of settlement, DEC and the Public Staff also agreed on the assumptions to be used in the securitization docket to evaluate whether securitization provides quantifiable customer benefits when compared to traditional storm cost recovery as required by Section (b)(1)(g) of the Securitization Statute.

On October 26, 2020, DEC and DEP filed their Joint Petition for Financing Orders, requesting the Commission grant authorization for the financing of the Companies’ storm recovery costs incurred due to the Storms, as a cost-saving measure for the benefit of the Companies’ customers, along with the direct testimony and exhibits of Thomas J. Heath, Jr., Structured Finance Director, Duke Energy Business Corporation (DEBS); Charles N. Atkins II, Chief Executive Officer, Atkins Capital Strategies LLC; Melissa Abernathy, Rates and Regulatory Planning Director, DEC; Jonathan Byrd, Southeast Pricing & Regulatory Solutions, DEC and DEP; and Shana W. Angers, Accounting Manager, DEBS. The Companies further requested that the Commission find that their Storm Recovery Costs and related Financing Costs are appropriately financed by debt secured by storm recovery property, and that the Commission issue orders for DEC and DEP by which each utility may accomplish such financing using a securitization structure authorized by N.C. Gen. Stat. On October 16, 2020, pursuant to the Securitization Statute, DEC, along with DEP, filed its Joint Petition for issuance of a storm recovery financing order to recover their respective Storm Expenses.

The § 62-172 (Financing Orders), so that the Companies may recover their prudently incurred Storm Recovery Costs (Joint Petition). The Companies’ Joint Petition also explained that N.C. Gen. Stat. § 62-172(b) authorizes the Companies to finance through securitization the amount of storm recovery costs found by the Commission to be recoverable, but that as of the filing of the Joint Petition, the Companies were still awaiting orders in their 2019 rate cases with the determination that the Storm Recovery Costs were reasonable and prudent, and

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

that the Companies could not proceed with securitization until such orders were received.

On November 6, 2020, the Commission issued its Order Scheduling Hearing, Requiring Filing of Testimony, and Establishing Discovery Guidelines. On December 17, 2020, Carolina Industrial Group for Fair Utility Rates II (CIGFUR II) and III (CIGFUR III) (together with CIGFUR II, CIGFUR) filed a Petition to Intervene. Among other things, the Order required the parties to file a statement consenting to the evidentiary hearing being held remotely.

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

On December 21, 2020, the Public Staff filed the testimony and exhibits of Joseph S. Fichera, Chief Executive Officer, Saber Partners LLC (Saber Partners or Saber or Public Staff Consultants); William Moore, Consultant, Saber; Calvin C. Craig, III, Financial Analyst with the Economic Research Division of the Public Staff; Barry M. Abramson, Senior Advisor, Saber; Steven Heller, President, Analytical Aid; Rebecca Klein, Principal, Klein Energy LLC; Brian A. Maher, Senior Advisor, Saber; Hyman Schoenblum, Senior Advisor, Saber; and Paul Sutherland, Senior Advisor, Saber. On that same day, the Public Staff filed a Motion for Extension of Time to file the joint testimony of Michael C. Maness, Director of the Accounting Division of the Public Staff; and Michelle M. Boswell, Staff Accountant with the Accounting Division of the Public Staff.

On December 22, 2020, the Commission granted the Public Staff's Motion for Extension of Time and the Public Staff filed the joint testimony and exhibits of witnesses Maness and Boswell.

Consents to remote hearing were filed by DEC, DEP, the Public Staff, and CIGFUR on January 5, 2021.

On January 6, 2021, the Public Staff filed corrections to the testimony and exhibits of witnesses Sutherland, Heller, Fichera, and the joint testimony of witnesses Maness and Boswell.

On January 11, 2021, the Companies filed the rebuttal testimony and exhibits of witnesses Heath, Atkins, and Abernathy.

On January 13, 2021, the Public Staff filed a revised version of the Public Staff Direct Testimony Corrections filed on January 6, 2021.

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

On January 27, 2021, in Docket No. E-7, Sub 1243, DEC and the Public Staff entered into and filed an Agreement and Stipulation of Partial Settlement (Second Stipulation) settling some issues in the case. Also on January 27, 2021, DEC and DEP filed a motion requesting that the Commission issue an order temporarily waiving the 135-day timeframe for issuance of financing orders via a 30-day extension of time through and including April 9, 2021.

The matter came on for an evidentiary hearing on January 28, 2021. DEC and DEP presented the testimony of witnesses Heath, Atkins, and Abernathy. The Public Staff presented the testimony of witnesses Klein, Fichera, Schoenblum, Maher, Moore, Sutherland, Heller, Maness, and Boswell. The pre-filed testimony of those witnesses who testified at the expert witness hearing, as well as all other witnesses filing testimony in this docket, was copied into the record as if given orally from the stand.

On February 1, 2021, the Commission granted the Companies' request for a temporary waiver of the 135-day timeframe to receive an order on the Companies' Joint Petition. Further, the Commission extended the deadline for suggested revisions to the proposed Financing Orders of DEC and DEP, in addition to any post-hearing briefs, to February 18, 2021.

On February 9, 2021, DEC and DEP filed a Motion Requesting that the Commission Take Judicial Notice of the Errata to the Direct Testimony of Jonathan L. Byrd as evidence in the evidentiary hearing.

DEC, DEP, and the Public Staff jointly filed a late-filed exhibit in response to Commission requests on February 12, 2021.

On February 16, 2021, the Commission issued an order admitting into evidence the Errata to Direct Testimony of Jonathan L. Byrd filed on January 25, 2021.

The parties submitted post-hearing briefs and suggested revisions to the proposed Financing Orders on February 18, 2021.

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

## STATUTORY FRAMEWORK

The Securitization Statute establishes the process by which a public utility may petition the Commission for a financing order authorizing the public utility to finance storm recovery costs associated with storm recovery activities with the proceeds of storm recovery bonds that are secured by the storm recovery property. Before granting a financing order, the Commission must find that the issuance of the storm recovery bonds and the imposition of storm recovery charges are expected to provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of storm recovery bonds. See N.C. Gen. Stat. § 62-172(b)(3)b.2.

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

When issued, the financing order must include the amount of storm recovery costs to be financed using storm recovery bonds, the imposition and collection of storm recovery charges that are nonbypassable and paid by all existing and future retail customers receiving transmission or distribution service from the public utility or its successors or assignees, the maturity period of the bonds, a formula-based true-up mechanism, the creation of storm recovery property that will be used to secure the bonds, and a method of tracing funds collected as storm recovery charges. See N.C. Gen. Stat. § 62-172(b)(3)b.1.-.12.

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

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



In this Financing Order, we establish procedures to assist the Commission in finding the proposed offering of Storm Recovery Bonds satisfied the Statutory Cost Objectives (defined below) including the creation of the Bond Team. The Bond Team is designed to allow for cooperation between DEC, its designated advisor(s) and counsel, and the Commission, including any independent consultants or counsel hired by the Commission to ensure that the structuring, marketing, and pricing of the Storm Recovery Bonds will achieve the Statutory Cost Objectives. The Public Staff and its outside consultant and counsel will be invited to join Bond Team meetings and have the opportunity to review all Transaction Documents, as defined below.

DEC, its structuring advisor and counsel, and a designated Commissioner or member of Commission staff and its independent consultant and counsel will serve on the Bond Team (Members of the Bond Team). One designated representative of DEC and one member of the Commission or Commission staff, as a designated representative of the Commission, shall be joint decision-makers in all aspects of the structuring, marketing and pricing of the storm recovery bonds except for those recommendations that in the sole view of DEC would expose DEC or the Special Purpose Entity (SPE) to securities law, other potential liability in connection with the offering of Storm Recovery Bonds or other potential contractual law liability.

Based upon consideration of the pleadings, testimony, and exhibits received into evidence at the hearings, the First Stipulation, the Second Stipulation, the statutory framework, and the record as a whole, the Commission makes the following:

## **FINDINGS OF FACT**

### **Jurisdiction**

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

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

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

### JOINT PETITION

#### On October 26, 2020, Joint Petition

4. DEC ~~and DEP filed, by~~ its Joint Petition ~~for a financing order pursuant to the Securitization Statute including DEC's request with DEP, originally requested~~ to issue Storm Recovery Bonds in the amount of approximately: \$230.8 million, which consists of \$225.6 million of Storm Recovery Costs (including carrying costs from the date of the Storms through the then projected issuance date of the Storm Recovery Bonds, calculated at the Company's approved weighted average cost of capital ("Carrying Costs")<sup>6</sup>), plus Up-front Financing Costs ~~of issuing to issue~~ the Storm Recovery Bonds of approximately \$5.2 million, which are subject to change and update prior to the pricing of the Storm Recovery Bonds plus or minus any adjustment to Carrying Costs necessary to account for the number of days, as applicable, either greater than or less than assumed in the Carrying Cost calculation based on the projected issuance date for the Storm Recovery Bonds. This amount is referred to herein as the "Securitized Balance."~~The Joint Petition includes direct testimony and exhibits supporting the request, as well as a comparison between the net present value of the costs to customers that are estimated to result from the issuance of Storm Recovery Bonds and the costs that would result from the application of the traditional method of recovery of Storm Recovery Costs from customers, in accordance with the Securitization Statute" as may be updated through the issuance advice letter process described herein.~~

### THE SECOND STIPULATION

5. On January 27, 2021, DEC, DEP, and the Public Staff (the Stipulating Parties) entered into and filed the Second Stipulation resolving some of the issues in this proceeding between the parties. Those issues that were not resolved by the Stipulation are referred to herein as the "Unresolved Issues."

6. The Commission, having carefully reviewed the Second Stipulation and all the evidence of record, finds and concludes that the Second Stipulation is a product of the give-and-take in settlement negotiations between the Stipulating Parties, is material evidence in this proceeding, and is entitled to be given appropriate weight in this proceeding, along with other evidence from the Companies and intervenor parties.

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

7. The Second Stipulation resolves only some of the disputed issues between the Stipulating Parties. The Unresolved Issues include the level of participation and authority given to the Public Staff during the bond structuring, marketing, and pricing process; whether certifications from parties other than the Companies, that the structuring, marketing, and pricing of the Storm Recovery Bonds are expected to provide quantifiable benefits to customers of DEC as compared to the costs that would have been incurred absent the issuance of Storm Recovery Bonds and are reasonably expected to result in the lowest storm recovery charges payable by the customers of DEC consistent with market conditions at the time such Storm Recovery Bonds are priced, are necessary as a condition to closing; additions or modifications to the bond transaction structure and documents; and the selection of transaction participants, including the selection of underwriters, underwriters' counsel, trustees, and other transaction participants. The Unresolved Issues are resolved by the Commission and are addressed later in this Financing Order.

8. The Commission finds and concludes, based on all of the evidence presented, that the provisions of the Second Stipulation are just and reasonable to all parties to this proceeding and serve the public interest. Therefore, the Second Stipulation is approved in its entirety. The specific terms of the Second Stipulation are addressed in the following findings of fact and conclusions.

### **COSTS ELIGIBLE FOR FINANCING**

#### **Storm Recovery Costs**

5.9. Consistent with the Commission's findings and conclusions in its 2019 DEC Rate Case Order issued in Docket No. E-7, Sub 1214, Storm Recovery Costs subject to adjustments including the final amount of ~~carrying costs~~ Carrying Costs through the issuance date of the Storm Recovery Bonds, are eligible for recovery through securitization and have been found to be reasonable and prudent. Furthermore, the Commission finds that (i) ~~the~~ proposed issuance of Storm Recovery Bonds and the imposition of Storm Recovery Charges will provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of Storm Recovery Bonds and (ii) ~~the~~ structuring, marketing and pricing of the Storm Recovery Bonds are reasonably expected to result in the lowest Storm Recovery Charges consistent with market conditions at the time the Storm Recovery Bonds are priced and the terms set forth in this Financing Order (collectively, the "Statutory Cost Objectives").

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

6.10. DEC's proposed Up-front Financing Costs, in the estimated amount of \$5.2 million, subject to adjustment in the IAL (as defined below) as described in Finding of Fact 48, are reasonable and prudent and eligible for recovery through securitization.

11. The Second Stipulation provides that once Up-front Financing Costs are known, if actual Up-front Financing Costs are in excess of the amounts included in the IAL as described in Finding of Fact 48, DEC shall establish a regulatory asset to defer any excess amounts of Up-front Financing Costs, and preserve those costs to consider for later recovery in DEC's next respective general rate cases. In addition, the regulatory asset shall accrue carrying costs at DEC's respective net-of-tax weighted average cost of capital (WACC) return. The Second Stipulation further provides that any excess or over-collection of Up-front Financing Costs shall be set aside in a regulatory liability, accruing carrying costs at DEC's respective net-of-tax WACC return, to be considered for return to customers in DEC's next respective general rate case. These provisions of the Second Stipulation are just and reasonable to all parties in light of all of the evidence presented.

### On-going Financing Costs

4. —The On-going Financing Costs identified in DEC's Joint Petition and that are identified in Attachment 4 of the form Issuance Advice Letter (IAL) subject to update and adjustment in the IAL filed after pricing and as described in Finding of Fact 48, qualify as "financing costs" eligible for recovery pursuant to N.C. Gen. Stat. § 62-172(a)(4). DEC's request to establish a regulatory asset to defer any prudently incurred Up-front Financing Costs in excess of the amounts appearing in the issuance advice letter is approved.

12. For clarification purposes, notwithstanding the definition of "financing costs" in N.C. Gen. Stat. § 62172(a)(4), for purposes of this Financing Order, On-going Financing Costs do not include the payment of interest on the Bonds.

13. Per the Second Stipulation, DEC shall provide specific detailed invoices and other supporting documentation, if applicable, for On-going Financing Costs other than the servicing and administration fees, on a monthly basis (Other On-going Financing Costs), 15 days after the end of the previous month. If the Companies did not receive any invoices in the previous month, DEC will submit a letter notifying the Public Staff that no invoices were received. Upon receipt of the invoices, the Public Staff shall be permitted to conduct a limited audit of the On-going Financing Costs for mathematical or clerical errors, or for costs incurred as a result of gross negligence, recklessness, or willful misconduct by DEC or the SPE, within forty-five (45) days of receipt of the supporting documentation. Parties further agreed to a process for dispute resolution. In cases where a resolution about the amounts of Other On-going Financing Costs cannot be reached between the parties, the Public Staff will file a recommendation with the Commission, at the time the dispute arises, that the disputed amount be returned to customers, with carrying costs at DEC's respective net-of-tax WACC return, in its respective next general rate case, with the issue to be resolved by the Commission. These provisions of the Second Stipulation are just and reasonable to all parties in light of all of the evidence presented.

### **Servicing and Administration Fees**

14. The Second Stipulation provides that DEC will establish regulatory asset or regulatory liability accounts for the purpose of tracking (as received and incurred) servicing and administration fees received by DEC from the SPE and the incremental costs incurred by the Company in fulfilling the required functions under the servicing and administrative agreements. The Second Stipulation further states that any regulatory asset or liability account established pursuant to this paragraph shall accrue carrying costs at DEC's respective net-of-tax WACC, and be considered for recovery from or returned to customers in DEC's next respective general rate case. This provision of the Second Stipulation is just and reasonable to all parties in light of all of the evidence presented.

### **Tail-end Collections**

15. The Second Stipulation provides that any collections of Storm Recovery Charges after the Storm Recovery Bonds and all relating Financing Costs have been repaid in full (Tail-End Collections) will be tracked separately and placed into a regulatory liability, and accrue carrying costs at DEC's net-of-tax WACC, to be considered for return to customers in DEC's next respective general rate case. This provision of the Second Stipulation is just and reasonable to all parties in light of all of the evidence presented.

### **Capital Contributions**

16. The Second Stipulation provides that DEC's capital contribution to its SPE shall earn a return at the interest rate of the longest maturing tranche of the Storm Recovery Bonds. This provision of the Second Stipulation is just and reasonable to all parties in light of all of the evidence presented.

### **Audit of Storm Recovery Costs**

17. The Second Stipulation provides that the Public Staff shall be able to audit DEC's Storm Recovery Costs not approved in the DEC 2019 Rate Case Order, provided that (a) the Public Staff will conduct the audit and report their findings to the Commission within 60 days of the date of receipt of any requested documents, with the 60 day period beginning upon the Public Staff's receipt of documents from the Companies' responses to the Public Staff's initial data request, to be submitted by March 5, 2021; and (b) the Public Staff's audit shall be limited to the adjustments made since the Public Staff's audit in the 2019 rate cases. This provision of the Second Stipulation is just and reasonable to all parties in light of all of the evidence presented. Within 7 days from the date the Public Staff reports their findings to the Commission, the Company shall file their response to the Public Staff's findings. Within 14 days from the date of the Company's filing, the Commission shall issue an order determining the reasonableness and prudence of the audited Storm Recovery Costs.

## Scheduled Final Maturity of the Bonds

18. The Second Stipulation provides that the bonds shall have a scheduled final payment date of the latest maturing tranche of bonds between, and inclusive of, an 18 and 20 year period from the date of issuance, to achieve higher net present value savings to customers compared to traditional cost recovery and based upon market conditions at the time of pricing, all in a manner consistent with the Commission's Financing Order. This provision of the Second Stipulation is just and reasonable to all parties in light of all of the evidence presented.

## STRUCTURE OF ISSUANCE

7-19. DEC's proposed financing structure adheres to the requirements of the Securitization Statute.

### **Special Purpose Entities**

8-20. For purposes of securitization it is reasonable for DEC to create one or more ~~Special Purpose Entities~~ ("SPEs"),<sup>7</sup> each of which will be a Delaware limited liability company ("LLC") with DEC as its sole member. Any such SPE will be an "assignee" as defined in N.C. Gen. Stat. § 62-172(a)(2), when an interest in Storm Recovery Property is transferred, other than as security, to such SPE, and such SPE may issue Storm Recovery Bonds in accordance with this Financing Order.

