

1 PLACE: Held via Videoconference
2 DATE: Thursday, January 28, 2021
3 TIME: 10:00 a.m. - 12:05 p.m.
4 DOCKET NO.: E-2, Sub 1262
5 E-7, Sub 1243
6 BEFORE: Chair Charlotte A. Mitchell, Presiding
7 Commissioner ToNola D. Brown-Bland
8 Commissioner Lyons Gray
9 Commissioner Daniel G. Clodfelter
10 Commissioner Kimberly W. Duffley
11 Commissioner Jeffrey A. Hughes
12 Commissioner Floyd B. McKissick, Jr.

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IN THE MATTER OF:
Joint Petition of Duke Energy Carolinas, LLC,
and Duke Energy Progress, LLC, for Issuance of Storm
Recovery Financing Orders

VOLUME 1

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T A B L E O F C O N T E N T S

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E X H I B I T S

IDENTIFIED/ADMITTED

Duke Energy Carolinas, LLC, and
Duke Energy Progress, LLC, Joint
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(Confidential filed under seal)

Public Staff Heath Cross Examination
Exhibit 1..... 138/--

Public Staff Heath Cross Examination
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1 P R O C E E D I N G S

2 CHAIR MITCHELL: All right. Good morning
3 everyone. Let's come to order and go on the record,
4 please. I'm Charlotte Mitchell, Chair of the
5 Utilities Commission, and with me via remote
6 connection this morning are Commissioners ToNola D.
7 Brown-Bland. Please announce your presence.

8 COMMISSIONER BROWN-BLAND: Good morning.

9 CHAIR MITCHELL: Commissioner Lyons Gray.

10 COMMISSIONER GRAY: Good morning.

11 CHAIR MITCHELL: Commissioner Daniel
12 Clodfelter.

13 COMMISSIONER CLODFELTER: Yes, good morning.

14 CHAIR MITCHELL: Commissioner Kimberly
15 Duffley.

16 COMMISSIONER DUFFLEY: Good morning.

17 CHAIR MITCHELL: Commissioner Jeffrey
18 Hughes.

19 COMMISSIONER HUGHES: Good morning.

20 CHAIR MITCHELL: And Commissioner Floyd
21 McKissick.

22 COMMISSIONER MCKISSICK: Good morning.

23 CHAIR MITCHELL: The Commission now calls
24 for hearing Docket Numbers E-2, Sub 1262 and E-7, Sub

NORTH CAROLINA UTILITIES COMMISSION

1 1243, In the Matter of Joint Petition of Duke Energy
2 Carolinas, LLC, and Duke Energy Progress, LLC, for
3 Issuance of Storm Recovery Financing Orders.

4 On October 26, 2020, Duke Energy Carolinas
5 and Duke Energy Progress, to which I will refer to as
6 the Companies, filed a Joint Petition for Financing
7 Orders pursuant to North Carolina General Statute §
8 62-172 seeking authority from the Commission to
9 finance the storm recovery costs incurred by each
10 Company due to Hurricanes Florence, Michael, and
11 Dorian, and Winter Storm Diego. The Petition was
12 supported by testimony from Thomas J. Heath, Jr.,
13 Charles N. Atkins II, Melissa Abernathy, Johnathan
14 Byrd, and Shana W. Angers.

15 On November 6, 2020 the Commission issued an
16 Order scheduling the hearing, requiring filing of
17 testimony, and establishing discovery guidelines. The
18 Scheduling Order, among other things, set this matter
19 for hearing on this date and at this time to be heard
20 remotely using videoconference technology in light of
21 the ongoing COVID-19 pandemic.

22 The participation of the Public Staff in
23 this proceeding is authorized pursuant to North
24 Carolina General Statute § 62-15.

1 And additionally, Petitions to Intervene in
2 the proceeding were filed by Carolina Industrial Group
3 for Fair Utility Rates II and the Carolina Industrial
4 Group for Fair Utility Rates III, which Petitions were
5 granted by Order of this Commission.

6 Each of these parties to the proceeding has
7 consented, as evidenced by filing made in the dockets,
8 to conducting this hearing remotely using
9 videoconference technology.

10 On December 21st, 2020, the Public Staff
11 filed the testimony of Calvin C. Craig, as well as the
12 testimony and exhibits of witnesses Joseph Fichera,
13 William Moore, Barry Abramson, Steven Heller, Rebecca
14 Klein, Ryan Maher, Hyman Schoenblum, and Paul
15 Sutherland on behalf of the Public Staff.

16 On December 22nd, 2020, the Public Staff
17 filed the joint testimony and exhibits of Michael
18 Maness and Michelle Boswell.

19 On January 6th, 2021, the Public Staff filed
20 corrections to testimonies of witnesses Sutherland,
21 Heller, Fichera, Maness and Boswell.

22 January 11th, 2021, the Companies filed the
23 rebuttal testimony and exhibits of Thomas Heath,
24 Charles Atkins, and Melissa Abernathy.

1 On January 13th, 2021, the Public Staff
2 filed a revised version of the Public Staff direct
3 testimony corrections which had been previously filed
4 on January 6th to correct witness Heller correction
5 Item 2, and witness Fichera correction Item 4, as well
6 as the complete corrected testimonies of Public Staff
7 witnesses Sutherland, Heller, Fichera, Maness and
8 Boswell.

9 On January 25th, 2021, the Companies filed a
10 Notice of Billing Compliance Procedure and the
11 Affidavit and supporting exhibits of Jonathan Byrd.
12 On that same day, the Companies also filed an errata
13 to Jonathan Byrd's direct testimony.

14 On January 27th, the Companies and the
15 Public Staff filed a Stipulation of Agreement and
16 Partial Settlement in this proceeding.

17 Also on January 27th, the Companies filed a
18 motion requesting a temporary waiver of the statutory
19 135-day timeframe to receive a final order on the
20 Companies' Joint Petition in this proceeding and
21 requesting that the 135-day timeframe be extended by
22 30 days through and including April 9th, 2021. The
23 Companies maintain that the 30-day extension will
24 grant the Commission time to rule on the prudence of

1 the Companies' storm recovery costs and the Companies'
2 ongoing respective general rate cases, which
3 determination is required prior to the Companies being
4 able to proceed with securitization.

5 Finally, and also on January 27th, 2021, the
6 Companies and the Public Staff filed a joint motion to
7 excuse witnesses Byrd, Angers, and Craig from
8 appearing at the hearing today.

9 That brings us to today.

10 In compliance with the requirement of the
11 State Government Ethics Act, I remind all members of
12 the Commission of their responsibility to avoid
13 conflicts of interest and inquire at this time whether
14 any member of the Commission has a conflict of
15 interest with respect to matters coming before us this
16 morning.

17 (No response)

18 The record will reflect that no one
19 indicated a conflict in this matter.

20 There appearing to be no conflicts, we will
21 move forward, and I now call on counsel to announce
22 their appearances, beginning with the Companies.

23 MR. ROBINSON: Good morning, Chair Mitchell,
24 Members of the Commission. My name is Camal Robinson,

1 Associate General Counsel, on behalf of Duke Energy
2 Carolinas and Duke Energy Progress. Also appearing
3 with me from Duke Energy is Mr. Bo Somers.
4 Additionally, we have appearing with us from the Law
5 Firm of McGuireWoods, Jim Jeffries and Kristin Athens.

6 All of our attorneys have filed their
7 appearance sheets and have provided them to the court
8 reporter via email. Thank you.

9 CHAIR MITCHELL: Good morning, Mr. Robinson,
10 Mr. Somers, Mr. Jeffries, and Ms. Athens.

11 All right. CIGFUR?

12 MS. CRESS: Good morning. This is Christina
13 Cress with the Law Firm of Bailey & Dixon appearing on
14 behalf of CIGFUR II and III.

15 CHAIR MITCHELL: Good morning, Ms. Cress.

16 All right. And Public Staff?

17 MR. GRANTMYRE: Good morning Chair Mitchell,
18 Commissioners. Bill Grantmyre for the Using and
19 Consuming Public along with Zeke Creech, Using and
20 Consuming Public. Thank you.

21 CHAIR MITCHELL: All right. Good morning
22 Mr. Grantmyre and Mr. Creech.

23 Before we will begin, I will address the
24 open motions. The Commission has no questions for

1 witnesses Byrd, Angers, and Craig and, therefore, the
2 motion to excuse these witnesses is granted. At the
3 appropriate time, Counsel, I'll entertain motions to
4 admit the prefiled testimonies and exhibits of these
5 witnesses into evidence.

6 Next, turning to the Companies' motion for a
7 waiver of the 135-day timeframe, I want to hear from
8 the Public Staff, see if the Public Staff has a
9 response to this motion.

10 Mr. Grantmyre you're -- okay.

11 MR. GRANTMYRE: We do not oppose it.

12 MR. CREECH: Madam Chair, just to clarify,
13 you're speaking of which -- I'm sorry.

14 CHAIR MITCHELL: Mr. Creech, please announce
15 your presence for purposes of our court reporter. I
16 asked if the Public Staff has a response to the
17 Companies' motion for a waiver of the 135-day
18 timeframe.

19 MR. CREECH: Madam Chair, I'd like to add to
20 my colleague Bill Grantmyre's comments. This is Zeke
21 Creech with the Public Staff. We are actually still
22 reviewing that and would like the opportunity to file
23 some comments with the Commission on that particular
24 point.

1 CHAIR MITCHELL: So Mr. Creech, just so I'm
2 clear, the Public Staff intends to file a response to
3 the Companies' motion?

4 MR. CREECH: I believe that we will.

5 CHAIR MITCHELL: All right. Well, I will
6 refrain from holding on the motion until I receive the
7 comments from Public Staff. Do you anticipate those
8 comments will be filed this morning or later today?

9 MR. CREECH: I do not know at this time.
10 Let me consult with Mr. Grantmyre and --

11 CHAIR MITCHELL: Okay.

12 MR. CREECH: -- we will let you know.

13 CHAIR MITCHELL: Okay.

14 MR. CREECH: Thank you so much.

15 CHAIR MITCHELL: All right. Okay. One last
16 point, housekeeping matter, before I turn to counsel
17 to see if there are any other preliminary matters we
18 need to address before getting into the testimonies
19 scheduled for the day. We will -- obviously, we began
20 at 10 o'clock. We'll go until about 12 o'clock at
21 which point we'll recess for lunch til 1:30. We will
22 resume at 1:30 and we will go until five o'clock this
23 afternoon and we will take a break somewhere in there
24 for our court reporter.

1 All right. With that, any other preliminary
2 matters before we begin?

3 MR. ROBINSON: Chair Mitchell, this is Camal
4 Robinson. I have a few.

5 CHAIR MITCHELL: All right. Please proceed,
6 Mr. Robinson.

7 MR. ROBINSON: Thank you. So Chair
8 Mitchell, at this time we ask that the Companies'
9 Joint Petition, exhibits and appendices be entered
10 into the DEC and DEP records.

11 CHAIR MITCHELL: Mr. Robinson, hearing no
12 objection to your motion, it is allowed.

13 (WHEREUPON, Duke Energy Carolinas,
14 LLC, and Duke Energy Progress,
15 LLC, Joint Petition for Financing
16 Orders, Joint Petition Exhibits A
17 through D are received into
18 evidence.)

19 MR. ROBINSON: Thank you. Chair Mitchell,
20 the next one I have on January 25th, 2021, as you
21 indicated, the Companies did file a letter notifying
22 the Commission of alternative billing compliance
23 procedure for DEP with the accompanying affidavit of
24 Jonathan L. Byrd and supporting exhibits. At this

1 time the Companies request that the letter, affidavit,
2 and exhibits be entered into the record.

3 CHAIR MITCHELL: Mr. Robinson, hearing no
4 objection, your motion is allowed.

5 (WHEREUPON, Duke Energy Carolinas,
6 LLC, and Duke Energy Progress,
7 LLC, Notice of Billing Compliance
8 Procedure and Byrd Attachments 1
9 through 3 are received into
10 evidence.)

11 (WHEREUPON, Affidavit of JONATHAN
12 BYRD is copied into the record as
13 if given orally from the stand.)
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**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1262
DOCKET NO. E-7, SUB 1243

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Joint Petition of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC for Issuance of Storm Recovery Financing Orders)	AFFIDAVIT OF JONATHAN BYRD
)	
)	
)	

I, JONATHAN BYRD, first being duly sworn, do depose and state as follows:

1. I am the Director, Southeast Pricing & Regulatory Solutions for Duke Energy Carolinas, LLC (“DEC”), Duke Energy Progress, LLC (“DEP”, and together with DEC, the “Companies”), and Duke Energy Florida, LLC. My business address is 550 South Tryon Street, Charlotte, North Carolina. I previously filed direct testimony in this proceeding on October 26, 2020.

2. The purpose of this affidavit is to explain how DEP will comply with the statutory billing requirements provided in N.C. Gen. Stat. § 62-172(d) prior to the implementation of DEP’s new billing system, Customer Connect, planned for November 2021.

3. N.C. Gen. Stat. § 62-172(d) requires that a public utility that has obtained a financing order and caused storm recover bonds to be issued to:

(1) Explicitly reflect that a portion of the charges on such bill represents storm recovery charges approved in a financing order issued to the public utility and, if the storm recovery property has been transferred to an assignee, must include a statement to the effect that the assignee is the owner of the rights to storm recovery charges and that the public utility or other entity, if applicable, is acting as a collection agent or servicer for the assignee. The tariff applicable to customers must indicate the storm recovery charge and the ownership of the charge.

(2) Include the storm recovery charge on each customer's bill as a separate line item and include both the rate and the amount of the charge on each bill.

4. The Companies' Joint Petition proposes a bond issuance date of June 1, 2021¹, and explains how in order to synchronize the collection of storm recovery charges with the first payment on the storm recovery bonds, the tariffs for DEC and DEP that apply the storm recovery charges will become effective as of the date of issuance of the storm recovery bonds.²

5. Accordingly, under the current timeline, DEP will begin billing customers for the storm recovery charge beginning July 1, 2021, or approximately four months prior to implementation of DEP's new billing system Customer Connect planned for November 2021.

6. DEP's current billing system, Customer Information Management or "CIM", that DEP will utilize to bill customers for the storm recovery charge prior to implementation of Customer Connect is not specifically capable of displaying for each customer a detailed bill with individual line item charges based on kWh usage. For example, rider charges such as fuel, demand-side management and energy efficiency, etc. are included in a customer's overall kWh charge and are not broken out separately or shown as independent line items. DEP's new billing system, Customer Connect, which again is planned to be implemented in November 2021, will be, however, able to display the storm recovery charge as a separate line item.

7. To reprogram and manipulate CIM to allow for the display of the storm recovery charge on each DEP customer bill as an independent, line item charge for the months prior to implementation of Customer Connect is not feasible or cost-effective. Such an endeavor would be expensive, resource intensive and require design, development, implementation and testing of material CIM program changes, all within a less than six-month

¹ Direct Testimony of Shana W. Angers, at 6, Docket Nos. E-2, Sub 1243 and E-2, Sub 1262 (Oct. 26, 2020).

² Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Joint Petition for Financing Orders, at 24, Docket Nos. E-2, Sub 1243 and E-2, Sub 1262 (Oct. 26, 2020).

timeframe. Moreover, the speed and complexity of such changes would introduce risk of error and failure, as well as the possibility that such implementation would jeopardize other initiatives currently stressing the limits on the CIM legacy billing system, including COVID-19 related billing activities, as well as other rate and regulatory changes required by the North Carolina Utilities Commission.

8. Therefore, to comply with the statutory billing requirements of N.C. Gen. Stat. § 62-172(d) utilizing CIM from July to October, my team and I have created a temporary billing solution that is equivalent to the requirement of a separate line item charge and otherwise meets the billing requirements of the statute.

9. DEP will provide customers with a bill insert for the months of July, August, September, and October (based on the planned implementation of the Customer Connect billing system in November 2021) that describes the storm recovery charge as a separate charge from the customer's overall, main bill. The bill insert will also explain that the "storm recovery charges [were] approved in a financing order issued to [DEP]" and, if applicable, "a statement to the effect that the assignee is the owner of the rights to storm recovery charges and that the public utility or other entity, if applicable, is acting as a collection agent or servicer for the assignee."

10. In addition, the bill insert, as well as the Company's website, will include a bill message that directs customers to a simple website calculator that allows customers to calculate their storm recovery charges, or, alternatively, contact DEP via telephone for questions regarding storm recovery charges.

11. Last, DEP will provide general notice to customers regarding the storm recovery charge on the Company's website.

12. Based on my experience as Director, Southeast Pricing and Regulatory Solutions at Duke Energy Corporation, it is my opinion that this temporary and alternative billing procedure created by myself and my team will sufficiently address customer questions regarding storm securitization charges. Moreover, once Customer Connect is implemented, DEP customers will begin to receive a single, detailed bill with an individual line item storm recovery charge.

[FURTHER AFFIANT SAYETH NOT]

This the 25th of January, 2021.

BY: *Jon Byrd*
Jonathan Byrd

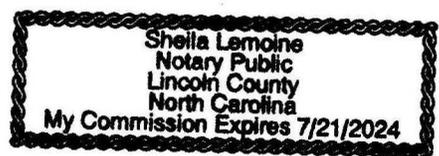
STATE OF NORTH CAROLINA

Lincoln COUNTY

I certify that Jonathan Byrd personally appeared before me this day, acknowledging to me that she signed the forgoing document.

Witness my hand and notarial seal on this the 25 day of January, 2021.

(Place Notary Stamp Here)



Sheila Lemoine
Print Name
Sheila Lemoine
Notary Public

My Commission Expires: July 21, 2024

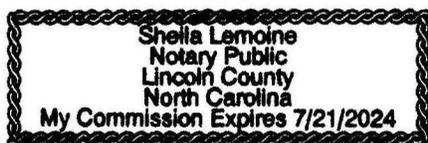
**G.S. § 10B-41 NOTARIAL CERTIFICATE FOR
ACKNOWLEDGMENT**

Lincoln County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Jonathan Byrd

Date: January 25, 2021

Sheila Lemoine
Official Signature of Notary



Sheila Lemoine, Notary Public

My commission expires: July 21, 2024

I signed this notarial certificate on January 25, 2021 according to the emergency video notarization requirements contained in G.S. 10B-25.

Notary Public location during video notarization: Lincoln County

Stated physical location of principal during video notarization: Union County

This certificate is attached to an Affidavit signed by Jonathan Byrd on January 25, 2021 and includes 6 pages inclusive of this certificate.

1 MR. ROBINSON: Thank you, Chair Mitchell.
2 My next one, as you also indicated, on January 27th,
3 2021, the Companies and the Public Staff entered into
4 an Agreement and Stipulation of Partial Settlement.
5 At this time I request that the Agreement and
6 Stipulation of Partial Settlement be moved into the
7 record.

8 CHAIR MITCHELL: Mr. Robinson, hearing no
9 objection, that motion is allowed as well.

10 (WHEREUPON, Agreement and
11 Stipulation of Partial Settlement
12 received into evidence.)

13 MR. ROBINSON: Okay. Thank you, Chair
14 Mitchell. A question with regards to the testimony,
15 prefiled testimony of Jonathan Byrd and Shana Angers.
16 Chair Mitchell, I'm happy to move those into the
17 record now or if you prefer that to be done at a later
18 time, you let me know.

19 CHAIR MITCHELL: Well, thank you,
20 Mr. Robinson, for the question. What I would like is
21 just for purposes of clarity of the record, have the
22 Company introduce the testimony of its witnesses
23 during the point in the hearing at which the Company
24 witnesses are testifying and then hold the Public

1 Staff's testimony until the point of the hearing when
2 the Public Staff witnesses are testifying.

3 So unless there are any other preliminary
4 matters that we need to address we can move forward
5 and, Mr. Robinson, you can move to introduce the
6 testimony of the witnesses that have been excused.

7 MR. ROBINSON: Thank you, Chair Mitchell.

8 CHAIR MITCHELL: Okay. Any other
9 preliminary matters, counsel?

10 MR. ROBINSON: Just one last FYI, Chair
11 Mitchell. So some of our attorneys and witnesses will
12 be receiving some help from our assistants to just get
13 them set up and to locate exhibits to minimize
14 disruption of the flow of the hearing. So I just
15 wanted to alert the Commission and of the intended
16 practice as well as the parties and just ensure to the
17 Commission and the parties that their role is an
18 administrative one purely.

19 CHAIR MITCHELL: Okay. Understood and thank
20 you for the -- thank you for the notice.

21 And just one last reminder from me. We are
22 all well versed at functioning remotely these days,
23 but just remember keep your mics on mute unless you
24 are speaking just to minimize background noise and to

1 allow our court reporter to hear everything that is
2 being said.

3 All right. Any other -- counsel, any other
4 preliminary matters?

5 MR. ROBINSON: Nothing from the Companies,
6 Chair Mitchell.

7 CHAIR MITCHELL: All right. Hearing none,
8 the case is with you, Mr. Robinson.

9 MR. ROBINSON: Thank you, Chair Mitchell.
10 Our first witness is Mr. Tom Heath and he will be
11 presented by Jim Jeffries. Thank you.

12 CHAIR MITCHELL: All right. Mr. Heath,
13 there you are. Mr. Jeffries, let me see if I can find
14 you. There he is. All right. Mr. Heath, would you
15 raise your right hand, please?

16 THOMAS J. HEATH, JR.;
17 having been duly affirmed,
18 testified as follows:

19 (WHEREUPON, the Court Reporter
20 interrupted due to audio
21 feedback.)

22 (OFF-THE-RECORD DISCUSSION)

23 CHAIR MITCHELL: All right. Mr. Jeffries,
24 you may proceed.

1 MR. JEFFRIES: Thank you, Chair Mitchell.

2 DIRECT EXAMINATION BY MR. JEFFRIES:

3 Q Mr. Heath, could you please state your name and
4 business address for the record, please?

5 A Sure. It's Thomas Heath and my business address
6 is 550 South Tryon Street, Charlotte, North
7 Carolina, 28202.

8 Q And where do you work, Mr. Heath?

9 A I work for -- I work for Duke Energy Business
10 Services, an affiliate service company of Duke
11 Energy Carolinas and Duke Energy Progress.

12 Q And what's your position with Duke Energy
13 Business Services?

14 A I am employed as a Structured Finance Director in
15 our Treasury Department.

16 Q Thank you. Are you the same Tom Heath that
17 prefiled direct testimony in this proceeding on
18 October 26, 2020, consisting of 37 pages, and
19 Heath Exhibits 1 and 2a through 2f?

20 A Yes, I am.

21 Q And Mr. Heath, was that testimony prepared by you
22 and were those exhibits prepared by you or under
23 your direction?

24 A Yes, they were.

1 Q Do you have any corrections to your prefiled
2 direct testimony or exhibits?

3 A No, I do not.

4 Q Mr. Heath, if I asked you the same questions that
5 are set forth in your prefiled direct testimony
6 while you're on the stand today, would your
7 answers be the same as is reflected in the
8 prefiled testimony?

