

PLACE: Held via Videoconference

DATE: Friday, January 29, 2021

TIME: 2:00 p.m. - 4:49 p.m.

DOCKET NO.: E-2, Sub 1262

E-7, Sub 1243

BEFORE: Chair Charlotte A. Mitchell, Presiding

Commissioner ToNola D. Brown-Bland

Commissioner Lyons Gray

Commissioner Daniel G. Clodfelter

Commissioner Kimberly W. Duffley

Commissioner Jeffrey A. Hughes

Commissioner Floyd B. McKissick, Jr.

IN THE MATTER OF:

Joint Petition of Duke Energy Carolinas, LLC,
and Duke Energy Progress, LLC, for Issuance of Storm
Recovery Financing Orders

VOLUME: 4



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P R O C E E D I N G S:

CHAIR MITCHELL: All right. It's 2:00.
Let's go back on the record, please. Mr. Jeffries,
you may continue.

MR. JEFFRIES: Thank you,
Chair Mitchell. Before the break, I had intended
to provide and question Mr. Fichera about some of
the Florida statutes related to the Office of
Public Counsel down there, but I think, for our
purposes, we would be satisfied if the Commission
would agree to take judicial notice of Florida
Statute 350.0611.

CHAIR MITCHELL: Mr. Jeffries, the
Commission will take judicial notice of the Florida
Statute 350.0611. Did I get that right?

MR. JEFFRIES: You did.

CHAIR MITCHELL: Okay.

MR. JEFFRIES: All right, then.

JOSEPH FICHERA, BRIAN A. MAHER, HYMAN SCHOENBLUM,

AND WILLIAM MOORE,

having first previously duly affirmed, were examined

and continued testifying as follows:

CONTINUED CROSS EXAMINATION BY MR. JEFFRIES:

Q. So, Mr. Fichera, I've got just a few more

1 questions for you, if you bear with me.

2 A. (Joseph Fichera) Absolutely, sir.

3 Q. You would agree with me, would you not, that
4 both DEC and DEP have significant experience in issuing
5 long-term debt in the capital markets, right?

6 A. Traditional utility debt, yes. Not
7 securitization debt, but traditional utility debt,
8 absolutely.

9 Q. Yeah. They have some experience with
10 securitization debt because of the DEF, the Florida
11 transaction, right?

12 A. Well, I don't know how the organization is
13 set up, in terms of DEC and DEP. If they're all
14 handled through the parent company, through Mr. Heath,
15 then I would say yes; but if they all have their
16 separate staffs doing their individual issuance, I
17 would say no. But I don't know the -- I just don't
18 know. Some parents allow their subsidiaries to do
19 various things, others, everything has to be
20 coordinated. If it's coordinated through Mr. Heath,
21 who I worked closely in Florida, then I'd say that he's
22 got one deal under his belt, yes.

23 Q. All right. Thank you. According to
24 Mr. Heath, I believe in his testimony yesterday and his

1 rebuttal testimony, DEC and DEP have approximately
2 \$50 billion in currently outstanding long-term bonds;
3 do you recall reading that in Mr. Heath's testimony?

4 A. Yes. All right. One other thing about the
5 experience, I think two other people that worked on the
6 transaction, I think Brian Buckler, who was intimately
7 involved, just left Duke and now he's president of
8 Oklahoma Gas, he was the one who did most of the -- did
9 testimony and who was the lead. Mr. Heath reported, I
10 believe, to Brian Buckner. He's no longer at Duke.
11 And the general counsel who went through, I think,
12 retired, Bob Lucas. So I think there's new players.
13 There's been turnover at Duke as well. But Tom is
14 still there, and Tom I know.

15 Q. Well, I can assure you that Mr. Lucas is
16 still there as well, but could you address my question,
17 and I'm happy to repeat it, if you --

18 A. Yes. I can't check the exact number, but I
19 know there's a large amount of outstanding debt on the
20 consolidated balance sheet of all of those. I don't
21 know that the \$50 billion goes specifically to those
22 two utilities.

23 Q. Right. Mr. Heath also testified that the
24 costs of this debt, even though it's corporate debt,

1 through the ratemaking process is being paid for by
2 ratepayers -- utility ratepayers within the Company.

3 Do you remember that?

4 A. Yes, I remember that. I think you left out
5 the fact that it's subject to ongoing review and
6 disallowances Mr. Schoenblum talked about, which is a
7 fundamental difference here. This debt is nonrecourse
8 to the -- so paid by the ratepayers directly. The debt
9 that Mr. Heath was referring to is debt of the utility
10 that goes through rate cases subject to cost-of-capital
11 review, prudence, and continuing ongoing review.

12 So it's not the same as this deal where you
13 just tell me what's the interest rate and send the bill
14 to the ratepayer. Their debt goes to their balance
15 sheet, goes into their cost of capital, goes into a
16 rate proceeding, may or may not be allowed, what is
17 allowed is, and then it's still subject to review.

18 Q. (Sound failure.)

19 COURT REPORTER: I missed the beginning
20 of your question, Mr. Jeffries. I lost the
21 beginning of your question, if you could start that
22 over.

23 MR. JEFFRIES: Yes, yes.

24 Q. Mr. Fichera, do you also recall Mr. Heath

1 testifying that the corporate debt that we've been
2 discuss -- the long-term bonds that we've been
3 discussing, and they're being paid for by Duke's
4 ratepayers through the ratemaking process --

5 A. Right. I think --

6 Q. Well, could I finish my question, sir,
7 because I haven't gotten to the question?

8 A. Okay. I'm sorry, sir.

9 Q. And the question is, you recall his testimony
10 to that effect, correct?

11 A. Yes.

12 Q. And to your knowledge, has any state
13 commission ever found Duke to have been imprudent in
14 issuing any of that debt?

15 A. With that big qualifier, to my knowledge,
16 since I have not done any research on it, I would have
17 to say yes, but I don't know in terms of all the cost
18 of capital.

19 MR. JEFFRIES: Chair Mitchell, that's
20 all the questions we have for Mr. Fichera.

21 CHAIR MITCHELL: All right. Redirect
22 for the panel?

23 MR. GRANTMYRE: Chair Mitchell, the
24 Public Staff does not have any redirect for

1 witnesses Moore or Maher.

2 CHAIR MITCHELL: Okay. Mr. Creech?

3 Mr. Creech, you're on mute.

4 MR. CREECH: Thank you. Thank you,
5 Chair. And I do have questions for witness
6 Schoenblum as well as for witness Fichera. Can you
7 all hear now, hopefully?

8 CHAIR MITCHELL: You may proceed,
9 Mr. Creech.

10 MR. CREECH: Thank you so much.

11 REDIRECT EXAMINATION BY MR. CREECH:

12 Q. First, Mr. Schoenblum, you received any
13 number of questions on statutory questions earlier. I
14 was hoping we could go back to the statute -- the storm
15 securitization statute just for a moment.

16 And can you read the provision there relating
17 to flexibility? Actually, read the whole sentence
18 there, because it does include the word "degree," and
19 it's saying "degree of flexibility," does it not?

20 A. (Hyman Schoenblum) Yes. The lead-on
21 sentence -- it's paged with about eight provisions, but
22 the lead-in sentence on top of the page, and that's
23 page 5, is:

24 "A financing order issued by the Commission

1 to a public utility shall include all of the
2 following elements."

3 And then it goes on to list seven -- eight
4 elements. The eighth one reads as follows:

5 "The degree of flexibility to be afforded to
6 the public utility in establishing the terms
7 and conditions of the storm recovery bonds,
8 including but not limited to payment
9 schedules, expected interest rates, and other
10 financing costs."

11 I would emphasize the word "degree," which
12 means that there may be some restrictions.

13 Q. Okay. And I wanted -- you were also asked
14 about other -- you were asked about definitions in the
15 storm securitization statute.

16 It is true, however, even though the Public
17 Staff is not defined within that statute, that the
18 Public Staff is referred to within that statute; is
19 that correct, to your knowledge?

20 A. The storm?

21 Q. Let me point you, I suppose I could --

22 A. Yeah, please. Please.

23 Q. All right. If you will scroll down to, I
24 think it's just page 2 of the statute, initially,

1 subsection (4)(f). Do you see that? "Any cost
2 incurred by the Commission or Public Staff"; do you see
3 that?

4 A. I'm sorry, (4)(f)?

5 Q. Under definitions, I'm sorry, (a)(4)(f). A,
6 and then number 4, and then F. It's the second page
7 of --

8 A. I got it. I'm sorry, I'm sorry, I was
9 looking in the wrong place. Yes. (A)(4)f) says:

10 "Any costs incurred by the Commission or
11 Public Staff for any outside consultants or
12 counsel retained in connection for the
13 securitization of storm recovery costs."

14 Q. All right. And let's go down, if we can, to
15 actually the 15th page of that statute. Just go almost
16 to the very end, if you can, and it's gonna be
17 subsection or paragraph item (n) there, where it says
18 "consultation."

19 A. Yes, I see that.

20 Q. Can you read that, please.

21 A. Sure.

22 "Consultation. In making determinations
23 under this section, the Commission, or Public
24 Staff, or both may engage an outside

1 consultant and counsel."

2 Q. Okay. And obviously you're not a lawyer and
3 I don't want to be too -- what's the right word? I
4 want to say this in a right way.

5 But presumably, the North Carolina General
6 Assembly knew of the Public Staff in making those two
7 references, wouldn't you say?

8 A. Absolutely. They established the Public
9 Staff in another area, but obviously, in the storm
10 recovery statute, they obviously knew of the Public
11 Staff. There's no doubt in my mind.

12 Q. And it'd be fair to say that they
13 contemplated, certainly in this unique first storm
14 securitization offering, a role, whatever the
15 Commission may decide, for the Public Staff?

16 A. It certainly seems that they contemplated a
17 role for the Public Staff; that's correct.

18 Q. All right. Thank you. Now, when --
19 Mr. Schoenblum, you were also asked about a -- just
20 briefly about one offering in the state of New Jersey,
21 I think it was a \$46 million offering.

22 Just to be clear, while that offering did
23 have an underwriter, it was -- it was a limited public
24 offering under Section 144(a); is that -- let's see

1 here, I think that's right, of the SEC?

2 A. That is correct. It was filed under Section
3 144(a). It was not registered with the SEC, but it was
4 a limited offering, and it used Citigroup as the
5 underwriter, and it was a private placement.

6 Q. All right. Now, a lot of your testimony -- a
7 lot of your testimony relates to best practices and
8 certainly various Public Staff witnesses, and we got
9 some questions on that today. And, at times, it's
10 narrowed down to a slide or other things, but I was
11 hoping to see if we can kind of visualize that for
12 folks and --

13 MR. CREECH: Chair Mitchell, if we can,
14 I would like to bring up Public Staff Redirect --
15 Premarked Redirect Exhibit 38. That's on page 1906
16 of the combined. It's a Barclays Capital PSE&G
17 spread summary.

18 THE WITNESS: I do not ready have access
19 to that.

20 Q. I'm sorry, you do or you do not?

21 A. I do not. I'm familiar with it, but I do not
22 have ready access to it.

23 Q. I'm sorry about that. I'll send that right
24 over to you in just one moment. And hopefully we'll

1 have time while other folks pull theirs together.

2 CHAIR MITCHELL: All right. Mr. Creech,
3 are you gonna seek to have this document
4 introduced?

5 MR. CREECH: Yes.

6 CHAIR MITCHELL: All right. Let's get
7 it named, then.

8 MR. CREECH: I would like to name this
9 document as Public Staff Schoenblum Redirect
10 Exhibit 1.

11 CHAIR MITCHELL: All right. Document
12 will be identified as Public Staff Schoenblum
13 Redirect Exhibit 1.

14 (Public Staff Schoenblum Redirect
15 Exhibit 1, marked for identification.)

16 MR. CREECH: All right.

17 Q. Mr. Schoenblum, you may have that in front of
18 you now, or it's coming.

19 You're familiar with this document, are you
20 not, the Barclays Capital?

21 A. I'm opening it up right now. Yes, I have
22 that.

23 Q. Okay. And --

24 A. Yes.

1 Q. Let's turn over to the next -- well, tell us,
2 what is this, Mr. Schoenblum? You can pull onto the
3 next page, 1907 there, or the next page -- I'm sorry,
4 it says, "Offering spread to swaps versus weighted
5 average life."

6 A. Yes, I see that. That's a review of the
7 PSE&G transaction. That's what this document is.

8 Q. And it compares the Texas, New Jersey, and
9 other deals, does it not?

10 A. Yes, it does.

11 Q. And this is -- let's -- and let's go on to
12 the next page, if we can, as well. It says, "All in
13 spread to swaps versus weighted average life"; do you
14 see that?

15 A. I see that.

16 Q. And again, Texas deals, New Jersey deals, and
17 other deals?

18 A. That's correct.

19 Q. And this is -- the first page of this entire
20 document that you have says "RRB spread summary." I
21 think that could also be stated as RBB spread summary,
22 ratepayer-backed bonds --

23 A. Ratepayer-backed bonds, yes, that's correct.

24 Q. And would you say this is a visualization of

1 the types of -- the visualization of some of the
2 benefits of implementing best practices in
3 ratepayer-backed bond transactions?

4 A. Certain -- to a certain extent, it obviously
5 is, and indicates how a utility can do better than the
6 average under certain conditions.

7 Q. All right. Now -- thank you so much. Now,
8 in some of the questionings about flexibility earlier,
9 it seemed to be suggesting that the Company interest
10 might, in some way, trump ratepayer other interest as
11 part of that statute. Obviously, in these bonds, these
12 are not traditional Company bonds but are rather being
13 paid back by the ratepayers. So you would think that
14 the ratepayer interest would be considered as part of
15 that, would you not?

16 A. I would say so, yes.

17 Q. All right. Just making sure we covered all
18 the points here.

19 A. And if there's one thing I may add --

20 Q. Go ahead.

21 A. -- to a discussion that Mr. Fichera had just
22 a moment ago in response to a question on how these
23 ratepayer-backed bonds and their incentives differ from
24 traditional utility bond issuances, I would add to that

1 that for utilities that have rate settlement agreements
2 that last a number of years, let's say three or four or
3 five years, it is possible that if you have bond
4 issuances during that period of time, which may not be
5 totally reflected in rates, some of those costs may
6 slip between the cracks. But that certainly does not
7 happen with respect to ratepayer-backed bonds where the
8 total amount of the bonds is guaranteed for recovery.
9 Just a point of clarification.

10 Q. Very good. And I just have one other.

11 A. (Joseph Fichera) And I just want to clarify
12 something, Hyman. That presentation you have is more
13 than just a PSE&G transaction, that was looking at --
14 Mr. Schoenblum wasn't with Saber Partners at that time
15 in 2005, I think that presentation was done and
16 delivered to us by Barclays Bank. That looked at all
17 New Jersey transactions for that time period versus all
18 Texas transactions using a methodology similar to what
19 is in Mr. Sutherland's testimony, regression analysis
20 of credit spreads, to be able to compare benefits and
21 costs.

22 And notably, the New Jersey line is higher
23 than the Texas line. New Jersey had a financial
24 advisor and had certifications, but those

1 certifications had -- were not unqualified but were
2 sort of circular. That was discussed in Florida in
3 2006 where they looked at certifications in determining
4 best practices, and they determined the certification
5 in New Jersey was not as good as the certification
6 given by the advisor in Texas.

7 And they incorporated the Texas version that
8 Ms. Klein talked about in that financing order in 2006,
9 which then carried over to the 2015 Duke Energy Florida
10 transaction. So I just wanted to try to connect
11 various dots here so you know what you're seeing.

12 Q. Thank you.

13 Mr. Schoenblum, I have sent you one more
14 statute to take a look at, if you could.

15 MR. CREECH: Chair Mitchell, I would
16 like to bring up the first of the Public Staff's
17 premarked redirect exhibits, Premarked Exhibit 35.
18 Premarked Exhibit 35, that's page 1789. A great
19 year, by the way. Let's see here, Premarked
20 Exhibit 35, which is, again, the Commission
21 statute, the Public Staff statute, and the storm
22 securitization. I just have one quick point on
23 this.

24 Q. Mr. Schoenblum, do you have that?

1 A. (Hyman Schoenblum) I do.

2 MR. CREECH: Chair Mitchell, I would
3 like to mark this as Public Staff Redirect --
4 excuse me, Public Staff Schoenblum Redirect
5 Exhibit 2.

6 MR. JEFFRIES: Chair Mitchell, I
7 certainly don't have any objection to marking this,
8 but it's also in the record as Heath -- or Public
9 Staff Heath Cross Examination Exhibit 1.

10 CHAIR MITCHELL: It is. And so in the
11 interest of avoiding duplicate entries, Mr. Creech,
12 I'll ask that we hold on your request and that your
13 witness can refer to the document, but it is
14 already in the record.

15 MR. CREECH: That's great, because
16 that's actually the one I sent to him, so that's
17 good, just as well.

18 Q. Mr. Schoenblum --

19 MR. CREECH: Thank you for that,
20 Mr. Jeffries.

21 Q. -- if you would just on that document, it
22 says at the top 16-2 declaration of policy; do you see
23 that?

24 A. 62-2.

1 Q. I'm sorry, 62-2, that's right. Scroll over
2 three -- scroll over three more pages, if you will, to
3 62-15, and then scroll down to G.

4 A. G.

5 Q. Certainly not trying to overstate the Public
6 Staff's rule here, but did want to go to G at least to
7 get that noted in the record.

8 If you will, can you read that, please?

9 A. Beginning with "upon request"?

10 Q. Please.

11 A. "Upon request, the executive director shall
12 employ the resources of the Public Staff to
13 furnish to the Commission, its members, or
14 the attorney general such information and
15 reports or conduct such investigations and
16 provide such other assistance as may be --
17 reasonably be required in order to supervise
18 and control the public utilities of the state
19 as may be necessary to carry out the laws
20 providing for their regulation."

21 Q. Thank you, Mr. Schoenblum. And I believe you
22 had referenced the Public Staff's statute before, but,
23 obviously, that's just an additional role that the
24 General Assembly has contemplated within the Public

1 Staff; is that correct?

2 A. That's correct.

3 Q. I'm not certain that I have any other
4 questions for you, Mr. Schoenblum. Let me just
5 double-check, if I may, please.

6 Okay. Mr. Schoenblum, thank you so much. I
7 appreciate your time very much. Thank you.

8 Witness Fichera?

9 A. (Joseph Fichera) Yes, sir.

10 Q. First of all, I guess I will pull back up
11 Public Staff Redirect -- Schoenblum Redirect Exhibit 1.

12 Was there anything else that -- based upon
13 your discussion with Mr. Jeffries about best practices
14 and the slide he had, is there anything else, kind of,
15 about the visualization here on this Barclays Capital
16 piece that you want to -- that would give additional
17 effect to what you were saying in that all the best
18 practices cannot be put in a slide, but that there are
19 quantifiable demonstrable outcomes to this process?

20 A. Yes. And those were also over time. And I
21 think I -- when I interrupted a few minutes ago, it was
22 also to point to Mr. Sutherland's testimony where there
23 was a study -- a similar study like that done by
24 Citigroup back in 2003, I believe, 2004 that looked at

1 the credit spreads, because that's the only thing you
2 can really affect, is the spread over a benchmark.

3 At that time, those were spreads over what is
4 known as the swap rates for various maturities as
5 opposed to treasury rates. And by getting closer to
6 the benchmark, that's your savings. So when you see
7 spreads for different tranches, because you're going to
8 have different maturities of bonds, they will have
9 different spreads relative. There's a pattern that
10 develops in those and you can see. And sometimes some
11 are higher than others, but that's what a regression
12 analysis does, is to smooth that out and say what trend
13 lines are here.

14 And that graph is another example of an
15 analysis. That was done by Barclays Bank and provided
16 to us with permission to use with our clients. And
17 there was also the study that was done of the Florida
18 transaction where you see the same thing looking at
19 over the transactions from 2010 to 2016 and where the
20 savings were.

21 And, you know, it's an interesting graph,
22 because it also goes into the notion that, at the
23 shorter maturities, the Florida transaction was sort of
24 like average, maybe even a little higher than some

1 other transactions, but when you went out to the longer
2 maturities where there was much more expensive to the
3 ratepayer, costs more, longer years. As Mr. Heller
4 said, you know, one basis point over two years may not
5 be much, but one basis point over 20 years, a lot of
6 money. And also size, those were much lower. So we
7 got lower interest rates.

8 So this is sort of -- shows that when you
9 have, implement various things, you can have a result,
10 and it's been replicated, so it happened multiple
11 times. So it wasn't that you just got lucky.
12 Sometimes you get lucky, other people -- you can.
13 Other times it's through hard work. Sometimes it's
14 both. And sometimes it's both. As --

15 Q. Go ahead.

16 A. I was quoting Napoleon who said he preferred
17 lucky generals to smart generals. It is important to
18 have this sort of process and look at, then, the
19 certifications. That's where I wanted to point out,
20 there were certifications in New Jersey, but the
21 Florida Commission had evaluated those in 2006. And I
22 believe it's somewhere in the record, the decision
23 memorandum for the Florida Commission, that was
24 presented by staff as to what to require in the

1 financing order about an independent certification
2 without qualification. And they specifically spoke
3 about New Jersey -- and versus Texas. And that goes to
4 Mr. Jeffries about best practices.

5 So New Jersey sort of had best practices,
6 they had Commission involvement, they had an
7 independent advisory with Bear Stearns, they had a
8 certification, but the implementation of that varied.
9 And this was a quantitative way of doing it.

10 Q. Okay. Thank you. And a lot of -- a lot of
11 the time questioning of you, in particular, related to
12 as the role of Saber's witness of clients at various
13 times and Commissions, and so I wanted to explore that
14 with you just one more moment. I mean, it seems to me
15 from what you were saying -- and again, you can put it
16 in your own words -- that isn't it true that, whether
17 it's a Commission or Public Staff, there's kind of a
18 basket of responsibilities in various states.

19 And in some states in which you've worked,
20 the Commission takes on a judicial-type function, but
21 also files testimony routinely and does a little bit
22 more investigation in some states than other states,
23 and it's just kind of the baskets are separated in
24 different ways. But can you speak to that?

1 A. Yes. I mean, first of all, I separate the
2 Commissioners from the staff to the Commission. So in
3 everything we dealt with, the Commissioners made the
4 final decision. Staff never made a decision to -- the
5 Commissioners made the decision. The Commissioners
6 sometimes delegated to one of their Commissioners to be
7 a lead or to act through, but it was the Commissioners
8 deciding how it should be done.

9 And that's the same as the Public Staff
10 proposal here. The Commissioners will be making the
11 final decision as the structure marketing and pricing.

12 Second was the staff. Who puts on testimony?
13 You know, I have learned a lot in this process, getting
14 back to the data requests and everything about, you
15 know, the distinction between Public Staff and
16 Commission staff in Florida, you know, Public Staff is
17 called an intervenor, staff who put on testimony in
18 Florida was not called an intervenor but was just staff
19 testimony. You know, these sort of distinctions are a
20 little bit beyond me.

21 We just saw who is putting on testimony on
22 behalf of the ratepayer for the Commission to make a
23 decision, and that's what we've seen -- North Carolina
24 is a little different than other states. And as I

1 said, that statute that you were just reading about,
2 that's the first time we've seen somebody other than a
3 Commission being specifically authorized. As we
4 prepared for this case looking more at the statutes
5 that both you and others have had us read, you got more
6 into the weeds here about your authorization and such.
7 But from a big picture, we are looking at who put on
8 testimony for staff for the ratepayer.

9 In North Carolina, it was -- it's Public
10 Staff. In Florida, it was Commission staff. In Texas,
11 it was Commission staff as well. You know, in
12 California just recently, nobody -- Commission staff
13 didn't put on any testimony, but they did -- they did
14 it a little differently, in terms of setting up a
15 finance team that didn't involve a ratepayer but just
16 involved the Commission staff.

17 So I think this is a great country, there's a
18 lot of diversity here, and as we work with the
19 different states, we see that there's different roles
20 of consumer advocates and Commissions handle things
21 differently.

22 Q. And one of the questions that seems to have
23 come up is just joint decision-making and kind of
24 running through that a bit. And you touched on,

1 obviously, that the Commission is the ultimate decider,
2 and to be clear, you know, obviously, the Commission
3 decides, right, so --

4 A. Yes.

5 Q. Let's say if the Commission decides to be a
6 joint -- so-called joint decision-maker or decides
7 to -- has it been explored, the scenario where, if the
8 Commission decides for whatever reason to not be a
9 joint decision-maker and potentially not the Public
10 Staff either, what -- you know, what happens then?
11 What happens then? Is that really the bond team
12 scenario?

13 A. No, that's not really a bond team scenario.
14 No, because that's basically -- the way it started out
15 in 1997, it was just the Companies took it and ran with
16 it. I think, for example -- maybe I shouldn't say that
17 completely. In New Hampshire, I believe in 1999, they
18 had the state treasurer get involved. It was a
19 small -- in securitizations and bring the state
20 treasurer actually in the process. So there was
21 something -- again, diversity of approaches.

22 But starting in the 2000s when there were
23 more issues and people were realizing more and more
24 about this, there was more desire to have a lowest cost

1 standard, as we were talking about having ratepayer
2 representation and having independent certifications.
3 So Louisiana did that when storm securitization.
4 Florida then did that. And it's being discussed now.
5 I think if you see legislation that was passed last
6 year in Colorado and in Montana have a role for the
7 Commission; however, if you go to New Mexico, you find
8 that it's not there. The Commission is basically left
9 out. Politics in New Mexico are kind of different than
10 everything. That's, again, great diversity in this
11 country.