### **Storm Recovery Property**

9-21. It is reasonable for DEC to sell or otherwise transfer Storm Recovery Property to the SPE pursuant to the terms of this Financing Order. Upon the transfer by DEC of the Storm Recovery Property to the SPE, that SPE will have all of the rights, title and interest of DEC with respect to such Storm Recovery Property, including the right to impose, bill, charge, collect, and receive the Storm Recovery Charge authorized by this Financing Order and to obtain periodic formulaic adjustments to each Storm Recovery Charge. Such Storm Recovery Property is expected to be pledged by the SPE to and held and administered by an indenture trustee as collateral for payment of the Storm Recovery Bonds to ensure the Statutory Cost Objectives are achieved.

10-22. The State of North Carolina and its agencies, including this Commission, has pledged to and agrees with bondholders, the owners of the Storm Recovery Property, and other financing parties that the State and its agencies, including this Commission, will not alter the provisions of the Securitization Statute, which authorize the Commission to create Storm Recovery

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

Property or take or permit any action that impairs the value of the Storm Recovery Property, as further described in N.C. Gen. Stat. § 62-172(k)(1).

### Form of Transaction Documents

~~11.23.~~ The ~~form~~forms of Purchase and Sale Agreement,<sup>8</sup> Administration Agreement,<sup>9</sup> Limited Liability Company Agreement (~~“(LLC Agreement”)~~),<sup>10</sup> ~~form of~~ Indenture,<sup>11</sup> and Servicing Agreement,<sup>12</sup> originally filed as exhibits to witness Thomas J. Heath Jr.’s testimony, (~~“and the Servicing Agreement, which was revised on February 18, 2021, (Transaction Documents”)~~) are in the public interest and necessary to facilitate the transaction and should be further reviewed by Members of the Bond Team to ensure that the Statutory Cost Objectives are achieved. The Public Staff shall also have the opportunity to review all Transaction Documents and offer advice to the Bond Team.

### Offering and Sale of Bonds

~~12.24.~~ DEC is hereby authorized to issue the Storm Recovery Bonds through a negotiated sale or other sales option to achieve the Statutory Cost Objectives.

~~13.25.~~ In the alternative, DEC is authorized to sell the Storm Recovery Bonds in combination with DEP to a grantor trust (the ~~“SRB Issuer”~~) that will issue secured ~~pass-through~~ notes that are backed by the Storm Recovery Bonds and storm recovery bonds issued by DEP in one transaction through the use of the SRB Issuer.

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

~~14.26.~~ The expected term of the scheduled final payment date of the last maturing tranche of bonds issued pursuant to the authority granted herein, as determined in the reasonable discretion of DEC, should be ~~no more than 15~~between, and inclusive of, 18 and 20 years from the issuance of the series of Storm Recovery Bonds. The legal maturity date of each tranche may be longer than the scheduled final payment date for that tranche.

~~15.27.~~ ~~We find that each~~Each tranche of the Storm Recovery Bonds should have a fixed interest rate, determined consistent with current market conditions. If market conditions change, and it becomes necessary to achieve the Statutory Cost Objectives for the one or more tranches of bonds to be issued in floating-rate mode, DEC is authorized to issue such bonds but will be required to execute agreements to swap the floating payments to fixed-rate payments in consultation

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

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

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

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

<sup>12</sup>-See Updated Heath Exhibit 2b filed Feb. 18, 2021.

with the other Members of the Bond Team and subject to Ordering Paragraph 13, to achieve the Statutory Cost Objectives.

16-28. DEC should strive to achieve AAA credit ratings, or equivalent ratings for the Storm Recovery Bonds and/or the SRB Securities (if any), and DEC is authorized to provide the necessary credit enhancements, with recovery of related costs as On-going Financing Costs, to achieve such ratings.

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

17-29. DEC's utilization of a Collection Account, including a General Subaccount, a Capital Subaccount, and an Excess Funds Subaccount, is reasonable and appropriate. DEC may include other subaccounts in the Collection Account, if necessary, to obtain AAA ratings or equivalent ratings on a series of Storm Recovery Bonds. Final terms of the Indenture shall be reviewed by Members of the Bond Team.

### **DEC as Initial Servicers of the Storm Recovery Bonds**

18-30. DEC's proposal to act as initial servicer of the Storm Recovery Bonds is reasonable and appropriate.

19-31. The on-going servicing fee for DEC, acting as the initial servicer, in the amount of 0.05 percent of the initial principal amount of the Storm Recovery Bonds plus out-of-pocket expenses provided for in the Servicing Agreement is necessary to compensate the servicer adequately and ensure the high credit quality of the Storm Recovery Bonds.

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

20-32. DEC's proposal to act as an administrator of the SPE under the proposed financing transaction is reasonable and appropriate.

21-33. The on-going fee to be paid to the administrator of \$50,000 per year plus out-of-pocket expenses included in the Administration Agreement is necessary to cover the costs and expenses of administering the SPE and to preserve the integrity of the bankruptcy-remote structure of the SPE and the high credit quality of the Storm Recovery Bonds.

### **~~On-going Financing Costs~~**

~~2. The On-going Financing Costs identified in DEC's Joint Petition and that are identified in Attachment 4 of the form Issuance Advice Letter ("IAL") qualify as "financing costs" eligible for recovery pursuant to N.C. Gen. Stat. § 62-172(a)(4).~~

~~3. It is appropriate for DEC to credit back to customers all periodic servicing and administration fees in excess of DEC's or an affiliate of DEC's~~



~~incremental cost of performing the servicer or administrator function in the next rate case when costs and revenues associated with the servicing and administration fees will be included in the cost of service.~~

### **Storm Recovery Bonds to be Treated as “Debt” for Federal Income Tax Purposes**

~~22-34.~~ DEC shall structure the Storm Recovery Bond transactions in a way that meets all requirements for the Internal Revenue Service’s ~~(“IRS”)~~ safe harbor treatment in accordance with IRS Rev. Proc. 2005-62.

## **STORM RECOVERY CHARGES**

### **Imposition and Computation of Storm Recovery Charges**

~~23-35.~~ To repay the Storm Recovery Bonds and On-going Financing Costs, DEC is authorized to impose Storm Recovery Charges to be collected on a per-kWh basis from all applicable customer rate classes until the Storm Recovery Bonds and related Financing Costs are paid in full.

~~24-36.~~ The Securitizable Balance to be financed using Storm Recovery Bonds shall be determined in accordance with the calculation shown in Appendix A to this Financing Order.

~~25-37.~~ The proposed allocation methodology of the Storm Recovery Charges is based upon DEC’s ~~existing (and previously approved)~~<sup>13</sup> allocation methodology in the proposed Tariff and should be approved.

~~26-38.~~ The State of North Carolina and its agencies, including this Commission, has pledged to and agrees with bondholders, the owners of the Storm Recovery Property, and other financing parties that the State and its agencies, including this Commission, will not, except for changes made pursuant to the True-Up Mechanism (as defined in Finding of Fact No. ~~3241~~), reduce, alter, or impair the Storm Recovery Charges until any and all principal, interest, premium, Financing Costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the Storm Recovery Bonds have been paid and performed in full, as further described in N.C. Gen. Stat. § 62-172(k)(1)d.

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

~~27-39.~~ DEC’s proposed Tariff complies with N.C. Gen. Stat. § 62-172(d)(1) and is appropriate for use in this proceeding.

~~28-40.~~ DEC is authorized and directed to include the Storm Recovery Charge on each customer’s bill as a separate line item and include both the rate

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

and the amount of the charge on each bill as required by N.C. Gen. Stat. § 62-172(d)(2) and a statement that the SPE is the owner of the rights to the Storm Recovery Charges and that DEC is acting as a servicer for the SPE as required by N.C. Gen. Stat. § 62-172(d)(1).

### True-Up of Storm Recovery Charges

~~29.41.~~ The formulaic true-up mechanism ~~{“(True-Up Mechanism”)}~~ and associated procedures described in DEC’s Tariff are reasonable and appropriate and are hereby approved.

### BOND TEAM

42. DEC, its designated advisor(s) and counsel, and a designated Commissioner or member of Commission staff, including any independent consultants or counsel hired by the Commission shall serve on the Bond Team.

43. The Public Staff, Underwriters and their respective consultants and/or counsel shall be invited to join all Bond Team meetings to review and comment on the structuring, marketing and pricing of the Storm Recovery Bonds and all Transaction Documents.

44. One designated representative of DEC and one member of the Commission or Commission staff, as a designated representative of the Commission, shall be joint decision-makers in all aspects of the structuring, marketing and pricing of the Storm Recovery Bonds except for those recommendations that in the sole view of DEC would expose DEC or the SPE to securities law, other potential liability in connection with the offering of Storm Recovery Bonds or other potential contractual law liability. The final structure of the transaction, including pricing, shall be subject to review by this Commission for the limited purpose of ensuring that all requirements of the Securitization Statute have been met.

45. Notwithstanding the joint decision-making authority described in Finding of Fact 44, the Commission finds that Members of the Bond Team, excluding DEC’s structuring advisor, shall also have equal rights in the hiring decisions for the underwriters and other transaction participants. However, DEC shall have sole right to select and engage all counsel and advisors for DEC, the SPE and the underwriters.

46. The [Commission or a Designated Commissioner] shall resolve any issues as to which the designated DEC and Commission joint decision-makers are unable to reach an agreement, except for those issues that in the sole view of DEC would expose DEC or the SPE to securities law, other potential liability in connection with the offering of Storm Recovery Bonds or other potential contractual law liability. Any such matter shall be presented by the designated DEC and the designated Commission joint decision-makers to the [Commission or Designated Commissioner]. The [Commission or Designated Commissioner] shall

announce their decision on the matter presented to the designated DEC and Commission joint decision-makers as soon as reasonably possible. The decision shall be final and not subject to review.

47. If DEC and DEP issue Storm Recovery Bond in a combined transaction as described in Findings of Fact 24 and 25, instead of a designated representative of DEC acting as a joint decision maker, DEC and DEP collectively, will be a joint decision maker through a single designated representative of both companies.

### **ISSUANCE ADVICE LETTER PROCESS**

~~30-48.~~ Because the actual structure and pricing of the Storm Recovery Bonds are unknown as of the issuance of this Financing Order, following determination of the final terms of the Storm Recovery Bonds and before issuance of the Storm Recovery Bonds, DEC, after consultation with Members of the Bond Team, will file with the Commission for each series of Storm Recovery Bonds, an IAL, as well as a form of True-Up Adjustment Letter<sup>14</sup> ~~(“TUAL,”~~ and together with the IAL, the ~~“IAL/TUAL”~~) in the forms attached hereto as Appendices B and C. The initial Storm Recovery Charges and the final terms of the Storm Recovery Bonds described in the IAL/TUAL will be final unless before noon on the third business day after pricing the Commission issues an order finding that the proposed issuance does not comply with the Standards of this Financing Order ~~in this Finding of Fact No. 33. The “Standards of this Financing Order” are: 1)~~, which are: 1) the issuance of Storm Recovery Bonds and imposition and collection of Storm Recovery Charges as authorized in this Financing Order provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of Storm Recovery Bonds; 2) the aggregate principal amount of Storm Recovery Bonds issued does not exceed the Securitizable Balance; 3) the SRB Securities (as defined in Evidence and Conclusions for Finding of Fact Nos. ~~13 and 14~~24-25) and Storm Recovery Bonds will be issued in one or more series comprised of one or more tranches having scheduled final payment date of ~~no longer than 15~~between, and inclusive of, 18 and 20 years; 4) the SRB Securities, or the Storm Recovery Bonds, if issued separately, have received a rating of Aaa(sf) / AAA(sf) or equivalent from at least two of the three major rating agencies; 5) the SRB Securities and Storm Recovery Bonds are structured to achieve substantially level debt service payments on an annual basis; 6) the issuance of the SRB Securities and Storm Recovery Bonds has been structured in accordance with IRS Rev. Proc. 2005-62; and 7) the structuring, marketing and pricing of the Storm Recovery Bonds, including the issuance of SRB Securities, resulted in the lowest Storm Recovery Charges consistent with market conditions at the time the Storm Recovery Bonds are priced and the terms set forth in this Financing Order.

<sup>14</sup>The True-Up Adjustment Letter is defined in the Evidence and Conclusions for Finding of Fact No. ~~33~~41.

## MITIGATION OF RATE IMPACTS

~~31-49.~~ The issuance of Storm Recovery Bonds and imposition and collection of Storm Recovery Charges as authorized in this Financing Order are expected to provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of Storm Recovery Bonds. The calculation of quantifiable benefits to customers was prepared by the Company in accordance with the requirements set forth in the DEC ~~Settlement~~First Stipulation.

## FLEXIBILITY

~~32-50.~~ It is appropriate to allow DEC flexibility in establishing the final terms and conditions of the Storm Recovery Bonds and any SRB Securities and therefore the ability, at its option, to cause one or more series of ~~storm recovery bonds~~Storm Recovery Bonds and SRB Securities to be issued, in order to achieve the Statutory Cost Objectives.

## CONCLUSION

~~33-51.~~ This Financing Order adheres to the statutory requirements outlined by the Securitization Statute necessary to issue a financing order authorizing a public utility to finance storm recovery costs.

## DISCUSSION AND CONCLUSIONS

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

#### Jurisdiction

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

## JOINT PETITION

### EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

#### Joint Petition

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

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

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

## **THE SECOND STIPULATION**

### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5-8 & 12-18**

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

The Company entered into a Second Stipulation with the Public Staff, which resolved a number of accounting issues between DEC, DEP and the Public Staff. Company witness Abernathy and Public Staff witnesses Maness and Boswell testified that the settlement was the result of extensive negotiations and give-and-take between the parties. (Tr. vol. 3, 63; Tr. vol. 4, 101.) Based on all the evidence in the record, the Commission finds and concludes that the provisions of the Second Stipulation are just and reasonable and the settlement should be approved in its entirety. The Commission addresses the substantive provisions in more detail below.

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

In the Joint Petition, DEC requested that its Up-front Financing Costs associated with the securitization process be included in the principal amount of storm recovery bonds in accordance with N.C. Gen. Stat. § 62-172(a)(12). (Joint Petition, 15.) Company witness Heath testified that Up-front Financing Costs include the fees and expenses to obtain the financing orders, as well as the fees and expenses associated with the structuring, marketing, and pricing of each series of Storm Recovery Bonds, including: external and incremental internal legal fees, structuring advisory fees and expenses, any interest rate lock or swap fees and costs, underwriting fees and original issue discount, rating agency and trustee fees (including trustee's counsel), accounting fees, information technology programming costs, servicer's set-up costs, printing and marketing expenses, stock exchange listing fees and compliance fees, filing and registration fees, and the costs of the outside consultant and counsel retained by the Commission or the Public Staff. (Tr. vol. 1, 48.) Witness Heath further stated that Up-front Financing

Costs include reimbursement to DEC and DEP for amounts advanced for payment of such costs. (Id.) Witness Heath provided estimates of the Up-front Financing Costs as Heath Exhibit 1 and explained that the estimates will be updated to actual Up-front Financing Costs incurred during the proposed IAL process (Id.) Company witness Abernathy then testified that since the actual Up-front Financing Costs will not be known until after the Commission issues the Financing Orders and the Storm Recovery Bonds have been issued, if the actual Up-front Financing Costs are below the amount appearing the IAL filed with the Commission, then the difference will be credited back to customers in the true-up adjustment letter process described by Company witness Angers. (Tr. vol. 3, 27-28.) Conversely, if the actual Up-front Financing Costs are in excess of the amounts appearing in the IAL, DEC proposed to seek permission to establish a regulatory asset to defer any prudently incurred excess amounts of Up-front Financing Costs to preserve for later recovery in its next respective general rate case proceeding. (Id.)

Public Staff witnesses Maness and Boswell testified that the Public Staff did not oppose establishing a regulatory asset for prudently incurred and properly accounted for under-recoveries of Up-front Financing Costs, provided the regulatory asset be adjusted for income taxes and accrued carrying costs at the Companies' net-of-tax WACC return. (Tr. vol. 4, 78-79.) However, the witnesses Maness and Boswell proposed that any excess or over-collection of Up-front Financing Costs be set aside in a regulatory liability, earning a WACC return, to be considered in each Company's next general rate case. (Id.)

In rebuttal testimony, witness Abernathy agreed with the Public Staff's recommendation that the regulatory asset be adjusted for income taxes and accrued carrying costs at the Companies' net-of-tax WACC return. (Tr. vol. 3, 44.) However, witness Abernathy testified that Public Staff's proposal to address any excess or over-collection of Up-front Financing Costs is a less efficient and less practical method to returning excess costs to customers than the Companies' proposed methodology. (Id. at 45.) Further, witness Heath explained that Public Staff's recommendation would be contrary to the separateness between DEC and the SPE for bankruptcy remoteness purposes. (Tr. vol. 1, 112-13.)

The Second Stipulation provides that once Up-front Financing Costs are known, if actual Up-front Financing Costs are in excess of the amounts included in the IAL as described in Finding of Fact 48, DEC shall establish a regulatory asset to defer any excess amounts of Up-front Financing Costs, and preserve those costs to consider for later recovery in DEC's next respective general rate cases. (Second Stipulation, § II.A.) In addition, the regulatory asset shall accrue carrying costs at DEC's respective net-of-tax WACC return. (Id.) The Second Stipulation further provides that any excess or over-collection of Up-front Financing Costs shall be set aside in a regulatory liability, accruing carrying costs at DEC's respective net-of-tax WACC return, to be considered for return to customers in DEC's next respective general rate case. (Id. § II.B.)

### **On-going Financing Costs**

In the Joint Petition, DEC requested that its On-going Financing Costs be recovered through the Storm Recovery Charges authorized by the financing orders. (Joint Petition, 15.) Company witness Heath explained that On-going Financing Costs include servicing fees; return on invested capital; administration fees; accounting and auditing fees; regulatory assessment fees; legal fees; rating agency surveillance fees; trustee fees (including any indemnity owed to the Trustee); independent director or manager fees; and other miscellaneous fees associated with the servicing of the Storm Recovery Bonds. (Tr. vol. 1, 57.) Witness Heath provided estimates of On-going Financing Costs in Heath Exhibit 1. Witness Heath further testified that because On-going Financing Costs are recovered through the Storm Recovery Charge, any disparities would be resolved through the True-up Mechanism described in Company witness Anger's testimony. (Id. at 62.)