9 A Yes, they would.

10 Q All right. You're also the same Tom Heath that
11 prefiled rebuttal testimony in this proceeding on
12 January 11th consisting of 48 pages and Heath
13 Rebuttal Exhibits 1 and 2; is that correct?

14 A Yes, I am.

15 Q And was that rebuttal testimony and were those
16 exhibits prepared by you or under your direction?

17 A Yes, they were.

18 Q And do you have any corrections to your rebuttal
19 testimony or exhibits?

20 A No, I do not.

21 Q And if I asked you the same questions set forth
22 in your prefiled rebuttal testimony while you are
23 the stand today, would your answers be the same?

24 A Yes, they would.

1 Q All right.

2 MR. JEFFRIES: Chair Mitchell, we -- DEC and
3 DEP would move that Mr. Heath's prefiled direct and
4 rebuttal testimony be entered into the record as if
5 given orally from the stand.

6 CHAIR MITCHELL: All right. Hearing no
7 objection, Mr. Jeffries, to your motion, the prefiled
8 direct testimony consisting of 37 pages of Mr. Thomas
9 Heath filed on October 26, 2020, shall be copied into
10 the record as if delivered orally from the stand. And
11 additionally, the rebuttal testimony of Mr. Heath
12 consisting of 47 (sic) pages filed on January 11th,
13 2021, shall be copied into the record as if delivered
14 orally from the stand. The exhibits to those
15 testimonies will be identified as they were when
16 prefiled.

17 MR. JEFFRIES: Thank you, Chair Mitchell.

18 (WHEREUPON, Heath Exhibits 1 and
19 2a through 2f and Heath Rebuttal
20 Exhibits 1 and 2 are marked for
21 identification as prefiled and
22 received into evidence.)

23 (WHEREUPON, the prefiled direct
24 and rebuttal testimony of THOMAS

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J. HEATH, JR., is copied into the
record as if given orally from the
stand.)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

**DOCKET NO. E-7, SUB 1243
DOCKET NO. E-2, SUB 1262**

In the Matter of:

))	DIRECT TESTIMONY OF
))	THOMAS J. HEATH, JR.
))	FOR DUKE ENERGY
))	CAROLINAS, LLC AND DUKE
))	ENERGY PROGRESS, LLC

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I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Thomas J. Heath Jr. My current business address is 550 South Tryon Street, Charlotte, North Carolina 28202.

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

A. I am employed by Duke Energy Business Services, LLC, a service company affiliate of Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC. (“DEP,” collectively the “Petitioners,” or the “Companies”) and a subsidiary of Duke Energy Corporation (“Duke Energy”), as Structured Finance Director.

Q. PLEASE BRIEFLY SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.

A. I have a Bachelor of Science degree with a major in Accounting from Southeastern Louisiana University and I am a Certified Public Accountant in the Commonwealth of Kentucky. My professional work experience began in 1995 with the public accounting firm of Price Waterhouse (now PricewaterhouseCoopers), where my work focused on audits of GAAP and SEC-compliant financial statements, including those in the electric utility industry, and the performance of due diligence procedures over mergers and acquisitions. In April 2004, I joined Cinergy Corp. (a predecessor company to today’s Duke Energy) as a Lead Analyst in the Accounting Research Group where I was responsible for assessing the appropriate accounting and disclosure treatment for significant non-routine matters as well as certain regulatory

1 accounting interpretations. Over the next 10 years, I held various finance-
2 related positions of increasing responsibility. In August 2014, I accepted a
3 position as Corporate Finance Director in Duke Energy's Treasury Department,
4 where I was responsible for executing public debt offerings for Duke Energy
5 and its utility subsidiaries with primary focus on DEC and DEP. While in this
6 position, I led the approximately \$1.3 billion Nuclear Asset-Recovery
7 Securitization for Duke Energy Florida, LLC. Following the completion of that
8 financing, I assumed my current position as Structure Finance Director.

9 **Q. WHAT ARE YOUR RESPONSIBILITIES IN YOUR CURRENT**
10 **POSITION?**

11 A. I am responsible for the execution of project and structured financings of Duke
12 Energy, its subsidiary utilities, and its nonregulated renewable operations. This
13 includes the issuance, renewal, and refinancing of project and structured debt
14 obligations.

15 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE NORTH**
16 **CAROLINA UTILITIES COMMISSION ("COMMISSION")?**

17 A. No.

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

20 A. The purpose of my testimony is to: (i) present and evaluate DEC and DEP's
21 proposal to use storm recovery bonds to finance storm recovery costs as
22 permitted by N.C. Gen. Stat. § 62-172 (the "Securitization Statute"); (ii) support
23 the Joint Petition for Financing Orders (the "Joint Petition") requesting

1 approval of the proposed issuance of storm recovery bonds, which is DEC and
2 DEP's recommendation requested in this proceeding; (iii) provide an overview
3 of DEC and DEP's proposed securitization transaction based on utility
4 securitization bond transaction norms; and (iv) provide an estimate of financing
5 costs, both up-front and on-going.

6 **Q. ARE YOU SPONSORING ANY EXHIBITS TO YOUR DIRECT**
7 **TESTIMONY?**

8 A. Yes. I am sponsoring:

- 9 ● Heath Exhibit 1 – estimated up-front financing and on-going financing costs
10 for storm recovery bonds; and
- 11 ● Heath Exhibit 2a – Form of Storm Recovery Property Purchase and Sale
12 Agreement;
- 13 ● Heath Exhibit 2b – Form of Storm Recovery Property Servicing Agreement;
- 14 ● Heath Exhibit 2c – Form of Indenture;
- 15 ● Heath Exhibit 2d – Form of Administration Agreement;
- 16 ● Heath Exhibit 2e – Form of Amended and Restated LLC Agreement; and
- 17 ● Heath Exhibit 2f – Form of the Declaration of Trust for the Finance Entity.

18 Each of these exhibits were prepared under my direction and control,
19 and to the best of my knowledge all factual matters contained therein are true
20 and accurate.

1 **Q. PLEASE IDENTIFY THE COMPANIES’ OTHER WITNESSES AND**
2 **SUMMARIZE THE PURPOSE OF THEIR TESTIMONIES IN THIS**
3 **PROCEEDING.**

4 A. The following is a list of the other witnesses who have submitted testimony on
5 behalf of DEC and DEP and a brief description of the general subject matter
6 addressed by each witness:

- 7 ● Charles N. Atkins II, Chief Executive Officer, Atkins Capital Strategies
8 LLC (“Atkins Capital” or “Co-Advisor”) – Overview of the utility
9 securitization market; describes DEC and DEP’s proposed transactions;
10 explains the collection and remittance process; discussion of key elements
11 of the Financing Orders; describes the rating agency process; describes the
12 marketing process; and explains the issuance advice letter process;
- 13 ● Melissa Abernathy, Director of Rates and Regulatory Planning for North
14 Carolina and South Carolina – Updates the storm recovery costs; identifies
15 and estimates the revenue requirements necessary to recover the storm
16 recovery costs through the proposed storm recovery charges; describes the
17 allocation methodology for the storm recovery charges; and demonstrates
18 how the storm recovery charge mitigates rate impacts as compared to the
19 traditional method of recovery;
- 20 ● Jonathan Byrd, Director, Southeast Pricing & Regulatory Solutions –
21 Describes the changes to each Company’s retail electric rate schedules;
22 quantifies the effect of these proposed changes on each Company’s North
23 Carolina retail electric customers; discusses how each Company proposes

1 to implement the storm recovery charges, as quantified in witness
2 Abernathy's testimony; and presents the proposed tariff sheets; and
3 • Shana W. Angers, Accounting Manager for DEP – Proposes a detailed
4 framework for the true-up mechanism and the accounting entries for storm
5 recovery financing.

6 **II. SECURITIZATION RECOMMENDATION**

7 **Q. PLEASE DESCRIBE THE COMPANIES' REQUEST TO FINANCE**
8 **STORM RECOVERY COSTS WITH STORM RECOVERY BONDS.**

9 A. DEC and DEP propose that the Commission approve the issuance of storm
10 recovery bonds to finance storm recovery costs. The proceeds from the storm
11 recovery bond issuances will be used to relieve DEC and DEP's storm recovery
12 costs and pay up-front financing costs. The amortization of the bonds will be
13 structured to provide an annual revenue requirement (including recovery of on-
14 going financing costs) of approximately \$18.1 million for DEC and
15 approximately \$58.1 million for DEP over the scheduled final term of
16 approximately 15 years based on market conditions as of October 6, 2020. This
17 annual revenue requirement estimate excludes any accrued carrying charges on
18 the storm recovery costs subsequent to May 31, 2021 and excludes incremental
19 up-front financing costs and on-going financing costs that may be incurred
20 above DEC and DEP's current estimate of up-front financing costs and on-
21 going financing costs, if applicable. Customers will be billed on a kWh basis
22 beginning with the first billing cycle of the month following the issuance of the
23 storm recovery bonds.

1 **Q. IS THE PROPOSED RECOVERY PERIOD FOR THE STORM**
2 **RECOVERY BONDS CONSISTENT WITH THE REQUIREMENTS OF**
3 **THE SECURITIZATION STATUTE?**

4 A. Yes. The Securitization Statute requires that the Commission specify the period
5 over which the storm recovery costs may be recovered. DEC and DEP propose
6 that storm recovery bonds will be issued with a scheduled final payment date
7 of approximately 15 years. The legal maturity date for each tranche may be
8 longer than the scheduled final payment date for that tranche.

9 As discussed in witness Atkins' testimony, the scheduled final payment
10 date of the storm recovery bonds represents the date at which the final payment
11 is expected to be made, but no legal obligation exists to retire the class in full
12 by that date. The legal maturity date is the date by which the bond principal
13 must be paid, or a default will be declared. The proposed preliminary structure
14 for this transaction utilizes a legal maturity that is approximately 24 months
15 longer than the scheduled final payment date for each bond, but this will
16 ultimately be determined in consultation with the rating agencies. The
17 difference between the scheduled final payment date and legal maturity
18 provides additional credit protection by allowing shortfalls in principal
19 payments to be recovered over this additional time period due to any unforeseen
20 circumstance. As such, this gap between the two dates, or "cushion," is a
21 benefit to the structure and is a contributing factor to achieving a "AAA" rating,
22 helping to lower the cost of funds on the bonds and therefore benefitting
23 customers. Thus, the proposed scheduled final payment date of approximately

1 15 years is also consistent with the statutorily required Commission
2 determinations that (i) the proposed issuance of the storm recovery bonds and
3 the imposition and collection of storm recovery charges are expected to provide
4 quantifiable benefits to customers as compared to the costs that would have
5 been incurred absent the issuance of storm recovery bonds and (ii) structuring
6 and pricing of the storm recovery bonds are reasonably expected to result in the
7 lowest storm recovery charges consistent with market conditions at the time the
8 storm recovery bonds are priced and the terms set forth in the Financing Orders
9 (the “Statutory Cost Objectives”).

10 This gap between the two dates will be driven by rating agency
11 concerns. To that effect, the period of time between the two dates could
12 potentially be shortened to one year, but that will not be known until the ratings
13 process is complete and will depend on a number of factors, including but not
14 limited to the size of the service territory and the length of the latest scheduled
15 final payment date.

16 DEC and DEP also considered a structure of storm recovery bonds with
17 a scheduled final payment date of approximately 20 years. However, the
18 Companies believe that the 15-year proposal strikes the right balance between
19 the length of the recovery period and the length and level of the recovery
20 charges. Additionally, the proposed 15-year structure is consistent with the
21 longest recovery period proposed by the North Carolina Utilities
22 Commission—Public Staff (“Public Staff”) in DEP’s storm deferral docket,
23 which was 15 years.

1 **Q. PLEASE DETAIL THE AMOUNTS DEC AND DEP ARE SEEKING**
2 **APPROVAL TO FINANCE THROUGH THE ISSUANCE OF STORM**
3 **RECOVERY BONDS.**

4 A. DEC and DEP propose to finance, with the issuance of storm recovery bonds,
5 the full amount of DEC and DEP’s storm recovery costs, which were outlined
6 in (i) DEC’s petition and testimonies in Docket Nos. E-7, Sub 1187 (“DEC
7 Storm Deferral Docket”) and E-7, Sub 1214 (“DEC Rate Case”); and (ii) DEP’s
8 petition and testimonies in Docket Nos. E-2, Sub 1193 (“DEP Storm Deferral
9 Docket”) and E-2, Sub 1219 (“DEP Rate Case”), accrued carrying charges
10 through the date of the bond issuance, and up-front financing costs. Witness
11 Abernathy’s testimony provides further details on the calculation of the storm
12 recovery costs and the accrued carrying charges. My testimony will address the
13 estimated up-front financing costs and on-going financing costs.

14 **Q. WHAT AMOUNT OF STORM RECOVERY BONDS WOULD BE**
15 **REQUIRED TO FINANCE THE AMOUNTS DESCRIBED ABOVE?**

16 A. DEC anticipates the issuance of approximately \$230.8 million in storm
17 recovery bonds, which is comprised of DEC’s storm recovery costs, which
18 includes \$18.6 million in capital investment, \$169.8 million in operation and
19 maintenance (“O&M”) expense, plus \$37.2 million in carrying costs assuming
20 a June 1, 2021 issuance date,¹ and approximately \$5.2 million of up-front
21 financing costs.

¹ N.C. Gen. Stat. § 62-172(b)(1)b. requires that a public utility petitioning the Commission for a financing order shall describe the storm recovery costs and estimates of the costs of any storm related activities that are being undertaken to be financed by issuing storm recovery bonds.

1 DEP anticipates the issuance of approximately \$748.0 million in storm
2 recovery bonds which is comprised of DEP's storm recovery costs, which
3 includes \$68.6 million in capital investment, \$556.6 million in O&M, plus
4 \$113.8 million in carrying costs assuming a June 1, 2021 issuance date,² and
5 approximately \$9.0 million of up-front financing costs.

6 Up-front financing costs are described in more detail later in my
7 testimony. The amounts above do not include estimated carrying charges on
8 the storm recovery costs after May 31, 2021 or any up-front financing costs that
9 may be incurred above DEC or DEP's current estimate of up-front financing
10 costs; however, these amounts, if applicable, will be added to and included in
11 the storm recovery costs to be financed through the sale of the storm recovery
12 bonds.

13 **Q. WHAT WOULD BE THE IMPACT TO CUSTOMERS IF THE**
14 **COMMISSION APPROVES DEC AND DEP'S SECURITIZATION**
15 **PROPOSAL?**

16 A. For DEC, the estimated storm recovery charge as further explained in witness
17 Byrd's testimony and exhibits, under market conditions as of October 9, 2020,
18 would be approximately \$0.57 per month for a typical 1,000 kWh residential
19 bill for approximately 15 years.

20 For DEP, the estimated storm recovery charge as further explained in
21 witness Byrd's testimony and exhibits, under market conditions as of October

² See N.C. Gen. Stat. § 62-172(b)(1)b.

1 9, 2020, would be approximately \$2.81 per month for a typical 1,000 kWh
2 residential bill for approximately 15 years.

3 The actual average retail charge per kWh will vary based on changes in
4 customer growth and usage projections as well as changes in market interest
5 rates and the proposed bond structure, as well as for changes in the storm
6 recovery costs that could occur for items such as accrued carrying charges after
7 May 31, 2021 that may occur between now and the issuance date of the bonds.

8 **Q. PLEASE DETAIL HOW BOND PROCEEDS WILL BE USED.**

9 A. Bond proceeds must first be used to pay up-front financing costs associated with
10 the bond financing. Proceeds would next be used to reimburse DEC and DEP
11 for their relevant storm recovery costs plus the accrued carrying charges.

12 **Q. WHAT IF THE COMMISSION ISSUES A FINANCING ORDER BUT**
13 **THERE IS A DELAY IN ACTUALLY IMPLEMENTING THE**
14 **FINANCING OR THE FINANCING DOES NOT OCCUR?**

15 A. Subsequent to May 31, 2021, DEC and DEP will each continue to accrue the
16 carrying charges until the bonds are issued. Any delays will result in higher
17 accrued carrying charges and an ultimately higher bond issuance amount.

1 **Q. SINCE DEC AND DEP ARE EACH REQUESTING PERMISSION TO**
2 **FINANCE STORM RECOVERY BONDS, DO THE STORM**
3 **RECOVERY BONDS HAVE TO BE SOLD TO INVESTORS IN**
4 **SEPARATE TRANSACTIONS, OR MAY THEY BE CONSOLIDATED**
5 **INTO ONE TRANSACTION?**

6 A. As discussed further in witness Atkins' testimony, the preliminary structure
7 reflected in DEC and DEP's Joint Petition does assume a consolidated or
8 combined transaction. The DEC and DEP transactions involve the creation of
9 bankruptcy-remote special purpose entities ("SPEs") wholly owned by their
10 respective utility, which each issue storm recovery bonds. Under the
11 anticipated structure, DEC and DEP bonds will be issued to a third SPE, a
12 grantor trust that is wholly owned by Duke Energy Corporation ("SRB Issuer").
13 SRB Issuer will issue to the market secured pass-through notes (the "SRB
14 Securities") that are backed by the separate storm recovery bonds issued by
15 DEC and DEP. The structure of the DEC and DEP storm recovery bonds and
16 the SRB Securities are to be designed to be identical, with respect to tranching,
17 payment dates, scheduled and legal maturities. The true-up adjustment
18 effective dates for the DEC and DEP bonds are also to be the same dates. The
19 debt service payments from the DEC and DEP bonds are to be passed through
20 to service the debt service on the SRB Securities.

1 **Q. WHY DO YOU ANTICIPATE USING THIS STRUCTURE?**

2 A. As discussed further in witness Atkins' testimony, this structure is expected to
3 assist in achieving the Statutory Cost Objectives under the Securitization
4 Statute.

5 **III. TRADITIONAL METHOD OF RECOVERY**

6 **Q. DID THE PASSAGE OF THE SECURITIZATION STATUTE, WHICH**
7 **PROVIDES FOR THE ISSUANCE OF STORM RECOVERY BONDS,**
8 **ALTER THE CURRENT FRAMEWORK FOR STORM COST**
9 **RECOVERY?**

10 A. No. The Securitization Statute simply provides the Commission with an
11 additional option for recovery of storm recovery costs. Under the Securitization
12 Statute, recovery of storm recovery costs would be achieved through the
13 issuance of storm recovery bonds, which are repaid by customers through a
14 nonbypassable charge.

15 **Q. PLEASE EXPLAIN THE USE OF THE TRADITIONAL METHOD OF**
16 **RECOVERING THE STORM RECOVERY COSTS IF DEC AND DEP**
17 **DECIDE NOT TO ISSUE THE STORM RECOVERY BONDS OR IF**
18 **THE COMMISSION DOES NOT APPROVE FINANCING ORDERS**
19 **FOR THE ISSUANCE OF STORM RECOVERY BONDS.**

20 A. The traditional method of recovery for the storm recovery costs is addressed in
21 witness Abernathy's testimony. If DEC and DEP do not issue the storm
22 recovery bonds or if the Commission determines that the storm recovery costs
23 should not be securitized and instead should be recovered through the

1 traditional means, DEC and DEP will request recovery of the storm recovery
2 costs, plus accrued carrying costs, related to storms by filing petitions
3 requesting an adjustment to the storm cost recovery rider proposed in the
4 Companies' respective rate cases, Docket Nos. E-7, Sub 1214 and E-2, Sub
5 1219, in accordance with the Companies' Agreements and Stipulations of
6 Partial Settlement with the Public Staff.

7 N.C. Gen. Stat § 62-172(c)(2) provides that, after receipt of a financing
8 order, the public utility retains sole discretion regarding whether to cause the
9 bonds to be issued, including the right to defer or postpone such sale,
10 assignment, transfer, or issuance.

11 **IV. COMPARISON OF SECURITIZATION TO THE TRADITIONAL**

12 **METHOD**

13 **Q. WHAT ARE THE COMPARATIVE BENEFITS OF SECURITIZATION**
14 **RELATIVE TO THE TRADITIONAL METHOD OF RECOVERY?**

15 A. As provided in witness Abernathy's testimony and exhibits, the estimated
16 cumulative revenue requirement calculated in accordance with the Partial
17 Settlement and Stipulation between DEC and the Public Staff in Docket No. E-
18 7, Sub 1214 is \$180.1 million on a present value basis (\$285.6 million on a
19 nominal basis). Also, as provided in witness Abernathy's testimony and
20 exhibits, the estimated cumulative revenue requirement amount over the total
21 period of outstanding bonds is \$122.1 million on a present value basis (\$209.5
22 million on a nominal basis). These amounts are based on a bond structure with
23 a scheduled final term of approximately 15 years) and based on market

1 conditions that existed as of October 9, 2020. The resulting net benefits to
2 DEC's customers is \$58.1 million or 32.2 percent on a present value basis
3 (\$76.1 million on a nominal basis).

4 As provided in witness Abernathy's testimony and exhibits, the
5 estimated cumulative revenue requirement calculated in accordance with the
6 Partial Settlement and Stipulation between DEP and the Public Staff in Docket
7 No. E-2, Sub 1219 is \$599.3 million on a present value basis (\$951.9 million
8 on a nominal basis). Also, as provided in witness Abernathy's testimony and
9 exhibits, the estimated cumulative revenue requirement amount over the total
10 period of outstanding bonds is \$400.3 million on a present value basis (\$682.4
11 million on a nominal basis). These amounts are based on a bond structure with
12 a scheduled final term of approximately 15 years) and based on market
13 conditions that existed as of October 9, 2020. The resulting net benefits to
14 DEP's customers is \$199.0 million or 33.2 percent on a present value basis
15 (\$269.6 million on a nominal basis).

16 Thus, based on current market conditions, the issuance of storm
17 recovery bonds, and the imposition of storm recovery charges, is expected to
18 provide quantifiable benefits to DEC and DEP customers. The amount of
19 quantifiable benefits to DEC and DEP may change based on changes in market
20 conditions between October 9, 2020 and the date the storm recovery bonds are
21 issued. As a result, actual quantifiable benefits to DEC and DEP customers
22 could be more or less than the amounts stated above.

1 to DEC and DEP will be an on-going financing cost to be recovered through
2 the storm recovery charges.

3 DEC and DEP will receive the net proceeds after the payment of up-
4 front financing costs. The net proceeds will be used to relieve DEC and DEP's
5 storm recovery costs. DEC and DEP will each act as a servicer and will collect
6 an irrevocable, nonbypassable storm recovery charge to recover from its
7 respective customers the amounts necessary to pay principal and interest on the
8 storm recovery bonds as well as on-going financing costs associated with the
9 transaction. DEC and DEP, as servicer, will transfer the storm recovery charges
10 deemed collected to a collection account with the Indenture Trustee on a
11 periodic basis, such basis to be determined after consultation with the rating
12 agencies. The Indenture Trustee will then distribute such amounts to
13 bondholders and other parties in accordance with the payment waterfall for the
14 payment of principal and interest on the bonds and on-going financing costs
15 (described below), such as servicing fees, legal and accounting costs, trustee
16 fees, rating agency fees, assessments (i.e. regulatory assessment fees) and
17 administrative costs. The transaction documents provide more detail on the
18 payment waterfall.