12 Q. A lot was discussed in your -- the cross
13 examination of you about Florida, and you spoke to it
14 as well.

15 MR. CREECH: And I was hoping, if we
16 could, Chair Mitchell to pull up Premarked
17 Exhibit 69, which is Public Staff -- well, excuse
18 me. Premarked Exhibit 69 on page 3246. It's from
19 the Florida Public Service Commission for DEF, Duke
20 Energy Florida. It's a transcript.

21 CHAIR MITCHELL: All right. Mr. Creech,
22 let's go ahead and get the document marked.

23 MR. CREECH: Chair Mitchell, I would
24 like to mark this as Public Staff Fichera Redirect

1 Exhibit 1, if that's right. To my knowledge, this
2 has not been introduced before, and this is --

3 CHAIR MITCHELL: All right. That's
4 right. So we will name the document Public Staff
5 Fichera Redirect Examination Exhibit 1.

6 (Public Staff Fichera Redirect
7 Examination Exhibit 1, marked for
8 identification.)

9 Q. Mr. Fichera, can you please -- tell us what
10 this document is, if you will, please.

11 A. I believe that's the transcript of the
12 open -- the emergency meeting, it was called, after the
13 structure marketing and pricing of the bonds in Duke --
14 for Duke Energy Florida, a project finance
15 securitization, to consider whether or not to issue a
16 stop order on the transaction. The same process that
17 was being proposed here with Public Staff performing
18 the role of Commission staff there.

19 And it is staff presenting to the Commission
20 why they believe that the Commission does not need to
21 stop the transaction, and it is allowed -- and it is
22 a -- all other intervenors, like the large energy
23 users, office of people's counsel, and the Company
24 themselves all got up and spoke and gave their views

1 about the transaction and commented about the
2 participants' role in the transaction and what saved
3 ratepayers money, and who did -- who did what.

4 Q. Okay. And thank you, Mr. Fichera. And if
5 you can, please turn over to the beginning.

6 A. I don't have the document right in front of
7 me.

8 Q. Oh, okay. I'm sorry, I thought you were
9 picking up there.

10 A. Well, I pretty much know it by heart, but not
11 the specific --

12 Q. That's fine, I will --

13 A. Just let me -- you sent that to me, right?
14 Let me just pull it up.

15 Q. I'll send you another copy.

16 A. There was an excerpt to -- a video excerpt --
17 by the way, the meeting was taped and is on the website
18 of the Commission, and also there is a five-minute
19 excerpt of the -- of the meeting with the transcript
20 that's available on our website. Did you send me it?

21 Q. Yup. I've just sent that, and the video you
22 referenced, the link to that is on the last page, but
23 that is not technically part of the transcript; is that
24 correct? It's just an excerpt?

1 A. Yeah. That's not on the website, but the
2 video, it's a full rendition of the transcript. The
3 parts -- as a matter of fact, every frame of the video
4 shows the transcript part that the person is talking
5 from.

6 Q. And as that email comes through to you, one
7 of the folks who was involved in this and who is
8 referenced is a Ms. Triplett who is -- who I guess is
9 or was an employee of Duke Energy Florida; is that
10 correct?

11 A. Yes.

12 Q. And what was I hoping you could do, and let
13 me know when that email --

14 A. I have it now, and I apologize to the
15 Commission waiting, I'm sorry. What page do you want
16 me to go to?

17 Q. It's actually -- you're all the way down on
18 the PDF sent to you on page -- at least page -- let's
19 see here, page --

20 A. Look at the upper right-hand corner.

21 Q. Yeah, that's right.

22 A. What page?

23 Q. Page 13.

24 A. Page 13. Right. Yes.

1 Q. I think you've highlighted some language
2 there of Ms. Triplett's, but is it -- let's have you
3 read the highlighted portion there, if you will,
4 please.

5 A. Yes.

6 "This fantastic outcome is no accident. As
7 you pointed out, it is the culmination of
8 months of hard work. And I actually went and
9 looked at my calendar, and the first bond
10 meeting was at the end of October, and I
11 don't even think the financing order had been
12 issued. So everyone hit the ground running.
13 There were several weeks where we had
14 multiple meetings, lots of emails, lots of
15 review of documents, and I just wanted to
16 highlight just a few things. We included
17 this in our issuance advice letter that was
18 filed today and circulated to the parties
19 yesterday, but I think it's important to note
20 that some of the good work that was done."

21 Do you want me to continue reading?

22 Q. I think that -- it's -- is that a good
23 summation of what ultimately culminated in the Duke
24 Energy Florida transaction that has been discussed so

1 much today?

2 A. Yes. It talked about the Company's work. I
3 mean, she's talking about the Company's work in it and
4 highlighting that, obviously, as the Company's
5 representative, and we had no qualms with that. It was
6 a -- you know, it was a fair and good negotiation that
7 ultimately resulted in a good outcome. I think she
8 mentions on page 15 -- I can read that:

9 "And as Mr. Mowery (phonetic spelling)
10 noted," he was the staff member, "we reviewed
11 the opinion letter from Saber Partners and it
12 does not contain any qualifications with
13 respect to the opinions that he was giving in
14 compliance with the financing order, so
15 again, all signs point to no stop order."
16 So, yes.

17 Q. Okay.

18 A. I think it shows the whole process there.
19 The Company didn't get everything it wanted, we didn't
20 get everything we wanted, it was a negotiation, and --
21 but it produced an outcome that Duke has now put in its
22 application for DEC and DEP, which it didn't have in
23 its application for DEF. So I think that's progress.

24 Q. Thank you, Mr. Fichera. You did reference

1 the issues memorandum a moment ago from, I think, the
2 2006.

3 Is that the FBL issues paper that you were
4 speaking of?

5 A. Yes. That's the Florida Power & Light.
6 There was the first storm securitization, and it was
7 modeled on -- the North Carolina law was modeled on
8 that law.

9 Q. Okay.

10 MR. CREECH: Chair Mitchell, I would ask
11 that we -- that is -- that is Public Staff
12 Premarked 42.

13 Q. And, Mr. Fichera, that's also in what you've
14 received.

15 A. Right. What page of the PDF is that?

16 Q. I'm showing you right now. It is PDF page
17 1966.

18 A. All right. PDF page 1966. You gave me a
19 63-page document here.

20 Q. Well, it's not the same, then. My apologies.

21 A. I'm scrolling through.

22 Q. All right. Let's see here. Here you go.

23 MR. CREECH: Chair Mitchell, do you have
24 that?

1 CHAIR MITCHELL: I do.

2 MR. CREECH: Okay. Chair Mitchell, I
3 would like to mark this as Public Staff Fichera
4 Redirect Exhibit --

5 CHAIR MITCHELL: We're at 2.

6 MR. CREECH: 2, that's right.

7 CHAIR MITCHELL: All right. The
8 document will be marked Public Staff Fichera
9 Redirect Examination Exhibit Number 2.

10 (Public Staff Fichera Redirect
11 Examination Exhibit Number 2, marked for
12 identification.)

13 Q. Mr. Fichera, are you familiar with this?

14 A. Yeah. Can you send me that?

15 Q. Yeah. It should be there right now, and
16 maybe we can just discuss it as --

17 A. Is it in the potential cross -- okay.

18 Q. That's right, yeah.

19 A. I have all that.

20 Q. And I have emailed it to you. It's the
21 public service commission dated May 8, 2006. It's the
22 Florida Power & Light issues paper.

23 A. Yes. That's --

24 Q. It's my most recent email to you.

1 In the meantime, Mr. Fichera, you are
2 familiar with that issues paper, are you not?

3 A. Yes. And we can talk about it as we go
4 through it.

5 Q. I don't need to talk about it long, I just --
6 you referenced it, and I wanted to make clear what you
7 were speaking of.

8 A. Yes. The issue paper discusses various
9 things to be -- yes, it just came in. It just -- it
10 came in. So what page again, 19 what?

11 Q. 66.

12 A. Yes, sir. Yes. So staff prepares, you know,
13 a summary of all of the issues and the positions of
14 various people in the party and then makes
15 recommendations to the Commission as to what to do.
16 Yes, I have it now. And as you see, it's got -- this
17 is from the public record. It's got the initials
18 signed for the division of economic regulation, general
19 counsel, regulatory compliance, various other people to
20 discuss what should go into the financing order for the
21 first storm securitization in the country.

22 Q. And you said that was -- served as a model
23 including for North Carolina; is that correct?

24 A. Yes. The legislation for sure. It didn't

1 have a lowest cost standard, but they did have the
2 catch-all phase about not inconsistent with the
3 statute.

4 Q. And in that instance, the financing order did
5 include that requirement, did it not?

6 A. Yes. That the Commission could add any
7 conditions that it wish that were not inconsistent with
8 the statute.

9 Q. And that -- in that instance, the financing
10 order did include that lowest impact standard, did it
11 not?

12 A. That is correct.

13 Q. All right. I just wanted to touch on two
14 other things I believe that you were asked about today.
15 You were -- again, the best practices, the slide there,
16 was there -- I didn't want you to be limited to
17 anything that was on that slide. I mean, Mr. Jeffries
18 was clear about what -- you know, what it represented,
19 and I think you were too.

20 Was there anything else you needed to clarify
21 on that -- is there anything not on that slide that --
22 excuse me.

23 A. Well, I think Mr. Jeffries is trying, again,
24 make the implication that it was only the Commission

1 staff should be the ones that would be implementing
2 these things. Again, different states have different
3 approaches. It's the principal of ratepayer
4 representation that we'd like to get across, and the
5 decision-making standard and the independent
6 verification, not a self-certification process. And
7 there's no aspersions about the self-certification,
8 that they are violating the law or anything like that,
9 it's just that they may view one thing, you want to
10 view another.

11 As Ms. Triplett from DEF said that she
12 reviewed our opinion and she agreed with that opinion.
13 Then that's where you -- that's where you want to come
14 out. You want to have people who have differing
15 perspectives coming to an agreement and then being --
16 having that being able to be verified independently.
17 So, you know, having a second opinion is always a good
18 thing. And having the approach, I think as one of the
19 Commissioners said yesterday about trust but verify is
20 what you're doing.

21 It's not saying that you're -- your
22 certification, you're lying, I'm just saying I need to
23 do my own -- I need to do my own due diligence and own
24 homework. And I worked for a boss named Ace Greenberg

1 at Bear Stearns and, you know, again he sent out a memo
2 to us once that said we believe everybody's honest, but
3 they're more honest if you watch them like a hawk.

4 So -- and that's within my industry and in
5 every industry. It's sort of like diligence and
6 observation, everybody comes together, no aspersions,
7 nobody's saying anything, but it's best to have all
8 these different views come together and be presented to
9 the decision-maker, which would be the Commission.

10 Q. Thank you, Mr. Fichera.

11 MR. CREECH: Chair Mitchell, I don't
12 have any other questions at this time.

13 CHAIR MITCHELL: Just so I'm clear, that
14 completes Public Staff's redirect of the panel?

15 MR. CREECH: Mr. Grantmyre, I don't --

16 MR. GRANTMYRE: That is correct. We
17 have no further redirect.

18 CHAIR MITCHELL: All right. Thank you,
19 Mr. Grantmyre and Mr. Creech. All right. We will
20 turn to questions from the Commission beginning
21 with Commissioner Brown-Bland.

22 COMMISSIONER BROWN-BLAND:
23 Chair Mitchell, I have no questions.

24 CHAIR MITCHELL: Okay.

1 Commissioner Gray?

2 COMMISSIONER GRAY: I have no questions.

3 CHAIR MITCHELL: All right.

4 Commissioner Clodfelter?

5 COMMISSIONER CLODFELTER: Thank you. I
6 had quite a few, but Mr. Fichera very helpfully
7 answered all of them on cross examination. Thank
8 you, Mr. Fichera. I have no more.

9 THE WITNESS: It's the Vulcan mind meld,
10 Commissioner Clodfelter. Telepathy works.

11 CHAIR MITCHELL: All right.

12 Commissioner Duffley?

13 COMMISSIONER DUFFLEY: I too had my
14 questions answered through cross examination.

15 CHAIR MITCHELL: All right.

16 Commissioner Hughes?

17 COMMISSIONER HUGHES: No questions here.

18 CHAIR MITCHELL: All right. And

19 Commissioner McKissick?

20 COMMISSIONER MCKISSICK: Likewise,
21 Mr. Fichera was excellent in addressing the
22 questions I had. Probably saved us a half hour.

23 CHAIR MITCHELL: All right. Glad to
24 hear that. All right. Make sure y'all are on

1 mute. I'm getting some feedback. Mr. Fichera, you
2 answered most of mine as well. I am going to
3 ask -- I am going to ask you a few, and I'm going
4 to ask you to do your best to just provide very
5 succinct responses, since you provided so much
6 testimony already and you have been very helpful
7 with your answers, so.

8 THE WITNESS: Thank you.

9 EXAMINATION BY CHAIR MITCHELL:

10 Q. Can you do your best to just briefly describe
11 for me the change and involvement that occurred from
12 the 2005 or 2006 proceeding in Florida, the 2015
13 proceeding in Florida, the change in involvement of
14 both the Florida PSC as well as the Florida Office of
15 Public Counsel?

16 A. I don't think -- you know, 14 years ago in
17 that proceeding, it was a very contested proceeding.
18 The first storm securitization. I know the attorney
19 general and other things were very much involved.
20 Staff -- we were hired by staff. Didn't have any real
21 interaction with the office of people's counsel at that
22 time.

23 And that financing order adopted pretty much
24 all the best practices. However, it gave the option of

1 the utility in the end in communicating with the option
2 to do a competitive bid. Meaning that they did not do
3 a negotiated transaction where we selected a group of
4 underwriters and just negotiated with them with the
5 road show and such. The Company decided that it didn't
6 want to do some of the things that staff wanted to do
7 in a negotiated transaction, and made an offer that
8 they would do a competitive bid, and that the
9 competitive bid would, at least in their filings,
10 would -- the rates on the competitive bid would meet or
11 be lower than a Texas transaction done in 2005 and a
12 West Virginia transaction in 2007 at the same time.

13 And we were advisors to -- so Florida Power &
14 Light said, we'll do a competitive bid, not a
15 negotiated transaction with the bond team, and as long
16 as the credit spreads are within that range of the
17 Texas transaction, there is no need for additional
18 certifications. The competitive bid would satisfy it.
19 And if the rates were higher than either the Texas
20 transaction or the West Virginia transaction,
21 shareholders would pick up the additional cost.

22 That was a very specific offer, unusual offer
23 in 2007. So the Commission accepted that offer, and
24 they did a competitive bid, and they came out a little

1 better than -- a couple basis points than the West
2 Virginia transaction and the Texas transaction.

3 So now when we go to 2015 and '16 and start
4 the process, we were hired by staff again and gave
5 testimony. And since that -- in that time, we had also
6 had gone through the SEC, got a no-action letter about
7 how to structure the bonds as corporate securities and
8 not asset-backed securities. And we made that proposal
9 to do a negotiated transaction but with a corporate
10 structure based on a 2007 SEC no-action letter.

11 So that went forward, and there was then --
12 rather than a contested hearing, we got a settlement, a
13 joint stipulation through the process. And in that
14 process, OPC and other intervenors were agreeing about
15 the amount of money that would be of the plant -- the
16 nuclear power plant for Duke Energy Florida that would
17 be recovered in rates, and the length of time for the
18 amortization period for that to be.

19 However, the bond team, they then did a
20 quasi-public meetings. I think some of the bond team,
21 the meetings were noticed, some of them were public
22 where anybody could listen in on the calls, and some
23 were just in an executive session. So it was a little
24 bit of a hybrid from what was done elsewhere. I hope

1 I'm not getting too into the weeds on this,
2 Madam Chairman. Good.

3 So it was a little bit of a hybrid so that
4 there was more transparency for these bond team
5 meetings, so that some of the intervenors, like the
6 Office of Public Counsel, could listen in but not
7 participate in anything. The transcript from that, I
8 point you to the Office the Public Counsel's comments
9 about what they saw the value of an independent -- of
10 advisor, specifically naming us in the process, how
11 much we saved. But the staff was really directing it.

12 We were, again, advisors, and it was done all
13 on a consensus basis. And as you go through in this
14 process, for example, I know there has been these, sort
15 of, references about talking to the SEC, talking to
16 investors. Once the bond team starts to meet, you --
17 there are protocols. For example, once we meet and
18 decide and file a document with the Securities and
19 Exchange Commission, the protocol will be that no
20 contact with the SEC would be done independently, but
21 that it would be done through the Company's counsel
22 with Commission or an advisor counsel involved. So
23 we'd have counsel involved in that, but nobody was
24 talking directly. But that's the protocol.

1 The same with the rating agencies. Once you
2 submit something with the rating agencies, they'll go
3 through a process of running, and we sort of all agree
4 about what we're gonna say, we should all be speaking
5 with one voice, things like that.

6 Now, prior to that formal process, we'll have
7 conversations. We may have conversations with the
8 rating agencies or with the SEC. For example, in
9 preparing for this hearing, last week I contacted the
10 SEC to make sure that there were no changes in their
11 policies with regard to the structure that we did in
12 2016 and with the registration statement that was done
13 in '16. Did not talk about this transaction because
14 there is no transaction. Just wanted to know, from
15 2016 to now, had there been any changes?

16 Why did I do that? Well, back in 2015, the
17 Company gave testimony with Morgan Stanley that this
18 SEC no-action letter that was gotten in 2007, which was
19 obviously nine -- eight years old at that point, was no
20 longer valid. They actually put, I think in a response
21 to a data request, they said that that no-action letter
22 was no longer valid, it didn't apply, and if we had to
23 go back to the SEC to get permission, it would take a
24 long time and we're not gonna do it.

1 Well, we -- in terms of doing due diligence
2 to determine is that accurate, did the SEC really
3 change its mind, I was involved in the process in 2007.
4 I had -- was -- you know, talked with the SEC through
5 counsel on that transaction and got that no-action
6 letter, which is a very formal of process, and I didn't
7 think it had changed, but they said it did. Maybe they
8 were right. So I contacted the SEC, and we found out
9 that they were wrong. They hadn't changed. And that
10 they said that their policy was that if -- they have
11 given a no action letter, and if it's on our website --
12 on their website, it's still valid. And it was on
13 their website and still valid.

14 We then informed that of the Company. The
15 Company, you know, sort of didn't believe it, so we
16 arranged a conference call with counsel with the SEC in
17 order to get that clarification. They gave it. And
18 then we filed -- were able to pursue that -- that
19 structure, which is called a series trust, not -- that
20 it's not an aspect security. Everything that Mr. Heath
21 was talking about yesterday about making sure it's a
22 corporate security and not being a structured product
23 and not -- it's tied to that 2007.

24 And so we did our due diligence and spoke --

1 again, this week I talked to the SEC, anything changed.
2 Nothing has changed. I also asked them about the
3 disclosure, because one of the things we did in 2016,
4 Saber Partners recommended that there be a
5 question-and-answer section in the prospectus about the
6 structure, about the legislation, about the true-up,
7 and that there be, you know, frequently asked question
8 with an answer. This is often done with salesmen with
9 pieces of paper, but those aren't part of the
10 prospectus and you can't really circulate them, but if
11 it's in the prospectus, then it can be circulated to
12 everybody.

13 So we proposed a question and answer. We got
14 a lot of pushback from Duke. The lawyers said it's
15 never been done before, we haven't seen anything in the
16 SEC -- you haven't seen any prospectus that has had a
17 question and answer, and we think that there -- that
18 that will cause delays, it will be a problem. We
19 pushed back and said, well, look, why don't we try it?
20 As long as -- the rule is, as long as we're saying
21 something truthful, and honest, and it's in the
22 prospectus, the procedure is to submit the document to
23 the SEC, wait for their comments, and then respond.

24 So if they have a concern about it, they'll

1 tell us, and if they have a concern and ask us to
2 remove it, then we remove it, or we can talk to them
3 about it. And that's it, they had no comment. So I
4 also asked about that. And this person at the SEC
5 said, oh, no, we like Q and As. The SEC itself often
6 uses -- puts out its own regulations in a
7 question-and-answer format because we find that that's
8 very -- that's more informative to the market of what
9 the meaning of their rule or regulation is.

10 So we wanted to apply that same principal in
11 the Duke transaction in Florida, and we hope that Duke
12 will do it again here. We have not seen -- so we think
13 that's -- for example, we think that's a best practice.
14 Let's use a Q and A. Let's make the offering document
15 as plain English as possible. Stop the legalese. We
16 want to get as many investors as we can. We want to
17 even get the small investor.

18 I was here -- you know, you said \$5 million.
19 I would like to get investors of \$1 million or \$50,000
20 in these AAA bonds. They're great bonds. And the
21 broader it is, the better. So that -- so, in 2016, we
22 did more on the disclosure, we did more on the
23 structure than we did in 2007. And it just shows the
24 evolution of the market and how people with differing

1 views can come together, and we'll create a better
2 product.

3 Now, not everybody has adopted that. For
4 example, Southern California Edison Company in
5 California right now is doing a securitization. They
6 are now -- they just amended their registration state
7 and -- from what they put in in October to adopt to the
8 Duke Energy Florida structure. Go to Wisconsin.
9 Wisconsin is doing a securitization. They just filed a
10 registration statement. It's not using that structure.
11 It's a smaller deal, different. And so not always
12 adapted. So somebody could point to Wisconsin and say
13 why don't we do it like Wisconsin? Somebody could say,
14 well, why don't we do it like Florida? Somebody will
15 say why don't we do it like, you know, Louisiana? So
16 there's a lot going on here in this, and therefore, you
17 need to sort through that.

18 And the Commission needs to be able to sort
19 through that because this is, as I said in my opening
20 remarks, the unique use of the Commission's authority
21 to create this, you know, direct payment on everybody's
22 bill that you are going to agree to raise to whatever
23 level is necessary to pay the bonds with the state of
24 pledging that it's not. Nobody else. And if somebody

1 doesn't pay their bill, we take their loss and we
2 redistribute it to everyone else. Nowhere else is a
3 security like that.

4 One time an investor asked me, really, you
5 mean, if people don't pay the bills, the people who are
6 paying get their bills raised; I said, yeah. They
7 said, is that legal; I said, it's in the law. It is
8 what it is. And that's why we think that these should
9 price much closer to U.S. Treasury securities. They
10 should be much -- have much lower interest rates than
11 Duke's outstanding first mortgage bonds, which are
12 considered the highest quality bonds in the market.
13 They got a aa2 rating on the first mortgage bond. Got
14 to beat that and such.

15 So from 2006, they did a competitive bid,
16 they did some other things. Got a new -- 2007,
17 no-action letter got in 2007 from West Virginia. Other
18 people didn't adopt it. Then in 2015 we did adopt it,
19 went through it, and now it's in Duke's application
20 here. Great. And now we're just saying what's the
21 pre-issuance process to make sure that we are all on
22 the same page as Ms. Triplett said at the end, where
23 this is a fantastic outcome, everybody's hard work.
24 That's what you want. That's what you want to get the

1 same thing here for North Carolina. And what I think
2 is most important is, as Ms. Klein pointed out
3 yesterday, is you're really starting a program.

4 Now, Duke sort of -- when we said that this
5 was a program, they asked us what program are we
6 referring to in my testimony, and I went back and said
7 look at the legislation, look at the legislation note.
8 There is going to be multiple issuances. There's going
9 to be more storms. You brought up the notion of a
10 storm reserve, and it was good there was an opening
11 today that maybe gotta have a fund to storm reserve.
12 That's what was done in Florida at these low interest
13 rates as opposed to the weighted average cost of
14 capital. You're going to be coming back to the market,
15 you want to have a good template so that your time --
16 the next financing order, we won't have a full hearing.
17 It can be more, you know, just updating in case there
18 has been any real developments that have occurred. And
19 that will be more efficient. We can get almost like a
20 shell filing. And in North Carolina we'll have access
21 to, you know, this market. The consumer groups will
22 all see it as a positive thing working together with
23 Duke and with the Commission and Public Staff. And as
24 I think was said by somebody, a high tide raises all

1 boats. So that's what we -- that's the development
2 from 2006. And it wasn't short, but it was detailed,
3 and you said I could get you into the weeds.

4 Q. All right. Mr. Fichera, well, you sure
5 covered a lot of ground there, but you answered my
6 question, so I will let you go. I appreciate your
7 response, and I --

8 A. You're saying that sincerely.

9 Q. Absolutely.

10 CHAIR MITCHELL: I will check in with
11 counsel to see if any questions on Commission's
12 questions?

13 MR. CREECH: Mr. Jeffries, go ahead.

14 MR. JEFFRIES: I don't think the Company
15 has any follow-up.

16 CHAIR MITCHELL: Okay. Thank's,
17 Mr. Jeffries.

18 MR. CREECH: I just had --

19 EXAMINATION BY MR. CREECH:

20 Q. Mr. Fichera, if you could be very brief on
21 this, very brief. I take from your comments just now,
22 relating to the evolution and in Florida, that Saber is
23 somewhat agnostic in terms of whether it's involved
24 with the Commission or a Public Staff, or -- your role

1 has been more just trying to get the best deal for the
2 ratepayers; is that correct?

3 A. Yes. Anyone who would like to file best
4 practices -- the utility wanted to file best practices,
5 we would help them out too. I mean, I think the
6 approach is there are certain things here that have
7 worked and should be replicated.