In testimony, Public Staff witnesses Maness and Boswell recommended that adjustments to On-going Financing Costs be matched with an offsetting regulatory asset or liability in DEC's traditional ratemaking cost of service to create a link to adjust the Company's cost of service in a future general rate case proceeding upon subsequent audit for prudence review of such adjustments. (Tr. vol. 4, 80-81.)

In rebuttal testimony, Company witness Heath explained that the structure of securitization is not designed to work this way and the proposed audit and prudence review is inconsistent with the Securitization Statute. (Tr. vol. 1, 112.) Further, witness Abernathy testified that the Public Staff's recommendation does not make practical sense from a ratemaking perspective since the On-going Financing Costs are costs incurred by the separate SPEs, not DEC. (Tr. vol. 3, 46.) Witness Abernathy further testified that the Companies were not aware of any other jurisdiction where this type of mechanism is in place. (Id.)

In the Second Stipulation, DEC agreed to provide specific detailed invoices and other supporting documentation, if applicable, for Other On-going Financing Costs on a monthly basis, fifteen (15) days after the end of the previous month. (Stipulation § II. C-G.) If DEC did not receive any invoices in the previous month, DEC will submit a letter notifying the Public Staff that no invoices were received. (Id.) Upon receipt of the invoices, the Public Staff shall be permitted to conduct a limited audit of the Other On-going Financing Costs for mathematical or clerical errors, or for costs incurred as a result of gross negligence, recklessness, or willful misconduct by DEC or the SPE, within forty-five (45) days of receipt of the supporting documentation. (Id.) Parties further agreed to a process for dispute resolution. (Id.) In cases where a resolution cannot be reached between the parties, the Public Staff will file a recommendation with the Commission, at the time the dispute arises, that the disputed amount be returned to customers, with carrying costs at DEC's respective net-of-tax WACC return, in its respective next general rate case, with the issue to be resolved by the Commission. (Id.)

In response to questions by the Commission regarding why the Public Staff's review of the Other On-going Financing Costs per the Second Stipulation is limited to mathematical or clerical errors, or for costs incurred as a result of gross negligence, recklessness, or willful misconduct by DEC or the SPE, Company witness Abernathy stated the following:

So I think it's good to understand the difference between the traditional utility costs and then what these costs represent. So in traditional ratemaking for traditional utility costs, those are subject to prudence review, and in return, the Companies are allowed to earn a return at the weighted average cost of capital through that structure. The standard of review here for these ongoing costs is different just because the structure of recovery is different through securitization. So these costs are different than traditional utility costs. These are the costs of the SPE in order to – and they're required in order to issue the storm recovery bonds. And Company witness Atkins went through the various reasons why it's important for the SPE to remain whole for their ongoing financing costs and the reason that it's structured that way to support the structure of the bonds. And it's important that that structure is maintained so that we could pass savings on and achieve the lower costs through storm securitization statute. And so with regards to the audit that we agreed to in the settlement, the storm securitization statute allows for your mathematical and clerical errors through the true-up mechanism process, and that's consistent with the storm securitization statute. And then this audit is also an audit to ensure no charges are a result of recklessness, willful misconduct, and gross negligence, which is in line with the requirements of the servicing and administration agreements of the Company. But in summary, it's there to support the structure of this transaction, which is different than traditional recovery.

(Tr. vol. 3, 68-69.)

### **Servicing and Administration Fees**

In the proposed original form of Financing Order attached as Exhibit B to the Joint Petition, DEC requested that servicing and administration fees collected by the Companies be included in the Companies' cost of service, and that DEC credit back the fees to the customers as part of DEC's cost of service in the next general rate case, along with all of the incremental costs of performing servicing and administration functions, as well as the expenses incurred by DEC to perform obligations under the Servicing Agreement or Administrative Agreement not otherwise recovered through the Storm Recovery Charge. According to Company witness Heath, servicing responsibilities will include billing, monitoring, collecting and remitting securitization charges; reporting requirements imposed by the servicing agreement; implementing the True-Up Mechanism; procedures required



to coordinate required audits related to DEC and DEP's role as servicers; legal and accounting functions related to the servicing obligation; and communication with rating agencies. (Tr. vol. 1, 58.) Administration fees are meant to cover expenses associated with administrative functions DEC will be providing to the SPE, separate from those of the servicer, and include maintaining the general accounting records, preparation of quarterly and annual financial statements, arranging for annual audits of each SPE's financial statements, preparing all required external financial filings, preparing any required income or other tax returns, and related support. (Id. at 60.) Witness Heath provided an estimate of the servicing and administration fees in Heath Exhibit 1.

In testimony, Public Staff witnesses Maness and Boswell recommended that, instead of simply being passed annually through the cost of service, the servicing and administration fees be held in a regulatory liability account, adjusted if appropriate for income taxes and accrued carrying costs at DEC's respective net-of-tax WACC, and refunded to customers in the Company's next general rate case. (Tr. vol. 4, 83-84.)

In rebuttal testimony, Company witness Abernathy testified that DEC believed the servicing and administration fees were reasonable and tracking of the actual costs incurred was unnecessary given the magnitude of dollars involved. (Tr. vol. 3, 48.) According to witness Abernathy, amounts well under a million dollars are not typically considered material enough to establish regulatory assets and liabilities and track outside of a general rate case. (Id.)

The Second Stipulation provides that DEC will establish regulatory asset or regulatory liability accounts for the purpose of tracking (as received and incurred) servicing and administration fees received by DEC from the SPE and the incremental costs incurred by the Company in fulfilling the required functions under the servicing and administrative agreements. (Stipulation § II.H.) The Second Stipulation furthers states that any regulatory asset or liability account established pursuant to this paragraph shall accrue carrying costs at DEC's respective net-of-tax WACC, and be considered for recovery from or returned to customers in DEC's next respective general rate case. (Id.)

### **Tail-end Collections**

In DEC's original proposed Financing Order, the Company proposed to record any overcollection of Tail-end Collections to a separate regulatory liability account to be credited back to customers in the Company's next rate case. Public Staff witnesses Maness and Boswell agreed with DEC's proposed treatment; however, they additionally recommended that the regulatory liability be adjusted for income taxes and accrued carrying costs at the Companies' net-of-tax WACC. (Tr. vol. 4, 85-86.)

In rebuttal testimony, Company witness Abernathy stated that the Company agreed with the Public Staff's recommendation. (Tr. vol. 3, 49.) Witness

Abernathy further stated that the Tail-end Collections will stay with the SPE trustee until the Storm Recovery Charge is set at \$0 and no more cash from the Storm Recovery Charge is being collected. (Id. at 49-50.) At that point in time, all cash at the trustee (i.e. the Excess Funds and Capital Subaccounts) will be distributed to DEC and DEP. (Id.) Once the cash from the Tail-end Collections is received by DEC and DEP, the regulatory liability discussed above would be recorded. (Id.) Until DEC and DEP actually receive the cash from the SPE trustee, there is no actual liability to customers. (Id.)

The Second Stipulation provides that any Tail-end Collections will be tracked separately and placed into a regulatory liability, and accrue carrying costs at DEC's net-of-tax WACC, to be considered for return to customers in DEC's next respective general rate case.

### **Capital Contributions**

In DEC's original proposed Financing Order, the Company proposed to earn a rate of return on its invested capital in its SPE of at least 0.50 percent of the original principal amount of the Storm Recovery Bonds issued by the SPE, equal to the rate of interest payable on the longest maturing tranche of Storm Recovery Bonds. Company witness Heath testified that the requested return is consistent with prior utility securitizations, including the 2016 Duke Energy Florida (DEF) transaction. (Tr. vol. 1, 59.) Public Staff witnesses Maness, Boswell, and Sutherland recommended that DEC should not earn a return on the contributed capital over and above what the SPE actually earns on its investments and returns to the Company. (Tr. vol. 4, 87.)

In rebuttal testimony, Company witness Heath testified that DEC is entitled to a return on their equity capital contributions to these proposed transactions commensurate with the level of return a regulated utility is otherwise entitled to earn on its equity investments. (Tr. vol. 1, 108-09.) Further, witness Heath testified that DEC is investing millions of dollars into its SPE, to produce the quantifiable benefits of securitization for its customers, that will not be returned for potentially two decades. (Id.) To compensate DEC for the lost opportunity to invest that capital in assets that would otherwise yield a higher return, the Company is seeking a return that is less than its WACC but higher than what the Public Staff has proposed. (Id.)

The Second Stipulation provides that DEC's capital contribution to its SPE shall earn a return at the interest rate of the longest maturing tranche of the Storm Recovery Bonds.

### **Audit of Storm Recovery Costs**

Public Staff witnesses Maness and Boswell testified that the Public Staff has not been able to fully review all of the changes in recorded O&M expenses since the general rate cases and recommends that those changes in expenses

remain subject to future review, including a prudency review in a future general rate cases. (Tr. vol. 4, 74-75.) In rebuttal testimony, Company witness Abernathy testified that while the Company understands and supports the Public Staff's need and authority to audit its costs, the Public Staff had time to review DEC's Storm Recovery Costs as they had not changed since the filing of the Joint Petition Storm Recovery Costs. (Tr. vol. 3, 59.) Further, witness Abernathy testified that the storm cost amounts have actually decreased from the amounts included in the Companies' most recent rate cases to the amount included in the Joint Petition. (Id.)

The Second Stipulation provides that the Public Staff shall be able to audit DEC's Storm Recovery Costs, provided that (a) the Public Staff will conduct the audit and report their findings to the Commission within 60 days of the date of receipt of any requested documents, with the 60 day period beginning upon the Public Staff's receipt of documents from the Companies' responses to the Public Staff's initial data request, to be submitted by March 5, 2021; and (b) the Public Staff's audit shall be limited to the adjustments made since the Public Staff's audit in the 2019 rate cases.

### **Scheduled Final Maturity of the Bonds**

In its original proposed financing order, DEC proposed a 15-year bond period for the Storm Recovery Charges. Company witness Heath testified that the 15-year proposal strikes the right balance between the length of the recovery period and the length and level of the Storm Recovery Charges. (Tr. vol. 1, 36.) Additionally, according to witness Heath, the proposed 15-year structure is consistent with the longest recovery period proposed by the Public Staff. (Id.)

Public Staff Consultant witness Sutherland recommended a longer amortization period because the longer the amortization period, the higher the level of net present value savings to the ratepayer and accordingly, the greater the benefit to the ratepayer. (Tr. vol. 3, 134-35.) According to witness Sutherland, a longer amortization period does not penalize the utility but does benefit the ratepayer. (Id.) Witness Sutherland also notes that interest rates are currently near historically low levels and that extending the maturity of the bonds allows both DEC and the ratepayers to reap the benefits of low rates for a longer period. (Id.) Public Staff witnesses Craig, Maness, and Boswell agreed with witness Sutherland's recommendation to lengthen the terms of the Storm Recovery Bonds from 15 years to 18 or even 20 years. (Tr. vol. 4, 92, 151.) However, witnesses Maness and Boswell sounded a note of caution for the long term. According to witnesses Maness and Boswell, if the recent pattern of large storms with large dollar impacts occurring every two years or so were to continue for the long term, it would be appropriate for the Commission to take into consideration the potential "snowball effect" on future rates that could develop from continuing to provide for long bond amortization periods. (Id. at 92.) That beneficial effect would need to be measured against the dollar benefits that could arise from such lengthened terms. (Id.)

In rebuttal testimony, Company witness Abernathy testified that the Company did not oppose the Public Staff's proposal to lengthen the bond amortization period but continued to support its original 15-year amortization period as a reasonable and appropriate balance between customer benefits and the length of the Storm Recovery Bonds and associated Storm Recovery Charge. (Tr. vol. 3, 55-56.) Witness Abernathy stated that she agreed with the "note of caution" raised by Public Staff witnesses Maness and Boswell concerning long term amortization periods, and believed the Public Staff's statement evidenced the reasonableness of the Company's original proposal. (Id.) Further, witness Abernathy provided a calculation of quantifiable customer benefits assuming a 20-year bond amortization period in Abernathy Rebuttal Exhibit 4. According to witness Abernathy, a 20-year bond term is estimated to provide approximately \$67.9 million (36.9%) savings to customers for DEC. (Id.)

The Second Stipulation provides that the length of the bond period shall have a scheduled final payment date of between, and inclusive of, an 18 and 20 year period from the date of issuance, to achieve higher net present value savings to customers compared to traditional cost recovery and based upon market conditions at the time of pricing, all in a manner consistent with the Commission's Financing Order.

### **Discussions and Conclusions**

Because the Second Stipulation has not been adopted by all of the parties to this docket, the Commission's determination of whether to accept or reject the Second Stipulation is governed by the standards set forth by the North Carolina Supreme Court in State ex rel. Utils. Comm'n v. Carolina Util. Customers Ass'n, Inc., 348 N.C. 452 (1998) (CUCA I) and State ex rel. Utils. Comm'n v. Carolina Util. Customers Ass'n, Inc., 351 N.C. 223 (2000) (CUCA II). In CUCA I, the Supreme Court held that:

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

(348 N.C. at 466.)

However, as the Court made clear in CUCA II, the fact that fewer than all of the parties have adopted a settlement does not permit the Court to subject the Commission's order adopting the provisions of a nonunanimous stipulation to a "heightened standard" of review. (351 N.C. at 231.) Rather, the Court said that Commission approval of the provisions of a nonunanimous stipulation "requires only that the Commission ma[k]e an independent determination supported by substantial evidence on the record [and] ... satisf[y] the requirements of chapter 62 by independently considering and analyzing all the evidence and any other facts relevant to a determination that the proposal is just and reasonable to all parties." (Id. at 231-32 (emphasis added).)

The Commission credits the testimony of the Company and Public Staff witnesses regarding the Second Stipulation and finds and concludes that the Second Stipulation is the product of the give-and-take between the Public Staff and the Companies during their settlement negotiations in an effort to appropriately balance the parties' positions. In addition, the Commission finds and concludes that the Second Stipulation was entered into by the parties after discovery and negotiations, and that it represents a proposed negotiated resolution of matters in dispute between the Companies and the Public Staff in this docket. Finally, the Commission finds and concludes that the Second Stipulation is fair, reasonable, and in the public interest. As a result, the Second Stipulation is material evidence to be given appropriate weight in this proceeding.

As detailed herein, there is ample evidence in the record to support all of the provisions of the Second Stipulation. Accordingly, the Commission is fully justified in adopting the Second Stipulation through the exercise of its own independent judgment, and finding and concluding through such independent judgment that the Second Stipulation "is just and reasonable to all parties in light of all the evidence presented." (CUCA I, 348 N.C. at 466.) The Commission hereby adopts the Second Stipulation in its entirety, and the conclusions as to the individual provisions of the Second Stipulation is set forth herein. In addition, the Commission finds and concludes that the Second Stipulation is entitled to substantial weight and consideration in the Commission's decision in this docket.

### **COSTS ELIGIBLE FOR RECOVERY FINANCING**

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 5—79-11**

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

#### **Storm Recovery Costs**

In its Joint Petition, DEC requested the authority to finance its Storm Recovery Costs through securitization of approximately \$230.8 million in Storm Recovery Costs, which includes \$18.6 million in capital investment, \$169.8 million

in O&M ~~expense~~expenses, plus Carrying Costs in the amount of \$37.2 million (plus or minus any adjustment to such ~~carrying costs~~Carrying Costs necessary to account of the number of days, as applicable, either greater than or less than assumed in the ~~carrying costs~~Carrying Costs calculation), plus an estimated \$5.2 million in Up-front Financing Costs. The amount of Carrying Costs DEC requests is calculated at the Company's approved ~~weighted average cost of capital~~WACC. The requested amount is also premised on a Storm Recovery Bond issuance date of June 1, 2021. DEC states that it will report to the Commission the final Carrying Cost ~~so~~ financed in the IAL as described below. N.C. Gen. Stat. § 62-172(a)(14) requires that DEC's Storm Recovery Costs eligible for financing be reasonable and prudent. Except for the Carrying Costs to be calculated as described herein and the adjustments to the Storm Recovery Costs made since the Public Staff's audit in the 2019 rate cases that are subject to the Second Stipulation, the Storm Recovery Costs were included in the Company's rate case application in Docket No. E-7, Sub 1214 and have been the subject of discovery and audit by the Public Staff and other interested parties to that proceeding. The Commission's DEC Rate Order found and concluded that DEC's Storm Recovery Costs were reasonable and prudent. Consistent with that Order, the Commission finds that DEC's Storm Recovery Costs are reasonable and prudent and therefore eligible for recovery through financing. DEC shall reflect the actual amount of Storm Recovery Costs recovered by the issuance of Storm Recovery Bonds in the IAL.

In addition, the Commission finds that DEC's Carrying Costs associated with the Storm Recovery Costs are also reasonable and prudent. Accordingly, the Commission finds that DEC should be permitted to finance its Storm Recovery Costs including Carrying Costs as provided in this Financing Order.

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

DEC has also requested authority to finance certain financing costs associated with the issuance of the Storm Recovery Bonds. DEC's proposed Up-front Financing Costs include but are not limited to, legal fees, consulting fees, structuring adviser fees, placement and underwriting fees, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs and any other costs necessary to issue the Storm Recovery Bonds (a complete list of all Up-front Financing Costs will be included on Attachment 2 of the IAL, a form of such letter with preliminary estimates of Up-front Financing Costs, is included in Appendix C of this Financing Order).

In addition, the costs of any outside consultant and counsel retained by the Commission to assist the Commission in performing its responsibilities under N.C. Gen. Stat. § 62-172(b)(3)b., and the costs incurred by the Public Staff for any outside consultants or counsel retained in connection with this securitization of the Storm Recovery Costs are Up-front Financing Costs. DEC's Up-front Financing Costs include reimbursement to DEC for amounts advanced for payment of such costs, and may also include other types of credit enhancement, not specifically

described herein, including letters of credit, reserve accounts, surety bonds, interest rate swaps, interest rate locks, and other mechanisms designed to promote the credit quality and marketability of the Storm Recovery Bonds or designed to achieve the Statutory Cost Objectives. The Up-front Financing Costs of any credit enhancements shall be included in the amount of costs to be financed by the sale of Storm Recovery Bonds. DEC has provided an estimate of Up-front Financing Costs of \$5.2 million based on a range of estimates in Heath Exhibit 1 attached to witness Heath's testimony.