19 **Q. PLEASE DESCRIBE THE TERMS OF THE STORM RECOVERY**
20 **BONDS.**

21 A. The storm recovery bonds will likely be issued in multiple tranches with
22 varying maturities to attract a greater number of investors. The targeted ratings
23 on the storm recovery bonds are expected to be AAA from at least two rating

1 agencies. Exact pricing, interest rates, terms, tranches and other characteristics
2 will be determined at the time of issuance and will depend on prevailing market
3 conditions.

4 **Q. WHEN ARE THE STORM RECOVERY BONDS EXPECTED TO BE**
5 **ISSUED?**

6 A. DEC and DEP expect to start marketing the storm recovery bonds as promptly
7 as possible after the last of the following events have occurred: 1) issuance of a
8 final, non-appealable financing order acceptable to DEC and DEP; 2) delivery
9 of any necessary SEC approvals under the Securities Act of 1933; and 3)
10 completion of the rating agency process. Upon completion of these events,
11 DEC and DEP expect to pursue an appropriately aggressive schedule to market,
12 price, and issue the bonds, subject to market conditions. DEC and DEP
13 recommend the storm recovery bonds be issued as soon as practicable and will
14 work to do so prior to May 31, 2021; however, the exact issuance date cannot
15 be determined at this time and depends on many factors, including those
16 mentioned above.

17 **Q. HOW WILL THE STORM RECOVERY BONDS BE SOLD?**

18 A. As shown in witness Atkins' testimony, since 2010, all utility asset
19 securitization transactions of a similar nature have been offered for sale to
20 investors through a group of underwriters, and of the transactions since 1997,
21 all but one of the utility securitizations have been offered to sale to investors
22 through a negotiated sales process. Therefore, based on this history of utility
23 securitization transactions, DEC and DEP's primary plan is to pursue a

1 negotiated sales process for issuance of the bonds, but other avenues may be
2 considered. DEC and DEP will select underwriters with extensive debt capital
3 markets experience and sales distribution workforce, specific experience in the
4 marketing of utility securitization issuances, and broad experience in the
5 marketing of asset-backed securities and corporate bonds. A thorough
6 marketing and price discovery process will be used to determine the most cost-
7 effective structure for issuing the storm recovery bonds. Witness Atkins'
8 testimony provides more detail on the standard process for marketing and sale
9 of the storm recovery bonds.

10 **VI. UP-FRONT FINANCING COSTS AND ON-GOING FINANCING COSTS**

11 **Q. PLEASE PROVIDE A DESCRIPTION OF THE UP-FRONT**
12 **FINANCING COSTS THAT WILL BE FINANCED WITH THE**
13 **PROCEEDS OF THE STORM RECOVERY BONDS.**

14 A. Up-front financing costs, which will be financed from the proceeds of the storm
15 recovery bonds, include the fees and expenses to obtain the Financing Orders,
16 as well as the fees and expenses associated with the structuring, marketing and
17 issuance of each series of storm recovery bonds, including: external and
18 incremental internal legal fees, structuring advisory fees and expenses, any
19 interest rate lock or swap fees and costs (including the cost, if any, associated
20 with interest rate hedges), underwriting fees and original issue discount, rating
21 agency and trustee fees (including trustee's counsel), accounting fees,
22 information technology programming costs, servicer's set-up costs, printing and
23 marketing expenses, stock exchange listing fees and compliance fees, filing and

1 registration fees, and the costs of the outside consultant and counsel, if any,
2 retained by the Commission or the Public Staff. Up-front financing costs
3 include reimbursement to DEC and DEP for amounts advanced for payment of
4 such costs.

5 **Q. PLEASE PROVIDE AN ESTIMATE AND DISCUSSION OF THESE UP-**
6 **FRONT FINANCING COSTS FOR EACH INDIVIDUAL ITEM**
7 **EXPECTED TO BE IN EXCESS OF \$50,000.**

8 A. DEC and DEP estimate the up-front financing costs associated with their
9 recommended issuance of storm recovery bonds to be approximately \$5.2
10 million and \$8.9 million, respectively, based on the approximate mid-point of
11 the range included in my Heath Exhibit 1. DEC and DEP reviewed several
12 asset recovery securitization filings made by other utilities and developed an
13 estimate of up-front financing costs with the assistance of its co-advisors. These
14 numbers are subject to change, as the costs are dependent on the timing of
15 issuance, market conditions at the time of issuance, the outcome of requests for
16 proposals for certain fees and other events outside the control of DEC and DEP,
17 such as possible litigation, incremental legal fees resulting from protracted
18 resolution of issues, possible review by the SEC and rating agency fee changes
19 and requirements.

20 **Q. PLEASE DESCRIBE THE ESTIMATED UNDERWRITING FEES AND**
21 **EXPENSES.**

22 A. Underwriting fees and expenses are shown in line 1 of Heath Exhibit 1 and
23 represent the amount that the underwriters will receive for underwriting and

1 selling the storm recovery bonds, assuming DEC and DEP issue the bonds in
2 the manner previously discussed. This estimated range of fees and expenses is
3 consistent with those paid under recent, similar transactions.

4 **Q. HOW WILL UNDERWRITERS' FEES BE DETERMINED?**

5 A. Assuming DEC and DEP issue the bonds in the manner that all other utility
6 securitization transactions have been issued since 2010, underwriting fees will
7 be incurred for the services previously discussed. The underwriters' fees will
8 be updated through the issuance advice letter procedure, as described in witness
9 Atkins' testimony, after the transaction is priced. Underwriters' fees of 40 – 50
10 basis points of the principal amount of the bonds are consistent with individual
11 utility securitization transactions with comparable issuance sizes that have
12 occurred in the market, based on DEC and DEP's review of a list of recent,
13 comparable transactions. Because the level of underwriting fees is uncertain at
14 this time, the actual costs will be updated through the issuance advice letter
15 procedure. As previously discussed, DEC and DEP will select underwriters
16 with specific experience in the marketing of utility securitization issuances.

17 **Q. PLEASE DESCRIBE THE SERVICER SET-UP FEES (INCLUDING**
18 **INFORMATION TECHNOLOGY PROGRAMMING COSTS).**

19 A. Section 62-172(a)(4)c. of the Securitization Statute includes information
20 technology programming costs in the definition of financing costs for a storm
21 recovery bond transaction. DEC and DEP intend this amount to recover the
22 cost of information technology systems modifications to bill, monitor, collect,
23 and remit securitization charges. The amount included in line 2 of Heath

1 Exhibit 1 represents DEC and DEP's current estimate of the costs of these
2 information technology systems modifications. This amount will be updated
3 through the issuance advice letter procedure.

4 **Q. PLEASE DESCRIBE AND EXPLAIN DEC AND DEP'S PROPOSED**
5 **TREATMENT OF LEGAL FEES.**

6 A. Legal fees are a function of the legal work necessary to issue the storm recovery
7 bonds. External and incremental internal legal fees are based upon the expected
8 hours devoted to the financing order procurement and bond issuance processes
9 rather than a fixed dollar amount. This category (line 3 of Heath Exhibit 1)
10 includes the fees and expenses of external and incremental internal counsel for
11 DEC and DEP and the SPE, the underwriters and DEC and DEP's co-advisors.
12 Counsel will advise on the storm recovery bond transaction structure, including
13 bankruptcy, regulatory and tax matters; issue various transaction opinions,
14 including bankruptcy opinions; and draft most other documents related to the
15 financing, including, among other tasks, the SEC registration statement, the
16 storm recovery property purchase and sale agreement, the indenture, the
17 servicing agreement, the administration agreement, the SPE organizational
18 documents, and any other necessary agreements (drafts of the storm recovery
19 property purchase and sale agreement, the indenture, the servicing agreement,
20 the administration agreement, the limited liability company agreement
21 establishing the SPE and the declaration of trust are included as Heath Exhibits
22 2a-2f). These estimated expenses are based on discussion with our internal
23 legal counsel and estimates from external counsel. DEC and DEP's co-advisors

1 and underwriters' counsel also advise on the transaction structure, review all
2 storm recovery bond transaction documents, and perform due diligence reviews
3 of the transaction in connection with the underwriters' initial purchase of the
4 bonds. The legal fees (over and above those incurred to date) will be affected
5 by events between the date of the filing of the Joint Petition and the date of bond
6 issuance, including the extent to which this proceeding is contested by
7 intervenors, the scope of any appeals, the extent of any comments received
8 during the SEC review, the requirements of underwriters, trustees, rating
9 agencies, regulators or the Commission's Designated Member, if applicable,
10 for any requested revisions to documents, the use of additional credit
11 enhancements, and other factors that cannot be foreseen. Thus, aggregate
12 amount of legal fees and expenses to be securitized will not be known until
13 closing. However, these costs will be estimated to the best of DEC and DEP's
14 ability and updated through the issuance advice letter procedure.

15 **Q. PLEASE DESCRIBE RATING AGENCY FEES.**

16 A. In order to sell the storm recovery bonds at the most favorable interest rate
17 reasonably achievable, the bonds should be rated by a minimum of two of the
18 three major rating agencies. Typically, a fee is required by each of the rating
19 agencies to rate the bonds. The fees charged by the rating agencies are subject
20 to change at any time and are typically a function of the size and structure of
21 the offering. The fees are typically calculated by applying a base rate charge to
22 the initial principal balance, subject to a required minimum fee. Neither DEC
23 or DEP nor the Commission has any effective control over the fees charged by

1 the rating agencies, however, DEC and DEP will use commercially reasonable
2 means to negotiate the lowest possible rating agency fees. The amounts shown
3 on line 4 of Heath Exhibit 1 reflect an estimate of the rating agencies fees to be
4 incurred for a transaction of the size contemplated by DEC and DEP. The low
5 end of the range presented is estimated at 7.5 basis points (or 0.075 percent) on
6 the principal amount of bonds issued, which represents Moody's Investor
7 Service's pricing guidance, payable to two rating agencies. This estimate
8 assumes no additional fees charged for the Trust Issuer. The high end of the
9 range includes a full 7.5 basis point fee charged for the Trust Issuer by two
10 rating agencies. Accordingly, the possibility of a change due to either the size
11 of the offering, or modification of the agencies' fee requirements must be taken
12 into account in determining the level of rating agency fees, and any increase in
13 these fees should be recoverable by DEC and DEP, pursuant to the issuance
14 advice letter procedure.

15 **Q. PLEASE DESCRIBE AND EXPLAIN DEC AND DEP'S PROPOSED**
16 **TREATMENT OF THE PUBLIC STAFF'S FINANCIAL ADVISOR**
17 **FEE.**

18 A. The Public Staff has retained a professional advisor and the costs of this advisor
19 and its legal counsel, if any, should qualify as an up-front financing cost in this
20 proceeding. The total cost of the Public Staff's financial advisor and its legal
21 counsel, if any, is not within DEC and DEP's control or influence and may not
22 be known until closing. The estimate on line 5 of Heath Exhibit 1 and the Public

1 Staff's legal counsel fees on line 6 are estimates and will be updated through
2 the issuance advice letter procedure.

3 **Q. PLEASE DESCRIBE THE FEES OF THE CO-ADVISORS TO DEC**
4 **AND DEP.**

5 A. After conducting a request for proposal ("RFP"), DEC and DEP selected
6 Guggenheim Securities, LLC ("Guggenheim") to act as their structuring
7 advisor in connection with structuring the transaction(s) and providing related
8 services in connection with this proceeding. Witness Atkins served as Senior
9 Advisor at Guggenheim at the time of the RFP and was a key factor in DEC
10 and DEP's decision to select Guggenheim as structuring advisor. Subsequent
11 to Guggenheim's engagement, witness Atkins transitioned to his chief
12 executive role at his company, Atkins Capital. DEC and DEP restructured its
13 engagement with Guggenheim and executed a separate engagement with Atkins
14 Capital. As a result of these changes, Guggenheim and Atkins Capital are
15 currently serving as co-advisors to DEC and DEP.

16 We expect Guggenheim to have the opportunity to continue as an
17 underwriter until the bonds are issued, but all structuring fees are expected to
18 be earned upon commencement of the ratings process. The fees and related
19 expenses to be paid to Atkins Capital and Guggenheim have been agreed upon
20 and reflect the required payments to Atkins Capital and Guggenheim under their
21 respective contracts. These fees and related expenses are consistent with the
22 amounts in recent transactions that have taken place in the market. However,
23 it is not known with precision when Atkins Capital and Guggenheim's services

1 as co-advisors will end. Following issuance of the Financing Orders, and
2 assuming DEC and DEP pursue the marketing and sale of the bonds consistent
3 with how all utility securitization transactions of a similar nature have been
4 offered to investors since 2010, DEC and DEP expect to name book-runners
5 who will perform advisory services as part of the services normally performed
6 by a book-running lead underwriter. For these services, it is expected that the
7 book-runner(s) will not seek fees beyond those underwriting fees they would
8 be paid in their capacity as book-runner(s) after they are engaged as book-
9 runner(s). However, as previously stated, the exact timing of that appointment
10 is not known. To the extent DEC and DEP's co-advisor's fees exceed the
11 estimate, DEC and DEP will update this amount through the issuance advice
12 letter procedure.

13 **Q. PLEASE DESCRIBE THE ACCOUNTING FEES.**

14 A. Accounting fees (line 8 of Heath Exhibit 1) relate to DEC and DEP's
15 independent auditor or other recognized accounting or consulting firm and
16 include the costs of agreed-upon procedures related to the storm recovery
17 bonds.

18 **Q. PLEASE DESCRIBE THE SEC REGISTRATION FEE.**

19 A. The SEC has specific formulas for calculating registration fees based upon the
20 initial principal amount. The current fee is \$109.10 per million dollars
21 registered. That fee structure, however, changes from time to time. The fees
22 are mandatory for registered offerings, and DEC and DEP have no control over
23 such changes. The estimated amount on line 9 of Heath Exhibit 1 will either

1 increase or decrease proportionately as a result of any increase or decrease in
2 the size of the storm recovery bond financing, and/or as a result of any change
3 in the SEC registration fee structure.

4 **Q. PLEASE DESCRIBE BOTH UP-FRONT AND ON-GOING FINANCING**
5 **COSTS OF CREDIT ENHANCEMENTS.**

6 A. To ensure the storm recovery bonds are issued under the most advantageous
7 terms, it may be necessary to use various forms of credit enhancement or other
8 mechanisms designed to improve the credit quality and marketability of the
9 bonds, including but not limited to overcollateralization accounts or letters of
10 credit. It cannot be known until the bonds are about to be issued whether the
11 use of credit enhancements will reduce customer costs. Such mechanisms will
12 be used only if they are cost justified (i.e., the savings exceed the costs).
13 Because the need for any such credit enhancements or mechanisms, as well as
14 their costs and benefits, will be determined by rating agency discussions and
15 market conditions at the time the bonds are priced, decisions to use them can
16 only be made at or near the time of pricing. On my Heath Exhibit 1, I have
17 assumed no credit enhancements, other than the true-up mechanism and the
18 Capital Subaccount, will be used, because, as witness Atkins discusses in his
19 testimony, additional credit enhancements are not currently anticipated to be
20 necessary to achieve “AAA” or equivalent credit ratings.

1 **Q. HOW WILL DEC AND DEP RECONCILE ACTUAL UP-FRONT**
2 **FINANCING COSTS WITH THE ESTIMATES PROVIDED BY DEC**
3 **AND DEP THROUGH THE ISSUANCE ADVICE LETTER**
4 **PROCEDURE SINCE THE ACTUAL COSTS WILL NOT BE KNOWN**
5 **UNTIL AFTER THE COMMISSION ISSUES THE FINANCING**
6 **ORDERS AND THE STORM RECOVERY BONDS HAVE BEEN**
7 **ISSUED?**

8 A. The proceeds of the storm recovery bond issuance will be used to pay (or
9 reimburse DEC and DEP for) the actual up-front financing costs incurred. The
10 issuance advice letter process, which will discuss the actual up-front financing
11 costs, are addressed in witness Atkins' testimony. If the actual up-front
12 financing costs are below the amount appearing in the issuance advice letter
13 filed with the Commission not later than one day after pricing the storm
14 recovery bonds, then the difference will be credited back to customers in a
15 manner to be determined in the Financing Orders provided, however, that
16 adjustments are not made to the storm recovery charges for any such excess up-
17 front financing costs as prohibited by the Securitization Statute. If the actual
18 up-front financing costs are in excess of the amount appearing in the issuance
19 advice letter, then DEC and DEP will have the right to collect such prudently
20 incurred excess amounts through the establishment of a regulatory asset.

1 **Q. PLEASE DESCRIBE THE ESTIMATED ON-GOING FINANCING**
2 **COSTS (EXCLUDING DEBT SERVICE) THAT WILL BE**
3 **RECOVERED FROM THE STORM RECOVERY CHARGE.**

4 A. In addition to debt service on the storm recovery bonds (and any swap or other
5 hedging costs), there will be expenses that will be incurred throughout the life
6 of the storm recovery bonds to support the on-going operations of the SPE.
7 These on-going financing costs are estimated at approximately \$0.44 million
8 and \$0.91 million annually for DEC and DEP, respectively, which
9 approximates the lower end of the range set forth in my Heath Exhibit 1, and
10 include servicing fees; return on invested capital; administration fees;
11 accounting and auditing fees; regulatory fees; legal fees; rating agency
12 surveillance fees; trustee fees; independent director or manager fees; and other
13 miscellaneous fees associated with the servicing of the storm recovery bonds.

14 Certain of these on-going financing costs, such as the administration
15 fees and the amount of the servicing fee for DEC and DEP (as the initial
16 servicers) may be determinable, either by reference to an established dollar
17 amount or a percentage, on or before the issuance of any series of storm
18 recovery bonds. Other on-going financing costs will vary over the term of the
19 storm recovery bonds.

20 **Q. WHAT ARE THE ESTIMATED SERVICING FEES AND HOW WILL**
21 **THEY BE CALCULATED?**

22 A. In consideration for its servicing responsibilities, the servicers, initially DEC
23 and DEP, will receive the periodic servicing fee (line 1 of Heath Exhibit 1),

1 which will be recovered through the storm recovery charges. To support the
2 bankruptcy analysis necessary to achieve the highest credit rating, the servicing
3 fees must be on arm's length terms and at market-based rates. Such servicing
4 responsibilities will include, without limitation: (i) billing, monitoring,
5 collecting and remitting securitization charges, (ii) reporting requirements
6 imposed by the servicing agreement, (iii) implementing the true-up mechanism,
7 (iv) procedures required to coordinate required audits related to DEC and DEP's
8 role as servicers, (v) legal and accounting functions related to the servicing
9 obligation, and (vi) communication with rating agencies.

10 The annual servicing fee to be paid to DEC and DEP is currently
11 estimated to be 0.05 percent of the original principal balance of the
12 securitization bonds, payable on each securitization bond payment date.
13 Alternatively, if DEC and DEP cease to service the storm recovery bonds and
14 a successor servicer is appointed, its servicer fee should be set at a level not to
15 exceed 0.60 percent of such original balance unless a higher rate is approved by
16 the Commission. To date, we are not aware of any utility securitization
17 transactions where a successor servicer has had to be appointed. The servicing
18 fees reflected appear to DEC and DEP to be consistent with the rates in other
19 recent securitizations. Since the servicing fee is based on the estimated original
20 principal balance, the final amount will be known only when the transaction is
21 priced and will be updated through the issuance advice letter process.

1 **Q. PLEASE DESCRIBE RETURN ON INVESTED CAPITAL.**

2 A. When the storm recovery bonds are issued, DEC and DEP propose that they
3 will each make a capital contribution to their respective SPE, which the SPE
4 will deposit into the Capital Subaccount. The storm recovery bond proceeds
5 will not be used to fund this capital contribution. As previously discussed, the
6 amount of the capital contribution will be at least 0.50 percent of the original
7 principal amount of the storm recovery bonds. The Capital Subaccount will
8 serve as collateral to facilitate timely payment of principal of and interest on the
9 storm recovery bonds. To the extent that the Capital Subaccount must be drawn
10 upon to pay these amounts due to a shortfall in the storm recovery charge
11 collections, it will be replenished to its original level through the true-up
12 process. The funds in the Capital Subaccount will be invested in short-term
13 high-quality investments and, if necessary, such funds (including investment
14 earnings) will be used by the Indenture Trustee to pay the principal of and
15 interest on the storm recovery bonds and the on-going financing costs payable
16 by the SPE. Consistent with prior utility securitizations, including their
17 affiliate's transaction in Florida, DEC and DEP request to earn a rate of return
18 on their invested capital equal to the rate of interest payable on the longest
19 maturing tranche of storm recovery bonds. DEC and DEP request that this
20 return on invested capital be a component of on-going financing costs, and
21 accordingly, recovered through the storm recovery charges.

1 **Q. PLEASE DESCRIBE THE PURPOSE OF THE ADMINISTRATION**
2 **FEES THAT YOU IDENTIFIED AND EXPLAIN HOW THEY WILL BE**
3 **CALCULATED.**

4 A. The annual administration fees are set forth on line 3 of Heath Exhibit 1 and are
5 meant to cover expenses associated with administrative functions DEC and
6 DEP will be providing to the relevant SPE. These functions will include, among
7 others, maintaining the general accounting records, preparation of quarterly and
8 annual financial statements, arranging for annual audits of each SPE's financial
9 statements, preparing all required external financial filings, preparing any
10 required income or other tax returns, and related support. None of the SPEs
11 will have any employees, so the administrator will perform these functions for
12 each SPE. These functions are separate from those of the servicer.

13 **Q. PLEASE DESCRIBE THE PURPOSE OF THE OTHER ON-GOING**
14 **FINANCING COSTS THAT YOU IDENTIFIED IN MORE DETAIL.**

15 A. The accounting and auditing fees (line 4 of Heath Exhibit 1) are meant to
16 represent costs for activities such as providing periodic reports to the trustee
17 and reviewing/certifying SEC filings. These fees will be paid to DEC and
18 DEP's independent auditor or other recognized accounting firm.

19 The regulatory fees are presented on line 5 of Heath Exhibit 1 and cover
20 the amount required to be submitted to the North Carolina Utilities Commission
21 under N.C. Gen. Stat. §62-302. This fee is calculated as 0.13 percent of the
22 storm recovery charge revenues and is required to be paid on a quarterly basis
23 on the 15th day of February, May, August, and November.

1 Each SPE will incur periodic legal fees. The annual estimate for these
2 expenses is shown on line 6 of Heath Exhibit 1.