8 Q. And then, finally, you mentioned some of
9 the -- if the Commission decides there should be a bond
10 team here, and whomever's on it, whether -- all that,
11 it is the case that guardrails are effectively put in
12 place, and that while certain communication with SEC
13 and rating agencies will certainly be put in place,
14 it's your view that the due diligence that an advisor
15 like yourself should do within those guardrails --
16 guardrails should not be limited; is that correct?

17 A. Yeah. I mean, we all have certain rules and
18 principals. For example, when we talk with an
19 investor, we would -- we do not talk -- and there's a
20 registration statement on file, we -- you can only talk
21 from that perspective if they have any questions about
22 that deal. We just know that.

23 But if you talk to the investor, if the
24 investor wants to know something about the commission

1 or about the financing order which is described in the
2 prospectus, but -- and I think in my testimony, I talk
3 about what I talk to investors about. And I think
4 Mr. Moore today talked about how we wanted to get
5 market intelligence, and get people's views, and see
6 what they're thinking, and what they're hearing, and
7 what the underwriters are saying to them versus what
8 the underwriters might be saying to us.

9 Again, we're not trying to impugn anybody in
10 terms of it, but I've been an underwriter, and I have
11 seen that sometimes things get distorted, or there's
12 different approaches, different things said with
13 different emphasis. As Brian Maher mentioned, you
14 know, every time he talked to underwriters, they said
15 it was -- the rate was going to be X, and then after he
16 did some more due diligence in talking to different
17 banks, suddenly it was X minus something that he
18 ultimately got.

19 So that's the kind of process. First we
20 verify. We believe everybody's honest, but they're
21 more honest if you watch them like a hawk. And, you
22 know, we sort of think that the role that we're sort of
23 performing is like the parents who, when you come home
24 early on a weekend, you know, sort of, you know, like,

1 what are you doing here, Dad? And the underwriters are
2 like, you know, well, what did you say here, I was just
3 looking around. What are all these chairs? What's
4 that?

5 I mean, it's really the underwriters who are
6 on the other side of the table. Duke, and the
7 Commission, and the advisors are representing -- are
8 negotiating with those folks. And so we can have a
9 united front with them, just like what was done in
10 Florida. I think Mr. Schoenblum said don't tinker with
11 success.

12 MR. CREECH: Thank you, Ms. Chair.

13 Thank you, Chair.

14 CHAIR MITCHELL: All right. Well, with
15 that, we have come to the end of this panel's time.
16 Mr. Creech, Mr. Grantmyre, I will entertain motions
17 at this point.

18 MR. GRANTMYRE: This is Mr. Grantmyre.
19 I would move into evidence the Maher testimony and
20 his five exhibits, and also the Moore testimony
21 unless it's already been admitted into evidence.
22 He had no exhibits.

23 CHAIR MITCHELL: All right. The Moore
24 testimony is in, but hearing no objection to your

1 motion, I will allow the evidence to Mr. Maher's
2 testimony to be admitted into evidence.

3 (Maher Exhibits 1 through 5, were
4 admitted into evidence.)

5 CHAIR MITCHELL: All right. Mr. Creech?

6 MR. CREECH: Yes. Chair Mitchell, I
7 would like to place into the record witness
8 Schoenblum's testimony and two exhibits, and then
9 Mr. Fichera's testimony and six exhibits. And
10 certainly their summaries and the summaries of the
11 witnesses who -- I believe they were read in, so
12 perhaps we don't have to do that -- of the other
13 two witnesses whom Mr. Grantmyre just mentioned.

14 CHAIR MITCHELL: All right. Mr. Creech,
15 hearing no objection to your motion, the exhibits
16 of witnesses Schoenblum and Fichera's testimony
17 will be admitted into evidence. Summaries for each
18 of the four panelists will be admitted into
19 evidence as well.

20 (Schoenblum Exhibits 1 and 2, and
21 Fichera Exhibits 1 through 6, were
22 admitted into evidence.)

23 (Summaries were read into the record,
24 and therefore not inserted here.)

1 CHAIR MITCHELL: Mr. Jeffries, did you
2 have something to add.

3 MR. JEFFRIES: Yes. Chair Mitchell, we
4 would move that DEC/DEP Fichera Cross Examination
5 Exhibit 1 be moved into evidence.

6 CHAIR MITCHELL: All right. So motion
7 is allowed.

8 (DEC/DEP Fichera Cross Examination
9 Exhibit 1, was admitted into evidence.)

10 MR. GRANTMYRE: Madam Chair, the Public
11 Staff would also move that the Public Staff's
12 redirect exhibits be entered into evidence. I
13 believe it was 1, 2, and 3.

14 MR. CREECH: Schoenblum -- Public Staff
15 Schoenblum Redirect Exhibit 1, and we have Public
16 Staff Fichera Redirect Exhibits 1 and 2.

17 CHAIR MITCHELL: All right. For
18 purposes of the record, hearing no objection to the
19 motion Mr. Creech has made, I will allow Public
20 Staff Schoenblum Redirect Examination Exhibit
21 Number 1 into evidence, and I will allow Public
22 Staff Fichera Redirect Examination Exhibit
23 Number 1, and Public Staff Fichera Redirect
24 Examination Exhibit Number 2 into evidence.

1 (Public Staff Schoenblum Redirect
2 Examination Exhibit Number 1 and Public
3 Staff Fichera Redirect Examination
4 Exhibit Numbers 1 and 2, were admitted
5 into evidence.)

6 CHAIR MITCHELL: All right.

7 MR. GRANTMYRE: We would -- the Public
8 Staff would request that Mr. Schoenblum be excused.
9 He has religious observances coming up within an
10 hour or so.

11 CHAIR MITCHELL: All right. That motion
12 will be allowed. Thank you, Mr. Schoenblum, for
13 your time today.

14 MR. CREECH: And based upon prior
15 discussions with Company counsel, I believe the
16 Company is agreeable also to Mr. Moore also being
17 excused, at least by 4:00 today.

18 CHAIR MITCHELL: All right. Hearing no
19 objection from Mr. Jeffries, we will allow your
20 witness to be excused as well, Mr. Creech.

21 MR. CREECH: Thank you.

22 CHAIR MITCHELL: All right. With that,
23 Public Staff, you may call your next witness.

24 MR. GRANTMYRE: Public Staff would call

1 Michael Maness and Michelle Boswell.

2 CHAIR MITCHELL: All right. Let's see,
3 there's Mr. Maness, there's Ms. Boswell.

4 Whereupon,

5 MICHAEL MANESS AND MICHELLE BOSWELL,
6 having first been duly affirmed, were examined
7 and testified as follows:

8 CHAIR MITCHELL: You may proceed,
9 Mr. Grantmyre.

10 DIRECT EXAMINATION BY MR. GRANTMYRE:

11 Q. Mr. Maness, will you please state your name
12 and your position with the Public Staff?

13 A. (Michael Maness) My name is
14 Michael C. Maness. I am director of the accounting
15 division of the Public Staff.

16 Q. And, Ms. Boswell, could you please state your
17 name and position with the Public Staff?

18 A. (Michelle Boswell) I'm Michelle M. Boswell.
19 I am the accounting manager over the electric section
20 of the Public Staff.

21 Q. And to whoever wants to answer this, did you
22 jointly prefile in this case testimony consisting of
23 29 pages, Appendixes A and B, which is your bios or
24 background, and two exhibits?

1 A. (Michael Maness) We did.

2 Q. And if I were to ask you those same questions
3 today, would your answers be the same? I realize there
4 has been a stipulation, so -- and you will address
5 that, I'm sure, but would your answers have been the
6 same at the time you filed this testimony?

7 A. Yes. We filed errata and a set of corrected
8 testimony, so it would be the same as set forth in the
9 corrected testimony filed.

10 Q. Do you remember the date you filed the
11 corrective testimony?

12 MR. CREECH: Let me chime in, if I may.

13 I believe, Mr. Grantmyre, it was on January 6th and
14 on January 13th. It was revised -- it was
15 corrected on January 6th and further revised on
16 January 13th.

17 Q. And if we were to ask you those same
18 questions today on your January 6th and 13th testimony,
19 would your answers be the same?

20 A. Yes.

21 MR. GRANTMYRE: I would request that
22 their testimony be copied into the record as if
23 given orally, and that the two exhibits be
24 identified.

1 CHAIR MITCHELL: All right. Hearing no
2 objection, the testimony of the witnesses as has
3 been corrected will be copied into the record as if
4 given orally from the stand. The exhibits to that
5 testimony will be identified as they were when they
6 were prefiled.

7 (Maness/Boswell Exhibits 1 and 2, were
8 identified as they were marked when
9 prefiled.)

10 (Whereupon, the prefiled corrected joint
11 direct testimony of Michael Maness and
12 Michelle Boswell was copied into the
13 record as if given orally from the
14 stand.)

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BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1262

DOCKET NO. E-7, SUB 1243

In the Matter of)	
Joint Petition of Duke Energy Carolinas,	)	JOINT TESTIMONY OF
LLC, and Duke Energy Progress, LLC	)	MICHAEL C. MANESS
for Issuance of Storm Recovery	)	AND
Financing Orders	)	MICHELLE M. BOSWELL
	)	PUBLIC STAFF – NORTH
	)	CAROLINA UTILITIES
	)	COMMISSION

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1262

DOCKET NO. E-7, SUB 1243

Joint Testimony of Michael C. Maness and Michelle M. Boswell

On Behalf of the Public Staff

North Carolina Utilities Commission

December 22, 2020

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

3 A. My name is Michael C. Maness. My business address is 430 North
4 Salisbury Street, Dobbs Building, Raleigh, North Carolina. I am
5 Director of the Accounting Division of the Public Staff – North
6 Carolina Utilities Commission (Public Staff).

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

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

9 **Q. MS. BOSWELL, PLEASE STATE YOUR NAME, BUSINESS**
10 **ADDRESS, AND PRESENT POSITION.**

11 A. My name is Michelle M. Boswell. My business address is 430 North
12 Salisbury Street, Dobbs Building, Raleigh, North Carolina. I am

1 Manager of the Electric Section of the Accounting Division of the
2 Public Staff – North Carolina Utilities Commission (Public Staff).

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

4 A. My qualifications and duties are included in Appendix B.

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

6 A. The purpose of our testimony is to present the Public Staff’s position
7 on certain matters related to Docket No. E-7, Sub 1243 and Docket
8 E-2, Sub 1262, the Joint Petition for Financing Orders (Petition) filed
9 with the Commission by Duke Energy Carolinas, LLC (DEC) and
10 Duke Energy Progress, LLC (DEP) (collectively, the Companies), on
11 October 26, 2020. By way of the Petition, the Companies request
12 that the Commission issue a Financing Order that will authorize and
13 enable each of the Companies to engage in securitization of the
14 expenses and capital costs associated with certain major storms
15 experienced in 2018 and 2019. Our testimony is filed in conjunction
16 with testimony filed in this proceeding by Calvin C. Craig, III,
17 Financial Analyst, Public Staff Economic Research Division, and on
18 behalf of the Public Staff by consultants from Saber Partners, LLC.

19 **Q. PLEASE BRIEFLY EXPLAIN WHAT YOU MEAN BY THE TERM**
20 **“SECURITIZATION.”**

1 A. Securitization, as the term is used in this proceeding, is a process by
2 which a utility takes a large, specifically identified set of incurred
3 costs subject to being recovered over time through depreciation or
4 amortization, and instead of including the unamortized balance in
5 rate base, finances it with debt-only securities financially and legally
6 segregated from the capital structure used for ratemaking purposes.
7 Therefore, because the undepreciated or unamortized balance is
8 subject to only a debt return during the depreciation/amortization
9 period, instead of the utility's full weighted average cost of capital
10 (WACC) (both debt and equity components), the securitization
11 process potentially reduces the overall cost to ratepayers principally
12 by the difference between the WACC and the significantly lower
13 interest rate. If a large amount of principal is securitized, this process
14 can save ratepayers many millions of dollars.

15 **Q. PLEASE DESCRIBE THE TOPICS YOU WILL COVER IN YOUR**
16 **TESTIMONY.**

17 A. In our testimony, we will address four basic topics:

- 18 1. Statutory Basis for the Petition and Specific Relevance to
19 our Testimony.
- 20 2. Relevant General Rate Case Proceedings.
- 21 3. Costs to be Securitized.
- 22 4. Conditions of the General Rate Case Stipulations Affecting
23 Test of Quantifiable Benefits.
- 24 5. Application of the net benefit test.

1 and (3) the net present value comparison required by G.S. § 62-
2 172(b)(1)g that measures quantifiable benefits.

3 **REVIEW OF RELEVANT GENERAL RATE CASE**
4 **PROCEEDINGS**

5 **Q. HOW DO THE COMPANIES' CURRENTLY PENDING GENERAL**
6 **RATE CASES AFFECT THIS PROCEEDING?**

7 A. As discussed in the Petition and the testimony of DEC and DEP
8 witness Abernathy, in their general rate cases filed in 2019 [for DEC,
9 Docket No. E-7, Sub 1214 (Sub 1214); for DEP, Docket No. E-2, Sub
10 1219 (Sub 1219)], prior to G.S. § 62-172 being enacted into law, DEC
11 and DEP included proposals to defer and amortize the costs of
12 several major storms experienced in 2018 and 2019. However, DEC
13 and DEP witnesses testified that if the then-proposed securitization
14 statute was passed, the Companies would consider removing the
15 impacts of the deferred storm costs from the cases and pursuing
16 securitization instead.

17 G.S. § 62-172 became law in the fall of 2019. Subsequently, on
18 March 25, 2020 for DEC, and on June 2, 2020 for DEP, each of the
19 Companies filed Partial Settlement Agreements (First Partial
20 Stipulations) between it and the Public Staff, which, among other
21 things, contained an agreement that each of the Companies would
22 remove the capital and O&M impacts of the major storms from the

1 cost of service in the general rate cases, and pursue recovery
2 through securitization pursuant to G.S. § 62-172. The First Partial
3 Stipulations contain several provisions to protect the interests of the
4 parties should securitization not be ultimately pursued or approved,
5 and also provided for the effects of appeal of the Commission's rate
6 case orders and the future filing of a petition for rulemaking to
7 establish standards for future securitization proposals. Most
8 significantly for our testimony, the First Partial Stipulations contain
9 agreed-to assumptions that would be used in performing the net
10 present value tests of quantified benefits in the securitization
11 proceedings. These assumptions are discussed later in our
12 testimony.

13 The Sub 1214 and Sub 1219 general rate cases remain pending
14 before the Commission. However, we have proceeded in this
15 securitization proceeding under the provisional assumption that the
16 securitization-related proceedings of the First Partial Stipulations will
17 be approved. The First Partial Stipulations in Sub 1214 and Sub
18 1219 are filed with our testimony as Maness Boswell Exhibit 1 and
19 Maness Boswell Exhibit 2, respectively.

1 **COSTS TO BE SECURITIZED**

2 **Storm Costs**

3 **Q. PLEASE PROVIDE A DESCRIPTION OF THE COMPANIES'**
4 **STORM COSTS INCLUDED IN THE PRESENT SECURITIZATION**
5 **FILING.**

6 A. In the present securitization filing, the Companies have included
7 storm costs for Hurricanes Florence and Michael from 2018, Winter
8 Storm Diego from 2018, and, for DEP only, Hurricane Dorian from
9 2019. These were the same three and four storms for DEC and DEP,
10 respectively, which were removed from the cost of service as part of
11 the First Partial Stipulations between the Companies and the Public
12 Staff in each of their currently pending general rate cases. The
13 Companies have included incremental O&M and capital costs of
14 \$739,008,000 (for DEP) and \$225,570,000 (for DEC), as depicted on
15 witness Abernathy's Exhibit 2 for each of the Companies. These
16 amounts include O&M expenses and capital expenditures
17 associated with the 2018 and 2019 storms, and carrying costs on all
18 storm expenditures through May 31, 2021 at the net-of-tax weighted
19 average cost of capital (WACC) either approved by the Commission
20 in each of the Companies' most recent general rate cases or
21 proposed in the current general rate cases' stipulations with the
22 Public Staff.

1 **Q. ARE THE AMOUNTS OF STORM COSTS PRESENTED BY THE**
2 **COMPANIES IN THIS PROCEEDING THE SAME AMOUNTS THAT**
3 **WERE REMOVED FROM THE COST OF SERVICE IN EACH OF**
4 **THE COMPANIES' CURRENT PENDING GENERAL RATE**
5 **CASES?**

6 A. The costs included by the Companies in the present securitization
7 filing incorporate the costs included in each of the Companies'
8 respective general rate cases currently pending before the
9 Commission. However, the Companies have updated certain
10 amounts of the O&M storm expenses included in the general rate
11 cases. DEC's O&M storm expenses have decreased by the very
12 small amount of \$31,000, although there are several upward and
13 downward adjustments that net out to this amount. DEP's O&M
14 storm expenses have decreased by the larger amount of
15 approximately \$10.7 million, again by way of several upward and
16 downward adjustments. Capital expenditures are unchanged from
17 the amounts set forth in the general rate cases, while the carrying
18 cost balances have been updated through May 31, 2021, and have
19 also been adjusted to reflect, on and after January 1, 2021 for DEC
20 and February 1, 2021 for DEP, the net-of-tax WACC stipulated to by
21 the Public Staff and each of the Companies currently pending
22 general rate cases.

1 DEC and DEP witness Abernathy confirms in her testimony that there
2 will be no additional costs associated with the 2018 storms recorded
3 after June 30, 2020, the period through which the Companies have
4 included costs in the filing. Witness Abernathy further testifies that
5 no further adjustments to incremental O&M or capital costs included
6 in the securitization financing are expected for the 2019 storms,
7 which have been updated through September 30, 2020.

8 **Q. WHAT ARE THE PUBLIC STAFF'S RECOMMENDATIONS**
9 **REGARDING THE STORM COSTS INCLUDED IN THE STORM**
10 **SECURITIZATION FILING?**

11 A. In the course of the Companies' respective general rate cases, the
12 Public Staff reviewed the 2018 and 2019 storm costs, and concluded
13 that overall they were prudently incurred and reasonable for
14 ratemaking purposes. In this proceeding, the Public Staff has
15 gathered certain supporting documentation for the net reduction in
16 storm-related O&M expenses, and has verified the calculation of
17 carrying costs, assuming a storm recovery bond issuance date of
18 June 1, 2021 and Commission approval of the stipulated net-of-tax
19 WACC rates as of January 1, 2021 (for DEC) and February 1, 2021
20 (for DEP). However, due to the time constraints of this proceeding,
21 the Public Staff has not been able to fully review all the changes in
22 recorded O&M expenses since the general rate cases. Therefore,

1 those changes in expenses remain subject to future review.
2 Likewise, the final carrying cost amount remains subject to the actual
3 bond issuance date and the Commission's final decision in each
4 case regarding the net-of-tax WACC. With regard to storm-related
5 O&M expenses, the Public Staff recommends that the Companies be
6 required to provide any further supporting documentation requested
7 by the Public Staff to complete its review of the changes in storm
8 costs recorded since each of the Companies' general rate cases, and
9 that any differences between the final actual, prudent, and
10 reasonable amounts and the amounts included in securitized storm
11 recovery charges be addressed in each of the Companies' next
12 general rate cases, as provided for in G.S. § 62-172(a)(14)c.
13 Likewise, any difference between the final, accurately calculated
14 carrying costs and the amounts included in securitized storm
15 recovery charges should be addressed in each of the Companies'
16 next general rate cases, as provided for in the statute.

17 **Upfront and Ongoing Financing Costs**

18 **Q. PLEASE DESCRIBE THE FINANCING COSTS INCLUDED BY THE**
19 **COMPANIES IN THE FILING.**

20 A. The Companies have proposed that proceeds of storm recovery
21 bonds be used to finance their total storm securitization costs as well
22 as their up-front financing costs. The Companies also have proposed

1 that storm recovery charges be set and adjusted from time-to-time to
2 pay their ongoing financing costs. Up-front financing costs are the
3 fees and expenses incurred to obtain the Financing Orders, as well as
4 the expenses for structuring, marketing, and issuing each series of the
5 ratepayer-funded storm securitization bonds. According to DEC and
6 DEP witness Heath, these expenses include external and internal
7 legal fees, structuring advisory fees and expenses, interest rate swap
8 or lock fees, underwriting fees and original issue discount, rating
9 agency and trustee fees, accounting fees, information technology
10 programming costs, servicer's set-up costs, printing and marketing
11 expenses, stock exchange listing and compliance fees, filing and
12 registration fees, and expenses of outside consultants and/or counsel
13 if sought by the Commission or the Public Staff. The Companies have
14 estimated these costs at \$5.2 million for DEC and \$8.9 million for DEP.
15 Most of the up-front financing costs will not be determined until the
16 issuance advice letter process.

17 Ongoing financing costs are expenses incurred throughout the life of
18 the ratepayer-funded storm recovery bonds to support the ongoing
19 operations of the special purpose entity (SPE). According to DEC and
20 DEP witness Heath, ongoing financing costs include servicing fees,
21 return on invested capital, administration fees, accounting and
22 auditing fees, legal fees, rating agency surveillance fees, trustee fees,
23 independent director or manager fees, and other miscellaneous fees

1 associated with servicing the ratepayer-funded storm recovery bonds.
2 The Companies have estimated the annual ongoing financing costs at
3 approximately \$0.44 million for DEC and \$0.91 million for DEP. A
4 portion of the ongoing financing costs will be known by the issuance
5 of a series of ratepayer-funded storm recovery bonds, while other
6 costs will vary over the term of the bonds.

7 **Q. DOES THE PUBLIC STAFF BELIEVE IT REASONABLE TO**
8 **INCLUDE THE UP-FRONT AND ONGOING FINANCING FEES IN**
9 **THE OVERALL COSTS OF THE STORM SECURITIZATION**
10 **BONDS?**

11 A. The Public Staff believes the Companies will incur some costs
12 associated with originating the bonds as well as the ongoing
13 maintenance of the bonds, and it is reasonable to include an estimate
14 of those costs in the overall costs of the ratepayer-funded storm
15 securitization bonds.

16 **Q. PLEASE EXPLAIN ANY TRUE-UPS AND DEFERRALS THAT**
17 **WOULD BE NEEDED IN ORDER TO REFLECT ACTUAL COSTS.**

18 A. In its filing, the Companies have proposed estimated costs for both
19 the up-front and ongoing financing costs, and the costs will need to be
20 updated for actual known and measurable costs. In addition, the fees
21 payable to the Companies pursuant to their Servicing Agreements and
22 Administration Agreements are likely to differ from the Companies'

1 direct and incremental costs of providing those services. The
2 differences between the actual prudently incurred and properly
3 accounted for costs and the estimated costs included by the
4 Companies, or the differences between the fees payable to the
5 Companies pursuant to their Servicing Agreements and
6 Administration Agreements and the Companies' direct and
7 incremental costs of providing those services will either need to be
8 refunded to or collected from ratepayers.

9 The Companies have proposed that if the actual up-front financing
10 costs are less than the estimated costs (resulting in an overrecovery
11 of financing costs), the difference in the costs will be credited back to
12 ratepayers in a manner to be determined in the Financing Orders,
13 provided that adjustments are not made to storm recovery charges for
14 such excess as prohibited by G.S. § 62-172. However, if the actual
15 up-front fees are more than the estimate included by the Companies
16 (resulting in an underrecovery), the Companies are requesting that a
17 regulatory asset be established to allow the Companies to collect such
18 costs through the normal ratemaking process. The Public Staff does
19 not oppose establishing a regulatory asset for prudently incurred and
20 properly accounted for underrecoveries of up-front costs. The Public
21 Staff believes the regulatory asset should include only the excess
22 costs, adjusted if appropriate for income taxes, and accrued carrying
23 costs at the Companies' respective net-of-tax WACC, and collected

1 from ratepayers in an appropriate manner in each of the Companies'
2 next general rate cases.

3 In regards to the overrecovery of up-front financing costs, the Public
4 Staff believes that these amounts should be credited back to the
5 ratepayers through use of a deferred regulatory liability and
6 subsequent credit to the cost of service as part of the normal
7 ratemaking process, adjusted if appropriate for income taxes and
8 accrued carrying costs at the Companies' respective net-of-tax
9 WACC, returning the monies to the ratepayers in an appropriate
10 manner in each of the Companies' next general rate cases. The
11 Public Staff does not believe that this approach would violate the
12 terms of G.S. § 62-172. The deferred regulatory liability for up-front
13 financing costs could be combined with the regulatory asset for the
14 same type of costs, but should not be combined with the regulatory
15 assets and liabilities for other types of securitization-related costs
16 and benefits.

17 For ongoing financing costs, the Companies propose to resolve any
18 over- or underrecoveries of actual costs through the semi-annual,
19 quarterly, and or optional interim true-up mechanism. While the Public
20 Staff understands the administrative ease that this approach would
21 afford the Companies, as well as the need to periodically adjust storm
22 recovery charges to reflect true-up of these over- and

1 underrecoveries, we are not sure that allowing all changes in ongoing
2 financing costs to avoid Commission oversight would be in keeping
3 with the provisions of G.S. § 62-172(b)(3)d, which states, with regard
4 to the investigation of the true-up filings, “The review of the filing shall
5 be limited to determining whether there are any mathematical or
6 clerical errors in the application of the formula-based mechanism
7 relating to the appropriate amount of any overcollection or
8 undercollection of storm recovery charges and the amount of an
9 adjustment.” Changes in financing costs might well create the need
10 for review and investigation that could not be accomplished within
11 the 30-day window established by the statute for review of these
12 filings. The Public Staff believes that the changes in costs to be
13 charged or refunded to ratepayers should be subject to audit and
14 review for prudence and proper accounting prior to finalizing the
15 amounts to be collected from or returned to ratepayers. Therefore,
16 the Public Staff recommends that adjustments to ongoing financial
17 costs that are passed through to the non-bypassable storm recovery
18 charges be matched with an offsetting regulatory asset or liability in
19 the Companies’ traditional ratemaking cost of service, adjusted if
20 appropriate for income taxes and accrued carrying costs at the
21 Companies’ respective net-of-tax WACC. If upon later review, the
22 changes in costs prove to be imprudently incurred or otherwise
23 unreasonable, appropriate adjustments can be made to the cost of

1 service in a future general rate case proceeding. These deferred
2 regulatory assets or liabilities for ongoing financing costs could be
3 combined, but should not be combined with the regulatory assets
4 and liabilities for other types of securitization-related costs and
5 benefits.