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

N.C. Gen. Stat. § 62-172(a)(4) defines “financing costs.” The Commission finds that DEC's proposed Up-front Financing Costs fall squarely within this definition, and that these issuance costs are therefore financing costs eligible for recovery pursuant to the Securitization Statute. Due to the unknown aspect of these costs, the Commission orders that to the extent the actual Up-front Financing Costs are less than the amount appearing in the final IAL filed within one business day after actual pricing of the Storm Recovery Bonds, ~~such unspent amount will be reflected in the next True-Up Adjustment Letter (as defined herein). Conversely, DEC shall establish a regulatory liability to defer any amounts of Up-front Financing Costs less than those amounts appearing in the final IAL and preserve those amounts to consider for later credit in DEC's next general rate case and the regulatory liability shall accrue carrying costs at DEC's net-of-tax WACC. Conversely, in accordance with the Second Stipulation,~~ to the extent that the actual

Up-front Financing Costs are in excess of the amount appearing in the final IAL filed within one business day after actual pricing of the Storm Recovery Bonds, that DEC shall book such prudently incurred excess amounts to a regulatory asset to be recovered in the Company's next rate case and the regulatory asset shall accrue carrying costs at DEC's net-of-tax WACC.

### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 12-13**

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

#### **On-going Financing Costs**

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

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

Having reviewed DEC's proposal, the Commission determines that the proposed On-going Financing Costs identified in DEC's Joint Petition and Attachment 4 of the form of IAL qualify as "financing costs" pursuant to N.C. Gen. Stat. § 62-172(a)(4) and are therefore eligible for recovery through a storm recovery charge. Additionally, consistent with the Commission's conclusions for Findings of Fact Nos. 31 and 33, the Commission reiterates that it is appropriate for DEC to credit back to customers all periodic servicing and administration fees in excess of DEC's or an affiliate of DEC's incremental cost of performing the servicer or administrator function in the next rate case when costs and revenues associated with the servicing and administration fees will be included in DEC's cost of service.

Due to certain of the On-going Financing Costs approved in the IAL being an estimate, per the Second Stipulation the Public Staff shall be afforded an opportunity to review specific detailed invoices and other supporting documentation, if applicable, and narrative explanations for Other On-going Financing Costs on a monthly basis, 15 days after the end of the previous month.



If the Company did not receive any invoices in the previous month, the Company will submit a letter notifying the Public Staff that no invoices were received.

At its option, the Public Staff shall have the opportunity to perform a limited audit of the Other On-going Financing Costs (including auditing through possible additional data requests) for mathematical or clerical errors, or charges incurred as a result of gross negligence, recklessness, or willful misconduct by either the Company or the SPE, and that the Public Staff shall complete said audit within 45 days of receipt of the supporting documentation.

Upon receipt of such supporting documentation, the Public Staff shall have up to 10 days to object to the supporting documentation, if such supporting documents do not rise to an adequate level of detail necessary for the Public Staff to perform a limited audit of the Other On-going Financing Costs. An objection by the Public Staff shall suspend the above-described 45 day start date for the Public Staff's audit review to begin until adequate documentation is provided by DEC. The Public Staff may choose to instead audit the expenses for which the 45 days window will not be complete by the filing of DEC's true-up pursuant to the True-Up Mechanism provided, however, any audit by the Public Staff shall not delay the implementation of the True-Up Mechanism nor shall it have any adverse effect on the Storm Recovery Charges or Storm Recovery Bonds.

Any adjustments to the Storm Recovery Charges necessary to correct a mathematical or clerical error shall be made in connection with the next True-Up Mechanism filing after such determination. In the event Other On-going Financing Costs are determined in a separate proceeding by the Commission to have been incurred as a result of gross negligence, reckless or willful misconduct by either DEC or the SPE, DEC shall create a regulatory liability in the amount determined appropriate by the Commission to be returned to customers, with carrying costs at DEC's net-of-tax WACC, in its next general rate case. The Commission may not make any adjustments to the Storm Recovery Charges for Other On-going Financing Costs found to have been incurred as a result of gross negligence, recklessness or willful misconduct by either DEC or the SPE.

## **STRUCTURE OF ISSUANCE**

### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 819**

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

The evidence supporting these findings and conclusions is contained in the Joint Petition and exhibits, the testimony and exhibits of the witnesses, and the entire record in this proceeding. These findings and conclusions were not contested by any party.

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

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

- The use of (depending on whether more than one series of Storm Recovery Bonds are issued) one or more SPEs as issuer(s) of Storm Recovery Bonds, limiting the risks to bondholders of any adverse impact resulting from a bankruptcy proceeding of DEC or any affiliate.
- The right to impose, bill, charge, collect and receive Storm Recovery Charges that are nonbypassable and which must be trued-up at least semi-annually, but may be trued-up more frequently at the option of the servicer, to ensure the timely payment of the debt service and On-going Financing Costs as scheduled.
- The use of a collection account which includes, without limitation, a Capital Subaccount at the SPE funded initially by a deposit from DEC equal to at least 0.5 percent of the initial principal amount of the Storm Recovery Bonds issued by the SPE.
- A servicer (initially DEC) responsible for billing and collecting the Storm Recovery Charge from existing and future retail customers.
- The Federal income tax consequences of the transaction are consistent with satisfaction of the provisions established in IRS Revenue Procedure 2005-62.

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

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

Specifically, DEC has proposed that the Storm Recovery Bonds be issued pursuant to an Indenture and administered by an indenture trustee. The Storm Recovery Bonds will be secured by and payable solely from the Storm Recovery Property created pursuant to this Financing Order. The Storm

Recovery Property and other collateral will be pledged to the indenture trustee for the benefit of the holders of the Storm Recovery Bonds and to secure payment of principal, interest on the Storm Recovery Bonds and On-going Financing Costs.

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

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

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

Witness ~~Charles N. Atkins~~ H-stat testified that DEC's proposed bond structure is designed to provide substantially level annual debt service and revenue requirements over the life of the bond issue and would result in declining Storm Recovery Charges over time, assuming growth in customer energy consumption, other factors being equal. (Tr. vol. 2 at 150.) The Commission finds DEC's proposed transaction structure reasonable, and compliant with the Securitization Statute. Moreover, portions of DEC's proposed transaction structure, described in this Financing Order, are necessary to enable the Storm Recovery Bonds to obtain the highest bond credit rating possible, with an objective of AAA or equivalent bond credit ratings, so as to further ensure that the proposed issuance of the Storm Recovery Bonds on behalf of DEC and the imposition of the Storm Recovery Charges will ~~provide quantifiable benefits to customers as~~

~~compared to the costs that would have been incurred absent the issuance of Storm Recovery Bonds and~~ meet the Statutory Cost Objectives. Accordingly, DEC's issuance structure is hereby approved.

#### EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 920

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

#### Special Purpose EntityEntities

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

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

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

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

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

Per rating agency and IRS requirements, DEC will transfer to the SPE an amount required to capitalize each of its SPEs adequately (the "SPE Capitalization Level") for deposit into the Capital Subaccount. The SPE Capitalization Level is expected to be 0.50 percent<sup>15</sup> of the initial principal amount of the Storm Recovery Bonds to be issued by the SPE or such greater amount as might be needed to meet IRS or rating agency requirements. The actual SPE Capitalization Level will depend on tax and rating agency requirements, and will be subject to review by Members of the Bond Team pursuant to the procedures set forth in Findings of Fact 42 through 47. The Commission finds that DEC mayshall earn a return on thisits capital contribution in an amount equal to the rate of interest payable on the longest maturing tranche of the Storm Recovery Bonds. Moreover, the Commission confirms that the SPE will be an "assignee" as defined in N.C. Gen. Stat. § 62-172(a)(2), when an interest in Storm Recovery Property is transferred, other than as security, to such SPE, and such SPE may issue Storm Recovery Bonds in accordance with this Financing Order as discussed further herein.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 10 & 1121-22**

The evidence supporting these findings and conclusions is contained in the Joint Petition and exhibits, the testimony and exhibits of the witnesses, and the entire record in this proceeding. These findings and conclusions were not contested by any party.

#### **Storm Recovery Property**

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

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

and interests specified in this Financing Order, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds.

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

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

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

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

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

Pursuant to ~~by~~ N.C. Gen. Stat. § 62-172(e)(2)e., the priority of a security interest in Storm Recovery Property is not affected by the commingling of Storm Recovery Charges with other amounts. Any pledgee or secured party shall have a perfected security interest in the amount of all Storm Recovery Charges that

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

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

As provided by N.C. Gen. Stat. § 62-172(e)(3)b., the characterization of the sale, conveyance, assignment, or transfer of Storm Recovery Property as an absolute transfer and true sale or other absolute transfer and the corresponding characterization of the transferee’s property interest shall not be affected by: (1) commingling of Storm Recovery Charges arising with respect to the Storm Recovery Property with other amounts; (2) the retention by DEC of a (i) partial or residual interest, including an equity interest, in the Storm Recovery Property, whether direct or indirect, or whether subordinate or otherwise or (ii) the right to recover costs associated with taxes, franchise fees or license fees imposed on the collection of storm recovery charges; (3) any recourse that the transferee may have against DEC other than any such recourse created, contingent upon, or otherwise occurring or resulting from one or more of DEC’s retail customers’ inability to timely pay all or a portion of the Storm Recovery Charge; (4) any indemnification rights, obligations, or repurchase rights made or provided by DEC, other than indemnity or repurchase rights based solely upon DEC’s retail customers’ inability or failure to timely pay all or a portion of the Storm Recovery Charge; (5) the obligation of DEC to collect Storm Recovery Charges on behalf of the SPE; (6) DEC acting as the servicer of the Storm Recovery Charges or the existence of any contract that authorizes or requires DEC, to the extent that any interest in Storm Recovery Property is sold or assigned, to contract with the assignee or any financing party that it will continue to operate its system to provide service to its customers for the benefit and account of such assignee or financing party, and will account for and remit such amounts to or for the account of such assignee or financing party; (7) the treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or other purposes; (8) granting or providing to holders of the Storm Recovery Bonds a preferred right to the Storm Recovery Property or credit enhancement by DEC or its affiliates with respect to the Storm Recovery Bonds; or (9) any application of the True-Up Mechanism.

The Commission finds that the terms and conditions discussed above regarding Storm Recovery Property are reasonable and adhere to the requirements of the Securitization Statute. In addition, the Storm Recovery Property and all other collateral is to be held and administered by an indenture trustee pursuant to the Indenture, which helps ensure lower Storm Recovery Charges, and that the Statutory Cost Objectives can be achieved. Accordingly, the Commission approves of the (i) creation of Storm Recovery Property, including the rights to impose, bill, charge, collect and receive Storm Recovery Charges and obtain periodic adjustments to the Storm Recovery Charges and (ii) DEC's sale of the Storm Recovery Property to the SPE.

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

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1223**

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

#### **Form of Transaction Documents**

DEC ~~has~~ submitted in connection with its Joint Petition a form of the Purchase and Sale Agreement, the Administration Agreement, and the Servicing Agreement, which set out in substantial detail certain terms and conditions relating to the transaction structure for each issuance of Storm Recovery Bonds, including the proposed sale of Storm Recovery Property to the SPE, the administration of the SPE, and the servicing of the Storm Recovery Charges and Storm Recovery Bonds. ~~DEC requested that we~~DEC subsequently revised the form Servicing Agreement on February 18, 2021 to reflect omitted language discussed at the hearing. DEC requests that the Commission approve the substance of the form of the agreements between DEC and the SPE in connection with issuance of this Financing Order.

Drafts of these agreements were filed ~~in order that this~~for the Commission ~~may~~to evaluate the principal rights and responsibilities of the parties thereto. The final versions of these agreements, however, will be subject to change based on



the input from rating agencies, investors, attendees of the Bond Team meetings and other parties involved in the structuring and marketing of the Storm Recovery Bonds.

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

DEC has also submitted a form of the LLC Agreement with DEC as the sole member that DEC proposed would constitute the organizing document of the SPE. DEC requested that we approve the substance of the LLC Agreement, which would be executed substantially in the form submitted to this Commission, subject to such changes as DEC deems necessary or advisable to satisfy bankruptcy opinion and rating agency considerations. In addition, DEC proposed to execute a Servicing Agreement with the SPE which may be amended, renewed, or replaced by another servicing agreement in accordance with its terms, and as approved by this Commission. DEC will be the initial servicer but may be succeeded as servicer as detailed in the Servicing Agreement. Pursuant to the Servicing Agreement, the servicer is required, among other things, to impose, bill, charge, collect and receive the Storm Recovery Charges for the benefit and account of the SPE, to make the periodic true-up adjustments of Storm Recovery Charges required or allowed by this Financing Order and to account for and remit its collection of Storm Recovery Charges to or for the account of the SPE in accordance with the remittance procedures contained in the Servicing Agreement without any charge, deduction, or surcharge of any kind, other than the servicing fee specified in the Servicing Agreement.

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

~~The Commission~~ In his direct testimony, Public Staff witness Schoenblum requested that the Commission “require careful review and negotiation of all [DEC] transaction documents and contracts that could affect future customer costs” as well as provide that the Commission have the authority to enforce provisions of the Transaction Documents for the benefit of customers. (Tr. vol. 3, 361, 365.)

On rebuttal, witness Heath explained that DEC's proposed Transaction Documents were similar to those utilized in the 2016 DEF Transaction. He also clarified that the DEC transaction documents contained the same substantive customer protections that DEF included in its 2016 transaction. (Tr. vol. 1, 63.) He testified that one specific customer protection included, without limitation, the satisfaction of a "Commission Condition" being approval or acquiescence constituting approval by the Commission prior to any amendment or modification to the transaction documents. (Id. at 63-64.) Finally, he explained that some of the customer protections contained in Transaction Documents created additional obligations on the Commission that are not contemplated by the Securitization Statute, and that it was up to the Commission whether or not it wished to adopt those customer protections that require further Commission involvement. (Id. at 63-64.)

At the hearing, counsel for Public Staff questioned whether the Companies' Transaction Documents required the Companies to indemnify the SPEs for money damages imposed by reason of securities law violations, to which witness Heath responded yes. (Tr. vol. 1, 142.) Counsel for the Public Staff also questioned Mr. Heath on a provision of the proposed Servicing Agreement, asking why it did not contain the provision "without consent of the Commission," like the DEF transaction servicing agreement contained. (Id. at 161.) Witness Heath explained that the lack of that provision was the result of an oversight, and as evidenced by the form of Financing Order included with the Joint Petition (see Exhibit B, p. 43 of the Joint Petition) the Companies were in no way "trying to limit the Commission's ability" with respect to reviewing, approving, and enforcing the Transaction Documents, and implied the Companies would update the documents appropriately. On February 18, 2021, the Companies submitted a revised version of the Servicing Agreement to include the omitted language.

### **Discussions and Conclusions**

The Public Staff has raised concerns over whether the proposed Transaction Documents contain adequate customer protections. However, through rebuttal testimony and at the hearing, the Companies have clarified that the proposed Transaction Documents contain similar customer protections to those contained in the successful 2016 DEF transaction, and have additionally submitted updated Transaction Documents that reflect inconsistencies addressed by the Public Staff at the evidentiary hearing. These Transaction Documents also specifically provide for continuing review and approval by this Commission post-issuance of this Financing Order. In addition, the Commission, through this Financing Order, will also require review of these Transaction Documents by members of the Bond Team and Public Staff, to ensure customers are adequately protected, thereby resolving any of the Public Staff's above-stated concerns.

The Commission hereby determines that the Transaction Documents described above are necessary to facilitate the proposed financing structure approved herein. Moreover, the Transaction Documents are reasonable and will

help to achieve the Statutory Cost Objectives. Accordingly, the form Transaction Documents are approved— subject to further review by Members of the Bond Team and Public Staff to ensure that the Statutory Cost Objectives are achieved.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 13 & 1424-25**

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

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

In its Joint Petition, DEC requested the flexibility to determine which transaction structure is best tailored to then-existing rating agency considerations, market conditions, and investor preferences, so the financing of the Storm Recovery Costs can achieve the Statutory Cost Objectives. (Joint Petition, 23.) The Companies also proposed to issue the storm recovery bonds in either a registered public offering or unregistered exempt offering, to structure the transaction to achieve the highest possible credit rating from applicable rating agencies. (Joint Petition, 21.) Witness Atkins’ direct testimony specifically proposed a grantor trust structure, or the SRB Securities structure, where the DEC and DEP storm recovery bonds would be issued at once and together, to ensure similar market conditions and pricing for each utility’s storm recovery bonds. (Tr. vol. 2, 144.) Witness Atkins explained that this structure was recommended to ensure the DEC Storm Recovery Bonds would qualify for inclusion in the Bloomberg Barclays Corporate Index (Index), which had a 300 million dollar issuance size requirement, meaning a stand-alone DEC transaction would not qualify for inclusion. (Id.) He explained inclusion in the Index was preferred because a lot of investors perceive bond issues that are included in the Index to be more tradeable, or more liquid, and therefore more attractive than bonds that are not Index-eligible. (Id.)

In his direct testimony, witness Fichera stated that he had concerns with the grantor trust structure proposed by witness Atkins because “the structure has only been used once in the last 15-years,” and because it “adds a layer of complexity” to the sale of the bonds. (Tr. vol. 3, 239-40.) Witness Fichera also stated that to “be eligible for the Aggregate Bond Index, DEC and DEP would have to promote the storm recovery bonds as “asset backed securities,” even though the Companies say the storm recovery bonds would be structured like the [2016 Duke Energy Florida, LLC] bonds as ‘not asset-backed securities as defined by SEC Regulation AB.’” (Id.) He concluded by stating that, besides complexity, the Companies’ proposed structure adds confusion, but stated that if the Financing Order allows the possibility for using a grantor trust structure, this structure “should be studied by the bond team with further analysis by the Public Staff and its independent advisor...” (Id. at 240.) Witness Fichera, in addition to witnesses Schoenblum and Sutherland, additionally argued that the Companies should not

be granted flexibility in the Financing Orders to complete the transaction. (Tr. vol. 2, 116, 212, 331-32.)