3 The rating agencies will assess on-going fees associated with
4 monitoring the credit rating of each securitization bond series (line 7 of Heath
5 Exhibit 1).

6 The Indenture Trustee will be responsible for and earn a fee (line 8 of
7 Heath Exhibit1) for, among other things: (i) maintaining a record of investors;
8 (ii) calculating and remitting interest and principal payments to investors; (iii)
9 otherwise fulfilling its obligations under the indenture and other documents;
10 and (iv) reporting as required by the Commission or any other regulatory body.

11 Each SPE will also have an independent director or manager to oversee
12 its operation, and he or she will receive a fee for their services and will be
13 entitled to indemnification. Estimated fees are set forth on line 9 of Heath
14 Exhibit 1.

15 Other miscellaneous costs (line 10 of Heath Exhibit 1) are any costs that
16 may be incurred but that have not been specifically identified at this time. Such
17 types of costs have been identified by other utility companies for similar
18 transactions.

19 Other than the servicing fee and the administrative fee, it is difficult to
20 predict the level of such costs to be incurred by the SPE over the term of the
21 storm recovery bonds. It is virtually certain these fees will increase over the
22 term, not only because service providers periodically increase their fees, but
23 also because of inflation. Therefore, DEC and DEP believe there should be no

1 cap on the on-going financing costs. Moreover, each SPE must recover all of
2 its on-going financing costs in order to preserve bankruptcy remoteness of the
3 SPE and to secure AAA or equivalent credit ratings on the storm recovery
4 bonds.

5 **Q. HOW WILL THE COMPANY RECONCILE ITS ACTUAL ON-GOING**
6 **FINANCING COSTS OF THE TRANSACTION WITH ITS**
7 **ESTIMATED COSTS?**

8 A. Because on-going financing costs are recovered through the storm recovery
9 charge, disparities will be resolved periodically through the true-up mechanism.
10 The true-up mechanism is described in more detail in witness Anger's
11 testimony.

12 **Q. HAS THE U.S. TREASURY DEPARTMENT ISSUED ANY GUIDANCE**
13 **ON ACCOUNTING FOR STORM RECOVERY FINANCING AND**
14 **RELATED INCOME TAXES?**

15 A. Yes. Revenue Procedure 2005-62 provides a safe harbor for public utility
16 companies that, pursuant to specified cost recovery legislation, receive an
17 irrevocable financing order permitting the utility to recover certain specified
18 costs through a qualifying securitization. Under the revenue procedure, DEC
19 and DEP will not recognize taxable income upon: 1) the receipt of the
20 Financing Orders; 2) the transfer of DEC and DEP's rights under the Financing
21 Orders to the wholly-owned SPE; or 3) the receipt of cash in exchange for the
22 issuance of the storm recovery bonds.

1 **Q. DOES THE STORM RECOVERY FINANCING DEC AND DEP IS**
2 **PROPOSING MEET THE REQUIREMENTS OF THIS REVENUE**
3 **PROCEDURE?**

4 A. Yes.

5 **Q. IN DEC’S AND DEP’S AFFILIATE’S TRANSACTION IN FLORIDA,**
6 **THE FINANCING DOCUMENTS CONTAINED CERTAIN**
7 **PROVISIONS THAT THE FLORIDA COMMISSION VIEWED AS**
8 **“CUSTOMER PROTECTIONS.” DO THE FINANCING DOCUMENTS**
9 **THAT YOU ARE SPONSORING CONTAIN SIMILAR “CUSTOMER**
10 **PROTECTIONS?”**

11 A. Yes, it is my understanding that they do. As noted earlier in my testimony, I
12 am sponsoring proposed forms of the storm recovery property purchase and sale
13 agreement, the indenture, the servicing agreement, the administration
14 agreement, the limited liability company agreement establishing each SPE and
15 the limited liability company agreement/declaration of trust for the Finance
16 Entity. I believe that these documents contain the same substantive “customer
17 protections” which Duke Energy Florida, LLC included in its transaction.

18 **Q. CAN YOU BRIEFLY DESCRIBE WHAT THESE “CUSTOMER**
19 **PROTECTIONS” ARE?**

20 A. Generally, these “customer protections” include, without limitation:

- 21 • the satisfaction of a “Commission Condition” (being approval or
22 acquiescence constituting approval by the Commission) prior to any
23 amendment or modification to the financing documents;

- 1 • a provision authorizing the Commission to institute a proceeding to
2 require either DEC and DEP to make customers whole for any “Losses”
3 suffered (i) as a result of negligence, recklessness, or willful misconduct
4 by either DEC or DEP under the servicing agreement or the
5 administration agreement, or (ii) for any failure or breach by either DEC
6 or DEP of certain material representations, warranties or covenants in
7 the purchase and sale agreement;
- 8 • provisions making the Commission, on behalf of itself and customers of
9 DEC and DEP, a third-party beneficiary of the purchase and sale
10 agreement and the servicing agreement; and
- 11 • a provisions allowing the Commission to enforce the provisions of the
12 servicing agreement and to terminate the agreement in the event of a
13 default by DEC or DEP.

14 These provisions and related protections are more fully set forth in the exhibits.

15 **Q. DO ANY OF THE PROPOSED “CUSTOMER PROTECTIONS”**
16 **OBLIGATE THE COMMISSION BEYOND ITS REQUIREMENTS**
17 **UNDER THE SECURITIZATION STATUTE?**

18 A. While some of the “customer protections” (such as the requirement that DEC
19 or DEP make customers whole for “losses” as a result of certain events as
20 described in the previous question) are obligations solely of DEC and DEP, the
21 other “customer protections” I describe above create additional obligations for
22 the Commission that are not contemplated by the Securitization Statute. DEC
23 and DEP included these in the forms of transaction documents attached to its

1 Joint Petition, but ultimately, it is up to the Commission whether it wishes to
2 adopt those “customer protections” that require further Commission
3 involvement.

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

5 A. Yes.

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

**DOCKET NO. E-7, SUB 1243
DOCKET NO. E-2, SUB 1262**

In the Matter of:

))))))
Petition of Duke Energy Carolinas, LLC	And Duke Energy Progress, LLC for	Issuance of Storm Cost Recovery Financing	Orders		
))))))
					REBUTTAL TESTIMONY OF THOMAS J. HEATH, JR. FOR DUKE ENERGY CAROLINAS, LLC AND DUKE ENERGY PROGRESS, LLC

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I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Thomas J. Heath Jr. My current business address is 550 South Tryon Street, Charlotte, North Carolina 28202.

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

A. I am employed by Duke Energy Business Services, LLC, a service company affiliate of Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (collectively, the “Companies”) and a subsidiary of Duke Energy Corporation (“Duke Energy”), as Structured Finance Director.

Q. DID YOU PREVIOUSLY FILE TESTIMONY IN THIS PROCEEDING?

A. Yes. I filed direct testimony and exhibits on October 26, 2020.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to: (1) respond to Saber Partners, LLC’s (“Public Staff Consultants” or “Consultants”) concept of “best practices” as they relate to the securitization proposals in these dockets; (2) explain the Statutory Cost Objectives¹ of N.C. Gen. Stat. § 62-172 (the “Securitization Statute”) and how DEC and DEP’s proposals are consistent with those objectives; (3) explain the Companies’ position on post-financing order procedures; (4) respond to the Public Staff’s proposals related to return on invested capital and on-going financing expenses; and (5) respond to certain

¹ See Duke Energy Carolinas, LLC and Duke Energy Progress, LLC’s Joint Petition for Financing Orders, at 2, Docket Nos. E-7, Sub 1243 and E-2, Sub 1262 (Oct. 26, 2020).

1 mischaracterizations of the Companies' proposals reflected in the testimony of
2 several Public Staff Consultants' testimony.

3 **Q. ARE YOU SPONSORING ANY EXHIBITS WITH YOUR REBUTTAL**
4 **TESTIMONY?**

5 A. Yes. The following exhibits are presented in conjunction with my rebuttal
6 testimony for both DEC and DEP:

- 7 • Heath Rebuttal Exhibit 1 – All discovery produced by the Companies to
8 the Public Staff
- 9 • Heath Rebuttal Exhibit 2 – All discovery produced by the Public Staff to
10 the Companies²

11 As this is the first storm securitization transaction proposed by the Companies
12 before the North Carolina Utilities Commission ("Commission"), the
13 Companies believe that the record in these cases may benefit from the
14 additional information conveyed in responses to data requests. Each of these
15 exhibits were prepared under my direction and control, and to the best of my
16 knowledge all factual matters contained therein are true and accurate.

² Note these discovery responses reference attachments provided by the Companies and Public Staff in response to the other parties' discovery requests, but do not contain those actual attachments. The Companies will make these attachments available to the Commission upon request.

1 storm recovery bonds.³ Candidly, the Companies were expecting testimony
2 that was more focused on recommended changes to the detailed Financing
3 Order provisions, but the testimony we received contained very little of that sort
4 of content and instead focused almost exclusively on ensuring a continuing and,
5 by historic standards unusual, active role for both the Public Staff and its
6 Consultants. Therefore, the Companies have inferred that with the exception
7 of the approximately six main recommendations proposed by the Public Staff
8 and its Consultants, all of which will be addressed by me below and/or in the
9 rebuttal testimony of Companies witnesses Charles N. Atkins II and Melissa
10 Abernathy, the Public Staff propose relatively few modifications to the
11 Companies' proposed Financing Order provisions. Notwithstanding, while we
12 think there may be a role for the Public Staff in post-financing order activities,
13 if the Commission deems such role necessary or helpful, we have serious issues
14 with the unprecedented nature of the recommendations proposed by the Public
15 Staff and its Consultants on this issue in this proceeding.

16 **Q. WHAT IS YOUR SECOND GENERAL OBSERVATION ABOUT THE**
17 **PUBLIC STAFF CONSULTANTS' TESTIMONY?**

18 A. While the Public Staff did not propose significant modification to the
19 Companies' financing proposal, we believe there is a significant conceptual
20 disconnect between the larger context of the Companies' requests in these

³ While the Companies do not object to a continuing role of the Commission actively participating in the structuring, marketing, and pricing of bonds in this instance or to an advisory role for the Public Staff, as is explained in more detail later in my testimony, we believe that a continuing and co-equal role for an intervenor such as the Public Staff is problematic and unprecedented in the circumstances, in addition to raising issues around the scope of the Public Staff's statutory authority.

1 docket and what the Public Staff proposes regarding the execution of the
2 transaction.

3 **Q. PLEASE EXPLAIN.**

4 A. Duke Energy, including DEC and DEP and its other utility operating
5 companies, has many years of experience in issuing long-term debt to both
6 public and private investors, and I believe it has been successful in doing so.
7 Duke Energy currently has more than \$50 billion in outstanding long-term
8 bonds in the public debt markets, an amount equivalent to the cumulative
9 amount of utility securitization bonds issued since their inception in the mid-
10 1990s, and has issued an average of approximately \$6 billion annually in the
11 public debt markets each year since 2016. All of these bonds have been
12 authorized, marketed, and issued by Duke Energy with the assistance of their
13 advisors and underwriters utilizing practices that are standard for the issuance
14 of such instruments in recognized markets for long-term debt. None of these
15 issuances have been subject to the direct and active supervision of a
16 commission, except for the 2016 securitization transaction by Duke Energy
17 Florida (“DEF”), and all transactions related to DEC and DEP in particular
18 have been preliminarily approved by this Commission prior to issuance
19 pursuant to the requirements of N.C. Gen. Stat. 62-160 *et seq.* Also, none of
20 the issuances have been subject to the direct and active supervision of
21 intervenors. Further, in every case, the interest and fees associated with these
22 long-term debt issuances have been flowed through to Duke Energy’s
23 customers as part of the ratemaking process. To the best of my knowledge, no

1 state utility commission has ever denied recovery of carrying costs and charges
2 associated with Duke Energy's long-term debt nor has any party ever even
3 suggested to a state utility commission that Duke Energy's costs were
4 imprudent or not otherwise eligible for recovery from customers. In every case,
5 the fundamental terms applicable to these borrowings were established at the
6 time of issuance of the securities and, in every case, Duke Energy utilized their
7 best efforts to minimize the costs inherent in these borrowings, which are
8 ultimately paid for by its utility customers.

9 **Q. ARE THE STORM RECOVERY BONDS PROPOSED FOR ISSUANCE**
10 **IN THE PENDING DOCKETS MATERIALLY DIFFERENT FROM**
11 **OTHER LONG-TERM DEBT ISSUANCES BY THE COMPANIES?**

12 A. In my opinion, they are not. While I acknowledge that the structures used and
13 the flow of cash are different than a more customary long-term bond issuance,
14 I do not believe those differences necessitate an entirely different process for
15 approval and issuance of those bonds. I particularly reject the notion, which is
16 repeated often in the Public Staff Consultant's testimony, that DEC and DEP
17 would have anything other than their customers' best interests at heart and in
18 mind when structuring, marketing, and pricing these bonds or are presumptively
19 unsuited to manage the bond structuring, marketing, and pricing process in
20 these circumstances because of alleged conflicts of interest. The fundamental
21 purpose of securitization is to lower customer costs. The Companies are quite
22 capable of managing the issuance of storm recovery bonds in this instance
23 competently and fairly and are ready and willing to certify that such bonds will

1 be issued in a manner consistent with the lowest cost objectives contained in
2 the Securitization Statute as part of that process.

3 **Q. ARE YOU REJECTING THE CONCEPT OF CONTINUING**
4 **COMMISSION OR PUBLIC STAFF INVOLVEMENT IN THE**
5 **ISSUANCE OF STORM RECOVERY BONDS AFTER THE ISSUANCE**
6 **OF A FINANCING ORDER?**

7 A. Not at all. What I am doing is rejecting the fabricated concerns over potential
8 utility carelessness and lack of customer interest expressed in the
9 recommendations of the Public Staff Consultants and noting the fact that the
10 Companies have a long history of accessing debt markets efficiently, at
11 favorable rates, and of recovering the costs of such transactions from our
12 customers with Commission approval. The notion that the Companies would
13 suddenly alter its very well-established business practices and somehow begin
14 applying a less stringent standard while structuring, marketing, and pricing
15 these bonds simply because of the change in cash flows involved in issuing
16 storm recovery bonds is completely unsupported by any evidence.

17 **Q. WHAT ARE YOU ASKING THE COMMISSION TO DO IN THIS**
18 **INSTANCE?**

19 A. I am asking the Commission to determine whether and to what extent the
20 specific nature of storm recovery bonds requires a completely different process
21 for structuring, marketing, and pricing as proposed by the Public Staff
22 Consultants in this instance, in light of the history and experience of the
23 Companies and the Commission regarding the issuance of other long-term debt

1 securities for which customers are ultimately liable, and to implement
2 requirements consistent with their conclusions on this subject. In doing so, I
3 ask that the Commission consider the long, collective histories of DEC and DEP
4 in successfully issuing long-term debt and reject the notion that the Companies
5 will not act in the best interest of their customers if not directly supervised by
6 the Public Staff Consultants with respect to the issuance of storm recovery
7 bonds.

8 I expect the Commission to determine the nature and extent of
9 supervisory authority it feels is necessary and appropriate in these
10 circumstances but do not want that decision to be made on the basis of alleged
11 risks and assumed inappropriate behavior that is completely unsupported by our
12 experience in engaging in similar transactions over a long period of time.

13 **Q. DO YOU BELIEVE THE COMPANIES' JOINT PETITION AND**
14 **PROPOSED FINANCING ORDERS MEET THE STATUTORY**
15 **OBJECTIVES OF THE STORM SECURITIZATION STATUTE?**

16 A. Yes I do. The statute defines two objectives, which the Companies refer to as
17 the "Statutory Cost Objectives": 1) the proposed issuance of storm recovery
18 bonds and imposition and collection of storm recovery charges are expected to
19 provide quantifiable benefits to customers as compared to the costs that would
20 have been incurred [and passed through to customers] absent the issuance of
21 storm recovery bonds and 2) the structuring and pricing of the storm recovery
22 bonds are reasonably expected to result in the lowest storm recovery charge
23 consistent with market conditions at the time the storm recovery bonds are

1 priced and the terms of the financing ordering. As demonstrated in Abernathy
2 DEC Exhibit 5 and DEP Exhibit 5 in the Joint Petition and updated in
3 Abernathy Rebuttal Exhibits 1 – 3, the Companies have structured a financing
4 that is expected to provide net present value savings of approximately \$57.5
5 million for DEC customers over the life of the storm recovery bonds and
6 approximately \$216.2 million for DEP customers over the life of the storm
7 recovery bonds. Furthermore, as described in the direct and rebuttal testimony
8 of Companies witness Atkins, the Companies are proposing a structuring and
9 marketing process that is designed to achieve the lowest storm recovery costs
10 consistent with market conditions at the time the storm recovery bonds are
11 priced and the terms of the financing ordering. Finally, to assist the
12 Commission in evaluating the final terms of the transaction and whether or not
13 the Statutory Cost Objectives were in fact met, the Companies propose an
14 issuance advice letter (“IAL”) process which would include certifications from
15 each Company as to the satisfaction of the Statutory Cost Objectives and which
16 would give the Commission final authority over the issuance of the bonds.

17 **Q. YOU PREVIOUSLY MENTIONED THAT THE PUBLIC STAFF AND**
18 **ITS CONSULTANTS’ TESTIMONY CONTAINED LIMITED**
19 **RECOMMENDED CHANGES TO THE COMPANIES’ FINANCING**
20 **ORDERS. PLEASE LIST THEM.**

21 A. The Public Staff and their Consultants recommend that the Commission:
22 (1) incorporate into its financing order the alleged “best practices” outlined by
23 the Public Staff Consultants, including (a) creation of a post-financing order

- 1 and pre-bond issuance review process, (b) provisions in a financing order
2 that are designed to achieve a lowest cost objective, (c) retention of an
3 independent financial advisor and/or counsel to take part actively in all
4 aspects of the structuring, marketing, and pricing of the bonds;
- 5 (2) require certifications from the Companies, the bookrunning underwriters,
6 and the Public Staff Consultants that the structuring, marketing, and pricing
7 of storm recovery bonds in fact achieved the lowest storm recovery charges
8 consistent with market conditions at the time of pricing and the terms of the
9 financing order;
- 10 (3) approve oversight by the Commission, the Public Staff and its Consultant
11 through their participation on a bond team, that has joint decision-making
12 authority with the Companies, on all matters related to the structuring,
13 marketing, and pricing of the storm-recovery bonds;
- 14 (4) limit the Companies' return on their capital contributions to their respective
15 Special Purpose Entities ("SPEs") to each SPE's actual investment return;
- 16 (5) make adjustments to the treatment of up-front financing costs, on-going
17 financing costs, servicing and administration fees and tail-end collections,
18 and allow a second "bite at the apple" on auditing certain of the Companies'
19 underlying storm costs; and
- 20 (6) lengthen the proposed amortization period from a 15 to 20-year period.

21 I will be primarily addressing Public Staff and its Consultants'
22 recommendations (1) through (4) and the adjustments to up-front and on-going
23 financing costs contained in recommendation (5), while Companies witness

1 Abernathy will be primarily addressing the remaining recommendations in (5)
2 and (6). Public Staff Consultants also question certain aspects of the
3 Companies' proposed structure of the transaction and critique some of the
4 Companies' models and calculations used in support of its Joint Petition. While
5 the Public Staff Consultants do not ultimately recommend changes to the
6 Companies' proposed structure at this time, Companies witnesses Atkins,
7 Abernathy, and I address some of their questions and critiques in our respective
8 rebuttal testimony.

9 **III. SABER PARTNERS CONCEPT OF "BEST PRACTICES"**

10 **Q. PLEASE SUMMARIZE THE STEPS THE PUBLIC STAFF**
11 **CONSULTANTS RECOMMENDED AS "BEST PRACTICES" FOR**
12 **DEC AND DEP'S SECURITIZATION.**

13 A. As stated in Public Staff Consultants witness Hyman Schoenblum's testimony,
14 the alleged "best practices" include:

15 (1) Commission participation in the selection of underwriters, legal counsel and
16 other transaction participants and in defining the responsibilities of each
17 party. The Commission acting for itself or through a designee, the Public
18 Staff and their Consultants serving as joint decision-makers with the
19 Companies in all matters relating to the structuring, marketing and pricing
20 of the storm recovery bonds. The Commission should rely on experts who
21 have a duty solely to protect customers;

22 (2) Commission review and negotiation of all transaction documents and
23 contracts that "could affect future ratepayer costs";

- 1 (3) Commission should ensure that all statutory limits which benefit customers
2 are strictly enforced;
- 3 (4) Commission should establish procedures to ensure all savings are
4 transferred to customers;
- 5 (5) Commission should require that storm recovery bonds are offered to the
6 broadest market possible;
- 7 (6) Commission should require transparency in the distribution, in the initial
8 pricing and in the secondary market for the storm recovery bonds;
- 9 (7) Commission should direct the Commission's staff and the Public Staff and
10 its Consultants to take part fully and in advance in all aspects of structuring,
11 marketing and pricing the storm recovery bonds and direct the financial
12 advisor to disapprove any decision that would not result in the lowest all-in
13 cost of fund and the lowest storm recovery charges;
- 14 (8) Commission should require certifications from the underwriters, the
15 Companies and the Public Staff's Consultants as to actions taken to achieve
16 the lowest costs of funds and the lowest storm recovery charges under
17 market conditions at the time of pricing; and
- 18 (9) Commission should have authority to enforce the provisions of the financing
19 order and the transaction documents for the benefits of customers.⁴

⁴ Direct Testimony of Hyman Schoenblum Senior Advisor – Saber Partners, LLC, at 51-56, Docket Nos. E-2, Sub 1262 and E-7, Sub 1243 (Dec. 21, 2020).

1 **Q. DO YOU AGREE WITH THE CONSULTANTS’ RECOMMENDED**
2 **PRACTICES?**

3 A. Many of them. In fact, contrary to statements made by Public Staff Consultants’
4 witnesses⁵, many of these recommended “best practices” have already been
5 incorporated into the Companies’ proposed Financing Orders as they were
6 practices utilized in the DEF transaction. I go through them below. However,
7 some additional “best practices” recommended by witness Schoenblum were
8 not present in the DEF transaction and we believe are not appropriate for the
9 Companies’ transactions in these dockets, which I will address in more detail
10 below.