6 We also recommend that in the periodic true-ups DEC and DEP each
7 be required to inform the Commission in the filing of any changes to
8 the ongoing financing costs from the previous filing, and the
9 cumulative balance of all changes since the most recent general rate
10 case.

11 **Service Fees Paid to DEC and DEP**

12 **Q. PLEASE DESCRIBE THE TREATMENT OF THE SERVICER FEES**
13 **AND ADMINISTRATION FEES BETWEEN THE COMPANIES AND**
14 **THE SPE.**

15 A. The Companies have included a servicing fee of 0.05 percent of the
16 total ratepayer-funded storm securitization bond issuance, plus out-
17 of-pocket expenses. The servicing fee will be charged by DEC and
18 DEP to the SPEs, collected through the storm recovery charges by
19 the SPEs, and then passed by the SPEs to DEC and DEP, where it
20 will be recorded as revenue on each of the respective Companies'
21 books and where the Companies' actual and direct expenses
22 incurred in providing those services will be included in the cost of

1 service. The servicing fee is designed to recover the Companies'
2 direct and incremental costs associated with billing, monitoring,
3 collecting, and remitting securitization charges; complying with the
4 reporting requirements imposed by the servicing agreement;
5 implementing the true-up mechanism; conducting procedures
6 required to coordinate required audits related to the Companies' role
7 as servicers; performing legal and accounting functions related to the
8 servicing obligation; and communicating with rating agencies. All of
9 the above costs will be recorded as expenses on the Companies'
10 books, and also included in the cost of service.

11 Similarly, the Companies have included an administration fee of
12 \$50,000 per annum, plus out-of-pocket expenses. The
13 administration fee will be charged by DEC and DEP to the SPEs,
14 collected through the storm recovery charges by the SPEs, and then
15 passed by the SPEs to DEC and DEP, where it will be recorded as
16 revenue on each of the respective Companies' books, and where the
17 Companies' actual and direct expenses incurred in providing those
18 services will be included in the cost of service. The administration
19 fee is designed to recover the Companies' direct and incremental
20 costs associated administering the SPE. The above costs will be
21 recorded as expenses on the Companies' books, and also included
22 in the cost of service.

1 **Q. PLEASE DESCRIBE ANY DEFERRALS PROPOSED BY THE**
2 **COMPANIES REGARDING THE SERVICING FEE AND THE**
3 **ADMINISTRATION FEE.**

4 A. In the proposed form of Financing Order attached as Exhibits B and
5 C to the Joint Petition, the Companies request that servicing and
6 administration fees collected by the Companies be included in the
7 Companies' cost of service, and that the Companies credit back the
8 fees to the ratepayers as part of the Companies' cost of service in
9 the next general rate case, along with all of the incremental costs of
10 performing servicing and administration functions, as well as the
11 expenses incurred by the Companies to perform obligations under
12 the Servicing Agreement or Administrative Agreement not otherwise
13 recovered through the storm recovery charge.

14 **Q. PLEASE EXPLAIN THE PUBLIC STAFF'S RECOMMENDATION**
15 **REGARDING THE SERVICING FEE AND ADMINISTRATION FEE.**

16 A. Because general rate cases do not occur every year, and sometimes
17 several years can pass between them, the Public Staff believes the
18 servicing and administrative fees collected on behalf of the
19 Companies in excess of the actual direct and incremental costs
20 associated with providing those services should, instead of simply
21 being passed annually through the cost of service, be held in a
22 regulatory liability account, separate from the regulatory assets and

1 liabilities for other types of securitization-related costs and benefits,
2 adjusted if appropriate for income taxes and accrued carrying costs
3 at the Companies' respective net-of-tax WACC, and refunded to
4 ratepayers in an appropriate manner in the next general rate case.
5 This methodology will ensure the Companies recover the actual
6 costs they incur to service the storm recovery bonds and to
7 administer the SPEs while providing assurance to ratepayers that the
8 actual excess amounts collected by the Companies' will be passed
9 through to them, even if they are collected from the SPEs in years
10 between general rate cases, thus avoiding any windfalls associated
11 with the storm securitization. It should be noted that this approach
12 does not preclude setting a normalized net revenue amount during
13 general rate cases, and then truing up over- or underrecoveries in
14 future general rate cases.

15 **Tail-End Collections**

16 **Q. PLEASE EXPLAIN THE TAIL-END COLLECTIONS.**

17 A. The Companies, through the SPE, will collect storm recovery
18 charges until such time the entire storm recovery bonds and ongoing
19 financing charges are paid in full. Since it is not possible to know the
20 exact billing or collections before they are made, the Companies will
21 continue to bill and collect from ratepayers the storm recovery charge
22 for a period of typically 60 to 90 days after the storm recovery bonds

1 would have been fully recovered. The overcollection is due to the
2 timing difference of when billing and collections cease and the storm
3 recovery bonds are fully recovered.

4 **Q. PLEASE EXPLAIN THE COMPANIES' RECOMMENDATION AS**
5 **TO HOW TO REFUND THE OVERCOLLECTION TO**
6 **RATEPAYERS.**

7 A. In the present case, the Companies have proposed to credit a
8 regulatory liability account for any amounts remaining in each
9 Collection Account, less the amount of any Capital Subaccount, and
10 credit the net amount back to ratepayers in the Companies' next
11 general rate case following maturity of the storm recovery bonds.

12 **Q. PLEASE EXPLAIN THE PUBLIC STAFF'S RECOMMENDATION**
13 **AS TO HOW TO REFUND THE TAIL-END CREDIT.**

14 A. The Public Staff believes the overcollection due to all tail-end
15 collections of storm recovery charges should be held in a regulatory
16 liability account, separate from other securitization-related regulatory
17 assets and liabilities, adjusted if appropriate for income taxes and
18 accrued carrying costs at the Companies' respective net-of-tax
19 WACC, and then refunded to ratepayers in an appropriate manner in
20 the next general rate case. The Public Staff believes this
21 methodology is reasonable, as the Companies' have not historically
22 filed rate cases on an annual basis. Separating this regulatory

1 liability from other amounts receiving deferral treatment for
2 securitization that occurred in years prior to the tail-end credit would
3 avoid delay in collecting or refunding any of those other regulatory
4 assets or liabilities.

5 **Capital Contributions**

6 **Q. PLEASE EXPLAIN THE CAPITAL CONTRIBUTIONS INCLUDED**
7 **IN THE COMPANIES' FILING.**

8 A. In the present filing, the Companies propose to each make a capital
9 contribution of at least 0.50 percent of the original principal amount
10 of the storm recovery bonds for their utility to their respective SPE.
11 The SPE will deposit the contributions into a Capital Subaccount,
12 which will be used as collateral to facilitate timely payment of
13 principal and interest on the storm recovery bonds. The Capital
14 Subaccount will be invested in short-term high-quality investments,
15 and any remaining amounts in the Capital Subaccount will be
16 returned to the Companies upon full payment of the storm recovery
17 bonds.

18 **Q. PLEASE EXPLAIN THE RETURN THE COMPANIES ARE**
19 **SEEKING ON THE CAPITAL CONTRIBUTIONS.**

20 A. The Companies are requesting a return on the capital contributions
21 made to the Capital Subaccount based upon the interest rate of the

1 longest maturing tranche of storm recovery bonds. The Companies
 2 are requesting the return on capital be treated much like ongoing
 3 finance costs, and be recovered through the storm recovery charges.

4 **Q. WHAT IS THE PUBLIC STAFF'S RECOMMENDATION**
 5 **REGARDING THE RETURN ON CAPITAL CONTRIBUTIONS?**

6 A. The Public Staff believes the Companies should not earn an
 7 additional return on the contributed capital over and above what the
 8 SPE actually earns on its investments and returns to the Companies.
 9 Public Staff witness Sutherland addresses this issue in detail in his
 10 testimony, pointing out that the Companies' capital is not at risk. In
 11 addition to what is included in his testimony, we would like to point
 12 out that securitization is a process that, pursuant to G.S. § 62-172, is
 13 entirely at the discretion of the Companies to propose undertaking.
 14 Any opportunity cost incurred by the Companies as a result of not
 15 having "free" capital is incurred by their choice to pursue
 16 securitization, which, as witness Sutherland points out, has its own
 17 benefits to the Company.

18 **CONDITIONS OF THE GENERAL RATE CASE STIPULATIONS**
 19 **AFFECTING TEST OF QUANTIFIABLE BENEFITS**

20 **Q. PLEASE DESCRIBE THE PORTIONS OF THE STIPULATIONS**
 21 **THAT AFFECT THE NET PRESENT VALUE TESTS OF**
 22 **QUANTIFIABLE BENEFITS?**

1 A. As previously noted, each of the First Partial Stipulations includes
 2 agreed-to assumptions to be used in the net present value tests
 3 applied pursuant to N.C.G.S. § 62-172(b)(1)g. For DEC, these
 4 assumptions, as set forth in Section III.3 of the Sub 1214 First Partial
 5 Stipulation, are as follows:

- 6 a. For traditional storm cost recovery, 12 months of amortization
 7 for each Storm was expensed prior to the new rates going
 8 into effect;
- 9 b. For traditional storm cost recovery, no capital costs incurred
 10 due to the Storms during the 12-month period were included
 11 in the deferred balance;
- 12 c. For traditional storm cost recovery, no carrying charges were
 13 accrued on the deferred balance during the 12-month period
 14 following the date(s) of the Storm(s);
- 15 d. For traditional cost recovery, the amortization period for the
 16 Storms is a minimum of 10 years; and
- 17 e. For securitization, the imposition of the Storm recovery
 18 charge begins nine months after the new rates go into effect.

19 For DEP, the assumptions set forth in Section III.3 of the Sub 1219
 20 First Partial Stipulation are the same as those set forth for DEC,
 21 except that assumption d. uses a minimum of 15 years instead of 10.

22 **Q. WHAT ARE THE REASONS FOR THESE ASSUMPTIONS?**

23 A. The reason that most of the assumptions were included is that there
 24 are certain differences between the manner in which the deferral and
 25 amortization of major storm costs has been generally treated for
 26 traditional ratemaking purposes by the Commission and the manner

1 that storm recovery costs and charges are required to be treated for
2 securitization purposes pursuant to N.C.G.S. § 62-172, and the
3 Public Staff, in particular, believed that these differences should be
4 taken into account when determining whether securitization provides
5 quantifiable benefits for each of the Companies' ratepayers. For
6 example, under the traditional ratemaking method as generally
7 practiced by the Commission, any storm O&M amortization,
8 depreciation and return on capital investments, or carrying charges
9 on deferred costs are assumed to be recovered in then-existing rates
10 between the time the storms occur and the dates rates in the next
11 general rate case go into effect. Therefore, for purposes of this
12 proceeding, a 12-month period was assumed to occur in which no
13 impact of those items was assumed to affect current rates (thus
14 decreasing the net present value revenue requirement resulting from
15 the traditional method). Additionally, an assumption needed to be
16 made for the securitization option regarding how long after new rates
17 went into effect the non-bypassable charge would begin to be
18 collected, in order to reasonably calculate the net present value of
19 revenue requirements under that option. For purposes of this
20 proceeding, a nine-month lag was assumed in the First Partial
21 Stipulation. Finally, also in order to perform a proper net present
22 value comparison, at least a minimum hypothetical amortization
23 period needed to be assumed under the traditional ratemaking

1 approach. The parties decided that this period would be 10 years for
2 DEC and 15 years for DEP.

3 **Q. DO THESE ASSUMPTIONS APPLY FOR PURPOSES OTHER**
4 **THAN G.S. § 62-172(b)(1)g.?**

5 A. No. These assumptions apply solely for purposes of testing
6 compliance with the net present value tests in G.S. § 62-172(b)(1)g.
7 These assumptions do not apply for other purposes of this
8 proceeding.

9 For example, other Public Staff witnesses in this proceeding
10 recommend that the Commission exercise its authority under G.S. §
11 62-172(b)(3)b.12 to require that the structuring, marketing and
12 pricing of the storm recovery bonds result in the lowest storm
13 recovery charges consistent with market conditions at the time of
14 pricing and the terms of the Financing Order. The assumptions set
15 forth in Section III.3 of the Sub 1219 First Partial Stipulation would
16 not apply for this purpose.

17 **APPLICATION OF NET BENEFIT TEST**

18 **Q. HAVE YOU REVIEWED THE COMPANY'S APPLICATION OF THE**
19 **NET PRESENT VALUE COMPARISON IN THIS PROCEEDING?**

20 A. Yes. During the negotiations that led to the First Partial Stipulations,
21 the Companies and the Public Staff developed a model that

1 calculated the difference in the net present value of revenue
2 requirements between the securitization approach and the traditional
3 ratemaking approach. This model incorporated the assumptions
4 agreed to by the Companies and the Public Staff in the First Partial
5 Stipulations. DEC and DEP witness Abernathy presented these
6 analyses as part of her Exhibits filed in this proceeding. She
7 calculates net present value benefits of securitization in the amounts
8 of \$58,038,000 for DEC and \$199,019,000 for DEP.

9 **Q. HAVE THE COMPANIES CALCULATED THE NET PRESENT**
10 **VALUE BENEFITS OF SECURITIZATION IN A REASONABLE**
11 **MANNER, INCORPORATING THE ASSUMPTIONS AGREED TO**
12 **IN THE FIRST PARTIAL STIPULATIONS?**

13 A. In general, yes. The Company's calculations have been performed
14 in a generally reasonable manner, and demonstrate that in this
15 instance securitization does provide quantifiable benefits to
16 ratepayers. However, we agree with the testimony of the other
17 Public Staff witnesses in this case, who point out certain problems
18 with certain assumptions and calculations made by the Companies,
19 and also speak to ways in which the Companies can not only pass
20 the bar of justifying securitization, but also take steps to maximize
21 those benefits.

1 **Q. DO YOU HAVE ANY COMMENTS REGARDING THE TERMS OF**
2 **THE STORM RECOVERY BONDS?**

3 A. Yes. Other Public Staff witnesses, particularly witness Sutherland,
4 speak to the benefit that could be obtained by lengthening the term
5 of the storm recovery bonds from 15 years to 18 or even 20 years.
6 We agree with this recommendation in this proceeding, particularly
7 in this time of dramatically low interest rates. However, we would like
8 to sound a note of caution for the long term. If the recent pattern of
9 large storms with large dollar impacts occurring every two years or
10 so were to continue for the long term, it would be appropriate for the
11 Commission to take into consideration the potential “snowball effect”
12 on future rates that could develop from continuing to provide for long
13 bond amortization periods. That beneficial effect would need to be
14 measured against the dollar benefits that could arise from such
15 lengthened terms. However, in this proceeding, we believe that the
16 benefits of lengthening the amortization periods, as presented by
17 witness Sutherland, are clearly large enough to justify the
18 lengthening.

19 **Q. DO YOU HAVE ANY COMMENTS REGARDING THE**
20 **ASSUMPTIONS MADE IN THE ANALYSES REGARDING THE**
21 **WACC?**

1 A. Yes. For purposes of the analyses, DEC and DEP witness
2 Abernathy has used the WACC agreed to by the Companies and the
3 Public Staff in the Sub 1214 and Sub 1219 general rate cases. As
4 noted previously, these cases are still pending, and so this WACC is
5 not yet approved. However, the Public Staff considers the use of
6 these stipulated WACCs to be reasonable, given that neither the
7 actual approved WACC currently in effect nor any reasonable WACC
8 that the Commission might approve in the Sub 1214 and Sub 1219
9 proceedings would alter the conclusion that securitization does in
10 fact provide quantifiable benefits in this case.

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

12 A. Yes, it does.

APPENDIX A

MICHAEL C. MANESS**Qualifications and Experience**

I am a graduate of the University of North Carolina at Chapel Hill with a Bachelor of Science degree in Business Administration with Accounting. I am a Certified Public Accountant and a member of both the North Carolina Association of Certified Public Accountants and the American Institute of Certified Public Accountants.

As Director of the Accounting Division of the Public Staff. I am responsible for the performance, supervision, and management of the following activities: (1) the examination and analysis of testimony, exhibits, books and records, and other data presented by utilities and other parties under the jurisdiction of the Commission or involved in Commission proceedings; and (2) the preparation and presentation to the Commission of testimony, exhibits, and other documents in those proceedings. I have been employed by the Public Staff since July 12, 1982.

Since joining the Public Staff, I have filed testimony or affidavits in several general, fuel, and demand-side management/energy efficiency rate cases of the utilities currently organized as Duke Energy Carolinas, LLC, Duke Energy Progress, LLC., and Virginia Electric and Power Company (Dominion Energy North Carolina) as well as in several water and sewer general rate cases. I have also

filed testimony or affidavits in other proceedings, including applications for certificates of public convenience and necessity for the construction of generating facilities, applications for approval of self-generation deferral rates, applications for approval of cost and incentive recovery mechanisms for electric utility demand-side management and energy efficiency (DSM/EE) efforts, and applications for approval of cost and incentive recovery pursuant to those mechanisms.

I have also been involved in several other matters that have come before this Commission, including the investigation undertaken by the Public Staff into the operations of the Brunswick Nuclear Plant as part of the 1993 Carolina Power & Light Company fuel rate case (Docket No. E-2, Sub 644), the Public Staff's investigation of Duke Power's relationship with its affiliates (Docket No. E-7, Sub 557), and several applications for business combinations involving electric utilities regulated by this Commission. Additionally, I was responsible for performing an examination of Carolina Power & Light Company's accounting for the cost of Harris Unit 1 in conjunction with the prudence audit performed by the Public Staff and its consultants in 1986 and 1987.

I have had supervisory or management responsibility over the Electric Section of the Accounting Division since 1986, and also was assigned management duties over the Water Section of the Accounting Division during the 2009-2012 time frame. I was promoted to Director of the Accounting Division in late December 2016.

APPENDIX B

MICHELLE M. BOSWELL**Qualifications and Experience**

I graduated from North Carolina State University in 2000 with a Bachelor of Science degree in Accounting. I am a Certified Public Accountant.

As Manager of the Electric Section of the Accounting Division of the Public Staff. I am responsible for the performance, supervision, and management of the following activities: (1) the examination and analysis of testimony, exhibits, books and records, and other data presented by utilities and other parties under the jurisdiction of the Commission or involved in Commission proceedings; and (2) the preparation and presentation to the Commission of testimony, exhibits, and other documents in those proceedings. I joined the Public Staff in September 2000.

I have performed numerous audits and/or presented testimony and exhibits before the Commission addressing a wide range of electric, natural gas, and water topics. I have performed audits and/or presented testimony in Duke Energy's 2010 REPS Cost Recovery Rider; the 2008 REPS Compliance Reports for North Carolina Municipal Power Agency 1, North Carolina Eastern Municipal Power Agency, GreenCo Solutions, Inc., and EnergyUnited Electric Membership; four recent Piedmont rate cases; PSNC's 2016 rate case, DNCP's 2012 rate case, DEP's 2013 rate case, several Piedmont, NUI, and Toccoa annual gas cost reviews; Piedmont and NUI's merger; and Piedmont and NCNG's merger.

Additionally, I have filed testimony and exhibits in numerous water rate cases and performed investigations addressing a wide range of topics and issues related to the water, electric, and telephone industries.

1 Q. Mr. Boswell -- Ms. Boswell or Mr. Maness, do
2 either one -- will one of you please give a summary of
3 your testimony? I believe you have an updated summary
4 based -- because there's been a stipulation.

5 A. (Michelle Boswell) Yes.

6 The purpose of our testimony is to present
7 the Public Staff's position on certain matters related
8 to Docket No. E-7, Sub 1243 and Docket No. E-2,
9 Sub 1262, the Joint Petition for Financing Orders filed
10 with the Commission by Duke Energy Carolinas, LLC, or
11 DEC, and Duke Energy Progress, LLC, or DEP.

12 In our testimony, we addressed five basic
13 topics: One, statutory basis for the petition and
14 specific relevance to our testimony; two, relevant
15 general rate case proceedings; three, costs to be
16 securitized; four, conditions of the general rate case
17 stipulations affecting test of quantifiable benefits;
18 and five, application of the net benefit test.

19 The Petition was filed with the Commission
20 pursuant to N.C. General Statute 62-172, financing for
21 certain storm recovery costs, and includes the 2018 and
22 2019 storms originally proposed by the Companies for
23 deferral and amortization in each Company's last
24 general rate case, and subsequently removed from O&M

1 and capital costs as part of stipulations with the
2 Public Staff in each case. Additionally, the Companies
3 have included in the amounts to be securitized upfront
4 and ongoing financing costs, servicing fees, and other
5 costs related to the securitization of the storm costs
6 as provided for in the Statute.

7 The Public Staff has made several
8 recommendations regarding the accounting for all of the
9 costs proposed by the Companies for an inclusion in the
10 securitization filing, including; one, provisions if
11 the stipulations are not accepted by the Commission in
12 each Company's general rate case proceedings currently
13 pending before the Commission; and two, provisions to
14 limit amounts charged to ratepayers to actual and
15 reasonable storm recovery costs and financing costs.

16 Furthermore, our testimony details the
17 conditions of each Company's general rate case
18 stipulations that affected the test of quantifiable
19 benefits as well as the application of the net benefit
20 test. We agreed that in the present case,
21 securitization does provide quantifiable benefits to
22 the ratepayers. The Companies and the Public Staff
23 have entered into an agreement and stipulation of
24 partial settlement which settles all accounting issues

1 discussed in our testimony.

2 This concludes our summary.

3 CHAIR MITCHELL: All right. Are the
4 witnesses available for cross examination at this
5 time?

6 MR. CREECH: The witnesses are available
7 for cross examination.

8 MR. GRANTMYRE: I'm sorry, I was on
9 mute.

10 CHAIR MITCHELL: That's all right.
11 That's okay. All right. My notes indicate that
12 neither Duke nor the -- CIGFUR have cross for the
13 witnesses, but I will counsel --

14 MR. ROBINSON: Chair Mitchell -- I'm
15 sorry, go ahead.

16 CHAIR MITCHELL: I will ask counsel to
17 confirm. Mr. Robinson, seems like you might be
18 ready to ask some questions.

19 MR. ROBINSON: Sure. Chair Mitchell, I
20 think I'll take a lesson out of Mr. Grantmyre's
21 book and ask one very brief question to the panel.

22 CHAIR MITCHELL: All right. You may
23 proceed.

24 CROSS EXAMINATION BY MR. ROBINSON:

1 Q. Mr. Maness and Ms. Boswell, good afternoon.
2 You would agree with me, would you not, that the
3 stipulation that was entered into with the Companies
4 and the Public Staff was as a result of discovery and
5 extensive negotiations between the two parties?

6 A. (Michael Maness) Yes.

7 MR. ROBINSON: Thank you. No further
8 questions.

9 MS. CRESS: And, Chair Mitchell, this is
10 Christina Cress with CIGFUR. We do not have
11 questions for this panel. Thank you.

12 CHAIR MITCHELL: All right.
13 Mr. Grantmyre, Mr. Creech, any redirect for your
14 witnesses?

15 MR. GRANTMYRE: No.

16 CHAIR MITCHELL: Okay. Questions from
17 the Commissioners, beginning with Brown-Bland.

18 COMMISSIONER BROWN-BLAND: No questions.

19 CHAIR MITCHELL: All right.

20 Commissioner Gray?

21 COMMISSIONER GRAY: No questions.

22 CHAIR MITCHELL: All right.

23 Commissioner Clodfelter?

24 (No verbal response.)

1 CHAIR MITCHELL: Okay. No questions
2 from Clodfelter.

3 Commissioner Duffley?

4 COMMISSIONER DUFFLEY: No questions.

5 CHAIR MITCHELL: All right.

6 Commissioner Hughes?

7 COMMISSIONER HUGHES: No questions.

8 CHAIR MITCHELL: And

9 Commissioner McKissick?

10 COMMISSIONER MCKISSICK: No questions.

11 CHAIR MITCHELL: All right. Well, I --
12 unless you-all think you-all were going to get off
13 easy, I have a few questions for you. And I will
14 go ahead and start with my questions. We're going
15 to take a break at about 3:45 for the court
16 reporter. So I'll ask you a few now, and if we
17 don't get through them, we'll come back and resume
18 after the break.

19 EXAMINATION BY CHAIR MITCHELL:

20 Q. First one is from our staff, and I'm gonna
21 read it. I apologize, but I want to make sure I get it
22 correct -- I capture exactly what they need from you
23 all. So Angers Exhibit 1, page 1 of 1 provides the
24 true-up mechanism form, which is the process to be used

1 to ensure the recovery from customers of sufficient
2 revenues to provide for the timely payment of the storm
3 recovery bonds and their ongoing financing costs.

4 The form provides the calculation of the
5 average retail storm recovery charge per KWh to be
6 charged to the Companies' customers on their monthly
7 bills for the next projected remittance period.