On rebuttal, witness Atkins reiterated that the Companies needed flexibility to determine which proposed issuance structure would best achieve the Statutory Cost Objectives, and provided additional detail on each potential structures the Companies were considering. (Tr. vol. 2, 186-91.) He began by stating that the Companies were specifically considering three issuance strategies. Witness Atkins explained that one strategy is to market and price the DEC and DEP storm recovery bonds separately, spaced out by several weeks or months. (Tr. vol. 2, 198.) He testified this separate issuance strategy would mean that the two transactions may face different interest rate and market conditions and may have different interest rates that would drive the amount of customer charges the two customer bases would pay. (Id.) Further, he stated Carrying Costs on the second transaction would increase due to the delayed issuance. (Id.)

The second issuance strategy proposed would involve marketing and pricing the DEC and DEP transactions simultaneously, which, unlike the separate issuance approach, would allow the two transactions to face the same market conditions. However, witness Atkins explained that one factor to consider in assessing each alternative transaction structure is Index eligibility. (Id. at 197-98.) Thus, because Index-eligible bonds are generally believed to be more attractive than bonds that are not Index eligible, under the second proposed transaction structure, there is no way to ensure in advance that the smaller DEC transaction would not be disadvantaged when compared to the larger index-eligible DEP transaction. (Id. at 198-99.)

The third issuance strategy described by witness Atkins and the Companies' Joint Petition is the SRB structure, which would be the structure eligible for the Index. (Id.) Witness Atkins explained that this structure involves the SPE subsidiaries of DEC and DEP issuing storm recovery bonds to a bankruptcy remote trust wholly owned by Duke Energy. (Id.) This grantor trust would then issue notes to the marketplace backed by the DEC and DEP bonds and the interest rates on the trust note tranches would set the interest rate for each tranche of the DEC and DEP bonds. (Id.) Thus, each corresponding tranche of the DEC and DEP bonds would have the same interest rate, and therefore result in DEC and DEP storm recovery charges based on the same interest rates, eliminating the risk that the smaller DEC transaction might be treated less favorably. (Id.)

In regard to witness Fichera's assertion that the structuring of the issuance of bonds to qualify for inclusion of the Index would require structuring the bonds as "asset-backed securities," witness Atkins explained that the Companies would not structure the bonds as "asset-backed securities" under any circumstance. (Tr. vol. 2, 191.) He explained that the Companies will structure the transactions so that any bonds that are issued do not meet the definition of "asset-backed securities" pursuant to Regulation AB. (Id.) Witness Atkins further stated that the Companies

believe the SEC will accept the Companies' characterization of the bonds, as they did in the 2016 DEF transaction, and that treatment of the transaction as securities other than "asset-backed securities" is key to the Companies marketing these transactions as structured corporate securities. (Id.) Witness Atkins, however, agreed with the Public Staff that it was too early to determine how the storm recovery bond issuance should be structured, and that the Companies would consider the potential costs and benefits associated with several different transaction structures and issuance strategies to determine the options that best enable the Companies to achieve their Statutory Cost Objectives. (Id. at 186.)

During the hearing, counsel for the Companies questioned whether by testifying that the Companies' flexibility should be limited, the Public Staff was suggesting that the Companies should not have flexibility to address market conditions at the time of issuance. (Tr. vol. 2, 431.) Witness Schoenblum replied that "any issuer needs to have some flexibility," and also agreed that the Securitization Statute requires the Commission to grant the Companies a degree of flexibility in establishing the terms and conditions of the storm recovery bonds, including but not limited to the payment schedule, expected interest rate, and other financing costs. (Id. at 431-43.) Witness Fichera similarly clarified that the Public Staff was proposing a "process" that "gives the Company flexibility," and that he thought the word "flexibility" was "in almost every statute [he'd] dealt with..." (Tr. vol. 3, 436.)

### Discussions and Conclusions

DEC has proposed that the Storm Recovery Bonds be offered pursuant to an SEC-registered offering. The Company has provided testimony to the effect that virtually all utility securitizations have been sold as SEC-registered public transactions. Further, DEC has provided testimony to the effect that an SEC-registered, public offering, is likely to result in a lower cost of funds relative to a non SEC-registered offering, including a Rule 144A qualified institutional offering, all else being equal, due to the enhanced transparency and liquidity of publicly-registered securities. Accordingly, subject to the IAL procedure described further below, the Commission finds that an SEC-registered public offering is most likely to result in the lowest costs to consumers, and should be approved. However, the Commission ~~further~~also finds that DEC, subject to the IAL procedures described in the Evidence and Conclusions for Finding of Fact No. ~~3348~~, may also pursue a Rule 144A qualified institutional offering of the Storm Recovery Bonds.

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

The Commission finds, subject to the IAL procedures, that the issuance of the Storm Recovery Bonds pursuant to an SEC-registered negotiated sale is likely to result in lower overall costs and satisfy the Statutory Cost Objectives, and should therefore be approved. However, DEC, subject to the IAL procedures, is also authorized to pursue other sale options, including a Rule 144A offering, in order to satisfy the Statutory Cost Objectives. The Commission therefore finds it necessary to grant DEC flexibility and authority, in consultation with other Members of the Bond Team, to pursue other sale options that result in the ~~lowest Storm Recovery Charges for customers consistent with market conditions at the time~~ achievement of the Storm Recovery Bonds are priced Statutory Cost Objectives.

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

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

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

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

would in turn transfer those proceeds to DEC or DEP, as applicable in consideration for the storm recovery property sold to such SPE by DEC or DEP.

The Commission finds the testimony of witness Heath and witness Atkins to be persuasive, and agrees that combining the issuance of DEC's Storm Recovery Bonds and DEP's storm recovery bonds in one transaction through the use of the SRB Issuer may result in lower Storm Recovery Charges for customers, and help ensure that the Statutory Cost Objectives can be met. In particular, the Commission finds persuasive witness Atkins' testimony regarding investor preferences for inclusion in the Index.

Although the Public Staff raises questions as to whether this grantor trust structure is too "complex" and may cause "confusion," the Public Staff itself agrees that it is too early to determine which structure will ensure that the Statutory Cost Objectives are achieved. Moreover, the Public Staff presented no evidence that allowing the Companies to use a grantor trust structure would not in fact result in customer savings. Additionally, witness Atkins described the Companies' intent to not structure the Storm Recovery Bonds as "asset-backed securities," similar to the successful 2016 DEF transaction, dispelling Public Staff witness Fichera's concerns over marketing the bonds as such.

As also described by witness Atkins, the Companies have committed to consider the potential costs and benefits associated with each proposed transaction structure and issuance strategy to determine the strategies that best enable the Companies to achieve their Statutory Cost Objectives, and the Commission requires DEC to determine such through this Financing Order. The Commission additionally agrees with the Companies and Public Staff that it is too early to determine which structure best achieves the Statutory Cost Objectives, and therefore finds the Companies' position that it be granted the flexibility to utilize the grantor trust structure if it will best achieve the Statutory Cost Objectives at the time of issuance, to be most persuasive and in the interest of customers. Indeed, at the hearing, witnesses for the Public Staff agreed that issuers need flexibility in every transaction, and the Commission believes such flexibility will best ensure the Statutory Cost Objectives are achieved. (Tr. vol. 3, 436.)

Accordingly, the Commission hereby grants DEC the authority in this Financing Order to issue Storm Recovery Bonds in a combined transaction with DEP through the use of the SRB Issuer, if warranted. By allowing the Companies flexibility to determine which of the above issuance structures are best tailored to then-existing rating agency considerations, market conditions, and investor preferences, the financing of Storm Recovery Costs can be reasonably expected to result in the lowest Storm Recovery Charges consistent with market conditions at the time the Storm Recovery Bonds are priced achievement of the Statutory Cost Objectives.

**EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. ~~15~~—1726-28**

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

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

Regarding the principal amortization, the Commission determines that the expected term of the scheduled final payment date of the last maturing tranche should be ~~no later than 15~~between, and inclusive of, 18 and 20 years from the issuance of the series of Storm Recovery Bonds. in accordance with the Second Stipulation. The legal maturity date of each tranche may be longer than the scheduled final payment date for that tranche. Annual payments of principal of and interest on the Storm Recovery Bonds shall be substantially level over the expected term of the Storm Recovery Bonds. The exact scheduled final payment dates and legal final maturities of each tranche shall be decided in consultation with the Bond Team to ensure the issuance of Storm Recovery Bonds meets the Statutory Cost Objectives. Storm Recovery Bonds shall be determined through consultation with Members of the Bond Team after the issuance of this Financing Order.

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

As to interest rates, the Commission determines that each tranche of the Storm Recovery Bonds should have a fixed interest rate, based on current market conditions. If market conditions change, and it becomes necessary to achieve the Statutory Cost Objectives for the one or more tranches of bonds to be issued in floating-rate mode, DEC is authorized to issue such bonds but will be required to execute agreements to swap the floating payments to fixed-rate payments. in consultation with the other Members of the Bond Team and subject to Ordering Paragraph 13, to achieve the Statutory Cost Objectives. This flexibility will ensure that DEC can achieve economic benefits for customers.

The Company anticipates that each series of Storm Recovery Bonds will have a AAA or equivalent rating from at least two nationally recognized rating agencies. The Commission hereby grants DEC authority to provide necessary credit enhancements, with recovery of related costs as a form of On-going Financing Costs, to achieve such ratings in consultation with the other Members of the Bond Team and subject to Ordering Paragraph 13, to achieve to Statutory Cost Objectives.



## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1829

The evidence supporting these findings and conclusions is contained in the Second Stipulation, the Joint Petition and exhibits, the testimony and exhibits of the witnesses, and the entire record in this proceeding. These findings and conclusions were not contested by any party.

### Security for Storm Recovery Bonds

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

DEC proposed that the SPE will establish a Collection Account as a trust account to be held by its indenture trustee as collateral to facilitate the payment of the principal of, interest on, and On-going Financing ~~costs~~Costs related to, the Storm Recovery Bonds in full and on a timely basis. Each Collection Account will include the General Subaccount, the Capital Subaccount ~~and~~, the Excess Funds Subaccount, and the Tail-end Collection Subaccount, and may include other subaccounts if required to obtain AAA ratings or equivalent on the Storm Recovery Bonds in consultation with the other Members of the Bond Team and subject to Ordering Paragraph 13, to achieve the Statutory Cost Objective. Final terms of the Indenture may be reviewed by Members of the Bond Team.

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

When the Storm Recovery Bonds are issued, DEC proposes that it will make a capital contribution to its SPE, which the SPE will deposit into its Capital Subaccount. The storm recovery proceeds will not be used to fund this capital contribution. The amount of the capital contribution will be at least 0.5 percent of the original principal amount of the Storm Recovery Bonds issued by the SPE. Each Capital Subaccount will serve as collateral to facilitate timely payment of principal of and interest on the Storm Recovery Bonds. To the extent that a Capital Subaccount must be drawn upon to pay these amounts due to a shortfall in the Storm Recovery Charge collections, it will be replenished to its original level

through the true-up process described below. The funds in each Capital Subaccount will be invested in short-term, high-quality investments and, if necessary, such funds (including investment earnings) will be used by the indenture trustee to pay principal of and interest on the Storm Recovery Bonds and the On-going Financing Costs payable by the SPE. DEC will be permitted to earn a rate of return on its invested capital in the SPE equal to the rate of return at the interest payable on rate of the longest maturing tranche of the Storm Recovery Bonds ~~and this return on invested capital should, which shall~~ be a component of the Periodic Payment Requirement (as defined below), and accordingly, recovered from Storm Recovery Charges.

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

DEC also proposed that any Collection Account and the subaccounts described above are intended to facilitate the full and timely payment of scheduled principal of and interest on the Storm Recovery Bonds and all other authorized components of the On-going Financing Costs payable by the SPE. If the amount of Storm Recovery Charge collections in the General Subaccount is insufficient to make, on a timely basis, all scheduled payments of principal of and interest on the Storm Recovery Bonds and to make payment on all of the other components of the On-going Financing Costs payable by the SPE, the relevant Excess Funds Subaccount and the relevant Capital Subaccount will be drawn down, in that order, to make such payments. Any deficiency in a Capital Subaccount due to such withdrawals must be replenished on a periodic basis through the true-up process.

DEC also proposed that any Tail-end Collection Subaccount will hold any Storm Recovery Charges that were collected after the final payment and satisfaction of the Storm Recovery Bonds and after the discharge of all obligations with respect to such bonds. In accordance with the Second Stipulation, the amount in the Tail-end Collection Subaccount will be recorded as a separate regulatory liability, accrue carrying costs at DEC's net-of-tax WACC and credited back to customers in the Company's next rate case.

In addition to the foregoing, there may be such additional accounts and subaccounts as are necessary to segregate amounts received from various sources, or to be used for specified purposes. Upon the maturity of the Storm

Recovery Bonds and upon the discharge of all obligations with respect to such bonds, amounts remaining in each Collection Account ~~will be released to the appropriate SPE and will be available for distribution by the SPE to DEC. As noted in this Financing Order, equivalent amounts, less the amount of any Capital Subaccount, will be booked to a regulatory liability and credited back to customers in the Company's next rate case following the maturity of the Storm Recovery Bonds~~less the amount of any Capital Subaccount will be released.

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

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 19 & 2030-31**

The evidence supporting these findings and conclusions is contained in the Second Stipulation, the Joint Petition and exhibits, the testimony and exhibits of the witnesses, and the entire record in this proceeding. These findings and conclusions were not contested by any party.

#### **DEC as Initial Servicers of the Storm Recovery Bonds**

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

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

To preserve the integrity of the bankruptcy-remote structure of the SPE and ensure the high credit quality of the Storm Recovery Bonds, the servicer ~~must~~shall be adequately compensated for the services it provides, including the calculation, billing, and collection of Storm Recovery Charges, remittance of those charges to the indenture trustee, and the preparation, filing, and processing of the TUAL. DEC's proposed form of Servicing Agreement provides for an on-going servicing fee for the initial servicer in the amount of 0.05 percent of the initial principal

amount of the Storm Recovery Bonds plus out-of-pocket expenses. DEC has submitted testimony on the costs anticipated to be incurred by it in connection with the servicing functions under the Servicing Agreement, and we find such costs to be reasonable and appropriate.

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

However, in accordance with the Second Stipulation, the servicing fees collected by DEC, or any affiliate acting as the servicer under the Servicing Agreement, will be ~~reflected in DEC's ongoing cost of service such that held separately in a regulatory asset or regulatory liability account for the purpose of tracking (as received and incurred) servicing fees received by DEC from the SPE and incremental costs incurred by DEC in fulfilling the required functions under the Servicing Agreement. The regulatory asset or liability account established pursuant to this paragraph shall accrue carrying costs at DEC's net-of-tax WACC and~~ any amounts in excess of DEC's incremental costs of servicing the Storm Recovery Bonds shall be returned to DEC's retail customers in ~~the Company's~~ DEC's next rate case. The expenses incurred by DEC or such affiliate to perform obligations under the Servicing Agreement not otherwise recovered through the Storm Recovery Charges will likewise be included in DEC's cost of service.

DEC has proposed that it will not be permitted voluntarily to resign from its duties as a servicer if the resignation will harm the credit rating on Storm Recovery Bonds issued by its SPE. Even if DEC's resignation as servicer would not harm the credit rating on the Storm Recovery Bonds issued by the SPE, we find and direct that DEC shall not be permitted to voluntarily resign from its duties as servicer without consent of the Commission. If DEC defaults on its duties as servicer or is required for any reason to discontinue those functions, then DEC proposes that a successor servicer acceptable to the indenture trustee be named to replace DEC as servicer so long as such replacement would not cause any of the then current credit ratings of the Storm Recovery Bonds to be suspended, withdrawn or downgraded. We find that any successor servicer to DEC also should be acceptable to the Commission.

DEC has proposed that, and ~~we find~~ the Commission finds and ~~direct~~ directs that, the servicing fee payable to a substitute servicer should not exceed 0.60

percent per annum on the initial principal balance of the Storm Recovery Bonds issued by the SPE, unless a higher fee is approved by the Commission.

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

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

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

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

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 21 & 2232-33**

The evidence supporting these findings and conclusions is contained in the Second Stipulation, the Joint Petition and exhibits, the testimony and exhibits of the witnesses, and the entire record in this proceeding. These findings and conclusions were not contested by any party.

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

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

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

fee is necessary to cover any costs to be incurred by DEC in performing services as administrator.

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

~~The~~ In accordance with the Second Stipulation, the administration fees collected by DEC or any affiliate acting as the administrator under the Administration Agreement will be ~~included in DEC's cost of service such that~~ held separately in a regulatory asset or regulatory liability account for the purpose of tracking (as received and incurred) administration fees received by DEC from the SPE and incremental costs incurred by DEC in fulfilling the required functions under the Administration Agreement. The regulatory asset or liability account established pursuant to this paragraph shall accrue carrying costs at DEC's net-of-tax WACC and any amounts in excess of DEC's incremental costs of administering the SPE shall be returned to DEC's retail customers. The expenses incurred by DEC or such affiliate to perform obligations under the Administration Agreement not otherwise recovered through the Storm Recovery Charges will likewise be included in DEC's cost of service.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT ~~NOS. 23 & 24~~ NO. 34**

The evidence supporting these findings and conclusions is contained in the Joint Petition and exhibits, the testimony and exhibits of the witnesses, and the entire record in this proceeding. These findings and conclusions were not contested by any party.