11 Further, some of these “best practices” do not adhere to the statutory
12 framework of the Securitization Statute and deviate from standard North
13 Carolina regulatory practices. Additionally, the Companies do not agree with
14 the Public Staff Consultants that these are standard “best practices” generally
15 agreed upon by the utility industry or the debt capital markets more broadly,
16 but rather are the Public Staff Consultants’ “best practices” based upon their
17 evolving personal preferences for these type of transactions. For these reasons,
18 I will refer to them as the Public Staff Consultants’ practice recommendations
19 moving forward. Regardless, as I describe further below, the Companies have

⁵ *Id.*; Direct Testimony of Joseph S. Fichera, Chief Executive Officer of Saber Partners, LLC, at 37-38, Docket Nos. E-2, Sub 1262 and E-7, Sub 1243 (Dec. 21, 2020); Direct Testimony of Rebecca Klein, Principal of Klein Energy LLC, at 14, Docket Nos. E-2, Sub 1262 and E-7, Sub 1243 (Dec. 21, 2020); Direct Testimony of William B. Moore, Consultant at Saber Partners, LLC, at 14-15, Docket Nos. E-2, Sub 1262 and E-7, Sub 1243 (Dec. 21, 2020); Direct Testimony of Paul Sutherland, Senior Advisor at Saber Partners, LLC, at 42, Docket Nos. E-2, Sub 1262 and E-7, Sub 1243 (Dec. 21, 2020).

1 already adopted several of them and are not opposed to others that are not
2 inconsistent with the Securitization Statute or commonly used in transactions
3 of this nature. Specifically:

4 (1) Consultants' Practice Recommendation #1: As discussed later in my
5 rebuttal, the Companies do not object to the formation of a bond team that,
6 *consistent with the DEF transactions referenced by the Public Staff*
7 *Consultants*⁶, includes the Companies, their advisors and counsel, the
8 Commission and its independent outside consultants and/or counsel ("Bond
9 Team"). However, the Companies do object to Public Staff Consultants'
10 repeated plea that it too be given a formal position on such a Bond Team
11 and for the Bond Team to have joint decision-making responsibility. The
12 Companies have grave concerns with an arrangement that allows an
13 intervening party to have a formal role in a financial transaction that, by
14 statute, is required to be performed by the Companies, decided by the
15 Companies, and executed by the Companies. In the DEF transaction, which
16 the Public Staff Consultants repeatedly reference⁷ as the model for these
17 transactions, no intervening party was a member of the bond team, and
18 witness Paul Sutherland's testimony concerning "best practices" in that
19 transaction did not recommend any intervenors or their advisors be invited
20 to join the Bond Team as members.⁸ Furthermore, I am not aware, and from
21 reviewing the responses to DEC and DEP's discovery requests, it does not

⁶ Fichera, at 28.

⁷ *Supra*, at note 5.

⁸ The Public Staff Consultants were the Florida Public Service Commission's advisors in that transaction.

1 appear that Public Staff Consultants' witnesses are aware, of *any* example
2 where an intervenor was a member of a similarly constructed bond team.

3 In addition to the creation of the Bond Team, should the
4 Commission desire, the Companies are not opposed, consistent with the
5 DEF transaction, to a member of the Commission staff (or a Commissioner)
6 being a designated joint decision-maker in matters along with a designated
7 representative of the Companies concerning the structuring, marketing, and
8 pricing of the bonds.⁹ The Companies have less concerns with this
9 approach given the Commission's role in regulating the Companies, the
10 Commission's responsibilities under the Securitization Statute, and the use
11 of this framework in the DEF transaction and other utility securitizations
12 across the country. Again, however, the Companies are strongly opposed
13 to the recommendation that an intervening party, even the Public Staff or its
14 Consultant be given a joint decision-making role in the transaction.

15 (2) Consultants' Practice Recommendation #2: The Companies already
16 included forms of the proposed transaction documents as exhibits to their
17 Joint Petition for review by the Commission.

18 (3) Consultants' Practice Recommendation #3: The Companies agree that the
19 Commission should adhere to and enforce the Securitization Statute.

⁹ Except those recommendations that in the sole view of the Companies would expose the Companies or the SPEs to securities law and other potential liability (i.e., such as, but not limited to, the making of any untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary in order to make the statements made not misleading) or contractual law liability (e.g., including but not limited to terms and conditions of the underwriter agreement(s)).

- 1 (4) Consultants’ Practice Recommendation #4: The Companies proposed a
2 transaction that will provide significant quantifiable benefits to customers
3 in connection with the Companies’ recovery of prudently incurred storm
4 recovery costs, and the true-up mechanism is designed to ensure that storm
5 recovery charges are only collected in amounts necessary to pay principal,
6 interest and financing costs. There cannot and will not be an “economic
7 windfall” to the Companies as a result of the proposed transaction.
- 8 (5) Consultants’ Practice Recommendation #5: As further described in witness
9 Atkins’s testimony, the Companies are structuring the transaction to appeal
10 to a wide array of investors and will broadly market the securities. The
11 Companies have requested flexibility from the Commission to have the
12 ability to structure the transaction to achieve the Statutory Cost Objectives.
- 13 (6) Consultants’ Practice Recommendation #6: The Companies invite the
14 Commission and/or its outside consultant and counsel to fully participate in
15 the pricing process, including participation on any pricing calls so there is
16 full transparency.
- 17 (7) Consultants’ Practice Recommendation #7: As previously noted in response
18 to the first recommendation, the Companies support the establishment of a
19 Bond Team to participate in the structuring, marketing and pricing of the
20 storm recovery bonds. Furthermore, a member of the Commission staff (or
21 a Commissioner) along with a designated representative of the Companies,
22 will be joint decision-makers. The Companies recommend, in accordance
23 with Consultants’ Practice Recommendation #3 above, that the Commission

1 adhere to the statutory standard with respect to obtaining the lowest storm
2 recovery charges consistent with market conditions at the time of pricing
3 and terms of the applicable Financing Order as opposed to adopting a
4 different “lowest all-in cost of funds” standard as suggested by witness
5 Schoenblum¹⁰, or an “unqualified lowest storm recovery charge standard”
6 as suggested by witness Rebecca Klein¹¹. As mentioned above, the
7 Companies also object to the Public Staff Consultants’ request to expand
8 upon the “best practices” and processes used in Florida to create a space for
9 the Public Staff and its Consultants on the Bond Team or for the Public Staff
10 or its Consultants to be a joint decision-maker.

11 (8) Consultants’ Practice Recommendation #8: The Companies have proposed
12 to deliver certifications as described by witness Schoenblum. To the extent
13 other parties offer certifications to the Commission, the Companies do not
14 suggest the Commission ignore them, but these other intervenor
15 certifications should not be conditions to approving the IAL.

16 (9) Consultants’ Practice Recommendation #9: The proposed transaction
17 documents filed with the Commission are modeled off the DEF transaction
18 documents, which have the enforcement provisions suggested by witness
19 Schoenblum.

¹⁰ Schoenblum, at 53.

¹¹ Klein, at 14.

1 **IV. NORTH CAROLINA STATUTORY COST OBJECTIVES**

2 **Q. DOES THE SECURITIZATION STATUTE OUTLINE A LOWEST**
3 **COST OBJECTIVE FOR THE BOND ISSUANCE?**

4 A. Yes. N.C. Gen. Stat. § 62-172 requires (1) that the issuance of the storm
5 recovery bonds and the imposition and collection of a storm recovery charge
6 are expected to provide quantifiable benefits to customers as compared to the
7 costs that would have been incurred absent the issuance of the storm recovery
8 bonds and (2) that the structuring and pricing of the storm recovery bonds are
9 reasonably expected to result in the lowest storm recovery charges consistent
10 with market conditions at the time the storm recovery bonds are priced and the
11 terms set forth in such financing order.

12 **Q. HOW DO THE COMPANIES RECOMMEND ADHERING TO THESE**
13 **STATUTORY OBJECTIVES?**

14 A. As proposed in their Joint Petition, the Companies have outlined several steps
15 they will undertake in connection with the structuring, marketing and pricing of
16 the storm recovery bonds. This includes hiring a diverse group of underwriters,
17 conducting broad marketing to attract a wide array of both corporate and more
18 traditional asset backed investors, and crafting disclosure to convey the superior
19 credit quality of the storm recovery bonds. After pricing, each Company
20 intends to provide a certification that the offering of storm recovery bonds
21 provide quantifiable benefits to customers of each Company as compared to the
22 costs that would have been incurred absent the issuance of storm recovery

1 bonds and that the structuring¹² and pricing of the storm recovery bonds result
2 in the lowest storm recovery charges payable by the customers of such
3 Company consistent with market conditions at the time such storm recovery
4 bonds are priced and the terms set forth in the applicable Financing Order. The
5 Companies will not price the storm recovery bonds unless they are comfortable
6 that they can deliver the proposed certifications.

7 **Q. PUBLIC STAFF CONSULTANTS SEEM TO RECOMMEND**
8 **ESTABLISHING MORE STRINGENT LOWEST COST STANDARDS**
9 **THAN THE SECURITIZATION STATUTE PROVIDES FOR, IS THIS**
10 **CONSISTENT WITH YOUR UNDERSTANDING OF THE INTENT OF**
11 **THE SECURITIZATION STATUTE?**

12 A. No. Public Staff Consultant Fichera suggests that the Commission create a new
13 standard of the “lowest possible storm-recovery charges and the greatest
14 possible ratepayer protections,” while witness Schoenblum suggests, “lowest
15 all-in cost of funds and the lowest storm recovery charges to ratepayers,” and
16 witness Klein suggests an “unqualified lowest storm recovery charge
17 standard.”¹³ However, the Statutory Cost Objectives in the Securitization
18 Statute are clear. Therefore, to the extent that the Public Staff Consultants’

¹² The Public Staff Consultants argue that the Companies did not include in its proposed process the ability for Commission involvement in the marketing of the bonds. As I generally mentioned earlier, the Companies’ proposal was designed to be consistent with the plain language of the Securitization Statute, and Section (b)(3)b.3 excludes, from the Commission’s requirement to make findings about whether the Statutory Cost Objectives have been met, the marketing phase of the bonds. While the Companies’ lawyers have advised me that, in North Carolina, legislative intent is derived from the plain language of the statute, the Companies take no issue with and waive any objection to the Commission’s active involvement in the marketing of the bonds if that is what the Commission desires.

¹³ Fichera, at 24; Schoenblum, at 53; Klein, at 14.

1 testimony recommends that the Commission establish a standard more stringent
2 than the one established by the statute, the Commission should not agree to
3 establish one. As Public Staff witness Klein acknowledges in her testimony,
4 “there are no absolutes in this world.”¹⁴

5 Further, the Public Staff Consultants seem to suggest that a more
6 stringent lowest cost standard can be applied using the “catch-all provision”
7 provided in N.C. Gen. Stat. § 62-172(b)(3)b.12., which states that the
8 Commission may include in its financing order “[a]ny other conditions *not*
9 *otherwise inconsistent with this section* that the Commission determines are
10 appropriate.” Accordingly, the Companies’ lawyers have advised me that this
11 provision cannot be used as a “catch all” to expand the scope of the
12 Securitization Statute or create conditions in a financing order that do not
13 adhere to the plain terms and requirements of the Securitization Statute. Based
14 on this guidance and my own review of the Securitization Statute, it is my
15 opinion that the Securitization Statute very clearly establishes the precise cost
16 standard that should be applied, and applying a more stringent standard would
17 be inconsistent with the plain language of the Securitization Statute.

18 Regardless, the Companies have already proposed to certify to a lowest
19 cost standard after the pricing when the actual terms of the transaction are
20 known to demonstrate the Companies’ commitment to get as close as it

¹⁴ Klein, at 17.

1 reasonably can to such a standard. This is evident on Attachment 8 to Appendix
2 C of the Companies' proposed Financing Orders, which states the following:

3 Based on the statutory criteria and procedures, the record in
4 this proceeding, and other provisions of this Financing
5 Order, [DEC/DEP] certifies the statutory requirements for
6 issuance of a financing order and Storm Recovery Bonds
7 have been met, specifically that the issuance of the SRB
8 Notes and underlying Storm Recovery Bonds on behalf of
9 [DEC/DEP] and the imposition and collecting of storm
10 recovery charges authorized by this Financing Order provide
11 quantifiable benefits to customers of [DEC/DEP] as
12 compared to the costs that would have been incurred absent
13 the issuance of Storm Recovery Bonds and that the
14 structuring¹⁵ and pricing of the SRB Notes and underlying
15 Storm Recovery Bonds issued on behalf of [DEC/DEP]
16 result in the lowest storm recovery charges payable by the
17 customers of [DEC/DEP] consistent with market conditions
18 at the time such SRB Notes and underlying Storm Recovery
19 Bonds are priced and the terms set forth in the Financing
20 Order. (p. 3)

21 **Q. DO THE COMPANIES HAVE A LEGAL OBLIGATION TO ADHERE**
22 **TO THE STATUTORY COST OBJECTIVES?**

23 A. Of course we do and, again, on top of that we will certify that they are achieved
24 in the issuance of the bonds.

25 **Q. AS A DUKE ENERGY EMPLOYEE AND PARTICIPANT IN THE**
26 **BOND ISSUANCES, CAN YOU CERTIFY THAT THE COMPANIES**
27 **WILL ACHIEVE THE STATUTORY COST OBJECTIVES AND**
28 **ADHERE TO THE FINANCING ORDERS ONCE ISSUED?**

29 A. Yes. I can certify to that in principle. However, I will have that knowledge and
30 ability at the end of the bond issuance process utilizing the practices and

¹⁵ See *supra*, at note 12.

1 procedures we customarily use, which are standard in the utility industry and
2 the broader public debt markets.

3 **V. POST-FINANCING ORDER COMMISSION INVOLVEMENT**

4 **A. Statutory Background and North Carolina Regulatory Practice**

5 **Q. DOES THE STORM SECURITIZATION STATUTE CONTEMPLATE**
6 **COMMISSION OR INTERVENOR INVOLVEMENT POST-ISSUANCE**
7 **OF A FINANCING ORDER?**

8 A. No. I am not a lawyer, but I have read the Securitization Statute and I do not
9 see anything appearing to require that securitization be handled in this totally
10 unique way. To me, under the plain language of the Securitization Statute, the
11 financing order is the primary vehicle through which the Commission is
12 anticipated to supervise the issuance of storm recovery bonds. This approach
13 is also completely consistent with the manner in which the Commission handles
14 other topics of significance to utility customers in North Carolina. And while
15 the Companies acknowledge that the Commission has substantial discretion
16 with regard to how it implements the Securitization Statute in this case, it is my
17 opinion that the process suggested by the Public Staff Consultants is not
18 anticipated by the underlying statutory provisions.

1 **Q. BEYOND THE SECURITIZATION STATUTE, ARE YOU AWARE OF**
2 **ANY NORTH CAROLINA LAW OR RULE THAT ALLOWS THE**
3 **PUBLIC STAFF AND OTHER INTERVENORS TO DIRECTLY**
4 **PARTICIPATE IN A PUBLIC UTILITY’S DAY TO DAY ACTIVITIES,**
5 **SUCH AS BOND ISSUANCES?**

6 A. No. It is my understanding that the historic relationship between regulated
7 public utilities in North Carolina is that a publicly held utility is allowed to
8 operate as a normal corporation except with regard to where its activities touch
9 upon the public interest inherent in the provision of monopoly utility service to
10 the public. Historically, it is my understanding and experience that this
11 framework has involved preliminary approval, and supervision of, the recovery
12 of long-term debt costs, but has not involved direct transactional supervision of
13 discrete aspects of a particular debt offering, which are aspects generally left to
14 the corporations to manage.

15 **Q. IS IT COMMON NORTH CAROLINA REGULATORY PRACTICE**
16 **FOR THE COMMISSION TO BE INVOLVED IN THE DAY TO DAY**
17 **ACTIVITIES OF A PUBLIC UTILITY POST-ISSUANCE OF A FINAL**
18 **ORDER?**

19 A. No. In my opinion, the normal paradigm involved in the Commission’s
20 regulation of utilities in North Carolina is to address individual matters subject
21 to the Commission’s jurisdiction through administrative hearing procedures.
22 These typically involve filings by the utilities that initiate a proceeding followed
23 by a pre-filed testimony and evidentiary hearing process that results in a final

1 Commission order. Upon issuance of the final order in such proceedings, the
2 options available to the parties are to comply with the order, to ask for
3 reconsideration of the order, or to appeal the order to the North Carolina
4 Appellate Courts. I am not familiar with any prior proceeding where this
5 Commission has exercised active and ongoing implementation supervision of
6 corporate transactional activities after the issuance of a final order.

7 **Q. IS IT COMMON NORTH CAROLINA REGULATORY PRACTICE**
8 **FOR INTERVENORS TO BE INVOLVED IN THE DAY TO DAY**
9 **ACTIVITIES OF A PUBLIC UTILITY POST-ISSUANCE OF A FINAL**
10 **ORDER?**

11 A. No. In this regard, what has been proposed by the Public Staff Consultants in
12 this proceeding is extraordinary.

13 **Q. WHAT SECURITIES LAW LIABILITY CONCERNS DO YOU HAVE**
14 **WITH THE PROPOSAL THAT THE PUBLIC STAFF AND ITS**
15 **CONSULTANTS, OR ANY OTHER INTERVENOR NOW OR IN THE**
16 **FUTURE FOR THAT MATTER, REMAIN AN ACTIVE PART OF THE**
17 **BOND ISSUANCE PROCESS AFTER THE FINANCING ORDER IS**
18 **ISSUED IN THIS CASE?**

19 A. Under federal securities law, DEC and DEP will be the issuers of the underlying
20 bonds in this instance and as such will have all the obligations under the federal
21 securities laws with regard to such issuances. To the extent that the Public Staff
22 and its Consultants and/or other intervenors, now or in the future, remain
23 actively involved in the structuring, marketing, and pricing of bonds, the

1 Companies have concerns about how that impacts their potential liabilities
2 under the securities laws and to what extent such activities could expose the
3 Public Staff and other intervenors, now or in the future, to potential liability.

4 **B. The Companies' Initial Proposal**

5 **Q. EVEN THOUGH THE SECURITIZATION STATUTE DOES NOT**
6 **CONTEMPLATE COMMISSION OR INTERVENOR INVOLVEMENT**
7 **POST-ISSUANCE OF A FINANCING ORDER, AND DESPITE THE**
8 **CONCERNS IDENTIFIED ABOVE, DID THE COMPANIES**
9 **CONSIDER THE COMMISSION BEING INVOLVED POST-**
10 **ISSUANCE OF THE FINANCING ORDERS?**

11 A. Yes.

12 **Q. WHY DID THE COMPANIES PROPOSE THE OPTION TO THE**
13 **COMMISSION TO BE INVOLVED POST-ISSUANCE OF THE**
14 **FINANCING ORDERS?**

15 A. Because the actual structure and pricing of the bonds will not be known upon
16 the issuance of the Financing Orders, DEC and DEP believed it was not
17 unreasonable to offer the option of Commission involvement post-issuance of
18 the Financing Orders, if the Commission chose, so that it can be comfortable
19 the transaction satisfies the requirements of the Securitization Statute. The
20 Companies did not want to presume in their Joint Petition what level of post-
21 financing order involvement the Commission might ultimately wish to
22 undertake. Therefore, the Companies' proposal for the IAL process was
23 designed to allow the Commission to determine whether and to what extent it

1 wanted to be involved once the Financing Orders are issued. DEC and DEP's
2 proposal in no way seeks to limit the role of the Commission to oversee the
3 proposed transaction.

4 **Q. PLEASE DETAIL THE COMPANIES' INITIAL PROPOSAL WITH**
5 **RESPECT TO A DESIGNATED COMMISSIONER OR MEMBER OF**
6 **COMMISSION STAFF.**

7 A. The Companies proposed an IAL process that provided for a designated
8 Commissioner or member of Commission staff to be involved post-issuance of
9 the Financing Orders. The proposed IAL process additionally included
10 objectively measurable criteria by which the Commission can assess whether
11 the Statutory Cost Objectives of the proposed transactions were achieved.

12 These criteria include whether:

- 13 1) the issuance of the storm recovery bonds and imposition and
14 collection of storm recovery charges as authorized in the Financing
15 Orders provide quantifiable benefits to customers as compared to
16 the costs that would have been incurred absent the issuance of storm
17 recovery bonds; and
- 18 2) the structuring and pricing of the storm recovery bonds, including
19 the issuance of SRB Securities, resulted in the lowest storm recovery
20 charges consistent with market conditions at the time the storm
21 recovery bonds are priced and the terms set forth in the Financing
22 Orders.

1 The IAL process proposed by the Companies is similar to the IAL process used
2 in the DEF transaction.

3 **C. The Public Staff's Proposed Bond Team**

4 **Q. PLEASE DETAIL THE PUBLIC STAFF'S BOND TEAM PROPOSAL.**

5 A. The Public Staff's bond team proposal calls for the Public Staff and its
6 Consultants to be joint decision-makers with the Companies and the
7 Commission in all aspects of the proposed transaction.

8 **Q. WHAT ARGUMENTS DOES THE PUBLIC STAFF MAKE IN
9 SUPPORT OF ITS PROPOSED BOND TEAM?**

10 A. The Public Staff and its Consultants claim that they, and only themselves, are
11 working for the interest of customers with respect to the proposed transaction
12 and therefore they must be a joint decision-maker with respect to the proposed
13 transaction.¹⁶

14 **Q. DOES THE PUBLIC STAFF OR ITS FINANCIAL ADVISOR HAVE
15 ANY EXPLICIT LEGALLY BINDING FIDUCIARY OBLIGATION TO
16 CUSTOMERS?**

17 A. While the Public Staff's financial advisor claims it has an implicit fiduciary
18 obligation, the fact is that neither the Public Staff nor its financial advisor has
19 any explicit legally binding fiduciary obligation to DEC and DEP's customers.
20 For example, in response to the Companies' Data Request No. 2-33, which
21 asked "Does Saber Partners' contract with the Public Staff expressly create a

¹⁶ Direct Testimony of Brian A. Maher, at 17, Docket Nos. E-2, Sub 1262 and E-7, Sub 1243 (Dec. 21, 2020).

1 legally binding fiduciary duty to North Carolina customers or anyone else,”
2 Public Staff Consultant witness Maher objected to the question, and simply
3 referenced the following question and answer in his testimony:

4 **Q. Are you giving an opinion as to whether there is a legal**
5 **requirement of any party in this transaction to have a fiduciary**
6 **relationship?**

7 A. No. I am discussing the important issues related to whether a
8 fiduciary relationship exists and what the Commission should
9 consider in deciding how to evaluate information it receives from
10 different parties to the proposed transaction.

11 It is unclear to the Companies how the Public Staff’s Consultants repeatedly
12 claim a fiduciary duty to North Carolina utility customers with respect to the
13 securitization transaction, but simultaneously fail to testify as a matter of fact
14 that they have an actually established, legally binding fiduciary duty to North
15 Carolina utility customers.