8 Witness Angers explains in her direct testimony the
9 components of the true-up mechanism form and how it
10 will be used as proposed by the Companies.

11 Would you-all please explain how each
12 component of the true-up mechanism form will now be
13 calculated as a result of the agreement and stipulation
14 of partial settlement that the Company and the Public
15 Staff have entered into? And please include in your
16 response, the frequency of adjustment on the form to
17 the amounts included on lines 17 and 31 and lines 18
18 and 32 which are, just for your reference, the
19 servicing costs and other ongoing costs.

20 If this is something that you-all would
21 rather provide as a late-filed exhibit, you may do so.
22 But you may know off the top of your heads how to
23 answer, so I'll let you respond.

24 A. (Michael Maness) I think it would be

1 preferable if we did maybe provide this as a late-filed
2 exhibit. We have been engaging in some discussions
3 with the Company about the form, not necessarily
4 related to the settlement. I don't know that the
5 settlement, in itself, will affect the form, but we
6 would be glad to provide whatever information, and
7 probably do that in conjunction with the Company if
8 permissible to Commission and Commission staff --

9 Q. Yes.

10 A. -- as to what the form would look like.

11 Q. Yeah. Please do work together and provide
12 that information to us as quickly as you can.

13 MR. ROBINSON: Chair Mitchell, if I
14 could just maybe interject with that. So I know
15 that recently earlier today, you provided us with
16 late-filed Exhibit 1 that I think is relatively
17 similar to that question. So what we will propose
18 to do is work in conjunction with the Public Staff
19 and maybe have that, if possible, a joint
20 late-filed exhibit; would that be appropriate?

21 CHAIR MITCHELL: Yes, that would be
22 appropriate. And again, as quickly as you-all can
23 get that in to us would be appreciated.

24 Q. All right. Question about the timing of the

1 rate case order, where the prudence of the costs,
2 obviously, is an issue.

3 Do you -- does the Public Staff agree with
4 the Companies' position that the companies can't
5 proceed with a securitization until the rate case
6 orders are issued?

7 A. Yes.

8 Q. Okay. We are still waiting on a response
9 from the Public Staff to the Companies' motion for an
10 extension -- or waiver of the 135-day period, and so
11 one of the reasons for my -- Mr. Creech?

12 MR. CREECH: Chair Mitchell, that has
13 been a point of discussion within the Public Staff
14 and with counsel to the Company certainly this
15 morning, but the Public Staff has some concerns
16 about delay, including whether we can actually meet
17 that time frame, and also -- I mean, the issuance
18 time frame, and sufficiently mark it within a
19 truncated period of time. We kind of shared that
20 concern and another one with the Company, and the
21 Company's receptive to hearing from us. And so the
22 Public Staff does not object to that proposed
23 temporary waiver with the right terminology, and I
24 did want to -- I do appreciate your patience in

1 hearing from the Public Staff on that, and I also
2 appreciate the Company hearing from us on that as
3 well.

4 CHAIR MITCHELL: All right. Thank you,
5 Mr. Creech.

6 Q. Okay. So, Mr. Maness, just back to you. I
7 want to make sure I heard your answer. You indicated
8 you do -- the Public Staff does agree that the Company
9 needs a final order in the rate cases before it can
10 proceed with securitization?

11 A. (Michelle Boswell) Yes, we do.

12 Q. Okay. Okay. All right. A question for
13 you-all that follows up on a question that I asked of
14 Company witness Abernathy. I'm not sure if you-all
15 heard her response, but my question pertains to the
16 accrual of the carrying charge, which is calculated at
17 the Company's weighted average cost of capital.

18 The -- my understanding, or our understanding
19 of the testimonies filed is that the -- it accrued --
20 the carrying charges accrue at the 2017 rate until the
21 2019 rate becomes effective, that is the rate that is
22 presently pending before the Commission in those 2019
23 rate cases.

24 We heard witness Abernathy today state that

1 the Companies have put the interim -- as the -- since
2 the interim rates are into effect, they are using that
3 interim weighted average cost of capital. Is that the
4 Public Staff's understanding as well, and do you agree
5 with the Company's position on this issue?

6 A. (Michael Maness) Yes, we do.

7 Q. Yes to both questions?

8 A. Yes.

9 Q. Okay. Okay. All right. Will you-all --
10 either one of you or both of you-all talk us through
11 the -- how the audit is gonna work going forward of the
12 ongoing costs associated with this -- with the
13 financing? Can you -- we've heard from witness
14 Abernathy that the understanding is that it's a scope
15 that's more limited in scope than a prudence review,
16 but I'd like to it hear from you-all on that now, so
17 just generally talk us through the process.

18 A. Well, procedurally, we've agreed in the
19 stipulation to provide the Company with the data
20 request by March 5th, and then they will provide --
21 hopefully provide fairly quickly a response, and then
22 we will proceed with discovery. And have agreed to
23 file something with the Commission within 60 days. Is
24 that -- are you referring to the audit of the storm

1 cost or --

2 Q. Well, no. So you're talking about the update
3 to the storm cost. I do -- since you mentioned that,
4 Mr. Maness, I do have a question, though.

5 Do you-all anticipate that you'll have
6 sufficient time to reflect any adjustments necessary in
7 the final -- in the final amount to be securitized?

8 A. I think our expectation is that there won't
9 be any unexpected disagreements between the Company.

10 Q. Okay.

11 A. We just have to complete our due diligence.

12 Q. Understood. Okay. Thank you for that
13 clarification.

14 A. And I apologize, you were probably talking
15 about the ongoing finance costs then.

16 Q. I was. So just help us understand, talk us
17 through the process how the audit will occur on those
18 ongoing costs.

19 A. The Company basically, I believe each month,
20 will provide us with explanations, invoices, and other
21 documentation for the ongoing financing cost. We're
22 basically looking for any major differences between
23 what the expectations are for those costs. The Company
24 in its -- I believe in Mr. Heath's testimony has

1 provided an exhibit detailing those ongoing financing
2 costs, and we estimate a sort of a range of estimated
3 amounts for each different type.

4 We will be taking a look at those and, of
5 course, looking for mathematical and clerical errors in
6 the true-up calculation, itself, but also looking at
7 costs, themselves, and see if they are basically
8 consistent with what's set forth in the stipulation.

9 Q. Okay. And any -- can you help us understand
10 why -- why the decision to do less than a full prudence
11 review, what are the -- I'll just leave my question
12 there. Why less than a full prudence review?

13 A. That was essentially a compromise between the
14 Company and the Public Staff. Looking at it from the
15 Public Staff's perspective, we're interested in
16 protecting the ratepayers to the greatest extent
17 possible. However, there are certain requirements and
18 limitations within the statute with regard to the
19 review of true-up amounts. And so in discussing those
20 various concerns back and forth and limitations, this
21 was just where the parties landed as a reasonable
22 compromise. We think that it's sufficient to provide
23 protection for the ratepayers, and it is a standard
24 with which the Company has agreed to allow us to

1 review.

2 Q. All right. Thank you, Mr. Maness.

3 CHAIR MITCHELL: All right. Let me just
4 go through my notes to make sure I've --

5 (Pause.)

6 CHAIR MITCHELL: All right. That is all
7 from me. I will check in now with counsel to see
8 if you-all have questions on any of the questions
9 asked.

10 MR. ROBINSON: Chair Mitchell, I just
11 have a few questions.

12 CHAIR MITCHELL: All right. You may
13 proceed.

14 MR. ROBINSON: Thank you.

15 EXAMINATION BY MR. ROBINSON:

16 Q. So, Mr. Maness and Ms. Boswell, you recall
17 testimony -- or questions from Chair Mitchell regarding
18 the Company's application of the weighted average the
19 cost of capital?

20 A. (Michael Maness) Yes.

21 Q. And you are Ms. Abernathy's -- I'm sorry, you
22 say something, Ms. Boswell?

23 A. (Michelle Boswell) No.

24 Q. Okay. Mr. Maness and Ms. Boswell, you are

1 familiar with Ms. Abernathy's direct testimony in this
2 case, correct?

3 A. (Michael Maness) Yes.

4 Q. And, Mr. Maness or Ms. Boswell, I don't know
5 if you have it handy, but would you agree with me if
6 you do, that on pages 14 to 15 of her direct testimony,
7 she discusses how the Companies propose to treat
8 carrying charges of the storm recovery cost?

9 A. Give us a second, we can pull it up.

10 A. (Michelle Boswell) She does.

11 Q. Ms. Boswell, you said she does?

12 A. Yes.

13 Q. And, Ms. Boswell, you agree with the
14 treatment that Ms. Abernathy discusses on those two
15 pages as to how the Company ended up treating and
16 factoring in those weighted average cost of capitals?

17 A. We did.

18 Q. And last question. If I were to bring
19 witness Abernathy back on the stand to describe what is
20 on those two pages, you would generally agree with that
21 testimony?

22 A. We would.

23 MR. ROBINSON: No further questions.

24 Thanks.

1 MR. GRANTMYRE: The Public Staff does
2 not have any questions.

3 CHAIR MITCHELL: All right. Ms. Cress,
4 I assume no questions from you?

5 MS. CRESS: No questions. Thank you,
6 Chair Mitchell.

7 CHAIR MITCHELL: Okay. All right. With
8 that, I will entertain -- I will entertain motions.
9 Mr. Grantmyre? Mr. Grantmyre, you may be on mute.

10 MR. GRANTMYRE: The Public Staff moves
11 that their prefiled testimony, their errata
12 testimony, and their corrective testimony and the
13 two exhibits attached to their prefiled direct
14 testimony be admitted into evidence.

15 CHAIR MITCHELL: All right. Hearing no
16 objection, the motion is allowed.

17 (Maness/Boswell Exhibits 1 and 2, were
18 admitted into evidence.)

19 (Maness/Boswell testimony has already
20 been included in the transcript.)

21 CHAIR MITCHELL: All right. At this
22 time, Mr. Maness and Ms. Boswell, you may step down
23 and be excused. Thank you very much for your
24 participation today.

1 THE WITNESS: (Michael Maness) Thank
2 you.

3 THE WITNESS: (Michelle Boswell) Thank
4 you.

5 CHAIR MITCHELL: All right. With
6 that -- well, Mr. Grantmyre and Mr. Creech, do you
7 intend to call any additional witnesses?

8 MR. CREECH: Chair Mitchell, we were
9 gonna -- we do have witness Abramson available. We
10 were going to have him read his summary and have
11 him available. I'm not certain that the Company
12 has any cross for him. They've not indicated as
13 much. I don't know if the Company -- if the
14 Commission has any questions for him.

15 CHAIR MITCHELL: Well, let me --
16 Mr. Robinson, confirm that you-all don't have any
17 cross for the witness at this point in time,
18 please.

19 MR. ROBINSON: Chair Mitchell, I believe
20 that's the case. That is Jim Jeffries at least
21 identified witness, so I'll let Mr. Jeffries just
22 confirm that.

23 MR. JEFFRIES: That's correct, we have
24 no cross, Chair Mitchell.

1 CHAIR MITCHELL: All right. Thanks,
2 Mr. Jeffries. Does any Commissioner have a
3 question for the witness?

4 (No response.)

5 CHAIR MITCHELL: All right. Mr. Creech,
6 Mr. Grantmyre, it doesn't appear that any
7 Commissioner has a question for the witness, so at
8 this point in time you could move testimony in
9 to -- make a motion regarding moving testimony in.

10 MR. CREECH: Yes. Thank you so much,
11 Chair Mitchell. Witness Abramson filed in this
12 docket on December 21, 2020, direct testimony
13 consisting of 24 pages and 4 exhibits. And I would
14 like to move that Mr. Abramson's prefiled direct
15 testimony be copied into the record as if given
16 orally from the stand, and that his four exhibits
17 be marked for identification as premarked in the
18 filing. I would like to seek how we can also get
19 his summary into the record as well, whether he
20 needs to read it or -- or I know you-all have a --
21 the Commission has a copy and the Company has a
22 copy, but I think it's a very good summary.

23 CHAIR MITCHELL: All right. Mr. Creech,
24 without any objection, we would allow you to move

1 the summary into evidence.

2 MR. JEFFRIES: No objection,
3 Chair Mitchell.

4 CHAIR MITCHELL: Okay.

5 MR. CREECH: Thank you, Chair Mitchell.
6 So I would like to move that his prefiled direct
7 testimony, four exhibits, and summary be moved into
8 the record.

9 CHAIR MITCHELL: All right. Hearing no
10 objection, Mr. Creech, the prefiled testimony of
11 Mr. Abramson consisting of 24 pages will be copied
12 into the record as if delivered orally from the
13 stand. The exhibits to that testimony will be
14 identified as they were when prefiled, and they
15 will be admitted into evidence. Additionally, the
16 summary of the testimony that the witness has
17 prepared and that has been provided to the
18 Commission and to the parties will as well be
19 admitted into evidence.

20 MR. CREECH: Thank you.

21 (Abramson Exhibits 1 through 4, were
22 admitted into evidence.)

23 (Whereupon, the prefiled direct
24 testimony and summary of

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Barry M. Abramson was copied into the
record as if given orally from the
stand.)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1262

DOCKET NO. E-7, SUB 1243

In the Matter of

Joint Petition of Duke Energy	)	DIRECT TESTIMONY OF
Carolinas, LLC and Duke Energy	)	BARRY M. ABRAMSON,
Progress, LLC Issuance of Storm	)	CFA, SENIOR ADVISOR –
Recovery Financing Orders	)	SABER PARTNERS, LLC

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. E-2, Sub 1262

Docket No. E-7, Sub 1243

Direct Testimony of

Barry M. Abramson, CFA, Senior Advisor

Saber Partners, LLC

December 21, 2020

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8 Hurricane season ends historic as predicted by experts back in April **Error!**

9 **Bookmark not defined.**

10 Most groups predict an above-average hurricane season 26

INTRODUCTION

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

12 A. Barry M. Abramson, Saber Partners, LLC, 260 Madison Avenue,

13 Suite 8019, New York, New York 10016.

1 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR**
2 **POSITION?**

3 A. I am with Saber Partners, LLC, and serve as a Senior Advisor.

4 **Q. PLEASE DESCRIBE YOUR DUTIES AND RESPONSIBILITIES IN**
5 **THAT POSITION.**

6 A. I serve in a senior advisory position which includes participating in
7 business strategy and procurement of new business; meeting with
8 Saber Partners' clients and potential clients; meeting with senior
9 officers of the utilities, public utility regulatory commissions,
10 commission staffs, and investment banks with which we work, and
11 assisting in the development and review of presentations we make
12 to our clients and potential clients. I closely follow many utilities,
13 public service commissions, federal utility regulators, and state and
14 federal legislation that may affect utilities.

15 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
16 **PROFESSIONAL EXPERIENCE.**

17 A. I have a bachelor's degree in economics from Yale University. I have
18 a Certified Financial Analyst (C.F.A.) designation from the Institute
19 of Chartered Financial Analysts.

20 I have covered the U.S. utilities sector from the investment side for
21 more than 40 years.

1 From 1977 continuously through 2002, I worked for various Wall
2 Street investment banking firms in the equity research department,
3 always as an analyst covering electric and gas utilities stocks.

4 From 2002 continuously through 2016, I worked in two large money
5 management firms as an analyst and portfolio manager, managing
6 large portfolios that invested primarily in electric and gas utility
7 stocks, and secondarily in electric and gas utility debt securities.

8 During my 25 years on Wall Street, I worked at the following major
9 investment banking firms in the equity research department, in
10 chronological order, at Kidder, Peabody & Company, Merrill Lynch,
11 Goldman Sachs, Prudential Securities, PaineWebber, and UBS
12 Securities.

13 During my 14 years as a portfolio manager, I invested billions of
14 dollars primarily in U.S. utility stocks, and secondarily in utility debt
15 securities. I worked first at a large mutual fund company, Gabelli
16 Funds, and then at the world's largest sovereign wealth fund, Norges
17 Bank Investment Management.

18 In 2016, I joined Saber Partners, LLC, as a Senior Advisor, analyzing
19 electric and gas utilities.

20 I am one of the only electric and gas utilities analysts who has worked
21 for long periods of time at both Wall Street firms and at large money

1 management firms. In the parlance of the investment community, I
2 have lengthy experience with both the Buy Side and the Sell Side.

3 **Q. WHOM DO YOU REPRESENT IN THIS PROCEEDING?**

4 A. I represent Saber Partners, LLC, that has been hired by the Public
5 Staff of the North Carolina Utilities Commission to provide an
6 independent evaluation and opinion as to benefits to North Carolina
7 ratepayers from using best practices in the upcoming securitized
8 debt offerings, related to recovery of storm damage costs, for both
9 Duke Energy Carolinas, LLC (DEC) and Duke Energy Progress, LLC
10 (DEP).

11 **Q. ARE YOU SPONSORING ANY EXHIBITS?**

12 A. Yes. I am sponsoring the following exhibits:

13 Abramson Exhibit 1, Effects of Climate Change on the Southeast, a
14 study by North Carolina State University.

15 Abramson Exhibit 2, "What Climate Change Means for North
16 Carolina", a 2016 report from the U.S. EPA.

17 Abramson Exhibit 3, "Hurricane season ends historic as predicted by
18 experts back in April," about the 2020 hurricane season.

19 Abramson Exhibit 4, "The Missing Piece in the Climate Change Risk
20 Puzzle", an April 2020 report from Morgan Stanley.

1 In addition, except as otherwise defined in this testimony, terms have
2 the meanings assigned to them in the Glossary, attached as the final
3 exhibit to the testimonies of Public Staff witnesses Joseph Fichera
4 and Paul Sutherland.

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

6 A. **Investor Perception.** The purpose of my testimony is to describe
7 the potential impacts on investor perception for both equity and debt
8 investors in Duke Energy Corporation (DUK) and its subsidiary
9 companies, from optimizing the benefits of a securitization offering
10 to ratepayers of the respective utility subsidiaries. In particular, to
11 provide my independent opinion on how the stock prices, bond
12 prices, and investor perception would benefit from a securitization
13 offering that maximizes the benefits to ratepayers. Better investor
14 perception usually leads to better stock and bond prices for both
15 existing securities and new offerings, resulting in a lower cost of
16 capital, which benefits ratepayers.

17 **Achieving the Best Possible Outcome For Ratepayers Is Also**
18 **Good For Relations Between the Utility and its Regulators, A**
19 **Key Factor For Investors.** In addition, a securitization bond offering
20 that provides ratepayers the best possible outcome –namely the
21 greatest savings – would be viewed favorably by state regulators, in
22 my opinion. Knowledgeable, long-term investors in utility stocks and
23 bonds understand that a good regulatory environment is important to

1 the long-term success of their investments in regulated monopolies.
2 These investors understand the give-and-take of utility regulatory
3 proceedings, whereby neither the utility nor the ratepayer can get
4 100% of what they ask for – and yet still achieve – an outcome that
5 benefits both sides.

6 **Benefits of Involving an Independent Expert Financial Advisor.**

7 My testimony also aims to explain why using an independent expert
8 financial advisor, acting solely in the interests of the ratepayers,
9 would result in the greatest potential savings to ratepayers and
10 produce a transaction that satisfies the goals of the NCUC and the
11 Public Staff. In other words, in the traditional sense, an independent
12 financial advisor does not have a financial interest in the outcome of
13 the transaction and is not a beneficiary of the bond offering.

14 **A Programmatic Approach: This Is The First Of Many Storm**
15 **Damage Securitizations And Why It Matters For Future**
16 **Securitizations in North Carolina.**

17 Significant storm damage is likely to occur again in North Carolina, and probably with more
18 frequency and severity, due to the impacts of climate change. My
19 testimony addresses why achieving the optimal result in this first
20 storm damage securitization financing is extremely important for
21 achieving the best results again and again, in likely future storm
22 damage securitizations in North Carolina. I believe that investors in
23 The Companies, and in the holding company, Duke Energy should

1 view this, the first securitization of significant storm damage costs in
2 North Carolina, as not the last such securitization. I further believe
3 that these same investors should consider the ability of The
4 Companies to continue to use securitization of storm damage costs
5 in the future as a factor that reduces investment risk in the bonds the
6 companies and the stock and bonds of Duke Energy.

7 **Q. HAVE YOU TESTIFIED IN OTHER STATES IN THIS SUBJECT**
8 **MATTER?**

9 A. Yes. In 2018, I submitted testimony representing Saber
10 Partners before the California Public Utilities Commission. Saber had
11 been hired by the California Community Choice Association to
12 evaluate the risks and benefits of securitization to the consumers and
13 shareholders of the California utilities, and to explain how
14 securitization can be used to balance the interests of ratepayers and
15 investors.

16 **ESTABLISHING THE RATEPAYER-BACKED BOND PROGRAM**
17 **FOR NORTH CAROLINA UTILITIES**

18 **Q. WHY ARE YOU SAYING THAT YOU BELIEVE THIS WILL BE THE**
19 **“FIRST OF MANY” SECURITIZATIONS TO RECOVER STORM**
20 **DAMAGE COSTS IN NORTH CAROLINA?**

21 A. The current financing of Ratepayer-Backed Bonds should not be
22 viewed as a one-time event. It is likely that there will be additional
23 Ratepayer-Backed Bond financings for storm damage costs, likely to

1 occur every few years in North Carolina. There are five reasons I
2 believe that storm damage costs will keep rising in the next several
3 years:

4 1. **Weather and Climate Change.** Looking at the weather from
5 recent years in the Atlantic Ocean region, and from my
6 reading of many experts' articles about Climate Change (of
7 which I am not an expert), I conclude that North Carolina will
8 experience storms with greater frequency and with greater
9 severity).¹

10 2. **Growth in Number of Customers.** The Companies continue
11 to experience growth in the number of customers. Therefore,
12 even if the future brings storms of the same severity and
13 frequency as the recent past, the number of customers
14 impacted will keep on growing because of growth in the
15 region. DEC had customer growth of 2.1% in 2019 and 1.5%
16 in 2018 (from Page 37 of the Duke Energy 2019 SEC

¹ There are innumerable articles (and news reports) to support the point of climate change and potential impacts for future storms in North Carolina. Three examples include these that are included as Abramson Exhibits 1, 2 and 3:

"Effects of Climate Change on the Southeast," <https://climate.ncsu.edu/edu/Impacts>

"What Climate Change Means for North Carolina,"
<https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-nc.pdf>

"Hurricane season ends historic as predicted by experts back in April,"
<https://www.cnn.com/2020/11/30/weather/record-breaking-atlantic-hurricane-season-wrap-up/index.html>

- 1 Form 10-K). DEP had customer growth of 1.3% in 2019 and
2 1.5% in 2018 (from Page 40 of the Duke Energy 2019 SEC
3 Form 10-K).
- 4 3. **Inflation.** Assuming normal rates of inflation for materials and
5 labor costs, storm damage expenses can only rise.
- 6 4. **Work From Home.** A large number of ratepayers of The
7 Companies learned during the 2020 Covid-19 pandemic that
8 they can do their jobs by working from home (WFH). It is likely
9 that many of these workers and their employers will continue
10 to prefer the benefit of WFH. Some forecasters have predicted
11 that this trend of WFH may remain widespread even after the
12 Covid-19 pandemic is over. I believe that this puts more
13 pressure on utilities to restore service after a major storm,
14 even faster than before, because more workers will be doing
15 their jobs remotely. A multi-day power outage becomes more
16 costly to a WFH customer than merely a refrigerator full of
17 spoiled food.
- 18 5. **Electric Vehicle Market Growth and EV Infrastructure.** As
19 the number of electric vehicles grows in North Carolina, there
20 will be more pressure on utilities to restore service after a
21 major storm, even faster than before.

1 **Q. HOW LONG HAVE YOU BEEN FOLLOWING DUKE ENERGY**
2 **CORPORATION AS A RESEARCH ANALYST?**

3 A. I have been following Duke Energy for my entire 40+ year career.
4 The current Duke Energy holding company was formed through
5 several mergers and acquisitions. Thus, I have also followed the
6 predecessor companies for more than 40 years, including Duke
7 Power Company, Carolina Power & Light Company, and Piedmont
8 Natural Gas, located in the Carolinas, and the holding company's
9 utilities in Florida, Ohio, Indiana, and Kentucky.

10 Duke Energy (and previously Duke Power Company) has always
11 been a leader in the electric utility industry. This leadership role was
12 not merely due to the company's size, but also because it was
13 regarded as one of the premier engineering and operating utilities in
14 the U.S., in both fossil fuel operations and nuclear power operations.
15 As most long-time followers of this industry are aware, the company's
16 legendary Chairman, President, and CEO Bill Lee (William S. Lee,
17 III) led the efforts to recover, shut down, and stabilize the Three Mile
18 Island Nuclear Plant in 1979 (which was not a Duke Power asset).
19 When the Edison Electric Institute needed to reassure utility stock
20 and bond investors in 1986, soon after the Chernobyl Nuclear
21 Disaster in the Soviet Union, it called upon Duke Power's Bill Lee to
22 come to New York and address hundreds of nervous utility analysts
23 and institutional investors.

1 **Therefore, I believe that the holding company and the North**
2 **Carolina operating companies would not suffer any decline in**
3 **stature if they agreed to a collaborative process, like the holding**
4 **company used for the 2016 issuance of Ratepayer-Backed**
5 **Bonds for Duke Energy Florida. In the 2016 financing in Florida,**
6 **Duke Energy Florida agreed to use a collaborative bond team**
7 **that included an independent financial advisor.**

8 **Q. WHAT DO INVESTORS LOOK FOR WHEN DECIDING WHETHER**
9 **TO OWN AND INVEST IN A UTILITY STOCK AND/OR A UTILITY**
10 **BOND?**

11 A. From investments in utility common stocks, investors seek relatively
12 low risk, low stock market volatility, and stability and predictability of
13 earnings and dividends. In addition, most investors choose common
14 stocks for long-term growth in earnings and dividends, which should
15 drive stock values higher. Even though U.S. utility stocks are not
16 considered a high-growth sector, in the long run they have produced
17 steady, modest growth for investors.