#### **~~On-going Financing Costs~~**

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

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

~~Having reviewed DEC's proposal, the Commission determines that the proposed On-going Financing Costs identified in DEC's Joint Petition and Attachment 4 of the form of IAL qualify as "financing costs" pursuant to N.C. Gen. Stat. § 62-172(a)(4) and are therefore eligible for recovery through a storm recovery charge. Additionally, consistent with the Commission's conclusions for Finding of Fact Nos. 20 and 22, the Commission reiterates that it is appropriate for DEC to credit back to customers all periodic servicing and administration fees in excess of DEC's or an affiliate of DEC's incremental cost of performing the servicer or administrator function in the next rate case when costs and revenues associated with the servicing and administration fees will be included in DEC's cost of service.~~

### ~~EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 25~~

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

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

### **STORM RECOVERY CHARGES**

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. ~~26—2935-38~~**

The evidence supporting these findings and conclusions is contained in the Joint Petition and exhibits, the testimony and exhibits of the witnesses, and the entire record in this proceeding. These findings and conclusions were not contested by any party.

#### **Imposition and Computation of Storm Recovery Charges**

DEC seeks authorization to collect from its customers, in the manner provided in this Financing Order and/or the Tariffs approved hereby, Storm Recovery Charges in an amount sufficient to provide for the timely payment of principal of and interest on the Storm Recovery Bonds and all other On-going Financing Costs as described in the Evidence and Conclusions for Finding of Fact Nos. ~~23 & 245-8 and 12-18.~~

To repay the Storm Recovery Bonds and On-going Financing Costs, DEC is hereby authorized to implement Storm Recovery Charges to be collected on a per-kWh basis from all applicable customer rate classes until the Storm Recovery Bonds and associated Financing Costs are paid in full. The Storm Recovery Charges are nonbypassable, and must be paid by all existing or future retail customers receiving transmission or distribution services from DEC or its successors or assignees under Commission-approved rate schedules or under special contracts, even if the retail customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of

public utilities in this state. See N.C. Gen. Stat. § 62-172(a)(13) and (b)(3)b.4. In the event there is a fundamental change in the regulation of public utilities, the Storm Recovery Charges shall be collected in a manner that will not adversely affect the rating on the Storm Recovery Bonds.

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

DEC applied the allocation factors to the customer rate classes in the manner in which these costs or their equivalent costs were allocated in the cost-of-service study proposed by DEC in Docket No. E-7, Sub 1214, as required by the Securitization Statute. DEC used the allocation factors as well as the sales forecast (based on the 2021 retail sales forecast filed in the Company's most recent Integrated Resource Plan) to calculate the proposed initial Storm-Recovery Charge per kWh by customer rate class. The resulting Storm Recovery Charges were then set forth in proposed Tariffs, as shown in witness ~~Jonathan~~ Byrd's Exhibit 2, needed to implement the Storm Recovery Charge.

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

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

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

In the event DEC chooses to issue Storm Recovery Bonds to a trust or another SPE, as described in Finding of Fact No. 14, the obligations of customers



of DEC to pay relevant storm recovery bonds shall not be joint and several with customers of the other utility meaning that each storm recovery charge shall only be adjusted pursuant to the True-up Mechanism to ensure the collection of amounts sufficient to pay principal of, interest on and ~~other on~~On-going ~~financing costs~~Financing Costs related to the relevant storm recovery bonds.

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

This Commission anticipates stress case analyses, as described in witness Atkins' testimony, will show that the broad-based nature of the True-Up Mechanism under N.C. Gen. Stat. § 62-172(b)(3)b.6., and the State Pledge under N.C. Gen. Stat. § 62-172(k), will serve to minimize credit risk associated with the Storm Recovery Bonds (i.e., that sufficient funds will be available and paid to discharge the principal and interest when due).

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. ~~30 & 31~~39-40**

The evidence supporting these findings and conclusions is contained in the Joint Petition and exhibits, the testimony and exhibits of the witnesses, and the entire record in this proceeding. These findings and conclusions were not contested by any party.

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

DEC submitted a proposed Tariff included as Byrd DEC Exhibit 2 attached to witness Byrd's testimony to impose the Storm Recovery Charge. Pursuant to N.C. Gen. Stat. § 62-172(d)(1), the tariffs ~~must~~shall "explicitly reflect that a portion of the charges on such bill represents storm recovery charges approved in a

financing order issued to the public utility and, if the storm recovery property has been transferred to an assignee, must include a statement to the effect that the assignee is the owner of the rights to storm recovery charges and that the public utility or other entity, if applicable, is acting as a collection agent or servicer for the assignee.” In addition, the “tariff applicable to customers must indicate the storm recovery charge and the ownership of the charge.” N.C. Gen. Stat. § ~~62-172(d)(1)~~.

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

In addition, and in accordance with N.C. Gen. Stat. § 62-172(d)(2), the Commission determines that DEC’s applicable Storm Recovery Charge ~~must~~shall be recognized as a separate line item on retail customer bills entitled Storm Securitization Charge and include both the rate and the amount of the charge. Moreover, all electric bills issued by DEC must state that, as approved in a financing order, all rights to the Storm Recovery Charge are owned by the SPE and that DEC is acting as collection agent or servicer for its SPE.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3241**

The evidence supporting these findings and conclusions is contained in the Joint Petition and exhibits, the testimony and exhibits of the witnesses, and the entire record in this proceeding. These findings and conclusions were not contested by any party.

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

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

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

Consistent with Section N.C. Gen. Stat. § 62-172(b)(3)d., DEC proposed to file with the Commission at least semi-annually (and at least quarterly beginning

12 months prior to ~~the last scheduled payment date for the latest maturing tranche of a series of Storm Recovery Bonds) a-~~ letter applying the formula-based True-Up Mechanism and, based on estimates of consumption for each rate class and other mathematical factors, requesting administrative approval to make the necessary adjustments.

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

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

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

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

The "Periodic Payment Requirement" will be composed of the following components for each collection period: (i) ~~the~~ payments of the principal of and interest on the Storm Recovery Bonds issued by the SPE, in accordance with the expected amortization schedule, including deficiencies on past-due principal and interest for any reason, (ii) ~~On-going~~ Financing Costs payable during the collection period and the costs of funding and/or replenishing the Capital Subaccount and any other credit enhancements established in connection with the Storm Recovery Bonds and other related fees and expenses.

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

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

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

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

## **ISSUANCE ADVICE LETTER**

### **BOND TEAM**

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3342—47**

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

DEC's Joint Petition states that the Securitization Statute does not contemplate Commission involvement in the bond issuance process following granting of a financing order, but that in some public utility bond offerings, state utility commission have elected or have been statutorily required to participate in

the bond issuance process. (Joint Petition, 16-17.) Therefore, DEC and DEP proposed, to the extent the Commission so chose, to provide a Commissioner or Commission Staff member (a Designated Representative) with timely information to allow for the Designated Representative's participation in the actual structuring, pricing, and issuance of the storm recovery bonds, and indicated that the proposed financing order implemented such continued Commission involvement. (Id.)

In its testimony, the Public Staff proposed that it and its Consultant "serve as joint-decision maker with [DEC] in all matters related to the structuring, marketing and pricing of the proposed storm recovery bonds." (Tr. vol. 3, 360.) Specifically, the Public Staff proposed that the Commission direct its Consultant "to disapprove any decision that would not result in the lowest all-in cost of funds and the lowest storm recovery charges to ratepayers." (Tr. vol. 3, 363.)

In support of its proposal, the Public Staff Consultants first argued that in the 2016 DEF transaction, DEF utilized a bond team where "other participants" were "joint decision makers with DEF on all matters related to the structuring, marketing and pricing of those [r]atepayer backed bonds." (Id. at 244.) The Public Staff Consultants also argued that without their having joint decision-making authority, "there would be no one with a fiduciary duty to work in the best interests of ratepayers," that the Companies only have a fiduciary duty to shareholders, and that as financial advisor to the Public Staff, "Saber Partners considers itself as having a fiduciary duty to North Carolina ratepayers." (Tr. vol. 3, 284.) Additionally, the Public Staff Consultants argue that the Storm Recovery Bonds are not "normal utility bonds subject to standard review and approval in the ratemaking process," and that "once storm recovery bonds are issued, the ratepayer bears all the costs directly," "there is no material risk to the utilities..." (Tr. vol. 3, 331-232, 347.)

Public Staff Consultants also argue that they "are expected to participate on the bond team with a view protecting their own interests," citing to N.C. Gen. Stat. § 62-15(d) in support of their joint-decision-making proposal. (Tr. vol. 2, 77.) They argue that the Public Staff has been given an "express legislative mandate to advocate and protect ratepayers," and therefore should have a joint decision-making role on the bond team. (Id.) They also argue that the Commission has authority to grant the Public Staff and its Consultant decision-making authority pursuant to N.C. Gen. Stat. § 62-172(b)(3)b. (Id. at 92.)

On rebuttal, the Companies rejected the Public Staff and its Consultants' bond team proposal and argued that it was "extraordinary" and "unprecedented." Witness Heath first explained that the Companies have many years of experience in issuing long-term debt to both public and private investors, and that the Companies have been successful in doing so. (Tr. vol. 1, 71.) In his opinion, he testified that the storm recovery bonds proposed for issuance were not materially different from other long-term debt issuances by the Companies, and rejected the Public Staff's notion that the Companies would not have their customers' best interests at heart and mind when structuring, marketing, and pricing the storm recovery bonds. (Id. at 72.) He further testified that the Companies were capable

of managing the issuance of the storm recovery bonds and competently willing to certify that such bonds would be issued in a manner consistent with the Statutory Cost Objectives contained in the Securitization Statute. (Id. at 73.)

Next, witness Heath reiterated that the Securitization Statute does not contemplate Commission or intervenor involvement post-issuance of a financing order. (Tr. vol. 1, 88.) He explained that this is consistent with the manner in which the Commission handles other topics of significance to utility customers in North Carolina. (Id.) He further explained that he was not aware of any North Carolina law or rule that allows the Public Staff and other intervenors to directly participate in a utility's day to day activities such as bond issuances, and that it was not common North Carolina regulatory practice for even the Commission, let alone an intervenor such as the Public Staff, to be involved in a utility's day to day activities or have decision-making authority over such activities. (Id. at 89-90.) Witness Heath also questioned and expressed concern over how such decision-making authority could implicate liabilities under the federal securities laws. (Id. at 90-91.) Because the structure that the North Carolina legislature selected in adopting N.C. Gen. Stat. § 62-172 involves the public utility or an assignee of the public utility as the issuer of the storm recovery bonds, primary securities law liability and contractual liability rests with the public utility and its assignee and not with the State of North Carolina or with any intervenor to the proceeding. (Id. at 95.)

Next, witness Heath testified that neither the Public Staff nor its Consultant has any explicit legally binding fiduciary duty to DEC and DEP's customers, and explicitly stated that the Public Staff and its Consultant do not have the legal right to be joint decision-makers in any securities offering of a public utility, including this type of securities offering. (Id. at 93-94.) Similar to the Public Staff, he pointed to the 2016 DEF transaction to support his notion that the Public Staff's proposal was extraordinary and unprecedented. He explained that in the 2016 DEF Transaction, the bond team did not have joint decision-making authority with DEF, only a designated representative from DEF and a designated representative of the Commission were joint decision makers. (Id. at 100.) Witness Heath did agree, however, that the Companies were willing to adopt the DEF bond team model if the Commission so decided, comprised of the Companies, their advisor(s) and counsel, and a designated Commissioner or member of Commission staff, including any independent consultants or counsel hired by the Commission to ensure that the structuring, marketing and pricing of the storm recovery bonds will achieve the Statutory Cost Objectives. (Tr. vol. 1, 103-04.) Under this model, and similar to the DEF transaction, a designated representative of the Companies and a member of the Commission or Commission staff, as a designated representative of the Commission, would be joint decision makers in all aspects of structuring, marketing, and pricing of the storm recovery bonds except for those recommendations that in the sole view of the Companies would expose either Company or any SPE to liability. (Id. at 104.) Also on rebuttal, witness Atkins supported Mr. Heath's characterization of the Public Staff's proposal as unprecedented, stating that he was not aware of, and the Public Staff Consultants had not presented any evidence of, any previous utility securitization transaction

sponsored by an investor-owned utility where an intervenor was a member of a post-financing order bond team, or any case where an intervenor had “co-equal” or “joint” decision-making authority with designated representatives of the Commission and the sponsoring utility.

At the hearing, Public Staff witness Maher acknowledged on cross-examination that his statement that the Companies would not be incented to issue the bonds at the lowest cost was a presumption on his part and that he didn't have any independent evidence to support it. (Tr. vol. 3, 425-26.) Public Staff witness Sutherland agreed with counsel for the Companies that none of his exhibits demonstrating interest rate savings on transactions that utilized the Public Staff Consultant's recommended best practices, such as joint decision-making authority, included transactions where a state consumer advocate or state agency, other than a utilities commission, was a decision-maker. (Tr. vol. 3, 181.) Last, Public Staff witness Klein agreed that there are no other provisions of North Carolina law or Commission regulations.

### **Discussions and Conclusions**

The Public Staff and its Consultants cite to N.C. Gen. Stat. § 62-15(d) and N.C. Gen. Stat. § 62-172(b)(3)b.12. to state they have been granted implied authority by the North Carolina General Assembly to have a decision-making role over the structuring, marketing, and pricing of the storm recovery bonds post-issuance of a Financing Order. (Tr. vol. 4, 138-139; Tr. vol. 2, 220-21.) The Public Staff's interpretation of these statutes is incorrect; nothing in North Carolina law grants, and this Commission has never granted, the Public Staff authority to make management decisions and participate in day-to-day activities such as the issuance of a public utility's securities and will not do so now.

Public Staff and its Consultants first cite to N.C. Gen. Stat. § 62-15(d) to argue that because they are a statutory intervenor, they are more than just a party to this proceeding and therefore should be granted decision-making authority on a bond team. N.C. Gen. Stat. § 62-15(d) states:

It shall be the duty and responsibility of the public staff to: (1) Review, investigate, and make appropriate recommendations to the Commission with respect to the reasonableness of rates charged or proposed to be charged by any public utility and with respect to the consistency of such rates with the public policy of assuring an energy supply adequate to protect the public health and safety and to promote the general welfare;

(2) Review, investigate, and make appropriate recommendations to the Commission with respect to

the service furnished, or proposed to be furnished by any public utility;

(3) Intervene on behalf of the using and consuming public, in all Commission proceedings affecting the rates or service of any public utility;

(Id.; Tr. vol. 2, 77-78.)

As the North Carolina Supreme Court recently held in State ex rel. Utilities Commission v. Stein, “the cardinal principle of statutory construction is that the words of the statute must be given the meaning which will carry out the intent of the Legislature” and that the legislative “intent must be found from the language of the act...” Stein, 851 S.E.2d 237, 263–64 (N.C. 2020) (citing Milk Commission v. Food Stores, 270 N.C. 323, 332–33, 154 S.E.2d 548, 555 (1967). The plain language of N.C. Gen. Stat. § 62-15(d) does not grant the Public Staff (or its Consultants) decision-making authority in Commission proceedings or over a utilities’ securities offering.

N.C. Gen. Stat. § 62-15 grants the Public Staff authority to “intervene” and “review, investigate, and make appropriate recommendations to the Commission...” in utility proceedings. None of these directives equate to decision-making authority during a securities offering, or more specifically, decision-making authority over the Companies’ day-to-day activities such as the structuring marketing and pricing of securities, including storm recovery bonds. Pursuant to N.C. Gen. Stat. § 62-15(d), the Public Staff is only granted authority to make *recommendations* to the Commission, not make rulings or decisions in utility proceedings.

The Commission’s implementation of N.C. Gen. Stat. § 62-15, as well as general North Carolina regulatory practice, similarly supports the Companies’ interpretation that the statute does not grant the Public Staff superior rights to other parties to a proceeding or decision-making authority. As Mr. Heath testified, the Companies are unaware of any instances where the Public Staff (or any party other than the Commission) has been granted decision-making authority in a utility proceeding. (Tr. vol. 1, 94-5.) The Public Staff also provided no precedent in support of its proposal.

The only evidence the Public Staff and its Consultants actually put forth in support of their unprecedented decision-making proposal is a citation to N.C. Gen. Stat. § 62-172(b)(3)b.12., which states that the Commission may include in a financing order “[a]ny other conditions not otherwise inconsistent with this section that the Commission determines are appropriate.” However, as first explained by witness Heath, this provision cannot be used as a “catch all” to expand the scope of the Securitization Statute or create conditions in a financing order that do not adhere to the plain terms and requirements of the Securitization Statute. (Tr. vol. 1, 86.)



By the plain terms of the Securitization Statute, the Commission, and not the Public Staff, is granted decision-making authority to issue a financing order. N.C. Gen. Stat. § 62-172(b)(3)b. Furthermore, the Commission is required to make certain findings with respect to an offering of Storm Recovery Bonds, not the Public Staff. N.C. Gen. Stat. § 62-172(b)(3)b. According to the Securitization Statute, the Commission, and not the Public Staff, creates the storm recovery property which provides the security for the issuance of storm recovery bonds. N.C. Gen. Stat. § 62-172(a)(7). It is also the public utility, not the Public Staff or its Consultant, that is responsible for ensuring the structuring, marketing and pricing of the storm recovery bonds and the resulting storm recovery charge are in accordance with the financing order and the statute. (N.C. Gen. Stat. § 62-172(b)(3)b.10.)<sup>16</sup> The Securitization Statute additionally requires the Commission to grant the public utility, not the Public Staff or its Consultants, a degree of flexibility in establishing the terms and conditions of the storm recovery bonds, including, but not limited to repayment scheduled, expected interest rates, and other financing costs. (N.C. Gen. Stat. § 62-172(b)(3)b.8.)

Because of these disparate duties and obligations placed upon the Commission and the Company, the Commission finds it is “inconsistent with,” and a dramatic expansion of the scope of the Securitization Statute as well as N.C. Gen. Stat. § 62-15 for the Public Staff and its Consultant (or any other intervenor) to have decision-making authority over the structuring, marketing, and pricing of the storm recovery bonds.

The Commission additionally finds persuasive the fact that no intervenor or state consumer advocate agency has ever been granted decision-making authority on a utility securitization such as this. The Commission, however, will, as the Public Staff proposes, look to the 2016 DEF transaction bond team model as precedent. Although the Companies clarified through rebuttal testimony and testimony at the hearing that the bond team model the Public Staff and its Consultant proposes differs from the bond team model used in the 2016 DEF Transaction, the Public Staff and its Consultants, support this model. Moreover, as Companies witness Heath testified, the Companies do as well. Most importantly, all parties agree that the 2016 DEF transaction was successful, and resulted in significant customer savings. The Commission therefore finds it reasonable and appropriate to create a Bond Team model similar to that created in the 2016 DEF transaction as described by witness Heath. Accordingly, to implement this Bond Team, the Companies shall adhere to the findings below.