16 **Q. DO YOU BELIEVE THE PUBLIC STAFF HAS THE LEGAL RIGHT**
17 **TO BE JOINT DECISION-MAKERS IN THE PROPOSED**
18 **TRANSACTION?**

19 A. No. It would not be appropriate for an intervenor to be a joint decision-maker
20 in any securities offering of a public utility, including this type of securities
21 offering. As noted by Public Staff witness Klein, N.C. Gen. Stat. § 62-15(d)
22 states the Public Staff has a responsibility to “[i]ntervene on behalf of the using
23 and consuming public,” but this does not mean it should be making decisions
24 on behalf of a public utility company following finalization and issuance of a
25 Commission order. Such joint decision-making authority is inconsistent with

1 Public Staff's statutory mission or its traditional role in North Carolina. In
2 addition, the Companies reviewed the record of other utility securitization
3 transactions and could not find any other examples where an intervenor had a
4 comparable joint decision-making role. Notwithstanding the testimony
5 submitted by Public Staff Consultants' witnesses and responses to discovery
6 requests, none of the Public Staff Consultants' witnesses, including witness
7 Klein, can cite an example of an intervenor being a joint decision-maker in a
8 utility securitization bond offering.

9 The structure that the North Carolina legislature selected in adopting
10 N.C. Gen. Stat. § 62-172 involves the public utility or an assignee of the public
11 utility as the issuer of the storm recovery bonds. As a result, primary securities
12 law liability and contractual liability rests with the public utility and its assignee
13 and not with the State of North Carolina or with any intervenor to the
14 proceeding. Unlike the Companies, the intervenors have no liability and
15 therefore should not be in position of any joint decision-making authority.

16 Furthermore, while the Commission and the State of North Carolina
17 have ongoing obligations pursuant to the Securitization Statute, including to
18 support the true-up mechanism and to uphold the state pledge, intervenors have
19 no such obligations or authority. Further, by allowing an intervening party –
20 even the Public Staff – to have joint decision-making authority in the
21 transaction, it is unclear to the Companies how the effect of setting that
22 precedent will impact the inclusion or exclusion of other intervening parties
23 who may want to participate in future transactions. A simple example of this

1 concern is the possibility that in a future securitization the Attorney General –
2 who is also statutorily charged with representing the using and consuming
3 public – may seek participation in decision-making but may have different goals
4 and desires than the Public Staff. The potential for disagreements between the
5 Public Staff and the Attorney General – both of whom represent the same clients
6 – is a well-known phenomenon in regulatory proceedings before the
7 Commission.

8 **Q. DO YOU BELIEVE THE STORM COST SECURITIZATION**
9 **TRANSACTION IS SIGNIFICANTLY “MORE COMPLEX” THAN**
10 **OTHER PUBLIC UTILITY TRANSACTIONS UNDERTAKEN BY DEC**
11 **AND DEP AS THE PUBLIC STAFF CONSULTANTS SUGGEST?**

12 A. No. As I explained earlier, DEC and DEP recognize and respect the unique
13 aspects of utility securitization bonds in general and more specifically the added
14 features of the proposed SRB Securities transaction. However, the Companies
15 do not accept the Public Staff Consultants’ assertion that the proposed
16 transaction is significantly “more complex” than other sophisticated debt
17 transactions undertaken by them. While the proposed transaction does involve
18 certain unique aspects and structural considerations, it is still at its most
19 fundamental level the issuance of publicly issued debt to institutional investors.
20 Moreover, the assertion that the transaction is generally “more complex” is
21 subjective and does not in and of itself evidence a need for the Public Staff
22 Consultants, or other intervenors, to be joint decision-makers in the transaction.

1 **Q. PLEASE DETAIL THE COMPANIES' EXPERIENCE AS ISSUERS IN**
2 **THE PUBLIC DEBT MARKETS.**

3 A. As I briefly referenced earlier, DEC and DEP, their affiliates, and parent
4 company are frequent issuers in the public debt markets. Any implication by
5 the Public Staff Consultants that Duke Energy is not a sophisticated market
6 participant or does not know how to evaluate securities offerings and challenge
7 its underwriting banks is without merit and baseless. Given his 40 years of
8 experience covering the U.S. utilities sector in general and Duke Energy in
9 particular¹⁷, I think Public Staff Consultants witness Barry M. Abramson would
10 agree that Duke Energy's depth of experience with issuing public debt and the
11 related selection of underwriters and other transaction participants has not been
12 questioned in any of its regulated jurisdictions. In addition, through DEC and
13 DEP affiliate DEF's 2016 transaction, Duke Energy's treasury team, which
14 included me, have direct and relevant experience with the issuance of utility
15 securitization bonds. Further, we have already engaged several key participants
16 in DEF's 2016 transaction team, who are participating in DEC and DEP's
17 proposed transaction including Hunton Andrews Kurth LLP as issuer counsel,
18 Guggenheim Securities, LLC as co-advisor (who was recommended by Saber
19 Partners, LLC in the DEF transaction), and Paul, Weiss, Rifkind, Wharton &
20 Garrison LLP as structuring advisor counsel and also eventually underwriter
21 counsel (again by recommendation of Saber Partners, LLC in the DEF

¹⁷ Direct Testimony of Barry M. Abramson, at 3-4, 11, Docket Nos. E-2, Sub 1262 and E-7, Sub 1243 (Dec. 21, 2020).

1 transaction). Based on these collective factors, DEC and DEP's intention to
2 structure and market their proposed transaction in much the same manner as
3 DEF's 2016 transaction, and the active role permitted to a designated
4 Commissioner or member of Commission staff, if the Commission desires, as
5 outlined in the Joint Petition and further addressed in the remainder of my
6 rebuttal testimony will ensure the proposed transaction meets the Statutory Cost
7 Objectives.

8 In addition, since the beginning of 2019, DEC and DEP have issued a
9 combined total of \$3.6 billion in the public debt market across seven tranches
10 of debt. Every one of these tranches were allocated to an average of over 65
11 unique investor accounts, with one of the tranches allocated to 105 unique
12 accounts. By comparison, DEC and DEP affiliate DEF's 2016 securitization
13 issuance allocated \$1.294 billion across five tranches to 56 unique accounts. It
14 is evident that DEC and DEP have a demonstrated track record of broad
15 investors outreach and marketing and have no incentive or intention to operate
16 outside of our customary business practices.

17 **Q. WHAT HAS BEEN THE COMMISSION'S INVOLVEMENT IN THESE**
18 **TRANSACTIONS?**

19 A. The Commission, on a preliminary basis, authorized the issuance of the debt
20 and required reporting of the details of the terms of the debt issuances but
21 otherwise played no role in negotiating or issuing the actual instruments.

1 **Q. DID THE COMPANIES CONSIDER CUSTOMERS' INTERESTS**
2 **DURING THESE TRANSACTIONS?**

3 A. Yes, of course. The Companies are keenly aware that the costs of their debt
4 issuances are subject to ultimate recovery from customers and it is not in the
5 Companies' best interests to do anything that unnecessarily adds to the
6 cumulative costs of electric service that their customers must pay. This is as
7 true of their past issuances as it is of the current pending bond transactions.
8 Further, the Companies strongly reject any assertion from the Public Staff
9 Consultants that DEC or DEP would enter into any transaction without due
10 consideration of the transaction's impact on their customers or without
11 considering their customers' perspectives.

12 **D. Adoption of a Bond Team at Commission Discretion**

13 **Q. DID THE PUBLIC STAFF LOOK TO THE DEF 2016**
14 **SECURITIZATION PROCEEDING AS PRECEDENT FOR THIS**
15 **NORTH CAROLINA PROCEEDING AND THEIR BOND TEAM**
16 **PROPOSAL?**

17 A. Yes. Witness Joseph S Fichera references the DEF transaction extensively¹⁸
18 and other Public Staff Consultants reference it as well. That being said, Public
19 Staff Consultants do not describe the bond team or joint decision-making
20 authority from Florida accurately. To start with, witness Fichera incorrectly

¹⁸ See, e.g., Fichera, at 28; Abramson, at 11; Klein, at 11, Exhibit 2, Exhibit 4; Maher, at 12-13, Exhibit 1; Schoenblum, at 11, 27-28, 31, Exhibit 1; Sutherland, at 12-13, Exhibit 7; Direct Testimony of Steven Heller, President of Analytical Aid – Saber Partners, LLC, at 11, 14, Docket Nos. E-2, Sub 1262 and E-7, Sub 1243 (Dec. 21, 2020).

1 states that DEF did not propose bond team in Florida. To clarify the record,
2 DEF's proposed financing order attached to its petition stated, "[the]
3 Commission, as represented by a designated Commissioner, designated
4 Commission Staff, the Commission's financial advisor, and the Commission's
5 outside legal counsel (if any), shall be actively involved in the bond
6 issuance...as part of a Bond Team that also includes DEF, its financial advisor
7 or underwriter(s), and its outside counsel(s), in the structuring, marketing, and
8 pricing of each series of nuclear asset-recovery bonds."¹⁹

9 In addition, the bond team did not have joint decision-making authority
10 with DEF. Instead, a designated representative from DEF and a designated
11 representative of the Commission were joint decision-makers. Finally, witness
12 Fichera incorrectly describes the role of the Commission to resolve disputes.²⁰
13 Witness Fichera testified that a designated commissioner was selected to
14 resolve bond team disputes, but the process was only limited to resolving
15 disputes among the joint decision-makers, not disputes among the entire bond
16 team.²¹

¹⁹ See Duke Energy Florida, Inc.'s Petition for a Financing Order and Motion to Consolidate, at 28, Docket No. 150171-EI (July 27, 2015).

²⁰ Fichera, at 31.

²¹ See Florida Public Service Commission's Financing Order No. PSC-15-0537-FOF-EI, at 58, Ordering ¶ 67, Docket No. 150171-EI (Nov. 19, 2015) ("Florida Financing Order").

1 **Q. TO CLARIFY, IS THE PUBLIC STAFF CONSULTANTS' PROPOSAL**
2 **FOR A BOND TEAM ACTUALLY INCONSISTENT WITH THE DEF**
3 **BOND TEAM PROPOSAL IT RELIES UPON AS PRECEDENT FOR**
4 **ITS PROPOSAL?**

5 A. Yes. The Public Staff Consultants' proposal for a bond team goes beyond the
6 bond team used in the DEF transaction by recommending an intervening party,
7 the Public Staff, be included as a member of the Bond Team and have joint
8 decision-making authority. Membership on the DEF bond team was limited to
9 DEF and its financial advisor and designees of the Florida Public Service
10 Commission, including their financial advisor (i.e., Saber Partners, LLC).²²
11 Bond team membership was not extended to any intervening party to the
12 financing proceeding. Representatives of the customer advocate (Office of
13 Public Counsel) were invited to and joined certain of the bond team calls as a
14 courtesy, however, they were not part of the bond team and did not have a
15 formal role in the post-financing order stage of the DEF transaction. Other
16 transaction participants (legal counsel, underwriters, etc.) were also invited to
17 participate in the bond team calls but none of these parties were members of the
18 bond team. Furthermore, as noted above, there was no joint decision-making
19 authority among all of the members of the DEF bond team, it was limited to the
20 designated representative of DEF and designated representative of the Florida
21 Public Service Commission.

²² Florida Financing Order, at 54, Ordering ¶ 38.

1 In the Public Staff Consultants’ response to the Companies’ Data
2 Request No. 2-4, the Consultants seemed to intentionally try to make the DEF
3 bond team broader than it actually was by stating “[i]n the 2016 nuclear asset-
4 recovery bond transaction for DEF, however, Florida PSC’s financing order
5 established a [b]ond [t]eam consisting of DEF and its designated advisors, the
6 Florida PSC and its designated advisors, legal counsel, and representatives to
7 oversee and approve post-financing order decisions concerning the structuring,
8 marketing and pricing of those securitized bonds.” This is simply incorrect.
9 The DEF financing order actually states “DEF, its structuring advisor, and
10 designated Commission staff and its financial advisor will serve on the Bond
11 Team.” Regarding decision-making authority, the DEF financing order states
12 “[o]ne designated representative of DEF and one designated representative of
13 the Commission shall be joint decision makers for all matters concerning the
14 structuring, marketing, and pricing of the bonds except for those
15 recommendations that in the sole view of DEF would expose DEF or the SPE
16 to securities law and other potential liability (i.e., such as, but not limited to, the
17 making of any untrue statement of a material fact or omission to state a material
18 fact required to be stated therein or necessary in order to make the statements
19 made not misleading) or contractual law liability (e.g., including but not limited
20 to terms and conditions of the underwriter agreement(s)).”

1 **Q. WHAT IS THE POINT YOU WANT THE COMMISSION TO DERIVE**
2 **FROM YOUR EXPLANATION OF THE CONSTRUCT OF THE DEF**
3 **BOND TEAM?**

4 A. In the event the Commission decides to weigh the applicability of the construct
5 of the DEF bond team model to the Companies' proposed transaction in this
6 case, I want to make clear to the Commission that the Public Staff Consultants
7 did not accurately explain the construct of the DEF bond team, which the Public
8 Staff Consultants heavily rely on in their testimony. My explanation further
9 highlights the point I made earlier that the composition of the bond team the
10 Public Staff Consultants are recommending in these cases has not been adopted
11 in any utility securitization anywhere in the country of which I am aware,
12 including in the referenced DEF transaction.

13 **Q. ARE THE COMPANIES WILLING TO ADOPT THE DEF BOND**
14 **TEAM MODEL?**

15 A. Yes. While the Companies believe this is ultimately a decision for the
16 Commission, the Companies would support a Bond Team comprised of the
17 Companies, their advisor(s) and counsel, and a designated Commissioner or
18 member of Commission staff, including any independent consultants or counsel
19 hired by the Commission to ensure that the structuring, marketing²³, and pricing
20 of the storm recovery bonds will achieve the Statutory Cost Objectives. As I

²³ See *supra*, at note 12.

1 stated above, this is consistent with the bond team approach used in DEF's
2 transaction.

3 **Q. UNDER THIS MODEL, WHO WOULD HAVE DECISION-MAKING**
4 **AUTHORITY?**

5 A. Similar to the DEF transaction, a designated representative of the Companies
6 and a member of the Commission or Commission staff, as a designated
7 representative of the Commission, would be joint decision-makers in all aspects
8 of the structuring, marketing, and pricing of the storm recovery bonds except
9 for those recommendations that in the sole view of the Companies would
10 expose either Company or any SPE to liability. Pursuant to federal securities
11 laws, the Companies, in their role as "sponsors" and "depositors", have strict
12 liability for the accuracy of disclosure documents including the prospectus for
13 the storm recovery bonds and any other materials and information delivered to
14 investors. No other parties to the proposed transaction have this liability.
15 Therefore, the Companies must have final say over these items.

16 Like in Florida, the Companies and a member of the Commission or
17 Commission staff, as a designated representative of the Commission and its
18 outside consultant or counsel, as bond team members, excluding the
19 Companies' structuring advisor, would also have equal rights on the hiring
20 decisions for the underwriters. However, the Companies would like to retain
21 their right to select and engage any counsel for the Companies, the SPEs and
22 the underwriters.

1 **Q. PUBLIC STAFF CONSULTANTS RECOMMEND THE COMMISSION**
2 **ENGAGE A FINANCIAL ADVISOR; DO YOU AGREE?**

3 A. Ultimately this is a question for the Commission. If the Commission feels that
4 it will be beneficial to engage an outside consultant to assist the Commission in
5 connection with making determinations under the Securitization Statute, there
6 are several firms that have experience advising utility commissions in offerings
7 of utility securitization bonds. The Companies understand, from reviewing
8 prior utility securitization financing orders and transactions, that firms such as
9 Drexel Hamilton, Ducera Partners, Hilltop Securities (formerly First
10 Southwest), Oxford Advisors, and Public Financial Management Company
11 have advised other commissions on current or previous utility securitization
12 transactions. The Companies also believe that larger financial institutions such
13 as, but not limited to, Goldman Sachs, Morgan Stanley, and JP Morgan may
14 have advisory capabilities.

15 **Q. CAN OTHER PARTIES, INCLUDING THE PUBLIC STAFF AND ITS**
16 **CONSULTANTS, PARTICIPATE IN THE STRUCTURING,**
17 **MARKETING, AND PRICING OF THE BONDS UNDER THIS**
18 **MODEL?**

19 A. While they would not be formal members of the Bond Team, the Companies
20 are not opposed to the underwriters or the Public Staff and its Consultants being
21 invited to join all Bond Team meetings. Discussion among the Bond Team, the
22 underwriters and Public Staff will allow for multiple voices and suggestions
23 about the best way to structure, market, and price the storm recovery bonds.

1 Companies witness Atkins further elaborates on this concept.

2 **E. Certification**

3 **Q. PUBLIC STAFF CONSULTANTS ARE PREPARED TO OFFER AN**
 4 **“INDEPENDENT” CERTIFICATION THAT THE TRANSACTION**
 5 **MEETS THE STATUTORY REQUIREMENTS IF THE COMMISSION**
 6 **DESIRES. IS THIS CONSISTENT WITH THE DEF MODEL?**

7 A. No, it is not. Certifications for the DEF transaction were provided by DEF, the
 8 Florida Public Service Commission’s advisor, and the lead underwriters.

9 **Q. DO YOU BELIEVE ANY CERTIFICATION BY A PARTY OTHER**
 10 **THAN THE COMPANIES IS NECESSARY?**

11 A. No. Unlike the Florida transaction referenced by the Public Staff Consultants
 12 witnesses, where DEF was only obligated to certify that “the structuring, pricing
 13 and financing costs of the [securitization] bonds and the imposition of the
 14 proposed [securitization] charges have a *significant likelihood of resulting in*
 15 *lower overall costs or significantly mitigate rate impacts to customers* as
 16 compared with the traditional method of financing and recovering
 17 [securitization] costs,” the Companies are proposing in connection with the IAL
 18 to certify to a higher standard that, based on the actual results after pricing, the
 19 structuring and pricing²⁴ of the SRB Securities and underlying storm recovery
 20 bonds issued on behalf of DEC and DEP result in the *lowest storm recovery*
 21 *charges* payable by the customers of DEC and DEP consistent with market

²⁴ For the reasons explained above, the Companies do not object to certifying that the marketing phase of the bond issuance met the Statutory Cost Objectives as well.

1 conditions at the time such SRB Securities and underlying storm recovery
2 bonds are priced and the terms set forth in the Financing Orders. As such, it is
3 unclear what value an additional certification could provide that is not already
4 covered by the Companies' proposed certification. To the extent, however, the
5 Commission wishes to obtain a certificate from an independent outside
6 consultant, like the DEF transaction, acceptance of the IAL should not be
7 conditioned on the delivery of certifications from parties other than the
8 Companies.

9 **VI. PUBLIC STAFF ACCOUNTING ADJUSTMENTS**

10 **Q. ARE THERE ANY ACCOUNTING RECOMMENDATIONS MADE BY**
11 **THE PUBLIC STAFF THAT YOU WANT TO ADDRESS?**

12 A. Yes. Public Staff witnesses Michael C. Maness and Michelle M. Boswell
13 jointly propose that the Companies' capital contributions to each respective
14 SPE should be limited to the actual investment return earned by the SPEs on
15 that contribution. Public Staff witnesses Maness and Boswell also recommend
16 that adjustments to on-going financing costs be subject to future prudence
17 reviews by creating a corresponding regulatory liability for the purposes of
18 providing a credit to customers for adjustments the Public Staff deems to be
19 imprudently incurred. I explain why such a proposal is unprecedented, not
20 contemplated by the structure of, and inconsistent with, the Securitization
21 Statute.

22 Finally, Public Staff witnesses Maness and Boswell propose that over-
23 recoveries of up-front financing costs should be credited back to customers

1 through use of a deferred regulatory liability and subsequent credit to the
2 Companies' cost of service, in each of the Companies' next general rate cases.
3 Companies witness Abernathy provides a detailed summary of the Public
4 Staff's testimony on this issue, which I will not recite here, and briefly explains
5 why the Public Staff's proposal makes little sense from a ratemaking
6 perspective given the separation between the Companies and each SPE. I
7 further expand on the need for and nature of that separation below.

8 **A. Return on Capital Contribution**

9 **Q. DO YOU AGREE WITH PUBLIC STAFF WITNESSES MANESS AND**
10 **BOSWELL THAT THE COMPANIES' RETURN ON ITS CAPITAL**
11 **CONTRIBUTIONS SHOULD BE LIMITED TO THE ACTUAL**
12 **RETURN ON FUNDS IN THE COLLECTION ACCOUNTS?**

13 A. No. The Companies are entitled to earn a return on their equity capital
14 contributions to these proposed transactions commensurate with the level of
15 return a regulated utility is otherwise entitled to earn on its equity capital
16 investments. For this reason, the Companies believe that their proposed level
17 of return, equal to the interest rate of the longest maturity bond, is reasonable,
18 justified, and consistent with the recommendation of Saber Partners, LLC in the
19 DEF transaction.

20 The Companies' cash investment deposited into the capital account is
21 not released to the Companies until after the last payment of the longest tranche
22 of bonds is paid in full, which will be at least 15 years from now and perhaps
23 longer if the Commission decides to extend the maturity of the bond to 20 years

1 as the Public Staff has proposed. If the Companies were investing this capital
2 in assets that would be added to their respective rate base and amortized over a
3 similar period, it would be entitled to a return at its weighted average cost of
4 capital (“WACC”). However, here, the Companies are actually asking for a
5 level of return that is *less* than its WACC. In fact, the market interest rate on
6 the longest tranche is based upon the weighted average of that tranche, not the
7 market rate for a “bullet” payment that matches the final payment of the longest
8 tranche. As a result, the return proposed to be earned by the Companies is less
9 than a market rate for the date the equity contribution is expected to be returned
10 to the Companies. The plain fact is that the Companies are investing millions
11 of dollars into entities, for the quantifiable benefits for its customers, that will
12 not be returned for potentially two decades. To compensate the Companies for
13 the lost opportunity to invest that capital in assets that would yield a higher
14 return, the Companies are seeking a return that is less than its WACC but higher
15 than what the Public Staff has proposed. Moreover, the Companies are aware
16 that the DEF transaction allowed and utilized the same return proposed by the
17 Companies here. For these reasons, the Companies ask that the Commission
18 allow the Companies to earn its requested return on its capital contributions.

1 **B. On-going Financing Costs**

2 **Q. PLEASE REMIND THE COMMISSION WHAT ON-GOING**
3 **FINANCING COSTS ARE AND HOW THE COMPANIES PROPOSE**
4 **TO ACCOUNT FOR THEM.**

5 A. As I explain in my direct testimony, there will be on-going expenses that will
6 be incurred by each SPE throughout the life of the storm recovery bonds to
7 support its ongoing operations. These on-going financing costs include
8 servicing fees; administration fees; accounting and auditing fees; regulatory
9 fees; legal fees; rating agency surveillance fees; trustee fees; independent
10 director or manager fees; and other miscellaneous fees associated with the
11 servicing of the storm recovery bonds. Of these on-going financing fees, the
12 largest is the servicing fee, which is approved in the Financing Orders at 0.05%
13 of the initial aggregate principal amount of the storm recovery bonds so long as
14 DEC or DEP, as applicable, or a successor utility is the servicer. Additionally,
15 the administration fee is approved by the Commission in the Financing Orders.
16 The remaining fees are *de minimis* amounts owed to third parties to maintain
17 the structure of the bonds. The SPE's sole source of funds are the storm
18 recovery charges collected from customers. To ensure the amount of storm
19 recovery charges collected for each payment period is sufficient to pay the
20 principal and interest on the storm recovery bonds and the on-going financing
21 costs, they are factored into each true-up adjustment.