18 In general, U.S. utility common stocks have been attractive to
19 income-oriented investors, whether they are institutional investors
20 (pension funds, mutual funds, endowments) or individual investors
21 who need dividend income. During periods of low interest rates,
22 many investors view utility stocks as a substitute for investments in
23 debt securities. Even during periods of moderate to high interest

1 rates, many investors are attracted to utility stocks as a bond
2 substitute because most utility stocks have historically raised their
3 dividends annually, providing growing income to investors versus
4 fixed-income securities (i.e., debt securities).

5 Bond investors also seek out utility bonds for similar reasons, but
6 without the growth that can be achieved from rising dividends.
7 Relatively low risk, low market volatility and stability of cash flows
8 and earnings, make utility bonds attractive to risk-averse investors.

9 Looking at the two recent extraordinary financial/investor crises,
10 utilities did not suffer from fundamental or existential threats. During
11 the 2008-2009 Financial Crisis/Great Recession, utilities did not
12 require financial bailouts and their earnings, cash flows and
13 dividends, held up quite well. The same can be said for the Covid-19
14 financial and economic crash of 2020, when many industries other
15 than utilities required financial support and in some cases life
16 support.

17 These recent examples bolster the general belief that buying the
18 stocks and bonds of regulated utilities is a relatively low-risk
19 investment.

1 **Q. HOW DO INVESTORS IN UTILITY STOCKS AND BONDS VIEW**
2 **SECURITIZATION IN GENERAL?**

3 A. Institutional investors, and others who closely follow the utility sector,
4 do not like uncertainty. A very large unrecovered expense is
5 considered a risk. Investors want companies to avoid large write-offs
6 because that can hurt the balance sheet, hurt bond ratings, and could
7 require new common stock to be issued by the holding company that
8 might be dilutive to shareholder earnings.

9 In addition, investors like to see earnings growth in a utility, and they
10 understand that rate base growth leads to growth in earnings, which
11 benefits equity investors and bond holders. However, rate base
12 growth requires utilities to apply for rate increases in order to include
13 the new investments in rates. Rate increases, even when they are
14 justified, are never popular.

15 Therefore, securitization that enables a utility to recover significant
16 costs with the smallest impact on rates, is considered a positive. It is
17 then assumed that when future rate increases are needed to include
18 large new projects into rate base, it will be easier for regulators to
19 approve these necessary rate increases.

20 Furthermore, securitization enables the utility to receive the cash
21 proceeds upfront, after the closing of the securitization bond sale.

22 This is better than having to recover the expense over a period of

1 several years. By receiving the cash quickly, the utility has funds that
2 it can use to reinvest and grow its rate base.

3 **Importance of an Initial Ratepayer-Backed Bond Offering**

4 **Q. WHY IS THIS INITIAL PUBLIC OFFERING OF RATEPAYER-**
5 **BACKED BONDS FOR STORM DAMAGE COSTS IN NORTH**
6 **CAROLINA SO IMPORTANT TO INVESTORS IN DUKE ENERGY**
7 **AND DEP AND DEC? AND HOW DOES THIS FIT INTO THE**
8 **GROWING ASSESSMENT OF FINANCIAL RISKS OF CLIMATE**
9 **CHANGE FOR INVESTORS?**

10 A. Utility stock and bond investors are mostly risk-averse. There is a
11 broad market of stocks and bonds across many industries. When
12 investors want secure income streams with relatively low risk, they
13 often choose regulated utility stocks and bonds. Investors look at a
14 number of fundamentals when deciding to invest in the securities of
15 a particular utility, including, but not limited to, financial quality, fuel
16 mix, management quality, projected growth in earnings and cash
17 flows, projected growth in the service territory, the company's
18 strategic plans, and an assessment of the regulatory relations
19 between the company and its regulators in the states in which the
20 utility serves.

21 A new financial risk that has grown in importance is climate change.
22 In recent years, across all industries (not just utilities), most large

1 institutional investors have added climate change to the list of
2 fundamental factors that they assess in making investment
3 decisions.²

4 DEP is in many ways a coastal utility that has been significantly
5 impacted by large storms. DEC has a large territory, and while not
6 as close to the coast as DEP, DEC also has been significantly
7 impacted by large storms, such as Hurricane Hugo. Therefore, the
8 financial risk associated with climate change is likely to be
9 considered to a greater degree by investors in the holding company
10 Duke Energy and in its operating utilities in North Carolina and in
11 other coastal states, compared with investing in utilities in different
12 regions of the U.S.

13 These large institutional investors would consider the ability to
14 securitize significant storm damage costs as a factor that reduces
15 the financial risk of climate change to Duke Energy and its operating
16 subsidiaries.

17 As I stated earlier in this testimony, I believe that the current storm
18 damage securitization financing in this docket should be considered
19 the first of many. As also earlier stated, multiple studies by climate

² Here's a recent article about incorporating climate-change risks into the investment decision process from Morgan Stanley's Institute for Sustainable Investing, "The Missing Piece in the Climate Change Risk Puzzle," April 15, 2020, <https://www.morganstanley.com/ideas/climate-change-investing-risks-threats-opportunities>

1 scientists have predicted that the rising ocean temperatures will
2 result in storms that are more frequent and more severe.

3 Investors read these studies and use them to assess risk. There are
4 dozens of utilities in the U.S. from which investors can choose to
5 invest. Therefore, I believe that the ability to securitize significant
6 storm damage costs is an important factor that will make the holding
7 company Duke Energy, and its subsidiaries in North Carolina, more
8 attractive to investors.

9 **Q. WHY SHOULD THE INVESTOR IN DUKE ENERGY, DEC AND**
10 **DEP, BE CONCERNED ABOUT WHETHER A RATEPAYER**
11 **REPRESENTATIVE WITH AN INDEPENDENT FINANCIAL**
12 **ADVISOR IS USED IN THE PROCESS TO ACHIEVE THE**
13 **GREATEST POSSIBLE SAVINGS FOR RATEPAYERS IN THIS**
14 **SECURITIZATION DEBT OFFERING?**

15 A. Institutional investors understand the importance of good
16 relationships between utilities and their regulators. Utilities with large
17 capital spending programs are likely to require rate increases as new
18 investments lead to rate base growth. Duke Energy, the holding
19 company, reaffirmed its commitment to a large capital spending
20 program of \$56 billion over the next five years in a July 5, 2020 press
21 release. This followed the announcement on the same day that Duke
22 Energy and its partner Dominion Energy were cancelling the Atlantic

1 Coast Pipeline. Then in October 2020, the holding company raised
2 its 5-year capital spending forecast to \$58 billion.

3 It is my estimate that approximately 40%-50% of the \$58 billion five-
4 year capital spending program will be invested in the holding
5 company's two North Carolina electric utilities, combined. Therefore,
6 the rate bases of The Companies, are likely to grow fast enough to
7 require rate increase filings every one to two years, in my estimation.

8 **DIFFERENCE BETWEEN A TRADITIONAL UTILITY DEBT**
9 **OFFERING AND A RATEPAYER-BACKED DEBT OFFERING**

10 **Traditional utility debt offering.** In a traditional utility debt financing,
11 the utility has a strong incentive to achieve the lowest cost for the
12 debt, because it is directly responsible for the payment of the
13 principal and interest. Another reason why the utility wants the lowest
14 cost of debt is to keep utility service rates to customers as low as
15 possible, which is good for regional economic growth, customer
16 relations, and relations with state regulators. The current and future
17 stockholders and bondholders of the utility also benefit when the new
18 debt issuance achieves the lowest cost of financing, because then
19 there is more cash flow left over for coverage ratios on all of the
20 traditional debt (non-securitized debt) and also more earnings for
21 shareholders and for payment of common stock dividends.
22 Therefore, the utility and its investors, and its ratepayers all have a
23 stake in the outcome of the structure and pricing of a traditional utility

1 debt offering. In a traditional utility debt offering, the utility hires an
2 investment banking firm for advice and for execution of the
3 transaction. Because the utility's equity investors have a stake in the
4 outcome of the traditional debt financing, there should be pressure
5 on the investment bankers from the utility, to achieve the best
6 outcome.

7 **Ratepayer-Backed Bond offering is fundamentally different.** In a
8 securitization bond offering, the utility is not directly responsible for
9 the payment of the principal and interest. The utility is allowed by law
10 to collect a separate, non-bypassable charge from every ratepayer
11 to cover the principal and interest on the securitized bonds.
12 Therefore, the ratepayer and only the ratepayer is directly
13 responsible for the payment of the principal and interest on the
14 Ratepayer-Backed Bonds. This responsibility is on a joint basis. This
15 means if one ratepayer defaults on paying the charge, that amount
16 is allocated to other ratepayers who haven't defaulted until the bonds
17 are repaid in full. Even though the utility indirectly has a desire to
18 achieve the lowest cost of the securitization financing, the utility has
19 no direct financial stake in the final structuring and costs of the
20 Ratepayer-Backed Bond offering.

21 This is a critical distinction in how the capital markets work. When
22 one of the parties has no financial stake in the outcome of the pricing
23 process, the results can become skewed in the direction of the party

1 that does have a financial stake in the outcome. In this case that
2 would be the underwriters and the investors.

3 **Q. HOW ARE WE GUARANTEED THAT THE RATEPAYER'S**
4 **DIRECT FINANCIAL INTEREST IS REPRESENTED IN THE**
5 **SECURITIZATION BOND TRANSACTION?**

6 The utility has hired a financial advisor and investment banking firm
7 to advise, structure, market, and price the securitization bond
8 offering. None of these parties has a direct financial stake in the
9 outcome. We are asked to assume that these parties have the best
10 interests of the ratepayer in mind. The interest of the ratepayer is
11 represented by the Public Staff, with the final authority impacting
12 ratepayers vested in the Commission (NCUC). However, this is the
13 first ever storm damage securitization bond offering in North
14 Carolina. The utility has hired its experts, the investment bankers.
15 The Public Staff has hired their outside independent experts, Saber
16 Partners.

17 The companies and their expert witnesses, have not proposed to
18 include the NCUC or the Public Staff and its outside independent
19 experts, Saber Partners, in the process of structuring and pricing this
20 securitization bond offering. The ratepayer is the only party with a
21 direct financial stake in the outcome of the transaction. Because of
22 the statutory, non-bypassable charge, The Companies do not have
23 a direct financial stake in the pricing of this transaction. The

1 ratepayer, through the Public Staff, has hired outside independent
2 experts who have experience in structuring and pricing of
3 securitization bond offerings.

4 Therefore, as an independent financial analyst, I am concerned
5 about investor perception if the NCUC and the Public Staff are
6 excluded from the most important part of this financial transaction,
7 and the resulting impact on the relationship between the utility and
8 regulatory bodies. They are being asked to take the word of the
9 parties that do not have a material direct financial stake, that they did
10 achieve the lowest possible cost for ratepayers.

11 My colleagues, Rebecca Klein, Hyman Schoenblum, and William
12 Moore also have provided testimony in this proceeding. As a former
13 regulator and utility finance executives, respectively, they explained
14 why they believe that the Public Staff and its independent financial
15 advisor should be included in the structuring, marketing, and pricing
16 of the securitized storm cost recovery bonds through the bond team
17 process before the Commission makes the final decision on whether
18 the bonds should be issued.

19 **CONCLUSION**

20 **Include the Public Staff and its independent expert (Financial**
21 **Advisor) in the structuring, marketing and pricing.** From the
22 investor's point of view, as I have stated earlier, regulated

1 monopolies should make every attempt to maintain good
2 relationships with their regulators. There is no additional cost to the
3 companies' shareholders resulting from inclusion of the Public Staff
4 and its independent financial advisor, Saber Partners, in the process
5 of the structuring and the pricing of this securitized bond offering,
6 therefore go ahead and include the representatives of the
7 ratepayers.

8 **Q. DO YOU AGREE WITH THE COMMENT FROM THE COMPANIES'**
9 **WITNESS CHARLES ATKINS IN RESPONSE TO PS-DR6 THAT**
10 **PUBLIC STAFF SHOULD BE EXCLUDED BECAUSE**
11 **INTERVENORS SHOULD NOT BE INVOLVED IN PRICING,**
12 **STRUCTURING AND MARKETING OF THESE BONDS?**

13 A. In more than 40 years of following the regulated utility industry in the
14 U.S., I have looked at hundreds of utility rate cases and other
15 regulatory proceedings. In nearly every instance, there were one or
16 more intervenors in the rate case. Most of the time, these intervenors
17 were outsiders, pursuing a narrow agenda. Outside intervenors
18 typically represent a small segment of utility customers and/or these
19 outside intervenors are promoting a particular social, environmental,
20 or political agenda.

21 **THE PUBLIC STAFF IS NOT AN OUTSIDE INTERVENOR.**

22 The Public Staff in North Carolina was established by state law, with
23 a mandate to work on behalf of the public in matters of utility rates

1 and services. Therefore, I disagree with the blanket dismissal by the
 2 utility's witness who declares that the Public Staff should not be
 3 included in the Bond Team.

4 NC Gen. Stat. § 62-15 ("Office of executive director; public staff,
 5 structure and function") provides in-part:

6 (d) It shall be the duty and responsibility of the
 7 public staff to:

8 (1) Review, investigate, and make appropriate
 9 recommendations to the Commission with respect to
 10 the reasonableness of rates charged or proposed to be
 11 charged by any public utility and with respect to the
 12 consistency of such rates with the public policy of
 13 assuring an energy supply adequate to protect the
 14 public health and safety and to promote the general
 15 welfare;

16 (2) Review, investigate, and make appropriate
 17 recommendations to the Commission with respect to
 18 the service furnished, or proposed to be furnished by
 19 any public utility;

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

23 **Q. CAN THE NCUC COMMISSIONERS AND THE COMMISSION**
 24 **STAFF BENEFIT IN OTHER WAYS FROM HAVING A DIRECT**
 25 **INVOLVEMENT IN THE PROCESS OF THE STRUCTURING**
 26 **MARKETING AND THE PRICING OF THIS SECURITIZED BOND**
 27 **OFFERING?**

28 A. The commissioners do not receive lifetime appointments to the
 29 NCUC. Most of the commissioners will be involved in storm

1 securitization financings at least one or two times during their tenure
2 and possibly more. However, the staff of the Commission and Public
3 Staff are professionals who typically remain in their positions many
4 more years than the commissioners serve. As a positive side effect,
5 I believe that the decision-making and knowledge-base of the NCUC
6 and Public Staff will be enhanced by direct involvement in the
7 structuring, marketing, and pricing of this first ever storm damage
8 cost securitization in North Carolina. Experience of this nature will
9 make the NCUC commissioners and staff better in understanding
10 and overseeing future securitization bond financings.

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

12 A. Yes. Exhibits are attached beginning on the following page

Summary of the Testimony of Barry M. Abramson

Docket Nos. E-2, Sub 1262 and E-7, Sub 1243

CAREER COVERING UTILITIES

I have more than 40 years covering the utilities industry. I have covered the U.S. utilities sector from the investment side for more than 40 years. From 1977 through 2002, I worked for various Wall Street investment banking firms in the equity research department. From 2002 through 2016, I worked in two large money management firms as an analyst and portfolio manager, managing large portfolios that invested in the stocks and bonds of U.S. electric, gas and water utilities. I joined Saber Partners in 2016.

I have covered Duke Energy and its predecessor companies for more than 40 years.

UTILITY INVESTORS ARE RISK-AVERSE

Regulatory risk is always a consideration because investors understand that utilities are regulated monopolies. I believe that achieving the best outcome for ratepayers is good for relations between the utility and its regulators, and thus it is a positive for investors. Long-term investors understand the give-and-take of utility regulatory proceedings. This is of particular importance for investors in Duke Energy and its subsidiaries, because of the holding company's estimated \$58 billion 5-year capital spending program. I estimate that 40%-50% of this capital spending will be invested in Duke Energy's two North Carolina utilities, combined. I believe that such a large amount of rate base growth could require the North Carolina subsidiaries to file for rate increases on a regular basis.

**THE PUBLIC STAFF AND ITS INDEPENDENT FINANCIAL ADVISOR AS FULL AND
EQUAL PARTICIPANTS ON THE BOND TEAM**

Should investors be concerned that there might be an impact on the North Carolina regulatory relationship, if the holding company does not allow the NCUC and Public Staff's independent advisors to participate on the bond team, in the same way that the Florida public service commission and its independent advisors participated in the 2016 issuance of ratepayer-backed bonds for Duke Energy Florida?

I believe that the Public Staff and its independent financial advisor, should be a full and equal participant on the bond team. The Public Staff was directly created by law, to protect the interest of ratepayers in North Carolina. The principal and interest on ratepayer-backed bonds are the direct obligation of the ratepayers, and not an obligation of the utility that benefits from the proceeds of the bond sale.

PUBLIC STAFF ROLE

I don't regard the Public Staff as an intervenor. In more than 40 years of following the regulated utility industry in the U.S. I have looked at hundreds of utility rate cases and other regulatory proceedings. In nearly every case, there were outside intervenors, pursuing a narrow agenda. The Public Staff in North Carolina is not an outside intervenor. The Public Staff was established by law.

NC Gen. Stat. § 62-15 ("Office of executive director; public staff, structure and function") provides in-part:

6 (d) It shall be the duty and responsibility of the Public Staff to:

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

ROLE OF INDEPENDENT FINANCIAL ADVISOR(S)

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

This is the first of many storm damage cost-recovery bond issuances in North Carolina. Many studies by climate scientists and meteorologists predict that frequency and severity of storms will increase. I have included three exhibits that discuss this issue, including two that specifically focus on North Carolina and the Southeast Region of the U.S. I could have included dozens more.

Therefore it is important to get it right the first time and create a model for future issuances of storm damage cost-recovery bonds. I believe that the costs of damage from future storms will continue to increase, due to: Climate Change, Customer Growth, Inflation, Work From Home Trends, and Electric Vehicle Market Growth And EV Related Infrastructure.

Stock and bond investors have increased their analysis and concern of the risk of climate change. This is a major consideration for most institutional investors today, and it was not a major concern to most of them, only a few years ago. For coastal utilities, like DEP this is extremely important. For DEC, whose territory is not far from the coast, I believe it is also a key factor. I have included one exhibit in my testimony about how investors are incorporating climate change risks into their decision-making process.

The ability of a utility to use ratepayer backed bonds to recover storm damage costs is considered a factor that reduces overall investment risk. This is another

important reason why I believe that it is important to successfully complete this particular financing, the first such financing in the state of North Carolina.

RATEPAYER-BACKED BONDS ARE DIFFERENT FROM TRADITIONAL BOND

OFFERINGS

The Commissioners, the Commission Staff, and the Public Staff, all will benefit from being fully involved in the structure, pricing and marketing of this ratepayer-backed bond issue. This is the first of many such bond issuances likely in the state. Knowledge will be gained by all parties from full participation on the Bond Team. The active involvement of the Independent Advisor will facilitate the spread of knowledge and make the experience more worthwhile.

This concludes my summary.

1 CHAIR MITCHELL: All right. And with
2 that, the witness may be excused.

3 MR. GRANTMYRE: Chair Mitchell, this is
4 Bill Grantmyre again. The Public Staff would move
5 that the testimony of Calvin C. Craig be entered
6 into the record as in given orally. It's 10 pages
7 and it was filed on December 21st. It has no
8 exhibits but we would ask that it be copied into
9 the record as if given orally. Mr. Craig was the
10 one witness we had excused.

11 CHAIR MITCHELL: All right.
12 Mr. Grantmyre, hearing no objection to that motion,
13 the testimony of Public Staff witness Craig
14 prefiled on December 21, 2020, consisting of 10
15 pages will be copied into the record as if
16 delivered orally from the stand.

17 (Whereupon, the prefiled direct
18 testimony of Calvin C. Craig was copied
19 into the record as if given orally from
20 the stand.)

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22
23
24

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

**TESTIMONY OF CALVIN C. CRAIG
ON BEHALF OF THE PUBLIC STAFF
NORTH CAROLINA UTILITIES COMMISSION**

December 21, 2020

1 **Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS**
2 **ADDRESS FOR THE RECORD.**

3 A. My name is Calvin C Craig, III. I am a Financial Analyst in the
4 Economic Research Division of the Public Staff of the North
5 Carolina Utilities Commission (Public Staff), representing the using
6 and consuming public. My business address is 430 North Salisbury
7 Street, Raleigh, North Carolina 27603.

8 **Q. PLEASE OUTLINE YOUR EDUCATIONAL BACKGROUND AND**
9 **RELEVANT EMPLOYMENT EXPERIENCE.**

10 A. I received a Bachelor of Science degree in Industrial Relations from
11 the University of North Carolina at Chapel Hill in 1985, an MBA
12 degree from East Carolina University in 1993, and a Juris Doctor
13 degree from North Carolina Central University in 2006. In 2006 I
14 was admitted to practice law in North Carolina. Since joining the
15 Public Staff in November 1995, I have been involved with natural
16 gas expansion projects, have conducted rate of return studies, filed
17 affidavits and testimony assessing financial viability and a fair rate

1 of return in numerous water, wastewater, wind and solar utility rate
2 cases.

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

5 A. The purpose of my testimony in this proceeding is to discuss the
6 impact and consequences of storm recovery bond financing on
7 ratepayers in North Carolina. I have examined the details of the
8 storm securitization bonds being proposed by Duke Energy
9 Corporation, LLC (DEC) and Duke Energy Progress, LLC (DEP),
10 (collectively as Companies). I will focus my discussion on several
11 issues that I believe are of concern to ratepayers including:
12 maximizing benefits to ratepayers, the appropriate term for these
13 storm recovery bonds, the appropriate cost of capital and discount
14 rate, and the need for the subject storm securitization bonds to
15 obtain an AAA bond rating,

16 **Q. HOW IS YOUR TESTIMONY STRUCTURED?**

17 A. My testimony is presented in the following four sections:
18 I. Maximization of Ratepayer Benefits
19 II. The Appropriate Term for These Storm Recovery Bonds
20 III. Discount Rate and Cost of Capital
21 IV. The Importance of the Bonds Being Rated AAA

1

I. MAXIMIZATION OF RATEPAYER BENEFITS

2

Q. WHY IS IT IMPORTANT THAT THE PROPOSED STORM RECOVERY BONDS BE STRUCTURED TO MAXIMIZE RATEPAYER BENEFITS?

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5

A. N.C.G.S. § 62-172 requires the proposed storm recovery bonds be just and reasonable and in the public interest. N.C.G.S. § 62-172(b) 3b. 2. requires that the financing order include a finding that the issuance of storm recovery bonds and the imposition and collection of a storm recovery charge 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. These statutes require the maximization of benefits to the ratepayers. By attempting to achieve the lowest cost possible throughout all stages of structuring, marketing and pricing the proposed bonds, benefits to the ratepayers may be maximized. This maximization is possible if the bonds achieve an AAA rating because they can potentially be offered at the lowest interest rate to investors and the lowest cost to the ratepayers.

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In her Exhibit 5 for both DEC and DEP, Companies witness Abernathy shows the potential savings that can be realized by ratepayers for both Companies by issuing the proposed storm recovery bonds. Her analysis in Exhibit 5 for DEC indicates that ratepayers could save up to \$58 million by using the proposed

1 bonds to pay for storm clean-up expenses, which is a savings of
2 approximately 32.2% over using the customary method of paying
3 for these expenses. Her analysis of using the storm recovery bonds
4 in Exhibit 5 for DEP shows that DEP ratepayers could save up to
5 \$199 million by using the proposed bonds to pay for storm clean-up
6 expenses, which is a savings of approximately 33.2% over the
7 customary method of paying for these expenses. The potential
8 savings is significant for ratepayers by using this alternative as
9 compared to the traditional method of paying for storm damage.

10 **II. THE APPROPRIATE TERM FOR THESE STORM**
11 **RECOVERY BONDS**

12 **Q. WHAT IS THE APPROPRIATE TERM OF THESE STORM**
13 **RECOVERY BONDS?**

14 A. The appropriate term bond maturity for the storm recovery bonds is
15 an issue that must consider the best interests of the ratepayers.
16 The Companies propose the use of a fifteen-year scheduled term
17 for the recovery of the storm costs through storm recovery bonds.
18 In Companies witness Heath's testimony, he states that DEC and
19 DEP prefer a 15-year amortization period for the bonds because it,
20 "strikes the right balance between the length of the recovery period
21 and the length and level of the recovery charge."

22 Public Staff witness Sutherland advocates for a longer amortization
23 period because the longer the amortization period, the higher the

1 level of net present value savings to the ratepayer and accordingly,
2 the greater the benefit to the ratepayer. Since a longer amortization
3 period does not penalize the utility but does benefit the ratepayer,
4 an amortization period longer than fifteen years strikes a more
5 appropriate balance. Witness Southerland supports his statement
6 by noting that witness Abernathy argues against a term beyond 15
7 years because she appears to believe that major storms will occur
8 more frequently in the future and that extending their term beyond
9 15 years would result in aggregating charges from new storms
10 before all the associated charges from previous storms were paid.