DEC, its structuring advisor and counsel, and a designated Commissioner or a designated representative of Commission staff and its independent

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<sup>16</sup> A requirement that, after the final terms of an issuance of storm recovery bonds have been established and before the issuance of storm recovery bonds, the public utility determines the resulting initial storm recovery charge in accordance with the financing order and that such initial storm recovery charge be final and effective upon the issuance of such storm recovery bonds without further Commission action so long as the storm recovery charge is consistent with the financing order.

consultants and counsel shall serve on the Bond Team. The Public Staff, Underwriters and their respective consultants and counsel shall be invited to join all Bond Team meetings to allow for multiple voices and suggestions about the best ways to structure, market and price the Storm Recovery Bonds and to review and comment on proposed documents.

One designated representative of DEC and one member of the Commission or Commission staff, as a designated representative of the Commission, shall be joint decision-makers in all aspects of the structuring, marketing and pricing of the Storm Recovery Bonds except for those recommendations that in the sole view of DEC would expose DEC or the SPE to securities law, other potential liability in connection with the offering of Storm Recovery Bonds or other potential contractual law liability. As mentioned in Witness Heath's Rebuttal Testimony, pursuant to federal securities laws, DEC, in its role as "sponsor" and "depositor," and the SPE have strict liability for the accuracy of disclosure documents including the prospectus for the Storm Recovery Bonds and any other materials and information delivered in writing or otherwise provided to investors. DEC agrees Bond Team members, excluding DEC's structuring advisor, should also have equal rights on the hiring decisions for the underwriters and other transaction participants. However, DEC shall have sole right to select and engage all counsel and advisors for DEC, the SPE and the underwriters. The final structure of the transaction, including pricing, shall be subject to review by this Commission for the limited purpose of ensuring that all requirements of the Securitization Statute have been met.

The Commission or a Designated Commissioner (depending on who is the designated Commission joint decision maker) should resolve any issue as to which the designated DEC and the designated Commission joint decision-makers are unable to reach an agreement. If the designated representative of the Commission is a Commissioner, then the full Commission should resolve disputes. If the designated representative is a member of Commission staff then a commissioner designated by the Commission can resolve disputes. Any such matter should be presented by the designated DEC and designated the Commission joint decision-makers by email or in other writing to the Commission or Designated Commissioner. The designated Commissioner or Commission should announce their decision on the matter presented to the designated DEC and designated Commission joint decision-makers by email or other writing as soon as reasonably possible. The parties to this proceeding agree that the decision should be final and not subject to review.

In the event DEC and DEP issue Storm Recovery Bond in a combined transaction as described in Findings of Fact 24 and 25, instead of a designated representative of DEC acting as a joint decision maker, DEC and DEP collectively, will be a joint decision maker through a single designated representative of both companies.

## ISSUANCE ADVICE LETTER PROCESS

### EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 48

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

In their Joint Petition, the Companies proposed an IAL process whereby DEC and DEP certify that the structuring, marketing, and pricing of the storm recovery bonds transparently satisfy the Statutory Cost Objectives, with the Commission having the final say on whether the transaction is consummated or not. (Joint Petition Exhibits B and C, at Appendix C, Attachment 8.)

In direct testimony, Public Staff Consultants requested that the Commission require certifications from the underwriters, the Companies, and the Public Staff's Consultants as to action taken to achieve the lowest costs of funds and the lowest storm recovery charges under market conditions at the time of pricing. (Tr. vol. 3, 230-38, 340-43.) In support of their proposal, the Public Staff Consultants stated that the Companies have a financial incentive to receive the proceeds as quickly and effortlessly as possible, with no liability for the resulting storm recovery charges and arguably no liability in giving the certifications. (Id. at 236.) More specifically, Public Staff Consultants argued that the Companies have specific interests to "raise the full authorized amount in the shortest time possible and with the least possible effort." (Id. at 348.) Additionally, recognizing that the Companies had agreed to offer a certification, the Public Staff argued that whether the Companies were willing to certify to a lowest storm recovery charge was "ambiguous." (Id. at 342-45.)

In his rebuttal testimony, witness Heath explained that the Companies' Joint Petition did in fact propose to deliver certifications to the Commission that adhered to the Securitization Statute's lowest storm recovery charge standard, and otherwise adhered to the Statutory Cost Objectives. (Tr. vol. 1, 83.) He further clarified that the Companies will not price the storm recovery bonds unless they are comfortable that they can deliver the proposed certifications. (Id. at 85.) In addition, witness Heath stated that to the extent the Commission wishes to obtain a certificate from an independent outside consultant, acceptance of the IAL should not be conditioned on the delivery of certifications from parties other than the Companies. (Id. at 107.)

During the hearing, witness Heath explained that the Securitization Statute contained a more stringent cost certification standard than that contained in the 2016 DEF transaction, and reiterated that the Companies were committed to achieving and certifying to the Securitization Statute's lowest storm recovery charge standard. (Tr. vol. 4, 194.) Witnesses for the Public Staff, although on one hand arguing that the Companies needed to be "watch[ed] like a hawk" in order to ensure the Companies' were "more honest," agreed that they had no reason to

believe the Companies would be untruthful about its intent to comply with the Securitization Statute's lowest storm recovery charge standard and provide a certification to that effect to the Commission. (Tr. vol. 3, 403; Tr. vol. 4, 41-42.)

### **Discussions and Conclusions**

N.C. Gen. Stat. § 62-172(b)(3)b.3. requires this Commission to find that the structuring and pricing of the Storm Recovery Bonds are reasonably expected to result in the lowest storm recovery charges consistent with market conditions at the time the Storm Recovery Bonds are priced and the terms set forth in such Financing Order. Additionally, N.C. Gen. Stat. § 62-172(b)(3)b.10 requires the Company to determine the initial Storm Recovery Charge in accordance with this Financing Order.

Appendix C, Attachment 8 to this Financing Order requires:

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

Thus, the Securitization Statute and this Financing Order establish a lowest storm recovery charge standard that the Company must achieve. Moreover, the Securitization Statute and Financing Order create a legal obligation upon the Company to certify to achieving this standard in order for the Commission to approve the Company's IAL and allow the actual issuance of the Storm Recovery Bonds to go forth.

Because of the stringent lowest storm recovery charges standard, as well as the Company's legal obligation to adhere to, and achieve such, the Commission finds it reasonable and appropriate to condition approval of the Company's IAL

and the issuance of the final Storm Recovery Bonds upon the Company's certification only. The Commission will not condition approval of the Company's IAL or final issuance of the Storm Recovery Bonds on receipt of any other party's certification than the Company's.

Although the Public Staff requests that approval of the Company's IAL and issuance of the Storm Recovery Bonds be conditioned upon receipt of certification from the Public Staff's advisor and underwriters, the Commission believes that the Companies' lowest storm recovery charge certification is sufficient. The Public Staff and its Consultants put forth no evidence to support that the Company's certification should for any reason be doubted, and the Company has committed to not price the Storm Recovery Bonds unless they are comfortable that they can deliver the proposed certifications in accordance with the Statutory Cost Objectives and this Financing Order. In sum, the Commission believes the terms of the Securitization Statute and Financing Order adequately ensure that the Company will obtain and certify to a lowest Storm Recovery Charge for the benefit of customers.

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

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

or is unable or unwilling to deliver the required certification in a form acceptable to this Commission. The Commission will not issue an order to stop the transaction for any other reason, including, but not limited to, a change in market conditions after the moment of pricing.

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

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

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

### **MITIGATION OF RATE IMPACTS**

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3449**

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

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

In the DEC SettlementFirst Stipulation, DEC and the Public Staff agreed that to demonstrate quantifiable benefits to customers in accordance with N.C. Gen. Stat. § 62-172(b)(1)g., ~~that~~ DEC must show that the net present value of the costs to customers using securitization is less than the net present value of the costs that would result under traditional storm cost recovery. For purposes of settlement, DEC and the Public Staff also agreed on the assumptions to be used in evaluating whether securitization of the Storm Recovery Costs provides quantifiable customer benefits when compared to traditional storm cost recovery. Specifically, the DEC SettlementFirst Stipulation requires that when conducting this comparison, DEC will make the following assumptions in determining what the “new rates” under the traditional method of recovery would have been absent the issuance of the Storm Recovery Bonds:

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

DEC provided the cost comparison required by N.C. Gen. Stat. § 62-172(b)(1)g. in witness Abernathy’s DEC Exhibit 5-, which was subsequently updated in Abernathy’s DEC Rebuttal Exhibit 1. Abernathy DEC Rebuttal Exhibit 51 calculates both the total estimated net present value of costs to customers under the Storm Recovery Charges as well as the total cumulative costs to customers under the traditional cost recovery method. In addition, witness Abernathy included the aforementioned DEC SettlementFirst Stipulation assumptions in Abernathy DEC Rebuttal Exhibits 5-71-3, and explained in her testimony that the Company utilized the assumptions and adhered to the DEC SettlementFirst Stipulation in calculating its costs for the comparison. Therefore, as an initial matter, the Commission concludes that DEC has provided the necessary comparison required by N.C. Gen. Stat. § 62-172(b)(1)g. and properly adhered to the DEC Settlement-First Stipulation.

As shown in Abernathy DEC Rebuttal Exhibit 51, using the traditional method of cost recovery, the net present value of total retail costs to customers is approximately \$~~180~~184.2 million assuming a 15-year bond period. Using the storm securitization method of cost recovery and recovering Storm Recovery Costs through the Storm Recovery Charge, the net present value of total retail costs to customers is approximately \$~~422~~126.7 million assuming a 15-year bond period and approximately \$116.3 million assuming a 20-year bond period. This results in approximately \$~~58~~57.5 million, or approximately ~~32.0~~31.2 percent, in quantifiable benefits to customers assuming a 15-year bond period and approximately \$67.9 million, or approximately 36.9 percent, in quantifiable benefits to customers assuming a 20-year bond period. The calculation of ~~these~~the 15-year costs are detailed in Abernathy DEC Rebuttal Exhibits 5, 6 and 7, 2, and 3 and the calculation of the 20-year costs are detailed in Abernathy Rebuttal Exhibits 4 and 5.

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

## FLEXIBILITY

### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3550**

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

In this Financing Order, we approve the financing of DEC's Storm Recovery Costs and Up-front Financing Costs through Storm Recovery Bonds with terms to be established by DEC, at the time of pricing, subject to compliance with the IAL procedures outlined in this Financing Order. As discussed above, in the Evidence and Conclusions for Finding of Fact No. 3449, DEC provided testimony establishing that the proposed issuance of Storm Recovery Bonds by DEC and the imposition and collection of the Storm Recovery Charge from DEC's retail customers are expected to provided quantifiable benefits to such customers as compared to the costs that would have been incurred absent the issuance of Storm Recovery Bonds.

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



DEC proposed that its SPE issue Storm Recovery Bonds with a scheduled final payment date of ~~no more than 15~~between, and inclusive of, 18 and 20 years from the date of the issuance of the Storm Recovery Bonds and that the legal maturity date may be longer in accordance with rating agency requirements. Pursuant to witness Atkins' testimony, this difference provides additional credit protection, allowing shortfalls in principal payments to be recovered over an additional time period and therefore helping in achieving the targeted AAA or equivalent ratings. The Commission finds that the recovery period proposed by DEC to recover the Storm Recovery Charges is appropriate.

~~We find~~The Commission finds that Storm Recovery Bonds should be issued in one or more series, each series of Storm Recovery Bonds should be issued in one or more tranches, and the Storm Recovery Bonds should be structured by DEC to achieve the Statutory Cost Objectives. Further, the Storm Recovery Bonds shall be structured such that the expected payment of the principal of and interest on the Storm Recovery Bonds is expected to be substantially level on an annual basis over those expected terms.

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

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

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

## CONCLUSION

### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3651**

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

IT IS, THEREFORE, SO ORDERED, as follows:

#### **Approvals**

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

2. Approval of Second Stipulation. The Second Stipulation filed by the Companies and the Public Staff is hereby approved in its entirety.

2.3. Authority to Securitize. DEC's Joint Petition for Financing Orders authorizing the issuances by DEC and DEP of storm recovery bonds in one or more series is granted, subject to the terms set forth in the body of this Financing Order and the related financing order for DEP. DEC is hereby authorized to issue Storm Recovery Bonds secured by the pledge of Storm Recovery Property, in one or more series in an aggregate principal amount not to exceed the Securitizable Balance (as of the date the first series of Storm Recovery Bonds are issued). The proceeds are to be used to finance the equivalent of (i) recovery of Storm Recovery Costs, which includes Carrying Costs necessary to account for the number of days, as applicable, either greater than or less than assumed in the carrying costs Carrying Costs calculation, calculated at the Company's approved weighted average cost WACC as adjusted in the IAL in accordance with any determination of capital plus this Commission as a result of the limited audit performed by the Public Staff within 60 days of March 5, 2021, and described in this Financing Order (ii) recovery of the Up-front Financing Costs incurred in connection with issuance of the Storm Recovery Bonds. Carrying Costs and Up-front Financing Costs are subject to update, adjustment and approval pursuant to the terms of this Financing Order and the IAL procedures as provided by this Financing Order.

**3.4. Approval of Regulatory Asset.** DEC's request to establish a regulatory liability or regulatory asset in an amount equal to ~~defer any prudently incurred excess amounts of~~ the difference between Up-front Financing Costs identified in the final IAL and actual Up-front Financing Costs incurred and that the regulatory asset and regulatory liability shall accrue carrying costs at DEC's net-of-tax WACC returns is approved.

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

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

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

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

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

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

~~40.~~**11. Mitigation of Rate Impacts.** DEC's comparison between the net present value of the costs to customers that are estimated to result from Storm Recovery Bonds and the costs that would result from the application of the traditional method of financing and recovering Storm Recovery Costs from customers satisfies the terms of the DEC First Settlement.

12. **Composition of Bond Team.** DEC, its designated advisor(s) and counsel, and a designated Commissioner or member of Commission staff, including any independent consultants or counsel hired by the Commission should serve on the Bond Team.

13. **Joint-Decision-Making on Bond Team.** One designated representative of DEC and one member of the Commission or Commission staff, as a designated representative of the Commission, shall be joint decision-makers in all decisions of the Bond Team (see Ordering Paragraph 13). The [Commission] or a [Designated Commissioner] should resolve any issue as to which the designated DEC and the designated Commission joint decision-makers are unable to reach an agreement except for those issues that in the sole view of DEC would expose DEC or the SPE to securities law, other potential liability in connection with the offering of Storm Recovery Bonds or other potential contractual law liability. Any such matter should be presented by the designated DEC and the designated Commission joint decision-makers by email or in other writing to the Commission or Designated Commissioner. The designated Commissioner or Commission should announce their decision on the matter presented to the designated DEC and designated Commission joint decision-makers by email or other writing as soon as reasonably possible. The parties to this proceeding agree that the decision should be final and not subject to review.

14. **Roles of the Bond Team.** The Bond Team shall be involved, in advance, in all aspects of the structuring, marketing and pricing of the storm recovery bonds except for those recommendations that in the sole view of DEC would expose DEC or the SPE to securities law, other potential liability in connection with the offering of Storm Recovery Bonds or other potential contractual law liability. Members of the Bond Team, excluding DEC's structuring advisor, should also have equal rights on the hiring decisions for the underwriters and other transaction participants. However, DEC shall have sole right to select and engage all counsel and advisors for DEC, the SPE and the underwriters. The final structure of the transaction, including pricing, shall be subject to review by this Commission for the limited purpose of ensuring that all requirements of the Securitization Statute have been met.

## Reports and Accounting

~~44.~~**15. Issuance Advice Letter.** DEC shall file a combined IAL/TUAL in final form with the Commission within one business day after actual pricing, substantially in the form of Appendix C to this Financing Order describing the final structure and terms of the Storm Recovery Bond issuance, including an updated

accounting of the Up-front Financing Costs and the final Carrying Costs. Finally, the combined IAL/TUAL shall include certifications from DEC if required, that the structuring, marketing, pricing and Financing Costs of the Storm Recovery Bonds achieved the Statutory Cost Objectives. Unless the Commission issues an order stopping the Storm Recovery Bond issuance before noon on the third business day after pricing because the Commission determines that the IAL/TUAL and all required certifications have not been delivered or the transaction does not comply with the Standards of this Financing Order, the transaction proceeds without any further action of this Commission. The Commission shall only issue an order to stop the transaction if the Commission determines that (a) the transaction does not comply with the Standards of this Financing Order, or (b) DEC has not delivered the required certification in a form acceptable to the Commission.

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

**42-16. True-Up Adjustment Letter.** DEC or its assignee(s) are authorized to recover the Periodic Payment Requirement and shall file with the Commission at least semi-annually (and at least quarterly beginning 12 months prior to the last scheduled payment date of the latest maturing tranche of Storm Recovery Bonds) a TUAL as described in this Financing Order and shall be based upon the cumulative differences, regardless of the reason, between the Periodic Payment Requirement and the actual amount of Storm Recovery Charge remittances to the indenture trustee for the series of Storm Recovery Bonds. Upon the filing of a TUAL made pursuant to this Financing Order, the Commission shall either administratively approve the requested true-up calculation in writing or inform the servicer of any mathematical or clerical errors in its calculation as expeditiously as possible, but no later than 30 days following the servicer's true-up filing. Notification and correction of any mathematical or clerical errors shall be made so that the true-up is implemented within 30 days of the servicer's filing of a TUAL and no potential modification to correct an error in a TUAL shall delay its effective date and any correction or modification which could not be made prior to the effective date shall be made in the next TUAL. Upon administrative approval or the passage of 30 days without notification of a mathematical or clerical error, no further action of this Commission will be required prior to implementation of the true-up.