1 **Q. PLEASE DESCRIBE THE PUBLIC STAFF'S PROPOSAL**
2 **REGARDING ON-GOING FINANCING COSTS.**

3 A. In contrast to the Companies' recommendation, the Public Staff recommends
4 that adjustments to on-going financing costs that are paid from the storm
5 recovery charges be matched with an offsetting regulatory asset or liability in
6 the Companies' traditional ratemaking cost of service to create a link to adjust
7 the Companies' cost of service in a future general rate case proceeding upon
8 subsequent audit for prudence review of such adjustments.

9 **Q. SHOULD THE COMMISSION REJECT THE ACCOUNTING**
10 **TREATMENT FOR ON-GOING FINANCING COSTS PROPOSED BY**
11 **THE PUBLIC STAFF?**

12 A. Yes. The structure of securitization is simply not designed to work this way
13 and the proposed audit and prudence review is inconsistent with the
14 Securitization Statute. Other than the servicing fee and administration fee
15 payable to DEC or DEP, as applicable, which are approved upfront in the
16 Financing Orders, the remaining costs are third party costs incurred to support
17 the structure. These types of costs are approved in the Financing Orders and
18 IAL, and future adjustments are generally not subject a prudence review over
19 the life of the transaction. The Companies are concerned with the Public Staff's
20 proposed treatment because it is a negative factor in the separateness analysis
21 between the SPE and the Company, which owns the member interest in the
22 SPE. The on-going financing costs are the costs of the SPE, not costs of the
23 applicable utility. Furthermore, witnesses Maness and Boswell improperly

1 suggest that the Commission should authorize a new audit process that expands
2 both the time and scope of the review permitted by the Securitization Statute.
3 The statute states that any review of an adjustment filing be limited to
4 mathematical and clerical errors and the Commission must inform the
5 Companies of such errors within 30 days of the filing, so their proposal is
6 inconsistent with the plain meaning of the statute.

7 While the Companies are more than willing to provide the details of on-
8 going financing costs to the Public Staff to be able to check for mathematical
9 or clerical errors in connection with each true-up adjustment, as the statute
10 specifically contemplates, the on-going financing costs should not themselves
11 be subject to the type of prudence review and cost of service impacts
12 contemplated by the Public Staff.

13 **C. Over-Recovery of Up-front Financing Costs**

14 **Q. DO YOU AGREE WITH COMPANIES WITNESS ABERNATHY THAT**
15 **THE PUBLIC STAFF'S PROPOSAL TO ESTABLISH A**
16 **REGULATORY LIABILITY TO POTENTIALLY ADJUST THE**
17 **COMPANIES' COST OF SERVICE IN THEIR NEXT GENERAL RATE**
18 **CASES FOR ANY OVER-RECOVERY OF UP-FRONT FINANCING**
19 **COSTS DOES NOT MAKE SENSE FROM A REGULATORY**
20 **PERSPECTIVE?**

21 **A.** Yes. My discussion above regarding the separateness of the Companies and the
22 SPEs in the context of ongoing financing costs applies here too. If there is an
23 over-collection of up-front financing costs, then it is the SPE – not the

1 BY MR. JEFFRIES:

2 Q Mr. Heath, have you prepared a summary of your
3 prefiled direct and rebuttal testimonies?

4 A Yes, I have.

5 Q Could you please provide that for the Commission,
6 please?

7 A Sure. Good morning, Commissioners. My name is
8 Thomas Heath and I am a Structured Finance
9 Director from Duke Energy Corp. I'm pleased to
10 appear before you today to discuss the Petition
11 for storm recovery financing orders for Duke
12 Energy Carolinas and Duke Energy Progress, which
13 I will refer to collectively as "the Companies".

14 In my direct testimony, I present
15 the Companies' proposal to use storm recovery
16 bonds to finance storm recovery costs as
17 permitted by the Securitization Statute and to
18 provide an estimate of upfront and ongoing
19 financing costs. The Companies request that the
20 Commission approve the issuance of storm recovery
21 bonds to finance the full amount of the Companies
22 storm recovery costs related to Hurricanes
23 Florence, Michael, and Diego and winter -- or
24 Florence, Michael, and Dorian and Winter Storm

1 Diego.

2 The Statutory Cost Objectives of
3 the Securitization Statute of providing
4 quantifiable benefits to customers and
5 structuring and pricing the bonds to result in
6 the lowest storm recovery charges consistent with
7 market conditions at the time the bonds are
8 issued are clear, and the Companies have proposed
9 a financing structure that meets these objectives
10 and provides significant savings for DEC and DEP
11 customers compared to traditional base-rate
12 recovery. The Companies have proposed options to
13 either issue bonds separately for DEC and DEP or
14 in a combined structure, which the Companies
15 believe are expected to attract greater investor
16 attention and provide consistent bond terms and
17 pricing for both DEC and DEP customers. These
18 options are intended to permit flexibility for
19 the offerings to achieve the Statutory Cost
20 Objectives; and it is important to note that no
21 decision has been made to date as to exactly what
22 structure will be utilized in the proposed
23 transaction.

24 My rebuttal testimony responds to

1 recommendations proposed by the Public Staff
2 consultants, clarifies the requirements of the
3 Securitization Statute, explains how the
4 Companies' proposals are consistent with the
5 Statutory Cost Objectives, and provides
6 alternative recommendations regarding
7 post-financing order procedures.

8 The Companies' -- or rather the
9 Public Staff's testimony was primarily focused on
10 ensuring a continuing and, by historic standards,
11 an unprecedented and extraordinarily active role
12 for the Public Staff in the post-financing order
13 structuring, marketing, and pricing process for
14 the storm recovery bonds. The Companies have
15 significant concerns with an arrangement that
16 allows an intervening party, even the Public
17 Staff, to have a decision-making role in a
18 financial transaction that, by statute, is
19 required to be performed by the Companies,
20 decided by the Companies, and executed by the
21 Companies.

22 In the event the Commission
23 decides to weigh the applicability of the
24 construct of the Duke Energy Florida, or DEF,

1 bond team model to the Companies' proposed
2 transaction in this case, I make it clear to the
3 Commission that the Public Staff consultants did
4 not accurately explain the construct of the DEF
5 bond team which they heavily rely upon in their
6 testimony. While the Companies believe this is
7 ultimately a decision for this Commission, the
8 Companies would support a bond team consistent
9 with the DEF bond team which would be comprised
10 of the Companies, their advisors and counsel, and
11 a designated Commissioner or member of Commission
12 staff including an independent, any independent
13 consultants or counsel hired by the Commission
14 itself to ensure that the structuring, marketing,
15 and pricing of the storm recovery bonds will
16 achieve the Statutory Cost Objectives.

17 Commissioners, I want to make
18 clear that the Companies particularly reject the
19 notions, which are often repeated in the Public
20 Staff consultant's testimony, that DEC and DEP
21 are presumptively unsuited or would have anything
22 other than their customers' best interests at
23 heart and mind during this process. The
24 Companies are keenly aware that the cost of all

1 of their debt issuances are subject to ultimate
2 recovery from their customers and it is not in
3 the Companies' best interest to do anything that
4 would unnecessarily add to the cumulative cost of
5 electric service that their customers must pay.
6 This is as true of their past issuances as it is
7 of the proposed transactions, and our record --
8 our track record of prior bond issuances speak
9 for themselves. After all, the fundamental
10 purpose of securitization is to lower customer
11 costs. And, with this in mind, the Companies
12 have put together an indicative structure that,
13 based on market conditions as of early October
14 2020, would save DEC customers two hundred and
15 fifty -- sorry -- DEC customers \$57.5 million and
16 DEP customers \$216.2 million over a 15-year
17 period, that's over a 30 percent savings when
18 compared to the traditional method of recovering
19 storm costs through base electric rates.
20 Further, the Companies have proposed to certify
21 to this Commission through the Issuance Advice
22 Letter or otherwise, that the bonds meet the
23 Statutory Cost Objectives, and we take that
24 willingness to certify very seriously.

1 Lastly, the Public Staff
2 consultants have proposed so-called "best
3 practices" related to utility securitization
4 transactions and implied that the Companies'
5 proposed transaction is deficient because it does
6 not include these so-called "best practices".
7 The facts, however, are that many of these
8 recommended practices have already been
9 incorporated into the Companies' proposed
10 financing orders and transaction documents. The
11 Companies believe that the additional recommended
12 best practices of the Public Staff consultants
13 are not appropriate for the proposed transactions
14 in these dockets as they do not adhere to the
15 Securitization Statute and deviate from
16 established North Carolina regulatory practices.

17 Since the filing of my rebuttal
18 testimony, it is my understanding that the
19 Companies and the Public Staff have reached a
20 settlement regarding ongoing financing costs and
21 capital contributions among other things. I'm
22 happy to address any questions the Commission may
23 have regarding the Settlement Agreement and these
24 agreed-upon issues.

1 This concludes my testimony
2 summary.

3 Q Thank you, Mr. Heath.

4 MR. JEFFRIES: Mr. Heath is available for
5 cross examination and questions by the Commission.

6 CHAIR MITCHELL: All right. Mr. Grantmyre,
7 Mr. Creech, you may proceed.

8 MR. CREECH: Good morning, again, Madam
9 Chair. Thank you, Mr. Jeffries.

10 CROSS EXAMINATION BY MR. CREECH:

11 Q And good morning, Mr. Heath. How are you? Can
12 you hear me?

13 A I'm doing well today. Yes, I'm doing well today.
14 Thank you.

15 Q Good, good, good. Well, we're doing combined
16 cross on your direct and your rebuttal testimony
17 today, and so we'll start with your direct, but
18 we may move around a little bit. But let's start
19 with your direct.

20 One of the purposes that you state
21 in your direct on pages 3 and 4 is to support the
22 Joint Petition of the Companies. And I was
23 hoping we could briefly turn to the Petition just
24 for a moment as a preliminary matter.

1 A Sure. No problem. I've got it before me, so I'm
2 ready whenever you are.

3 Q Great. On the first page of the Petition, it
4 indicates a rationale for the Petition and ends
5 with "The Companies estimate that securitization
6 of the respective storm recovery costs will
7 result in expected customer savings of 32 percent
8 for DEC customers and 33 percent for DEP
9 customers"; is that correct?

10 A I believe that is correct.

11 Q Page 1.

12 A I was looking at my testimony, sorry, not the
13 Petition. I believe that is correct though.
14 Yes.

15 Q And to be clear, there's not just a customer
16 benefit here, however, the Companies benefit too,
17 including the Companies get paid back sooner and
18 in full instead of having to await the Companies'
19 next rate cases and this debt cannot be
20 considered corporate debt of the Utilities by the
21 Commission except for federal income tax
22 purposes, correct?

23 A That is correct.

24 Q And, of course, it's the ratepayers who pay back

1 these bonds, which is why you've heard them
2 referred to as ratepayer-backed bonds, correct?

3 A That is correct, but I would also clarify that,
4 as I mentioned in my testimony summary, that
5 customers are ultimately responsible for paying
6 back principal and interest on all of our debt,
7 whether it's securitization debt or our first
8 mortgage bonds.

9 Q And the Joint Petition, the Companies, I think
10 you mentioned, are proposing \$1 billion in bonds
11 and that's approximately -- that's to reimburse
12 -- a quarter reimbursement back to DEC and
13 three-fourths back to DEP; is that right,
14 approximately?

15 A Approximately, yes.

16 Q All right. Now, let's turn to page 10 of the
17 Joint Petition if we can, please, and Section 13
18 on page 10.

19 A Yeah.

20 Q Okay. We're not going to do a lot of reading
21 today, because I know that's not preferred, but I
22 would ask, because I think it's important and for
23 our discussion today, that you please read the
24 first sentences there, the first eight lines

1 finishing in "base rates", if you will.

2 A Okay. I'm on the Joint Petition, but Number 13,
3 is that right, under the offering of and sale of
4 bonds?

5 Q It's on page 10, Section 13, paragraph 13.

6 A All right. Hang on.

7 (Witness peruses documents).

8 I have -- hang on just a second.

9 Okay. I'm there finally. Sorry about that.

10 Q No, no. Thank you. Would you mind reading the
11 first eight lines there down to ending the
12 sentence "base rates"?

13 A Sure. *On November 6, 2019, SB 559 was signed*
14 *into law, establishing N.C. General Statutes*
15 *§ 62-172 to create a new financing tool to allow*
16 *utilities the ability to securitize certain storm*
17 *recovery costs. Securitization is a process by*
18 *which the storm recovery costs, which the*
19 *Companies are entitled to recover, are not*
20 *financed directly by the Companies at their*
21 *overall cost of capital. Instead, securitization*
22 *makes use of relatively low-cost bonds, which are*
23 *secured by an irrevocable right to bill,*
24 *collect -- bill and collect storm recovery*

1 *charges and certain periodic adjustments to such*
2 *charges. The storm recovery charges are separate*
3 *and distinct from the Companies' base rates.*

4 Q Thank you. Thank you, Mr. Heath. And then the
5 next sentence, I won't have you read it, but the
6 next sentence indicates that the issuer of the
7 bonds will be a bankruptcy-remote special purpose
8 entity, which we refer to as an SPE; is that
9 correct?

10 A That is correct.

11 Q And so DEC and DEP themselves will not
12 technically be the issuers of the bonds, but
13 rather a bankruptcy-remote SPE or SPEs, correct?

14 A True. The SPEs are the issuer, but Duke Energy
15 Carolinas and Duke Energy Progress will be
16 co-registrants on the registration statement.

17 Q And let's do just finish reading the very -- the
18 remainder of that section if you will and I think
19 we'll be done, starting "because".

20 A Sure. *Because of the nature of the storm*
21 *recovery property pledged to support the storm*
22 *recovery bonds, the securitization process*
23 *results in the issuance of highly-rated bonds,*
24 *usually AAA or equivalent rated, to raise the*

1 *capital necessary to reimburse an electric*
2 *utility for its previously incurred storm*
3 *recovery costs and to pay the associated*
4 *financing costs related to issuing the bonds and*
5 *maintaining the structure to ensure timely*
6 *payment of debt service on the bonds. This*
7 *approach makes it possible to reduce each*
8 *Companies' overall revenue requirement associated*
9 *with storm recovery costs thereby reducing costs*
10 *to customers. The revenue requirement is lower*
11 *because the securitization results in a lower*
12 *cost method of financing storm recovery costs in*
13 *comparison to traditional cost recovery and*
14 *ratemaking methods.*

15 Q Thank you. And then let's move onto -- in the
16 Petition to page 25 if we can. And there's a
17 heading there that says "Securitization
18 Benefits."

19 A I'm there.

20 Q Okay. And actually let's turn onto the next
21 page, page 26 and Section 46, and you see the
22 sentence --

23 A I'm there.

24 Q Do you see the sentence there that indicates that

1 the Storm Securitization Statute "requires the
2 Commission to find that the proposed structure
3 and pricing of the storm recovery bonds are
4 reasonably expected to result in the lowest storm
5 recovery charges consistent with market
6 conditions at the time the storm recovery bonds
7 are priced and the terms of the Financing
8 Orders"? Do you see that?

9 A Yes, I see that. I do see that.

10 Q Will you read the sentence right after that
11 starting with "the final structure"?

12 A "The final structure and terms of the storm
13 recovery bonds will be determined shortly before
14 their issuance, in accordance with the Financing
15 Orders. As described in the" --

16 Q That's good.

17 A Okay.

18 Q Okay. Sorry about that. But I guess -- so we
19 will not know the final structure and terms in
20 pricing of the bonds at the time of any financing
21 order; isn't that correct? Is that correct?

22 A That is correct.

23 Q Okay. Now, let's turn to page 27 of the Joint
24 Petition if we can. It's the next page and

1 Section 48.

2 A I'm there.

3 Q And the first sentence there says "To maximize
4 the benefits from securitization for customers,
5 it is necessary to obtain AAA-equivalent credit
6 ratings of the storm recovery bonds and, if
7 applicable, the SRB Securities"; isn't that
8 correct?

9 A That is correct.

10 Q And you'd agree that there are some very specific
11 requirements that must be met for these bonds to
12 achieve AAA rating and among them are some of the
13 items listed right in that next sentence which
14 are not, you know, number one, nonbypassability;
15 number three, a mandatory true-up mechanism;
16 four, the requirement that the Commission not
17 amend or terminate the Financing Orders; six, a
18 statutory pledge that neither the State nor the
19 Commission will impair the rights of the storm
20 recover bond holders. Is that correct?

21 A That is correct. Yes.

22 Q Okay. And then finally we'll move on from the
23 Petition here momentarily. Let's just turn to
24 page 20 -- back to page 20. There's a chart

1 there, kind of a flow chart, that says *Structure*
2 *of Issuance*.

3 A Yes, I'm there.

4 Q All right. And on the left-hand side there we
5 see DEC, the Duke Energy Carolinas, on the
6 right-hand side Duke Energy Progress. And really
7 the point there is that DEC can create a SPE of
8 its own and DEP can create a SPE of its own and
9 potentially come together, there at the bottom
10 that fourth box down I suppose, to issue them
11 jointly and that's what the Companies are asking
12 for flexibility for in this Petition; is that
13 correct?

14 A Yes, flexibility, but the flexibility is not just
15 for that structure. It could be for the SRB
16 structure. It could be for separate issuances
17 for DEC and DEP either at the same time or
18 separated in time. Yeah. But it's about
19 flexibility for the best option to achieve the
20 Statutory Cost Objective.

21 Q All right. And let's move to your rebuttal, if
22 we may, your rebuttal testimony.

23 A Sorry.

24 Q It's okay. And I want to -- you mentioned on

1 page 20 about the testimony of Public Staff
2 witness Fichera, and I was going to bring up now
3 our premarked Exhibit 5 to talk to you about
4 witness Fichera's figures, but it looks like the
5 functionality of that particular -- some of those
6 figures did not come through. They were all
7 black. And so I would ask actually if you could
8 potentially pull up -- if you would please pull
9 up the Fichera testimony, if you would, please,
10 witness Fichera's testimony.

11 A All right. I'm there. Can you hear me? I'm on
12 Mr. Fichera's testimony.

13 Q Perfect. Perfect. All right. Thank you. And
14 if you could just turn to page 13 of
15 Mr. Fichera's testimony. There's a figure 2
16 there. Very reminiscent to the premarked 5.

17 A Uh-huh.

18 Q And hopefully can see that. And witness Fichera
19 breaks this whole process into three phases. And
20 do you see what I'm looking at there, Phase 1,
21 Phase 2, and Phase 3?

22 A Yes, I do.

23 Q And -- give me one second. And so under Phase 1
24 a petition would be filed, testimony would be

1 filed, discovery occurs, and following the
2 hearing, possibly a financing order issued by the
3 Commission under this kind of framework; is that
4 correct?

5 A That is correct.

6 Q And that would be followed by Phase 2 that would
7 add the implementation of the Financing Order and
8 that's I think what you refer to as kind of the
9 marketing phase in your testimony; is that
10 correct?

11 A I would say it's the structuring and marketing
12 process.

13 Q Okay. Right. And then finally it's really the
14 final period there when pricing occurs and the
15 issuance of bonds; is that correct, in the Phase
16 3?

17 A That's right.

18 Q Okay. So I just lay that out, because I think
19 we'll see that here coming up. Thank you for
20 that very much.

21 So I would like to continue on
22 with your rebuttal if I could on a couple of
23 major themes that you touch on in your rebuttal.
24 The first relating to whether or not this is your

1 traditional bond issuance, and the second related
2 to some of your references to a plain meaning
3 reading of statutes. But before I do that, I
4 would like to talk with you about your initial
5 observations about the Public Staff's testimony
6 in this case, which you indicated also in your
7 summary today. If you go to page 4, lines 12 and
8 13 of your rebuttal.

9 A Okay. I'm there.

10 Q Yeah. You indicate that you thought that the
11 Public Staff's testimony should've focused more
12 on the Financing Orders though you are aware of
13 various observations the Public Staff witnesses
14 made as to Financing Orders including extensively
15 in the testimony of former Texas Commissioner
16 Klein in her Exhibit 2; is that correct?

17 A Yes.

18 Q And that the Commission's Procedural Order in
19 this proceeding indicated that suggested
20 provisions to the proposed Financing Orders be
21 filed on or before February 8th, which is, of
22 course, after this evidentiary hearing today; is
23 that correct?

24 A Yes, it is, but I do believe that it would've

1 been helpful at this stage to see a markup of
2 exactly what was being asked for here.

3 Q All right. Now, I do want to move onto the
4 themes I mentioned before. Let's turn to page 7
5 of your rebuttal. And in lines 9 to 11 you ask
6 "Are the storm recovery bonds proposed for
7 issuance in the pending documents" -- documents
8 -- "dockets materially different from other
9 long-term debt issuances by the Companies." And
10 can you please read the first sentence of your
11 response there?

12 A *In my opinion, they are not. While I acknowledge*
13 *the structures used and the flow of cash are*
14 *different than a more customary long-term bond*
15 *issuance, I do not believe those differences*
16 *necessitate an entirely different process for*
17 *approval and issuance of the bonds.*

18 Q Okay. But as the Companies seem to actually
19 acknowledge in their Joint Petition, there are
20 various aspects of these ratepayer-backed bonds
21 that are not normal. This process now, of
22 course, has its own statue, does it not?

23 A Yes, it does.

24 Q And the statute authorizes the Commission to

1 issue one or more Financing Orders which impose a
2 specific charge on all customers' electricity in
3 a Public Utility's historic service area,
4 correct?

5 A That's correct.

6 Q And a Financing Order that declares that the
7 right to impose, adjust, bill, and collect that
8 charge to be a present interest in property which
9 can be transferred to a bankruptcy-remote SPE,
10 correct?

11 A Correct.

12 Q And pledges that the State Legislature and the
13 Commission cannot revoke or amend the state
14 statute or the Financing Order in a way that will
15 adversely affect holders of the bonds, correct?

16 A Yes, all that is correct.

17 Q And that the storm recovery charges will remain
18 in place "even if a customer elects to purchase
19 electricity from an alternative electric supplier
20 following a fundamental change in regulation of
21 Public Utilities"; is that correct?

22 A Yes, it is.

23 Q Now, and as a result of these features,
24 ratepayer-backed bonds are typically assigned the

1 highest possible credit ratings, correct?

2 A Yes.

3 Q And they're not treated as debt of the Utility
4 for purposes of the credit rating agencies
5 assigning ratings to the Utilities' other
6 securities, correct?