11 Witness Sutherland explains why a longer maturity would be more
12 beneficial to the ratepayers by noting that while utility assets are
13 generally depreciated over 40 years, taking the weighted average
14 of 15 years for the portion of bonds that finance current expenses,
15 and 40 years for the portion of bonds that finance capital assets,
16 the maturity would be 18 years rather than 15 years. Witness
17 Sutherland also notes that increasing the term of the bonds by
18 three years increases the net present value of the savings on the
19 bonds by roughly \$40 million for DEC and DEP ratepayers
20 combined. He also notes that interest rates are currently near
21 historically low levels and that extending the maturity of the bonds
22 allows both the Companies and the ratepayers to reap the benefits

1 of these low rates for a longer period. The Public Staff supports the
2 up to 20-year storm security bond term.

3 **III. COST OF CAPITAL AND DISCOUNT RATE**

4 **Q. WHAT IS YOUR OPINION OF THE VALIDITY OF THE DISCOUNT**
5 **RATE AND COST OF CAPITAL USED IN THE COMPANIES'**
6 **PROPOSAL TO USE STORM RECOVERY BONDS?**

7 A. My examination of the proposed structure of the bonds indicates
8 that both the appropriate discount rate and cost of capital were
9 used in the proposal by both DEC and DEP in the scenario
10 analyses performed by the Companies. As mentioned in Public
11 Staff witness Sutherland's testimony, there are a couple of sources
12 of the potential savings to be realized. The first savings results from
13 the interest rate differential between that of the customary utility
14 bonds and the higher rated storm recovery bonds. An additional
15 saving results from the fact that while traditional utility bonds have
16 to be offset by common equity in order to preserve the capital
17 structure of a utility company, there is no similar need for the
18 securitized utility bonds to be offset with the company's common
19 equity and the associated state and federal income taxes. Avoiding
20 the high cost of equity and taxes could account for as much as two
21 thirds of the total savings.

22 In her testimony, Companies witness Abernathy stated that she
23 used the stipulated, weighted average, net of tax, cost of capital for

1 both Companies as stipulated in their most recent rate cases.
2 These rates have not been approved by the Commission as of yet
3 but she believes they likely will be approved by the Commission
4 since they are the result of a joint stipulation between the Public
5 Staff and DEC and DEP. Witness Abernathy uses the stipulated rate
6 from Docket No. E-7, Sub 1214 for DEC, which is 6.56% and the
7 stipulated rate from Docket No. E-2, Sub 1219 for DEP, which is
8 6.48% in her net present value analysis to quantify the savings
9 benefit to ratepayers by issuing the proposed storm recovery
10 bonds. As previously stated, both of these rates are after-tax rates.
11 Witness Abernathy uses the pre-tax weighted average cost of
12 capital for DEC and DEP, 8.6% and 8.4%, respectively, to calculate
13 the return on accumulated deferred income taxes. My analysis
14 indicated that these are the appropriate rates to be used in her
15 analysis when assessing the potential savings to be realized by the
16 ratepayers.

17 In evaluating the appropriate cost of capital, it is important to point
18 out the fact that just as a utility company has a cost of capital, in
19 effect so does a ratepayer. Ratepayers reflect the spectrum of the
20 levels of household income that are present in a utilities' customer
21 base. There are households with significant assets and high
22 incomes that can typically obtain capital at an interest rate close to
23 or at the prime interest rate, and there are low income households

1 that may have few or no assets that have a much higher debt cost.
2 The storm recovery bonds are projected to be priced below a 2%
3 interest rate, which is likely substantially less than what many low-
4 income households in North Carolina pay for debt. This lower
5 interest rate should benefit ratepayers because few if any
6 ratepayers could borrow funds at an interest rate below 2%. As a
7 result, the lower cost of the securitized bonds benefits virtually all
8 ratepayers in general and ratepayers with low-income households
9 in particular. At a time when the economies of the state of North
10 Carolina and the United States are being negatively impacted by
11 the effects of COVID-19, the ability to pay for storm costs at an
12 interest rate less than 2% is a great benefit to all involved.

13 **IV. THE IMPORTANCE OF THE BOND BEING RATED AAA**

14 **Q. WHY IS IT IMPORTANT THAT THE PROPOSED STORM**
15 **RECOVERY BONDS OBTAIN AN AAA BOND RATING?**

16 A. As I stated above, the proposed bonds are required to be
17 structured to provide storm recovery at a lower cost to consumers
18 than they would pay under the traditional method of paying for
19 storm recovery costs. AAA is the highest rating that the bond rating
20 agencies assign to bonds and accordingly issuing AAA rated bonds
21 provides the bond issuer with the opportunity to obtain the lowest
22 cost payments on the bonds. The higher the storm recovery bond
23 rating, the lower the cost to the ratepayers. An AAA rating indicates

1 to investors that the bonds have less risk than non AAA rated
2 bonds, and as a result investors typically require a lower interest
3 rate when purchasing these bonds. By obtaining a AAA rating, the
4 bonds can potentially be offered to investors at or near the lowest
5 possible interest rate and also at or near the lowest cost to the
6 ratepayers. This use of the lowest cost only increases the benefit of
7 the AAA bond rating to the ratepayer, because it provides the
8 opportunity to make the most efficient use of the assets as
9 collateral for the bonds.

10 However, simply obtaining a rating of AAA does not guarantee that
11 the most efficient use of the collateral securing the bonds has been
12 realized due the complex nature of bonds in general and storm
13 recovery bonds in particular. Additionally, all AAA rated bonds are
14 not the same nor do they possess the same level of risk. Typically,
15 securitized utility bonds are considered less risky by investors and
16 thus more attractive than regular utility bonds because they are
17 issued by a bankruptcy remote special purpose entity (SPE) which
18 make them less likely to be defaulted on in the event the parent
19 company does go bankrupt. This is the case because there is no
20 more than a remote risk that the assets of the SPE could be pooled
21 with other assets of a utility if a bankruptcy judge decides to apply
22 the equitable notion of substantive consolidation, which allows for

1 the pooling of the assets and liabilities of technically distinct
2 corporate entities to satisfy creditor claims.

3 In conclusion, AAA bonds are deemed more valuable and less risky
4 than lower rated bonds, and securitized utility bonds similar to
5 those proposed by DEC and DEP are usually considered less risky
6 and more valuable than AAA rated bonds not secured by this
7 unique type of utility asset and issued by a bankruptcy remote SPE.

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

9 A. Yes.

1 CHAIR MITCHELL: All right. Any
2 additional -- any additional procedural matters
3 from the Public Staff?

4 MR. GRANTMYRE: Grantmyre has none.

5 CHAIR MITCHELL: Okay. Thank you,
6 Mr. Grantmyre. Mr. Creech? All right.

7 MR. CREECH: No, Chair Mitchell.

8 CHAIR MITCHELL: All right. With that,
9 it's my understanding, Mr. Robinson, you'd like to
10 recall your witness Heath?

11 MR. ROBINSON: Yes. Chair Mitchell, at
12 the risk of causing ire to the parties on Friday
13 afternoon, we do have a few brief questions --
14 redirect questions for both Ms. Abernathy and
15 Mr. Heath. At this time, we would like to recall
16 Ms. Abernathy first. I will be handling
17 Ms. Abernathy, and then we will recall Mr. Heath,
18 and Mr. Jeffries will be handling Mr. Heath.

19 CHAIR MITCHELL: All right. Please do
20 so.

21 MR. ROBINSON: Thank you.
22 Ms. Abernathy, at this time we would like to
23 recall. Are you there?

24 CHAIR MITCHELL: I see Ms. Abernathy.

1 And, Ms. Abernathy, I'll just remind you that you
2 are under oath.

3 THE WITNESS: Okay.

4 Whereupon,

5 MELISSA ABERNATHY,

6 having previously been duly affirmed, was examined
7 and testified as follows:

8 REDIRECT EXAMINATION BY MR. ROBINSON:

9 Q. Ms. Abernathy, welcome back. Do you recall a
10 series of questions from Chair Mitchell asking you to
11 explain the points in time from the differing weighted
12 average cost of capitals are applied the Company's
13 storm cost at issue in this case?

14 A. Yes, I do.

15 Q. Ms. Abernathy, is there anything you would
16 want to add or to clarify to your prior response?

17 A. I would just like to clarify my response to
18 walk through the timeline of when we will change the
19 weighted average cost of capital. So we will update
20 the weighted average cost of capital in the carrying
21 cost calculation for the storm cost after we receive an
22 order in the pending rate cases and we actually have a
23 new authorized return.

24 In my testimony and in my exhibit in the

1 calculations, specifically in Exhibit 2 for each
2 Company in my direct testimony, at the time we
3 estimated that date to be January for DEC and
4 February 1st for DEP. So those dates will be updated
5 once we get final orders, and then the actual carrying
6 costs will be calculated using the actual cost of
7 capital to the extent that the assumption changes.

8 Similarly, we will also update that
9 calculation to go all the way through the actual final
10 issuance date, and the final amounts will be included
11 in the IAL process.

12 Q. Thank you, Ms. Abernathy. No further
13 questions.

14 MR. GRANTMYRE: The Public Staff has no
15 cross examination.

16 CHAIR MITCHELL: All right. Any
17 questions from the Commissioners for this witness?

18 (No response.)

19 CHAIR MITCHELL: All right.
20 Ms. Abernathy -- Mr. Jeffries, did you want to say
21 something?

22 MR. JEFFRIES: No, I'm sorry, I'm being
23 overanxious.

24 CHAIR MITCHELL: Okay. All right.

1 Well, Ms. Abernathy, you may step down. Thank you
2 very much.

3 THE WITNESS: Thank you, Chair Mitchell.

4 MR. ROBINSON: And of course, at this
5 time, Chair Mitchell, we would now officially seek
6 to excuse Ms. Abernathy.

7 CHAIR MITCHELL: Your witness may be
8 excused.

9 All right. Mr. Jeffries, I see you're
10 ready to go again, but I'm gonna give our court
11 reporter a break. We will take a 10-minute recess.
12 We'll come back on, we'll finish up the hearing and
13 call it a day. So let's go off the record now and
14 we will be back on at about 3:55.

15 (At this time, a recess was taken from
16 3:46 p.m. to 3:55 p.m.)

17 CHAIR MITCHELL: All right. Let's go
18 back on the record, please. Mr. Jeffries, you are
19 up.

20 MR. JEFFRIES: Thank you,
21 Chair Mitchell. Duke would recall Mr. Tom Heath to
22 the stand, please.

23 CHAIR MITCHELL: All right. Mr. Heath,
24 I will just remind you you are under oath.

1 THE WITNESS: I understand. Thank you.

2 Whereupon,

3 TOM HEATH,

4 having previously been duly affirmed, was examined
5 and testified as follows:

6 REDIRECT EXAMINATION BY MR. JEFFRIES:

7 Q. So, Mr. Heath, you and I are the two people
8 that are keeping all these folks from a weekend, so
9 we're going to try to go quickly here, okay --

10 A. I completely understand.

11 Q. -- before they start throwing rocks. So I've
12 got about four questions for you real quick.

13 Do you recall, when I was speaking with
14 Mr. Fichera, we were having a discussion about
15 Sabers -- I guess I would characterize it as business
16 interests in the ongoing bond transactions, and I asked
17 him a question, or maybe he gave an answer that I was
18 confused about, because I understood him at least
19 initially to say that their expenses would not be
20 included in any of the bond costs here.

21 Could you tell me what your understanding is
22 about how those expenses are being handled?

23 A. Yes. I was a bit confused by that initial
24 answer too. I do think Mr. Fichera may have come back

1 later and somewhat clarified. But just to make the
2 record perfectly clear, we are planning to include the
3 fees from the Public Staff consultants and any legal
4 counsel that they were to have, as well as any
5 consultants, any legal counsel that the Commission were
6 to hire as bond fees. And they would be included in
7 the upfront issuance cost and recovered in the issuance
8 of these bonds.

9 And so there is some discussion in my direct
10 testimony on -- I believe it's pages 24 and 25, and
11 then it's also in my Heath Exhibit 1 in my direct
12 testimony that covers and lists out those estimated
13 fees. So I just want to kind of note, as I think I
14 said yesterday -- may have said yesterday, you know,
15 the fact that the securitization statute mentions that
16 any counsel and consultants that the Public Staff were
17 to hire would be recovered in the transaction, treated
18 as a cost, I don't think that breaks new ground in the
19 treatment of a consultant's expenses on behalf of the
20 Public Staff.

21 The Public Staff -- the statute that enables
22 the Public Staff already provides for the recovery of
23 their outside consultants and experts' transaction
24 fees, or fees, period, from the Companies and from

1 customers ultimately. And so that language in the
2 statute is really enabling those fees, those expenses
3 to be recovered in the bond issuance amount.

4 Q. Thank you, Mr. Heath. Did you hear
5 Mr. Fichera's discussion with Chair Mitchell in
6 response to her question about sort of what are the
7 differences between the 2005 and 2015 Florida
8 securitization transactions, and particularly his
9 comments about communications with the SEC and
10 investors?

11 A. I did.

12 Q. Do you have a reaction to that as the person
13 who is going to be responsible for issuing these bonds
14 to the Company?

15 A. I do have a reaction to that. I heard that,
16 and it immediately brought concern to my mind. So we
17 talked about this a little bit yesterday, and I'll
18 elaborate more here that, you know, when a party is
19 thinking about -- I'll preface my comment as
20 Mr. Fichera did mention that his conversations with the
21 SEC earlier this week, I think it was, were not about
22 this transaction in particular. And so I've got no
23 reason to question that. But the fact that someone,
24 other than the issuers and underwriters, would be

1 permitted to speak to the SEC rating agencies and
2 in that, is very concerning to me.

3 So parties that have no securities law risk
4 or contract law risk being permitted to have those
5 discussions is very concerning and problematic in my
6 mind. There's a notion of entanglement. So it's when,
7 you know, someone speaks about a transaction, even if
8 they're in sort of a quasi-official position and
9 they're not the issuer, anything they say can be
10 attributed to the issuer, itself, and that can increase
11 exposure to the securities law liabilities to the
12 issuer.

13 So that's kind of that -- raised my -- raised
14 my concern when I heard that comment that those kind of
15 conversation. Again, Mr. Fichera said not in context
16 of the transaction, but they just brought those
17 concerns fresh to my mind again.

18 Q. Thank you, Mr. Heath. Those are two specific
19 issues I wanted to ask you about. Now I want to ask
20 you -- my last two questions are more general.

21 And I'd like -- you've heard the testimony
22 that's come into the record since you testified
23 yesterday, correct? I just wanted to ask you what your
24 reaction to that testimony was.

1 A. You know, I was a bit confused today. I --
2 you know, there was a lot of testimony, both yesterday
3 and today, and when I heard the Public Staff testimony
4 today, I really got confused about what exactly are
5 they proposing in terms of a bond team. And there
6 seemed to be, you know, joint decision-making,
7 questions, an ultimate resolution of things by the
8 Commission, and a lot of different things. And to me,
9 I almost am more confused sitting here now after
10 hearing all of that testimony than I was before this
11 hearing began.

12 So I would like to just kind of come back and
13 just present the bond team concept that the Company has
14 laid out and just be clear about what we're envisioning
15 or what we've offered and why we believe that is a very
16 reasonable proposition if the Commission were to choose
17 to implement a bond team.

18 And so what we've proposed is that a Company
19 representative and a representative of -- or a
20 designated Commissioner or representative of the
21 Commission staff be the joint decision-makers in all
22 aspects of the structuring, marketing, and pricing of
23 these proposed bonds. And that other members, be it
24 the underwriters, be it the Public Staff, or any

1 consultants that are employed by them, or others would
2 be contributing numbers to the discussion, and
3 contributing to the development of the all the material
4 related to this transaction, including the registration
5 statement, the rating agency materials, and the
6 investor road show materials. And that -- but those
7 two decision-makers, again, the Company rep and the
8 designated Commissioner or member of Commission staff
9 would ultimately decide what materials are put forth in
10 consultation with their own legal counsel.

11 And so I just want to be clear with that,
12 right. So we're not in any way trying to limit the
13 involvement of the Commission in the issuance of these
14 bonds. We're not in any way trying to shut the door on
15 the Public Staff's involvement in this offering going
16 forward. We believe there's places for both of them.
17 I've outlined those I think at length yesterday.

18 And to this question as to why it might be
19 appropriate for the Commission to be involved but not
20 the Public Staff as that joint decision-making body,
21 I'll go back to the things I said yesterday. And that
22 is the Commission and not the Public Staff has an
23 obligation to make findings of fact in this proceeding.
24 The Commission and not the Public Staff has the

1 responsibility of enabling the creation of the property
2 right and the transferral of that property right to the
3 issuing SPE. And the Commission, not the Public Staff,
4 has responsibilities to enact the true-up mechanism to
5 ensure that we -- that the servicers, which would be
6 the Companies, who are collecting enough cash and only
7 enough cash to pay the principal interest and fees
8 related to these bonds over time. And it's, again, the
9 Commission not the Public Staff that is making a state
10 pledge or making a pledge on behalf of the state to not
11 impair that property right and to not disallow charges
12 going forward.

13 So I hope that helps to clarify things. And
14 again, I believe we put forth a very reasonable
15 proposal here. I think I heard a couple of times
16 mentioned today two references -- or multiple times
17 mentioned today to our 2016 DEF transaction. And I
18 believe everyone that was involved in that transaction,
19 certainly the Company, the FPSC staff, the Commission
20 itself, the underwriters, everyone believes that that
21 was a very successful transaction. And I believe what
22 we have laid out in our petition in this proceeding is
23 a transaction that is very much like the transaction
24 that was such a success in Florida, and it includes

1 very many of the best practices (sound failure) --

2 CHAIR MITCHELL: All right.

3 Mr. Jeffries, we lost your witness.

4 MR. JEFFRIES: Yeah, well, there he is.

5 THE WITNESS: I'm sorry about that. So
6 I think where I --

7 CHAIR MITCHELL: Mr. Heath, we lost you
8 when you were saying it includes very many of the
9 same best practices as were included in the Florida
10 transaction.

11 THE WITNESS: Uh-huh. And that's really
12 what my final thought on that was, that we've
13 included the best practices that we believe are
14 relevant under the statute and relevant based on
15 North Carolina regulatory practices, and the ones
16 that have not been baked in are there -- are not
17 there for those reasons.

18 Q. And finally, Mr. Heath, is the arrangement
19 that you -- the approach to the bond issuance in this
20 case, in the event that the Commission does want there
21 to be a ratepayer advocate involved in the issuance of
22 the -- of the bonds post-financing order, does the
23 arrangement you just described continue to be your
24 recommendation to the Commission?

1 A. Yes, it is. That construct of a bond team,
2 if the Commission were to decide that a bond team was
3 necessary, yes.

4 MR. JEFFRIES: That's all the questions
5 I have for Mr. Heath, Chair Mitchell.

6 CHAIR MITCHELL: All right. I'll see if
7 Commissioners have questions for the witness.

8 Commissioner Brown-Bland? If you could
9 just shake your head no.

10 All right. Commissioner Gray? All
11 right.

12 Clodfelter, I see is a no.

13 Duffley?

14 COMMISSIONER DUFFLEY: Sorry, I have one
15 question. It's just a clarification, semantics
16 question.

17 EXAMINATION BY COMMISSIONER DUFFLEY:

18 Q. So, Mr. Heath, would -- the Public Staff,
19 under your scenario, would not be a part of the bond
20 team but an observer, like in the room but not part of
21 the bond team? Or do you view them as being part of
22 the bond team but not a final decision-maker?

23 A. Not a final decision-maker. So I see them,
24 along with underwriters, providing advice, and

1 recommendations, and reviewing all the materials.
2 Again, for the registration statement itself, the
3 rating agency materials, investor materials, reviewing
4 and contributing to the development of all of those
5 materials. But ultimately what gets put forth in front
6 of all of those bodies is determined by the two
7 decision-makers. And those decision-makers being the
8 Company representative and a designated Commissioner or
9 member of Commission staff advised by their counsel.

10 So, you know, whether the technical bond team
11 encompasses all of those people or, you know, if it's
12 the Company advisor -- the Company and its advisors and
13 legal counsel and the Commission and its advisor and
14 legal counsel, you know, that -- you know, that, I
15 think, to me, does get into semantics.

16 But the point I'm trying to -- that I want to
17 make sure we stress is that decision-makers are
18 strictly the Company rep and the Commission rep.
19 Everyone else is contributing input, but it's those two
20 folks who, based on all of that input and feedback they
21 receive, that ultimately make the decision of how to go
22 forward with the offering.

23 Q. Okay. Thank you.

24 CHAIR MITCHELL: All right.

1 Commissioner Hughes?

2 COMMISSIONER HUGHES: Just a quick
3 follow-up on that.

4 EXAMINATION BY COMMISSIONER HUGHES:

5 Q. Have you participated in this type of bond
6 team for another issue, being a securities issue, where
7 the Company and the Commission had joined public issue
8 responsibility, and what happens if they disagree?

9 A. The only other transaction that Duke has
10 participated in where there was any sort of bond team
11 where we -- where we shared decision-making authority
12 with anyone on a debt or an equity offering was the
13 2016 Duke Energy Florida transaction. So there was a
14 dispute resolution process in there where, if there
15 were conflicts between the joint decision-makers that
16 could not be resolved, there was a designated
17 Commissioner. So in there, the -- the Commission staff
18 person and its advisor with the Company were the joint
19 decision-makers. So if there were conflicts between
20 those, a designated Commissioner was available to
21 resolve that conflict and say here's what we're gonna
22 do.

23 What I would envision here, if it's a
24 designated Commissioner as a joint decision-maker, is

1 that the full Commission would decide how to resolve
2 that dispute. Now, we've had no dispute -- in Florida,
3 we had no dispute that rose to that level that ever had
4 to be resolved in that manner. We were always able to
5 work those things out amongst the joint
6 decision-makers.

7 Q. Thank you for that explanation.

8 COMMISSIONER HUGHES: No further
9 questions.

10 CHAIR MITCHELL: All right.
11 Commissioner McKissick?

12 COMMISSIONER MCKISSICK: Yes,
13 Madam Chair. I just have a couple quick questions.

14 EXAMINATION BY COMMISSIONER MCKISSICK:

15 Q. Mr. Heath, in terms of the bond team as you
16 envision it, would they have joint decision-making
17 authority, you know, the person from the Utilities
18 Commission and somebody from Duke dealing with the
19 selection of underwriters? Underwriters fall in that
20 category they're making joint decisions over?

21 A. Sure. Yes, they do.

22 Q. How about legal counsel?

23 A. Yes.

24 Q. All right. And about the structure of the

1 bond issue, if it's going to be in different tranches
2 and the benchmark securities pricing of the bonds,
3 about there, they also have joint --

4 A. Absolutely.

5 Q. -- decision-making authority?

6 A. Absolutely.

7 Q. So the whole marketing plan gets incorporated
8 into that same category of things where joint
9 decision-making occurs; is that right?

10 A. Yes, sir. Yes, sir.

11 Q. All right. So are there any areas that are
12 different in North Carolina in contrast to what was
13 done in Florida where North Carolina would somehow be
14 unique in terms of the decision-making authority the
15 bond team would possess in terms of its authority?

16 A. I don't think so. I mean, there are certain
17 things -- if there's a matter that -- that Duke, the
18 Company, DEC or DEP were to believe added to securities
19 law liability, then we would reserve -- we do propose
20 that we reserve discretion to have unilateral decisions
21 around those things. But -- and we had that in Florida
22 too, so that's not different to how the bond team
23 worked in Florida.

24 Q. Okay. And Mr. Fichera in his testimony

1 indicated that the two of you traveled together, I take
2 it to meet with potential investors. And did
3 that quite substantially. I take it that was back in
4 the 2016 period; is that correct?

5 A. That's right.

6 Q. And did you two accompany each other to
7 virtually all of those investor meetings, or what
8 percentage of them, and how did they go?

9 A. A hundred percent of those meetings, to my
10 recollection. So we went to four or five different
11 cities on a physical road show and met with multiple
12 groups of investors in each of those cities. We had a
13 large group investor meeting in, I think it was New
14 York over a lunch session where we had 10 or 15
15 different investors come in, and we all spoke to them
16 about the transaction. We also had telephonic
17 discussions one-on-one with investors. I think we had
18 a recorded kind of messages where the investors could
19 call and listen to. So we participated in all that
20 together.

21 I think those conversations were fine. We
22 had -- you know, we had a -- it was myself,
23 Mr. Fichera, representative from both of the
24 underwriters, and on most of those discussions it was

1 actually a person from the FPSC staff as well who was
2 in the room. And so we had, you know, a book of -- my
3 recollection, maybe 15 slides or so, and we each had
4 specific things we were covering. And the discussion
5 from the FPSC staff and from Mr. Fichera were around
6 things that the state is involved in through this
7 pledge.

8 So the pledge that's out that the Commission
9 is making here on behalf of the state, the true-up
10 mechanism, this property right defining some discussion
11 about the financing order itself. So our discussion,
12 things I talked about were the -- you know, does the
13 offerer -- or the issuer and the securities more
14 broadly, and they were talking about things that the
15 Commission had more direct oversight and responsibility
16 for.

17 Q. Okay. And did you encounter any challenges
18 or problems during the course of those meetings that
19 were held, if there were anything that might being
20 addressed differently if we were to go in a similar
21 path to perhaps bringing a financial advisor to help
22 the Commission; what did you learn from that that you
23 might do differently, or were they pretty much
24 seamless?

1 A. I mean, I think -- sorry. I think they were
2 very efficient meetings. I think we learned a lot on
3 that DEF transaction in general, about how do we think
4 about utility securitization bonds, how do we -- how do
5 we benchmark them, what do we compare them to, and how
6 do we register them and get them rated, and how do we
7 ultimately market them. So, you know, we learned a
8 lot. I think there's -- I think it was a successful
9 transaction. The process worked well.