**43-17. Changes to Storm Recovery Charges.** Upon any change to customer rates and charges stemming from the True-Up Mechanism, DEC shall file appropriately-revised tariff sheets with this Commission, *provided, however*, that approval of the Storm Recovery Charges shall not be delayed or otherwise adversely impacted by the Commission's decision with respect to the tariff.

**18. Public Staff Limited Audit of the Other On-going Financing Costs.** The Public Staff shall be permitted to perform a limited audit of the Other On-going Financing Costs as described in this Financing Order and present its findings to the Commission, provided, however, that unless an adjustment to the Storm Recovery Charges is necessary to correct for a mathematical or clerical error, the Commission shall not make any adjustments to Storm Recovery Charges as a result of the Public Staff's audit.

**44-19. Special Purpose Trust.** In the alternative to directly issuing and marketing the Storm Recovery Bonds to unaffiliated investors through either a registered public offering or unregistered exempt offering, the Storm Recovery Bonds may be sold to a single special purpose trust established by Duke Energy Corporation, parent of DEC as described in the Discussion and Conclusions.

**45-20. Imposition and Collection, Nonbypassability.** DEC is authorized to impose, bill, charge, collect, receive, and adjust from time to time pursuant to the True-Up Mechanism (as described in this Financing Order) a Storm Recovery Charge, to be collected on a per kWh basis from each of its existing and future retail customers until the related Storm Recovery Bonds are paid in full and all related Financing Costs and other costs of the bonds have been recovered in full. Such Storm Recovery Charges shall be nonbypassable charges that are separate and apart from DEC's base rates and shall be paid by all DEC jurisdictional existing and future customers receiving transmission or distribution service, or both, from DEC or its successors or assignees under Commission-approved rate schedules as provided in this Financing Order. Such Storm Recovery Charges shall be in amounts sufficient to ensure the timely recovery of DEC's Storm Recovery Costs and Financing Costs (Up-front and On-going) detailed in this Financing Order and the IAL (including payment of principal of and interest on the Storm Recovery Bonds).

**46-21. Allocation.** The Storm Recovery Charges shall be allocated to the customer rate classes in accordance with the description included in witness Abernathy's testimony, in the manner in which these costs or its equivalent were allocated in the cost-of-service study filed by the Company and approved on \_\_\_\_ in the DEC Rate Order, until altered by a subsequent rate case order.

**47-22. Collection Period.** This Financing Order and the Storm Recovery Charges authorized hereby shall remain in effect until the Storm Recovery Bonds and all Financing Costs (including tax liabilities) related thereto have been paid or recovered in full. This Financing Order shall remain in effect and unabated notwithstanding the reorganization, bankruptcy, or other insolvency proceedings of DEC or its successors or assignees.

\_\_\_\_ Following repayment of Storm Recovery Bonds and the relevant Financing Costs authorized in this Financing Order and release of the funds by the indenture trustee, each SPE shall distribute the final balance of its Collection Account to DEC and DEC shall credit other electric rates and charges by a like amount, less the

amount in the Tail-end Subaccount, which shall be recorded as a regulatory liability for remittance to Customers in DEC's next rate case and the amount of the relevant Capital Subaccount and any unpaid return on invested capital due to DEC as set forth in the body of this Financing Order, which shall be returned to DEC.

**18-23. Ownership Notification and Separate Line Item Charge.** The electric bills of DEC must explicitly reflect that a portion of the charges on such bill represents Storm Recovery Charges approved in this Financing Order and must include a statement to the effect that the SPE is the owner of the rights to Storm Recovery Charges and that DEC is acting as servicer for the SPE. The tariff applicable to customers must indicate the Storm Recovery Charge and the ownership of that charge. DEC shall identify amounts owed with respect to its Storm Recovery Property as a separate line item on individual electric bills.

### **Storm Recovery Property**

**19-24. Outside Costs.** Costs associated with the Commission or Public Staff's outside consultant and outside counsel, to the extent such costs are eligible for compensation and approved for payment under the terms of such party's contractual arrangements with the Commission or Public Staff, as such arrangements may be modified by any amendment entered into at the Commission or Public Staff's sole discretion, will qualify as Up-front Financing Costs and be paid from proceeds of Storm Recovery Bonds.

**20-25. Creation of Storm Recovery Property.** The creation of the DEC's Storm Recovery Property as described in this Financing Order is approved and, upon transfer of the Storm Recovery Property to the SPE, shall be created, and shall consist of: (1) all rights and interests of DEC or its successors or assignees under this Financing Order, including the right to impose, bill, charge, collect, and receive Storm Recovery Charges authorized in this Financing Order and to obtain periodic adjustments to such charges as provided in this Financing Order, and (2) all revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in this Financing Order, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, charged, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds. The creation of Storm Recovery Property is conditioned upon, and shall be simultaneous with, the sale or other transfer of the Storm Recovery Property to the SPE, the issuance of the Storm Recovery Bonds and the pledge of the Storm Recovery Property to secure a series of Storm Recovery Bonds.

**21-26. Irrevocability.** Upon the earlier of either (i) the transfer of the Storm Recovery Property or (ii) issuance of the Storm Recovery Bonds, this Financing Order is irrevocable and, except for changes made pursuant to the formula-based mechanism authorized in this Financing Order, the Commission may not amend, modify, or terminate this Financing Order by any subsequent action or reduce,

impair, postpone, terminate, or otherwise adjust the Storm Recovery Charges approved in this Financing Order.

### Structure of Securitization

**22-27. SPE.** DEC is authorized to form one or more SPEs to be structured as discussed in this Financing Order. DEC is authorized to execute one or more LLC Agreements, consistent with the form included as Heath Exhibit 2e to witness Heath's testimony and the terms and conditions of this Financing Order. The SPE shall be funded with an amount of capital that is sufficient for the SPE to carry out its intended functions as contemplated in the Joint Petition and this Financing Order. The Commission approves an initial capital contribution of 0.5 percent of the initial aggregate principal amount of a series of Storm Recovery Bonds. The capital contributions by DEC to the SPE shall be funded by DEC and not from the proceeds of the sale of Storm Recovery Bonds. DEC will be permitted to earn a rate of return on its invested capital in its SPE equal to the rate of interest payable on the longest maturing tranche of Storm Recovery Bonds and this return on invested capital should be a component of the Periodic Payment Requirement.

**23-28. Servicing and Administration Fees.** The servicing and administration fees collected by DEC or any affiliate of DEC, acting as either the servicer or the administrator under the Servicing Agreement or Administration Agreement, respectively, will be ~~included~~recorded in ~~DEC's cost of service such that DEC will credit back all periodic servicing fees in excess of DEC's or an affiliate of DEC's incremental costs of performing servicing as administration functions.~~a regulatory liability account, established separate and apart from any regulatory liability account established for Other On-going Financing Costs. The expenses incurred by DEC, or such affiliate to perform obligations under the Servicing Agreement or Administration Agreement ~~not otherwise recovered through the Storm Recovery Charges~~ will likewise be ~~included~~recorded in a regulatory asset account established separate and apart from any other regulatory asset account established for Other On-going Financing Costs. Any such regulatory asset or liability account established pursuant to this ordering paragraph shall accrue carrying costs at DEC's net-of-tax WACC, and be considered for recovery from or returned to customers in DEC's ~~cost of service~~next general rate case.

**24-29. DEC as Servicer.** DEC shall act as initial servicer under the proposed financing transaction, and is granted flexibility to act as initial servicer pursuant to the Servicing Agreement discussed in this Financing Order.

**25-30. Third Party Supplier.** If the State of North Carolina or this Commission decides to allow billing, collection and remittance of the Storm Recovery Charges by a third party supplier within the DEC service territory, such authorization will be consistent with the rating agencies' requirements necessary for the Storm Recovery Bonds and SRB Securities to receive and maintain the targeted triple-A rating or equivalent as described in Findings of Fact No. 17.



**26-31. Issuance.** In accordance with the terms of this Financing Order and subject to the criteria and procedures described herein, the SPE is authorized to issue Storm Recovery Bonds in an aggregate principal amount not to exceed the Securitizable Balance (as of the date the Storm Recovery Bonds are issued) and may pledge to an indenture trustee, as collateral for payment of the Storm Recovery Bonds, the Storm Recovery Property, including the SPE's right to receive the related Storm Recovery Charges as and when collected, the SPE's rights under the Servicing Agreement and other collateral described in the Indenture. As provided in N.C. Gen. Stat. § 62-172(c)(2)., DEC retains sole discretion regarding whether to assign, sell, or otherwise transfer Storm Recovery Property or to cause the Storm Recovery Bonds to be issued, including the right to defer or postpone such assignment, sale, transfer or issuance and this Commission will not refuse to allow DEC to recover Storm Recovery Costs in an otherwise permissible fashion.

**27-32. IRS Safe Harbor Provisions.** DEC shall be responsible to structure the Storm Recovery Bond transactions in a way that complies with the "safe harbor" provisions of IRS Revenue Procedure 2005-62.

ISSUED BY ORDER OF THE COMMISSION.

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

NORTH CAROLINA UTILITIES COMMISSION

**APPENDIX A**

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

Estimated Storm Recovery Costs (incremental O&M costs and capital investments)	\$ 188,374,000
Estimated Carrying Costs through bond issuance date <sup>1</sup>	\$ 37,196,000
Estimated Up-front Financing Costs <sup>2</sup>	\$ 5,230,000
	<hr/>
Estimated Principal Amount of Storm Recovery Bonds	\$ 230,800,000

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

<sup>2</sup> Final Up-front Financing Costs to be included in the Issuance Advice Letter.

APPENDIX B

[Form of Standard True-Up Adjustment Letter]



[ , 20 ]

**VIA ELECTRONIC FILING**

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

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

Dear Clerk Campbell:

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

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

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

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

**APPENDIX B**

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

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

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

Respectfully submitted,

Duke Energy Carolinas, LLC

Attachments

**Storm Recovery Charge True-up Mechanism Form**  
**For Storm Recovery Charge to be effective \_\_\_\_\_**

Description	Calculation of the True-up (1)	Projected Revenue Requirement to be Billed and Collected (2)	Revenue Requirement for Storm Recovery Charge (1)+(2)=(3)
<b>1 Storm Recovery Bond Repayment Charge (remitted to SPE)</b>			
2			
3 True-up for the Prior Remittance Period Beginning _____ and Ending _____			
4     Principal			
5     Interest			
6     Servicing Costs			
7     Other On-Going Costs*			
8     Total Prior Remittance Period Revenue Requirements(Line 4+5+6+7)	\$ -		
9     Prior Remittance Period Actual Cash Receipt Transfers and Interest income:			
10       Cash Receipts Transferred to the SPE			
11       Interest income on Subaccounts at the SPE			
12     Total Current Period Actual Daily Cash Receipts Transfers and Interest Income(Line 10 + 11)	-		
13 (Over)/Under Collections of Prior Remittance Period Requirements (Line 8+12)	-		
14     Cash in Excess Funds Subaccount	-		
15 Cumulative (Over)/Under Collections through Prior Remittance Period (Line 13+14)	\$ -		\$ -
16			
17			
18 Current Remittance Period Beginning _____ and Ending _____ (E)			
19     Principal			
20     Interest			
21     Servicing Costs			
22     Other On-Going Costs*			
23     Total Current Remittance Period Revenue Requirement(Line 19+20+21+22)	\$ -		
24			
25     Current Remittance Period Cash Receipt Transfers and Interest Income			
26       Cash Receipts Transferred to SPf	(A)	(B)	
27       Interest Income on Subaccounts at SPE	(A)	(B)	
28     Total Current Remittance Period Cash Receipt Transfers and Interest Income(Line 26+27)	\$ -	\$ -	
29 Estimated Current Remittance Period (Over)/Under Collection (Line 23+28)	\$ -	\$ -	\$ -
30			
31			
32 Projected Remittance Period Beginning _____ and Ending _____ (E)			
33     Principal		\$ -	
34     Interest		-	
35     Servicing Costs		-	
36     Other On-Going Costs*		-	
37     Projected Remittance Period Revenue Requirement (Line 33+34+35+36)		\$ -	\$ -
38			
39 Total Revenue Requirements (Line 15+29+37)			\$ -
40     Forecasted kWh Sales for the Projected Remittance Period collections (adjusted for uncollectibles)			(C)
41 Average Retail Storm Recovery Charge per kWh to be effective _____ (Line 39/40)			(D)
42			0
43			
44			

Notes:

- 46 (A) Amounts are based on actual collections for \_\_\_\_ through \_\_\_\_.
- 47 (B) Includes estimated future collections for services rendered through \_\_\_\_\_ that are billed at current rate
- 48 (C) Projected for services rendered \_\_\_\_\_ through \_\_\_\_\_. Collections are assumed to be on a month lag from services rendered date
- 49 (D) Amount will be allocated to each customer class in accordance with allocations approved in last general rate case
- 50 (E) Collections are assumed to be on a month lag from service rendered date

\*Other On-going Costs:

52 Pursuant to the Section XX of the Financing Order, the Other On-Going Costs are subject to review. The Other On-Going Costs for the prior remittance period on Line 7, represent actual on-going costs that may be adjusted as needed for any mathematical or clerical errors. The amounts shown for the current and projected remittance period include estimates that will be adjusted for actual costs in future true-up forms.

Disputed Other On-Going Costs

53 Only adjustments related to mathematical or clerical errors will be included in the Storm Recovery Charge true-up process. Any Other On-Going costs that are disputed for reasons other than mathematical or clerical accuracy, will not be adjusted through the Storm Recovery Charge true-up process. Disputed costs will be addressed in the Company's next general rate case. The total of disputed Other On-Going Costs to-date, not yet resolved in a general rate case, are \_\_\_\_\_.

APPENDIX C

[Form of Issuance Advice Letter]



[ , 20 ]

VIA ELECTRONIC FILING

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

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

Dear Clerk Campbell:

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

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

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

Name of Storm Recovery Bonds: [ ]  
Name of SPE: [ ]  
Name of Storm Recovery Bond Trustee:  
Name of SRB Securities: [SRB Notes]  
Name of SRB Issuer: [ ]  
Name of SRB Trustee: [ ]  
Expected Closing Date: [ ]  
Preliminary Bond Ratings<sup>1</sup>: Moody's, [Aaa(sf)]; Standard & Poor's, [AAA(sf)]; Fitch, [AAAsf] (final ratings to be received prior to closing)  
Total Principal Amount of Storm Recovery Bonds to be Issued (i.e., Amount of Storm Recovery Costs and Up-Front Financing Costs to be Financed): \$[ ] (See Attachment 1)  
Estimated Up-Front Financing Costs: \$[ ] (See Attachment 2)  
Interest Rates and Expected Amortization Schedules of the Storm Recovery Bonds and

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<sup>1</sup> The Company anticipates receiving bond ratings from at least two of the three major rating agencies.

## APPENDIX C

SRB Notes (See Attachment 3):

Distributions to Investors: Semi-annually

Weighted Average Coupon Rate<sup>2</sup>: [ ]%

Annualized Weighted Average Yield<sup>3</sup>: [ ]%

Initial Balance of Capital Subaccount: \$[ ]

Estimated/Actual On-going Financing Costs for first year of Storm Recovery Bonds: \$[ ] (See Attachment 4)

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

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

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

Attachment 5 provides the Revenue Requirements for calculating the Initial Charge. Attachment 6 calculates the Initial Charge based upon the cost allocation formula approved in the Financing

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<sup>2</sup> Weighted by modified duration and principal amount of each tranche.

<sup>3</sup> Weighted by modified duration and principal amount, calculated including selling commissions.

## APPENDIX C

Order. Attachment 7 is a comparison between the net present value of costs to customers that are estimated to result from the issuance of Storm Recovery Bonds and the costs that would result from the application of the traditional method of recovering Storm Recovery Costs from customers. Also attached are the calculations and supporting data for such tables. The Company's certification is Attachment 8.

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

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

Respectfully submitted,

Duke Energy Carolinas, LLC

Attachments



APPENDIX C

**Attachment 1**

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

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

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Attachment 2

**ESTIMATED UP-FRONT FINANCING COSTS**

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

**APPENDIX C**

**Attachment 3**

**EXPECTED AMORTIZATION SCHEDULE**

**A. General Terms**

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

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

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

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

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

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

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

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

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

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

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

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

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

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**Attachment 4**

**ESTIMATED ANNUAL ON-GOING FINANCING COSTS**

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

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

**APPENDIX C**

**Attachment 5**

**REVENUE REQUIREMENT AND INPUT VALUES**

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



**APPENDIX C**

**Attachment 6**

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

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

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

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**Attachment 7**

**Quantifiable Benefits to Customers**

[To be updated]

[Workpapers to be attached]

APPENDIX C

**Attachment 8**

**Form of Company Certification**



[       , 20    ]

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

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

Dear Clerk Campbell,

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

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

Name of Storm Recovery Bonds:

Name of SPE: [    ]

Name of Storm Recovery Bond Trustee:

Name of SRB Issuer: [    ]

Name of SRB Securities: [SRB Notes]

Name of SRB Trustee: [    ]

Closing Date: [       , 20    ]

Preliminary Bond Ratings<sup>4</sup>: Moody’s [Aaa(sf)]; Standard & Poor’s [AAA(sf)]; Fitch [AAAsf] (final ratings to be received prior to closing)

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

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

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

Distributions to Investors: Semi-annually

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<sup>4</sup> The Company anticipates receiving bond ratings from at least two of the three major rating agencies.

## APPENDIX C

Weighted Average Coupon Rate<sup>5</sup>:     %  
Annualized Weighted Average Yield<sup>6</sup>:                     %  
Initial Balance of Capital Subaccount: \$  
Estimated/Actual On-going Financing Costs for first year of Storm Recovery Bonds:  
\$[     ]

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

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

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

<sup>5</sup> Weighted by modified duration and principal amount of each tranche.

<sup>6</sup> Weighted by modified duration and principal amount, calculated including selling commissions.

## APPENDIX C

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

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

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

This certification is being provided to the Commission by the Company in accordance with the terms of the Financing Order, and no one other than the

**APPENDIX C**

Commission shall be entitled to rely on the certification provided herein for any purpose.

Respectfully Submitted,

Duke Energy Carolinas, LLC