10 I also think that, you know, based on our
11 extensive experience with issuing debt and the way we
12 go about approaching investors, and not just in who
13 were in a deal, but we meet with investors at
14 conferences throughout the year, absent the past year,
15 obviously, you know, puts us in a very good position
16 that, you know, we could do the -- we could do this
17 transaction and deliver a very successful transaction
18 to this Commission for approval with or without, you
19 know, that active of involvement.

20 Q. And let me ask you this. Yesterday I raised
21 the question of whether you felt that the Commission
22 could bring on Saber Partners as their financial
23 advisor, if we were to go with the structure that's
24 been proposed by Duke, and you seemed to feel at that

1 time they might have a conflict because they served as
2 financial advisor for the Public Staff. Of course,
3 neither Saber nor anyone else seems to share that
4 perception based upon testimony I heard today.

5 Do you remain of the opinion that you stated
6 yesterday that there would still be a potential
7 conflict, and is that a conflict that you feel needs to
8 be addressed?

9 A. I still do believe it would be a conflict.
10 As I mentioned yesterday, if the -- you know, Duke's
11 looking out for its customers here certainly, our
12 interests are aligned here, and the Commission staff is
13 looking -- or the Public Staff has got -- is looking
14 out for customer interest, right. And the Commission
15 is looking at both the viability of the utility as well
16 as the customer -- the customer impacts, right.

17 And so I think if you were to hire either
18 Guggenheim, our advisor today, or if you were to hire
19 the Saber Partners, I would see that as equally
20 being -- you know, either one of those would
21 potentially or could be -- would be a conflict.

22 Q. And last question. We had some discussion
23 yesterday about the certification that Duke would
24 envision providing. And, of course, you heard

1 considerable testimony today about certification being
2 provided by a financial advisor, independent entity
3 that would be looking out for ratepayers.

4 Do you see those being a conflict, or do you
5 consider that they might both be provided, that there
6 might be two opinions, understanding what Duke's
7 opinion would be in terms of -- you know, because as
8 I'm clear based upon your testimony yesterday.

9 A. You know, I certainly -- as we proposed, the
10 certification would come from the Companies. And as I
11 said yesterday, I would still support today that, you
12 know, we believe that that's -- that's really the only
13 certification that the Commission really needs to base
14 a decision on, right. We are -- we propose to certify
15 to a level that is more stringent, we believe, than
16 what we certified to in Florida, a lower cost standard.
17 We have agreed that we -- or we have proposed that we
18 would certify to a lowest storm recovery charge
19 standard here. And we stick to our position that
20 that's -- you know, we think that's enough for the
21 Commission to make a decision on, because we don't make
22 that representation, we don't make that certification
23 to this Commission on any other debt issuance, right.
24 So that should give an added level of comfort that, you

1 know, we're committed to -- we're committed to
2 delivering the best result for customers in the state
3 of North Carolina.

4 Q. Thank you, Mr. Heath.

5 COMMISSIONER MCKISSICK: Madam Chair, I
6 don't have any further questions.

7 EXAMINATION BY CHAIR MITCHELL:

8 Q. All right. Mr. Heath, just following up very
9 quickly on the last few questions that
10 Commissioner McKissick asked of you. The
11 certifications. So I understand the Company's position
12 on the certification it would provide and it's
13 proposing a more stringent certification than that
14 which was offered in the Florida transaction.

15 Remind me, were there any other
16 certifications given in the Florida transaction? Was
17 there -- just -- I'll leave it at that.

18 A. There were. The underwriters provided
19 certifications as well as the FPSC advisor. They were
20 not provided to us, so those certifications were given
21 to the Commission itself. I think our attorneys saw
22 them on the day of the hearing, but we did not -- we
23 don't have them, and we didn't --

24 Q. Okay. So that would be a difference between

1 what the Company is proposing to do in this case versus
2 the transaction in Florida; those two certifications
3 would not be involved here, as proposed by the Company.
4 Okay.

5 A. That is --

6 Q. Is that consistent with neither of those --
7 well, I guess I won't ask the next question, but
8 respond to my first question.

9 A. Yes. So our proposal here is that we give a
10 certification, and that certification is to a higher
11 level than what we provided in Florida. So we believe
12 it makes the other certificates unnecessary. But as I
13 said yesterday, if someone were to provide certificates
14 to you, we don't say ignore them, but we do say that we
15 believe, in the financing order, the only certificate
16 that should be required and should be a necessary
17 condition to the issuance of the bonds be the Company's
18 certificate.

19 Q. Okay. Thank you for clearing that up for me.

20 CHAIR MITCHELL: All right. Questions
21 on the Commissioners' questions.

22 Public Staff?

23 MR. CREECH: Yes, please,

24 Chair Mitchell, and thank you for all those

1 questions.

2 EXAMINATION BY MR. CREECH:

3 Q. I did want to start off first, if I could, on
4 the whole -- on the Florida note. We've talked -- I
5 believe, Mr. Heath, you indicated that what the Company
6 here is proposing is similar as many of the protections
7 or many of the aspects of the Florida transaction.

8 I guess it's just been noted, of course, that
9 the certifications here are different than in Florida;
10 that's correct? That the Companies proposing are
11 different in Florida; that's correct?

12 A. That's correct. But, you know, the reason
13 being that the Company is -- has proposed to certify to
14 a higher standard.

15 Q. And just to be clear, the Company has been
16 arguing that the Commission does not have the -- well,
17 excuse me, you can correct this, if you will. The
18 Company's been arguing that the -- that the Commission
19 doesn't have the authority under the so-called
20 catch-all provision to add a lowest cost standard to
21 get the type of certification that the Company is now
22 indicating that it will provide.

23 I know you started out your testimony by
24 being confused about -- well, let me not go into that.

1 I just -- if -- can you comment on that?

2 A. Yes. The statute here requires a lowest cost
3 standard, and we are certified -- we will certify to
4 that standard that is required by the statute. I don't
5 know why that's -- I mean --

6 Q. Okay. Go ahead if you need to. I'm not
7 trying to cut you off.

8 A. No. I mean, that's basically the point. I
9 mean, the statute here is lowest cost -- is lowest
10 storm recovery charge consistent with market conditions
11 the time the bond is priced in accordance with the
12 terms of financing order, and that's what we are
13 proposing to certify to.

14 Q. So is that a lowest impact standard? I mean,
15 that you've got the lowest at that time?

16 A. That is the lowest storm recovery charges
17 consistent with market conditions. Now, there were
18 some discussion in witness Klein, and I think maybe
19 witness Fichera, and maybe another -- another one of
20 the Public Staff consultant's testimony about imposing
21 a more stringent, you know, absolute kind of standard
22 is kind of the way I read it, and I would point to
23 witness Klein's testimony that there are no absolutes
24 in this world, and certainly not in the financial

1 market.

2 So, you know, we can certify to the statutory
3 standard, but I don't think the statutory standard
4 should be broadened beyond what it says today.

5 Q. So is the Company willing to give a
6 certification that's greater than the statutory
7 standard in North Carolina or that meets the statutory
8 standard in North Carolina?

9 A. We are willing to give a certification that
10 meets statutory standard.

11 Q. All right. Now -- and thank you for that.
12 Now, in Florida, you mentioned that it was a very
13 similar transaction, but as we discussed yesterday,
14 and -- there are already a number of protections in the
15 transaction documents that -- that are not included;
16 isn't that correct?

17 A. Well, there was one specific one that we
18 pointed out that -- you know, where the Commission -- I
19 think it was around approval of the termination of the
20 Companies as servicers. And so as we understood best
21 practices, you know, and what was in transaction
22 documents and from prior transactions, specifically
23 Florida, we did not really understand that particular
24 feature to be a -- something that the Commission was

1 going to want to take on as a best practice. So we --
2 you know, again, we provided the transaction documents
3 to the Commission for review as part of our petition,
4 and if they would like that language in there, we would
5 not be opposed to that.

6 Q. And thank you. And just a couple more
7 questions. There were questions by the Commissioners
8 related to how things went in Florida and
9 conversations.

10 Did you hear Commissioner -- during the
11 Commissioner questions did you hear witness Fichera's
12 response to my questions about operating within
13 guardrails within the confines of the bond team, but
14 yet being able to do -- having financial advisors being
15 able to do due diligence?

16 A. I did. But as I mentioned earlier in my --
17 in my response to one of Mr. Jeffries' questions was
18 this idea of securities law liability and entanglement
19 and, you know, we -- we have very significant concerns
20 about parties that don't bear liability and the
21 securities law having direct conversations on a
22 bilateral basis with investors.

23 Q. And just on that securities law aspect that
24 you mentioned, will -- will the -- will Duke Energy

1 Carolina and/or Duke Energy Progress indemnify their
2 issuer, the SBE issuer for any securities law
3 liability?

4 A. I would have to have that conversation with
5 my counsel. I'm not sure how we would see that
6 overall.

7 Q. Okay. I've got a number of more questions
8 based upon the Commission questions. I do appreciate
9 your time.

10 Were there any other items not included in
11 the Company's proposal here in North Carolina that were
12 included in Florida that you would like to speak to?

13 A. Could you be more specific?

14 Q. Well, I guess we talked about the
15 certifications and the standard of certifications. We
16 talked about customer ratepayer protections that are
17 not in the transaction documents.

18 Is there anything else that we need to
19 discuss?

20 A. Not to my knowledge, no.

21 Q. All right. Thank you. Thank you so much for
22 that. You got some questions about the make-up of the
23 bond team, and one thing that has kind of been, I
24 think, going on in my mind a bit is obviously the

1 Commission in this instance can take whatever route it
2 decides. It's the decider. It gets to write the
3 financing order. We are before the Commission now.
4 Let's say for whatever reason that the Commission
5 decides, okay, for whatever reason -- and the
6 Commission could decide if it wants to do it -- but
7 doesn't want to be a joint decision-maker on the bond
8 team. Then what happens, in your view?

9 A. If the Commission were to decide it did not
10 want to be a joint decision-maker, in terms of there
11 would still be a bond team or are we saying that the
12 Commission goes back to Duke's original proposal of an
13 issuance advice letter process.

14 Q. Well, I guess two questions. Number one,
15 would there be a bond team?

16 A. Well, the Commission has to make that
17 decision, right. So if they say there is no bond team
18 and they would -- they would accept our initial
19 proposal that we laid out in our direct testimony of
20 doing the -- of Duke doing the transaction and
21 bringing, you know, an issuance advice letter to the
22 Commission, you know, to kind of -- a couple of
23 months -- well, not a couple of months, but a few weeks
24 before going into the actual market and issuing the

1 securities, if we were to present this -- a draft
2 issuance advice letter with a -- indicative pricing and
3 actions that we have taken to date and what we expect
4 to do to complete this offering, and then we come back
5 with an actual issuance advice letter after the fact,
6 that could be one route.

7 If the Commission, again, approves that. If
8 they want some form of bond team, we would have to see
9 what the bond team so ordered would be. And we have to
10 understand what the order says about a bond team.

11 Q. And one of the questions you received, I
12 believe it was from Commissioner McKissick, related to
13 potential conflicts of the parties, et cetera, and you
14 had commented upon Saber Partners, and I think that the
15 question at some point in time came up to -- I don't
16 know if entanglements came up in that different context
17 or not. But is it your understanding -- you know,
18 you've heard the testimony from witness Fichera today,
19 and you indicated that he kind of came back around, I
20 guess, on his response on that.

21 You're clear that witness Fichera is not --
22 the Saber Partners team is not being paid on kind of a
23 performance-based contract in this instance? I mean,
24 it's not based upon a percentage of savings or anything

1 like that, based upon witness Fichera's testimony?

2 A. I don't know what the arrangement
3 specifically is, but yeah, I think that was what I
4 heard. It's not a contingent-type thing, but I don't
5 really know what the arrangement specifically is and
6 what the fee level is. We put some estimates in our --
7 in my exhibit based on our experience in Florida from
8 having an active Commission advisor at least involved
9 there.

10 Q. But other than being an advisor to, in this
11 instance, the ratepayer advocate, are you aware of any
12 other interest, other than doing a good job, that Saber
13 might have in this scenario?

14 A. Other than doing a -- I mean, I guess
15 they're -- you know, they -- we talked about earlier
16 today about underwriters, right. They're incentivized
17 to do a good job because they want repeat business. So
18 I guess I could see that as a motivation too. You
19 know, there's been a fair amount of talk about, you
20 know, future securitization issuances because of future
21 storms, and that may be likely. I would guess that,
22 you know, they would want to be seen as doing a good
23 job to position themselves for future advisement on
24 those kind of transaction.

1 Q. Thanks for your patience. I just have two or
2 three more quick ones, hopefully. One of the comments
3 that you made -- one of the comments you made to the
4 Commissioners related to kind of the authority that
5 they came up with related to kind of the authority that
6 they're giving up and the nature of these bonds.

7 And so, as we discussed yesterday, you know,
8 you are aware that these are AAA bonds for a reason,
9 right? Because you stated that the -- after the
10 financing order, the bonds are issued, there's a
11 statutory pledge that neither the state nor the
12 Commission may impair the rights of the storm recovery
13 bond underwriters; isn't that correct?

14 A. Yes, it is.

15 Q. And there's a requirement that the Commission
16 will not amend, or modify, or terminate the financing
17 order; is that correct?

18 A. I believe that's correct.

19 Q. And that there's a mandatory periodic true-up
20 mechanism to adjust storm recovery charges to ensure
21 that the bond holders get paid?

22 A. That's correct.

23 Q. And if somebody doesn't pay their bill, it
24 goes on to everybody else?

1 A. Yes.

2 Q. And it's a non -- it's considered
3 non-bypassability -- non-bypassable storm recovery
4 charge?

5 A. Yes.

6 Q. And then finally, even if there's a -- even
7 if a customer elects to purchase electricity from an
8 alternative electric supplier following a fundamental
9 change in regulation of the public utilities, the
10 bondholders still have to be paid?

11 A. The charges still have to be collected.

12 Q. The charges still have to be collected. Good
13 point. Yeah, correct. All right.

14 And then two final points. Just to be clear,
15 the certification that the -- and we talked about
16 Florida here. In Florida, there were certifications
17 given by three different types of folks. One was a
18 lower level-type certification in Florida because
19 the -- it was just considered that it was -- you heard
20 witness Fichera today, it's kind of a
21 self-certification. I mean, it's helpful, but the
22 second certification that was received was from the
23 underwriter, and that was the lowest impact
24 certification, is my understanding. And then the third

1 was from the investment advisor, in this instance it's
2 Saber, on behalf of the Commission.

3 And so there were three there. One from the
4 Company, a little lower standard, and then from the
5 underwriter, and from the -- and from the investment --
6 from the advisor, and those were lowest impact, and
7 then -- is that correct?

8 A. I believe that was the case, yeah. Again, I
9 did not get to see those -- personally, I did not see
10 the certification from either Saber Partners or from
11 the underwriters.

12 Q. Okay. Okay. Okay. And it may be -- I don't
13 even know if they gave a certification in that
14 instance. I think they did, and I thought that's what
15 I heard you said, but if that's --

16 A. We did.

17 Q. Okay. And then -- and again, the
18 North Carolina statute and the Florida statute, very
19 similar, correct?

20 A. I believe so, yes.

21 Q. And then finally, on these certifications,
22 you know, you -- the Company has offered to give a
23 certain level certification, the version, I can't quite
24 tell what level we're at, if it's lowest impact or a

1 so-called statutory standard according to the Company.
2 But, you know, take this analogy, if you will. You
3 know, you go to a doctor, and you want to get a second
4 opinion, you know. You know, in this instance, don't
5 you want to go to a doctor who's gonna say, "Yes, go
6 get a second opinion, I want you to"?

7 A. Yeah. I think I said earlier that, you know,
8 other people can provide certifications if the -- you
9 know, to the Commission, and the Commission doesn't --
10 shouldn't just, you know, ignore them or throw them
11 away, but the Commission should only need to rely on
12 the Company's certification, and -- because it is a
13 lowest charge -- or is a lowest storm securitization
14 charge consistent with market conditions and it covers
15 the structuring marketing and pricing of the bonds, so.

16 Q. Very good. Final question. You are -- you
17 may have heard earlier, and we talked about Duke Energy
18 Florida. It was Public Staff Fichera Redirect
19 Exhibit 1, which was the transcript from the public
20 hearing, and there was a five-minute video there kind
21 of attached to it at the end.

22 But you heard what was stated about
23 Ms. Triplett, who works for Duke Energy Florida, and
24 how everything came together. It wasn't -- quote, this

1 fantastic outcome is no accident, et cetera, et cetera.

2 Are you familiar with that?

3 A. Yes.

4 Q. And do you disagree with that?

5 A. No. It was a fantastic outcome. We -- I
6 think everyone agrees. I mean, the numbers in that
7 transaction, relative to other deals, speaks for
8 itself. I think we -- we -- I think that transaction
9 was a huge success. And we put forth a petition in
10 this state in this proceeding that very much looks like
11 the Florida transaction.

12 Q. But as we stated just at the very beginning
13 of this, the Company's proposal is not exactly like the
14 Florida model; is that right?

15 A. Correct. And I never said exactly.

16 Q. Perfect. Exactly. All right. Well, thank
17 you, Mr. Heath. Appreciate your time. Thank you so
18 much.

19 A. Thank you.

20 CHAIR MITCHELL: All right.

21 Mr. Jeffries?

22 MR. JEFFRIES: Thank you,
23 Chair Mitchell, just a couple.

24 EXAMINATION BY MR. JEFFRIES:

1 Q. Mr. Heath, at the risk of beating a dead
2 horse, I want to beat this certification horse one last
3 time.

4 Duke's commitment and your testimony in both
5 live and prefiled is that you intend to certify to the
6 lowest cost consistent with market conditions at the
7 time the bonds are issued; am I correct about that?

8 A. That is correct.

9 Q. Okay. And so market conditions would be
10 baked into that certification at that point, right?

11 A. Yes.

12 Q. Okay. Now, when I learned about adjectives
13 in elementary school, I learned about, you know, lowest
14 is an absolute, right? You can have low costs, or you
15 can have lower costs, or you can have lowest costs.

16 So you're gonna certify to lowest costs,
17 correct?

18 A. That is correct, yes.

19 Q. Okay. At the time of issuance, is there a
20 more stringent standard? I mean, is there something
21 lower than lowest?

22 A. Not to my knowledge, no.

23 Q. Okay. Thank you.

24 MR. JEFFRIES: That's all the questions

1 I have, Chair Mitchell.

2 CHAIR MITCHELL: Mr. Heath, I've got to
3 ask you one more, and I'm not trying to prolong
4 this proceeding, and we will finish today in just a
5 few minutes, but I'll ask my question, and then I
6 will allow counsel to ask questions on my question
7 if they need to.

8 EXAMINATION BY CHAIR MITCHELL:

9 Q. But I just want to be sure I'm clear on the
10 certification, since we talked about it so much now.

11 The certification, as I understand it given
12 in the Florida transaction, was that the -- at least in
13 the nuclear asset recovery case, was that the cost was
14 lower compared to -- the cost of the structured finance
15 is lower than the traditional method, and that is not
16 the same certification being given in this -- in this
17 North Carolina proceeding. Do I understand those two
18 things correctly?

19 A. That's exactly right. And the certification
20 that we are prepared to give in this proceeding for
21 this issuance, we believe is a higher standard. I
22 mean, it's lowest compared to -- like lowest storm cost
23 consistent with market conditions versus lower costs
24 than traditional recoveries. Those are vastly

1 different, right.

2 Q. All right. I didn't mean to interrupt you.
3 Go ahead -- if I interrupted you, finish your sentence.
4 I just wanted you to explain that distinction.

5 A. No, that was it. That was all.

6 Q. All right. That was it.

7 CHAIR MITCHELL: Counsel, y'all have
8 questions on my question?

9 MR. JEFFRIES: None, Chair Mitchell.

10 CHAIR MITCHELL: Okay.

11 MR. JEFFRIES: Not from the Company.

12 CHAIR MITCHELL: Public Staff? If
13 you've got a question, you've got to ask it,
14 Mr. Creech.

15 MR. CREECH: Thank you. I greatly
16 appreciate that. I have -- I do need to go back to
17 Florida here. I just want to make sure that we --
18 I couldn't quite hear your question,
19 Commissioner -- Chair Mitchell, when it first
20 started out, but I heard Mr. Heath.

21 EXAMINATION BY MR. CREECH:

22 Q. Mr. Heath, this is a question directed to
23 you.

24 So in Florida, how many -- how many

1 certifications were given?

2 A. By the -- by all parties? By the Company?

3 Q. By all parties. By all parties that you're
4 aware of.

5 A. There were three to my knowledge. So the
6 Companies', the underwriters', and I believe the
7 underwriters gave one together, and then the Commission
8 advisor.

9 Q. So there were three?

10 A. Three if the underwriters certified together,
11 four if they certified individually.

12 Q. And how many certifications is the Company
13 suggesting here in North Carolina?

14 CHAIR MITCHELL: All right. Mr. Creech,
15 you are getting -- you are straying afield from my
16 question. So I'll let your question -- I'll let
17 him answer your question, but then --

18 THE WITNESS: In this proceeding,
19 because the companies are willing to certify to the
20 lowest storm cost charges -- or the lowest charges
21 consistent with market conditions at the time the
22 bonds are priced and in the terms of the financing
23 order, we are proposing a single certification from
24 each of the companies. So one from DEC, one from

1 DEP.

2 Q. Is that still the case if there's a single --
3 okay. That's fine.

4 A. Yes, because -- yes, because the charges are
5 borne by DEC and DEP customers.

6 Q. So in Florida, one was given because there
7 was one Duke entity, in North Carolina there are two.

8 But in terms of remaining certifications in
9 Florida, there were three remaining, and you're
10 suggesting here in North Carolina there would be no
11 more remaining certifications after that, after the
12 Company?

13 A. Correct.

14 MR. CREECH: Thank you, Chair Mitchell.

15 CHAIR MITCHELL: All right. With that,
16 I believe we are at the end of the examination of
17 Mr. Heath. Mr. Heath, we appreciate your time and
18 your patience. You may step down. I don't believe
19 we need to handle any evidentiary issues for this
20 witness, Mr. Robinson, Mr. Jeffries?

21 MR. JEFFRIES: I concur, Chair Mitchell.

22 CHAIR MITCHELL: Okay. All right.

23 Mr. Heath, you are excused. Thank you very much.

24 THE WITNESS: Thank you. Have a good

1 weekend.

2 CHAIR MITCHELL: All right. So we have
3 come to the conclusion of the proceeding. I will
4 ask counsel if there are any procedural issues to
5 be addressed before we get to the pending motion.

6 MR. ROBINSON: Chair Mitchell, I have
7 one, I guess, preliminary one, and I think will be
8 dependent upon your ruling on the Companies' motion
9 for a temporary waiver and extension of time. So
10 right now the current deadline for comments,
11 briefs, or revisions to the Companies' proposed
12 financing order is currently scheduled for
13 February 8th. In the event that the Commission
14 opts to grant the Company's motion for that
15 extension of time for the Commission to issue the
16 order until April 9th, the Companies would request
17 that the deadline for those comments, et cetera, be
18 due February 18th, which would be an additional 10
19 days from the February 8th. I can state that I
20 conferred with parties prior to the hearings today,
21 and no party objected to this proposed request.

22 CHAIR MITCHELL: All right. Thank you,
23 Mr. Robinson. Before I rule on the motion as to
24 the waiver of the 135-day period set forth in the

1 statute, I want to hear from Ms. Cress that you --
2 as to whether your client has any position on this
3 matter.

4 MS. CRESS: We don't object.

5 CHAIR MITCHELL: Okay. All right. With
6 that, I will -- Mr. Robinson, I will allow the
7 Companies' motion as to the 135-day statutory
8 period. I will also allow the motion or the
9 request as to extension of time until February 18th
10 for the comments on the proposed financing orders.
11 We will -- although I have ruled orally on the
12 motion, we will issue an order just for clarity of
13 the record, and that will be forthcoming.

14 MR. ROBINSON: Thank you.

15 CHAIR MITCHELL: All right. With that,
16 any additional matters before we adjourn?

17 MR. ROBINSON: Nothing from the
18 Companies.

19 CHAIR MITCHELL: All right.

20 Mr. Grantmyre? Mr. Creech?

21 MR. CREECH: Thank you so much. Thank
22 you.

23 MR. GRANTMYRE: Nothing from the Public
24 Staff.

1 CHAIR MITCHELL: All right. Well, thank
2 you, everybody, for your participation. This has
3 been an interesting and a challenging proceeding.
4 I appreciate the attention and the effort that
5 you-all have put into this one, and appreciate
6 everybody's hard work to conduct this over video
7 conference technology. Also want to say thank you
8 to our court reporter. Thank you for your patience
9 and hanging in there with us.

10 All right. With that, we will be
11 adjourned. Thank you everybody.

12 (The hearing concluded at 4:49 p.m. on
13 January 29, 2021.)

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CERTIFICATE OF REPORTER

STATE OF NORTH CAROLINA)
COUNTY OF WAKE)

I, Joann Bunze, RPR, the officer before whom the foregoing hearing was taken, do hereby certify that the witnesses whose testimony appear in the foregoing hearing were duly sworn; that the testimony of said witnesses were taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

This the 3rd day of February, 2021.

Joann Bunze



JOANN BUNZE, RPR
Notary Public #200707300112