7 A No, that's incorrect. S&P, Standard & Poor's
8 does unconsolidated, but Moody's does include it
9 as on credit, and this debt is -- even though the
10 Statute and the Financing Order will say that
11 this is not debt of the Utility for any purpose
12 other than federal income tax purposes, the fact
13 is this debt is consolidated onto the balance
14 sheets of DEC and DEP for SEC filing purposes,
15 and that is generally what the rating agencies
16 look to.

17 So Moody's sees it as
18 consolidated, leaves it as consolidated, does
19 make some qualitative adjustments for it. S&P
20 would strip it out.

21 Q Are you suggesting that the Financing Order would
22 be incorrect?

23 A No. The Financing Order I believe and the --
24 this comment about this being debt, not treated

1 as debt of the Utility is for ratemaking purposes
2 and for income tax purposes only.

3 Q But to be clear, it's not debt of the parent. It
4 is only debt in the consolidated balance sheet;
5 isn't that correct?

6 A No. It's not debt of DEC and DEP for ratemaking
7 purposes. It is debt of DEC and DEP and Duke
8 Energy Corp for consolidated financial statement
9 purposes.

10 Q For consolidated purposes; is that correct?

11 A Yes. Yes.

12 Q All right. Now for DEC -- let's see here. And
13 we were talking about traditional utility bonds
14 and, again, with respect to traditional utility
15 bonds, the State Legislature and the Commission
16 could conceivably revoke or amend the State
17 Statute or the State Commission's order --
18 Utility Commission's order which authorized
19 issuance of the traditional utility bonds in ways
20 that adversely affect holders of the bonds; is
21 that correct?

22 A Could you clarify that question or repeat that,
23 please?

24 Q I guess I'm going back to the point about the

1 State pledge, and so -- and the Commission. So
2 for these bonds, there's got to be a pledge that
3 the State Legislature and the Commission cannot
4 revoke or amend the State Statute or the
5 Financing Order in a way that will adversely
6 affect holders of the bonds; that's correct, is
7 it not?

8 A That is correct, yes.

9 Q All right. We'll move on. Now for DEC -- for
10 DEC, how many of these ratepayer-backed bond
11 storm securitization issuances has the Company
12 completed?

13 A None.

14 Q And for DEP, how many ratepayer-backed bond storm
15 securitization issuances has the Company
16 completed?

17 A None.

18 Q And as for their parent, how many such issuances
19 has the parent completed?

20 A Their parent company none, but their affiliate,
21 Duke Energy Florida, did a transaction for almost
22 \$1.3 billion in 2016.

23 Q So they have an affiliate who's done one?

24 A Correct.

1 Q Okay. All right. Let's move on to another theme
2 in your rebuttal if we can, the so-called plain
3 meaning or plain reading of the Statute which is
4 mentioned on my count about five times in your
5 rebuttal. So I'd like to first, if I may, talk
6 to you about the Statutes if we could and
7 specifically I would like to --

8 MR. CREECH: Madam Chair, I would like to
9 pull premarked Exhibit 1, the Public Staff premarked
10 Exhibit 1, which is pages 1 to 21.

11 CHAIR MITCHELL: Mr. Creech, identify the
12 document that you're looking at, please.

13 MR. CREECH: Yes. At the very top it says
14 "62-2, Declaration of Policy".

15 CHAIR MITCHELL: Okay.

16 MR. CREECH: And I would like to mark this
17 as Public Staff -- I have to get our naming convention
18 here today, so I'd like to do it exactly how the
19 Commission would like, Public Staff Cross
20 Examination -- Public Staff Heath Cross Examination
21 Exhibit 1. How would you --

22 CHAIR MITCHELL: Let's identify the document
23 as Public Staff Heath Cross Examination Number 1.
24 Public Staff Heath Cross Examination Number 1.

1 (WHEREUPON, Public Staff Heath
2 Cross Examination Exhibit 1 is
3 marked for identification.)

4 MR. CREECH: Thank you.

5 BY MR. CREECH:

6 Q Mr. Heath, you'll be pleased to know we're not
7 going to read a ton of this statute, but we will
8 briefly touch on it. So this premarked --
9 this -- the Public Staff Heath Cross Examination
10 Exhibit 1 is actually comprised of three
11 statutes. One underlying the Commission. The
12 other underlying the Public Staff. And the third
13 being the Storm Securitization Statute. Do you
14 see subsection -- if you turn to page 2, the
15 second page of the document, to Subsection (b).

16 A Yes.

17 Q And it reads that "Authority shall be vested in
18 the North Carolina Utilities Commission to
19 regulate public utilities generally, their rates,
20 services, and operations"; correct? Do you see
21 that?

22 A What paragraph do you see that in?

23 Q I'm sorry. It's under (b), it's really the first
24 three -- the first two lines there.

- 1 A Okay.
- 2 Q *To these ends, therefore, authority shall be*
3 *vested.*
- 4 A Yes.
- 5 Q Right.
- 6 A Yeah, I see that.
- 7 Q All right. Now, let's turn over a couple more
8 pages if we can, and at the top of the page it
9 says *62-15*, and this is a Public Staff --
- 10 A Yeah.
- 11 Q All right. And do you see under Subsection (b)
12 there it says *There is established in the*
13 *Commission a Public Staff.?*
- 14 A Yeah.
- 15 Q Okay. And let's scroll down just a moment more
16 down to (d), and do you see the word "shall"
17 there, the second word?
- 18 A Such -- oh, "shall be fixed"?
- 19 Q No. I'm sorry. Under (d) there, *It shall be the*
20 *duty and responsibility --*
- 21 A Oh, (d).
- 22 Q -- *of the Public Staff to.* D as in David.
- 23 A Yes. Yeah. Sorry.
- 24 Q Okay. And in the listing that follows there, you

1 see that it includes reviewing and investigating
2 certain matters there in items one and two,
3 numbers one and two, reviewing -- review,
4 investigate, et cetera.

5 A Correct.

6 Q And in item three it indicates *Shall intervene on*
7 *behalf of the Using and Consuming Public, in all*
8 *Commission proceedings affecting the rates or*
9 *service of any public utility,* end quote; is that
10 correct? Do you see that?

11 A I see that, yes.

12 Q Okay. And then finally, and I think this is
13 important, let's go all the way down to 12. And
14 could you read number 12, please?

15 A Sure. *When deemed necessary by the executive*
16 *director, in the interest of the Using and*
17 *Consuming Public, advise the Commission with*
18 *respect to securities, regulations, and*
19 *transactions, pursuant to the provisions of*
20 *Article 8 of this Chapter.*

21 Q Okay. And as you probably realize, the
22 Legislature placed the Storm Securitization
23 Statute that involves securities in Article 8
24 which is entitled "Securities Regulation of

1 Chapter 62"; is that correct?

2 A I believe so, yes.

3 Q Okay. Now, speaking of securities, let's turn to
4 that issue for a moment if we can, because you've
5 raised that issue in your testimony if we can, so
6 let's go back to your rebuttal. And on pages 25
7 and 26 of your rebuttal, it's the bottom of 25,
8 top of 26.

9 A Okay. I'm --

10 Q Okay. You state -- quote -- well, it's starting
11 at the answer there on page 25, line 19, you say
12 "Under federal securities law, DEC and DEP will
13 be the issuers of the underlying bonds in this
14 instance and as such will have all the
15 obligations under the federal securities laws
16 with regard to such issuances." Do you stand by
17 that statement?

18 A I guess I would probably clarify that. DEC and
19 DEP would be co-registrants along with their SPEs
20 who are the issuers. Those SPEs are wholly owned
21 by Duke Energy Carolinas or will be wholly owned
22 by Duke Energy Carolinas, Duke Energy Progress.

23 Q Okay. And thank you. And that's -- those -- and
24 that was borne out in your response to a Data

1 Request 16 as I recall. Does that sound familiar
2 to you? Public Staff Data Request 16.

3 A It's very possible. I mean, there were many data
4 requests and it's hard to remember exactly what
5 every one of them covered, but that's probably
6 likely.

7 Q Let's -- there's just two other aspects on this.
8 You have attached to your testimony forms of
9 transaction documents proposed by the Companies,
10 but they do not require the Companies to
11 indemnify these SPEs for money damages imposed by
12 reason of securities law violations; is that
13 correct?

14 A I believe there is a condition that we make the
15 customers hold for any losses that are sustained.

16 Q And any unindemnified money damages imposed by
17 reasons of any securities law violation in
18 connection with the issuance of storm recovery
19 bonds would be a financing cost which the SPEs
20 are entitled to recover from storm recovery
21 charges; is that correct?

22 A I believe that would require a legal opinion.
23 I'm not really an attorney, but --

24 Q Understood. Understood. I'm not asking for

1 legal opinions here today. But we'll move on
2 then.

3 You were involved in the DEF storm
4 securitization transaction in Florida; is that
5 correct, Duke Energy Florida?

6 A That is correct, yes.

7 Q Okay. And was there any securities law violation
8 alleged or did one actually occur as it relates
9 to Duke Energy Florida?

10 A There were not, no.

11 Q The Florida Commission?

12 A Not that I'm aware of.

13 Q Its advisor that is also serving as the Public
14 Staff's advisor in this case?

15 A No, there were not that I'm aware of, but, you
16 know, I don't think we managed risk on whether or
17 not something, you know, whether there was a
18 claim. We look at the potential for there to be
19 a claim.

20 Q Okay. Let's move on if we can. In your -- so we
21 move on kind to the next topic here and maybe a
22 little harmony for a moment. You asked the
23 Commission at various -- to look at various
24 items -- let's see here -- we're on pages 10 and

1 11 of your rebuttal.

2 A Yes.

3 Q And it's at the bottom of 10 going into 11 you
4 mention various of the Public Staff's proposals,
5 our proposals, and I just wanted to -- and the
6 first three relate to best practices,
7 certifications, and in a bond team and/or Public
8 Staff involvement. And at least on those three
9 levels, in terms of a matter of degree, best
10 practices, certifications, and Public Staff
11 involvement, there is some level of agreement in
12 this case and perhaps some level of disagreement.
13 Would that be a fair characterization?

14 A Yes. But I think on the specific topic there's,
15 you know, some that would be more common,
16 understanding there may be wider, new wider
17 differences of opinion on others.

18 Q Okay. Now, let's turn to page 19 of your
19 rebuttal if we can.

20 A Okay.

21 Q And this goes to your -- where you speak of the
22 Companies' view on the lowest cost objective or
23 standard for issuance of the bonds.

24 A Yes. But I think it's really -- I think it's

1 really looking at what the statutory objective
2 is, yes.

3 Q Okay. Very good. And this relates back to our
4 discussion of your calling for a plain reading of
5 the Statute, so that's good, and as well as our
6 prior kind of original characterization or
7 discussion in characterizing these -- this
8 process in phases. Phase 1 that we're now in.
9 Phase 2 being the marketing, structuring, and
10 pricing of the bonds. And then Phase 3 being the
11 final period where certifications occur and we
12 press go and bonds are issued. If you can --

13 MR. JEFFRIES: Mr. Creech.

14 MR. CREECH: Yes.

15 MR. JEFFRIES: I'm sorry to interrupt.

16 MR. CREECH: Please.

17 MR. JEFFRIES: I don't think -- your
18 characterization of the phases I don't think was
19 consistent with Mr. Heath's characterization of the
20 phases, so we might want to clarify that. I think
21 it's -- the record may be confused on at this point.

22 MR. CREECH: Thank you.

23 Q Mr. Heath -- and my apologies. Mr. Heath, did
24 you want to clarify any point on that?

1 A I mean, there are certainly stages to this,
2 right? There's a financing order. There's a
3 post-financing order. I think we, you know, when
4 we talked about Mr. Fichera's testimony earlier,
5 he had that broken into three phases. I think I
6 look at it as there's the petition and there's a
7 post-financing order process.

8 Q Okay. Okay. All right. Thank you.

9 MR. CREECH: Thank you, Mr. Jeffries as
10 well.

11 Q Now, as -- we're on page 19 of your rebuttal and
12 can you read your question and answer at the top
13 of page 19 if you will there, *Does the*
14 *Securitization Statute outline a lowest cost*
15 *objective.* Could you, I suppose, read your
16 answer there?

17 A Sure.

18 Q And you can feel free to skip down to number two
19 after you start, but -- or you can read the whole
20 thing; either way.

21 A Yes. *The North Carolina General Statute § 62-172*
22 *requires (1) that the issuance of the storm*
23 *recovery bonds and the imposition and collection*
24 *of a storm recovery charge are expected to*

1 *provide quantifiable benefits to customers as*
2 *compared to the costs that would have been*
3 *incurred absent the issuance of the storm*
4 *recovery bonds, and (2) the structuring and*
5 *pricing of the storm recover bonds are*
6 *necessarily expected to result in the lowest*
7 *storm recovery charges consistent with market*
8 *conditions at the time the storm recovery bonds*
9 *are priced and the terms set forth in such*
10 *financing order.*

11 Q Thank you. Let's turn to the Securitization
12 Statute if we can, which you may recall we marked
13 that as Public Staff Heath Cross Examination
14 Exhibit Number 1, and you can go over to page 7,
15 which is Session Law 2019-255 (sic). Page 7 of
16 that document, the Securitization Statute.

17 A Yeah, I believe I'm there.

18 Q Okay. I believe Section (a) there is
19 definitions. And let's scroll down to Section
20 (b) if we can, which is actually on page 9 of the
21 overall document, page -- of the overall
22 document, page 3 of the Statute. It says
23 *Financing Orders.*

24 A No, I'm not following your page references there.

1 Q I'm sorry. Just the third page of that
2 particular statute. At the bottom of the page
3 says *Financing Orders* (b).

4 A Yes, okay. I'm there.

5 Q I'm just trying to get us momentarily and then
6 we're actually going to -- we're actually going
7 to go over -- and then we're actually going to
8 kind of continue flipping over if we can one more
9 page, three -- to number 3 there at the next page
10 where it says *Petition and order*.

11 A Yes, I see that.

12 Q All right. And thanks for your patience on that.
13 And then finally under that section we go to (b)
14 which is on the next page which is page 11 of the
15 overall document, page 5 of the Securitization
16 Statute. It says a --

17 A Okay.

18 Q It says *A financing order issued by the*
19 *Commission to a Public Utility shall include all*
20 *the following elements*, does it not?

21 A Yes, it does.

22 Q All right. And you see there that -- and you
23 just read from your rebuttal items one and two,
24 you see that those correspond really with items

1 (b) (2) and (b) (3) just below there, *do you not, A*
2 *finding that the proposed issuance* and then *A*
3 *finding that the structuring and pricing.* Do you
4 see that?

5 A Yes, findings that the Commission has to make.
6 Yes.

7 Q Okay. Now, going back to page 19 of your
8 rebuttal testimony that we had you just read, at
9 the top on your answer it says *Yes. N.C. Gen.*
10 *Stat. § 62-172 requires.* But should it be
11 revised to add reference to the Financing Order
12 as the Statute requires that it's the Financing
13 Order include those two items such that your
14 answer on page 19 of your rebuttal should instead
15 read "Yes. N.C. Gen. Stat. § 62-172 requires
16 that the Commission's Financing Order include
17 those two things"?

18 MR. JEFFRIES: Chair Mitchell, we'd object.
19 I mean, Mr. Creech is free to ask Mr. Heath a question
20 about his testimony, but I don't think having him try
21 to attempt to correct it on record is appropriate.

22 MR. CREECH: I'm pleased to move -- I'm
23 pleased to move on. I was just trying to make a
24 particular point about the plain reading of the

1 Statute.

2 CHAIR MITCHELL: I'll sustain the objection.
3 Please move on, Mr. Creech.

4 MR. CREECH: Okay.

5 Q Continuing on with this line of questioning,
6 however, in a different way, let's go to the
7 final provision of Item 12 of the Statute.
8 Again, in the very -- the next page, so again
9 we're now to -- down to (b)(12) on the very next
10 page of the Statute. And thanks for your
11 patience. And do you see there, Mr. Heath, where
12 it says "Any other conditions not otherwise
13 inconsistent with this section that the
14 Commission determines are appropriate"?

15 A Yes, I see that.

16 Q Now, let's briefly talk about the pricing of the
17 bonds if we can. All right?

18 A Okay.

19 Q And it may be that witness Atkins to whom you
20 regularly refer in your rebuttal can also speak
21 to this and, of course, he'll be on later today.
22 This relates to the Companies' contention that
23 all the bonds need to have actual buyers -- well,
24 actual orders from buyers for a hundred percent

1 of the bonds at the time the bonds are to be
2 sold, selling the bonds at a so-called
3 market-clearing price; is that correct?

4 A Yes.

5 Q Okay. Now, do you think it's advisable, whether
6 you're selling a thousand bonds or a thousand of
7 anything or renting a thousand of anything, if
8 you could get a great price for 95 percent of
9 something, the bonds, wouldn't you rather do that
10 than to go about getting a lower price overall
11 and getting lower gross receipts overall by
12 having to sell them all at once?

13 A I don't think I follow that question. I mean, I
14 think if you're asking about do we want to have
15 the bonds fully subscribed, yes, I do. I don't
16 think that anything other than having orders for
17 the bonds is a market-clearing price. I mean,
18 forcing to -- you know, trying to get an
19 underwriter to buy them at some other price to
20 drive down a rate or something like that I don't
21 think is appropriate. I mean, this is -- these
22 are -- should be fully marketed bonds and this
23 should bear the rate that is going to be
24 available in the market.

1 Q I guess my point is would it be a fair analogy to
2 say if you could, you know, if you can get an
3 optimum price for 95 percent of these bonds that
4 you're saying that no, we've actually got to sell
5 it at a -- potentially at a lower price so that
6 we get them all sold at once, we cannot have the
7 underwriting -- the underwriter hold onto the
8 final, you know, 5 percent there and take some
9 level of risk. Is that what you're saying?

10 A Yeah. For it to be a market-clearing price, they
11 need to be fully subscribed and sold.

12 Q Notwithstanding the fact that that could mean
13 lower gross receipts -- or excuse me -- in that
14 type of setting a less than optimum result.

15 A I wouldn't describe that as less than optimum. I
16 mean, the market-clearing is how bonds are -- the
17 market-clearing rate is how bonds are priced in
18 the public markets.

19 Q I hope we can move on to two final things if we
20 can. One is from your rebuttal and the other is
21 your direct testimony.

22 A Sure.

23 Q All right. The first relates to Public Staff
24 witness Abramson in your rebuttal, and then in

1 your direct testimony relating to transaction
2 documents. So let's first look at your rebuttal
3 on page 32 starting on line 7.

4 A Okay.

5 Q You state that *given his 40 years of experience*
6 *covering the U.S. utilities sector in general and*
7 *Duke Energy in particular*, and so you continue --
8 you reference Public Staff witness' Abramson's
9 experience covering utility bonds, do you not?

10 A Yeah, I do.

11 Q And do you happen to have -- I'd like for us
12 briefly to turn to witness Abramson's testimony
13 if we could.

14 A Okay. Give me a minute.

15 Q Let me get there if I can also. Thank you. And
16 let's turn to pages 6 and 7 of witness Abramson's
17 testimony.

18 A Okay.

19 Q And line 17 in particular. Do you see the
20 heading that reads "Achieving the Best Possible
21 Outcome For Ratepayers Is Also Good For Relations
22 Between the Utility and its Regulators, A Key
23 Factor For Investors"? Is that correct?

24 A I do see that, yeah.

1 Q And do you see where it goes on to say "In
2 addition, a securitization bond offering that
3 provides ratepayers the best possible outcome -
4 namely the greatest savings - would be viewed
5 favorably by state regulators, in my opinion.
6 Knowledgeable, long-term investors in utility
7 stocks and bonds understand that a good
8 regulatory environment is important to the
9 long-term success of their investments in
10 regulated monopolies"? Is that correct?

11 A Yes.

12 Q Okay. The final aspect of your testimony I'd
13 like to touch on are the transaction documents if
14 I can, and that's Exhibit -- kind of the various
15 Exhibits 2 to your direct testimony.

16 A Okay.

17 Q All right. Now, with respect to these
18 transaction documents, in most of these there are
19 two parties to these agreements; one being the
20 Utility and the other being its wholly-owned
21 subsidiary SPE; is that correct?

22 A Yes, for some of them.

23 Q And so essentially it's the Utility contracting
24 with its own SPE; is that correct?

1 A Yes. Or I would say it's the other way around,
2 the SPE contracting with the Utility. The
3 Utility is going to service bond. It's going to
4 be the administrator. It's going to sell the
5 property right to the SPE and those sorts of
6 things.

7 Q Certainly. Certainly. Thank you. Thank you for
8 that clarification. And in light of that, let's
9 turn to customer protections in those agreements
10 and on page 35 of your direct testimony. On page
11 35 of your direct testimony you ask the following
12 question: *In DEC and DEP's affiliate's*
13 *transaction in Florida, the financing documents*
14 *contain certain provisions that the Florida*
15 *Commission viewed as "customer protections". And*
16 *then you say Do the financing documents that you*
17 *are sponsoring contain similar "customer*
18 *protections"?* Do you see that?

19 A Yes, I do.

20 Q And you replied, *Yes, it's my understanding that*
21 *they do.* Is that correct?

22 A That is what I said, yeah.

23 Q All right. All right. I think we could go
24 through several of these transaction documents,

1 but we won't go through them all. I'd like to
2 primarily just look at this Servicing Agreement
3 if we could, please. All right. Now, and in
4 doing so I would like to --

5 MR. CREECH: Madam Chair, if I could, bring
6 up Public Staff premarked 13, which is the Duke Energy
7 Florida, the Servicing Agreement.

8 CHAIR MITCHELL: All right. Mr. Creech,
9 give us the page numbers for that exhibit.

10 MR. CREECH: Shall do. Just one second,
11 please. And thank you. I thought had it. Just one
12 second. I'm sorry.

13 CHAIR MITCHELL: I've got it, Mr. Creech. I
14 believe it's 529.

15 MR. CREECH: 529. I'm sorry.

16 CHAIR MITCHELL: Is that consistent with
17 your records?

18 MR. CREECH: Let's see here.

19 CHAIR MITCHELL: Mr. Creech, we're looking
20 at the Nuclear Asset Recovery Property Servicing
21 Agreement; is that right?

22 MR. CREECH: The Duke Energy Florida, DEF,
23 Servicing Agreement, correct.

24 CHAIR MITCHELL: Okay.

1 MR. CREECH: I'm having a technology issue
2 here. Excuse me one second.

3 CHAIR MITCHELL: Okay.

4 MR. CREECH: And thank you. That's correct.
5 Thank you. Thank you so much. Page 529.

6 CHAIR MITCHELL: Okay. Let's give everybody
7 a minute to find the document. That is the Nuclear
8 Asset Recovery Property Servicing Agreement. That
9 page number down at the bottom is 529. Mr. Creech,
10 would you like to mark this exhibit?

11 MR. CREECH: I would, please. I would like
12 to mark this exhibit as Public Staff Heath Cross
13 Examination Exhibit 2.

14 CHAIR MITCHELL: All right. The document
15 will be marked Public Staff Heath Cross Examination
16 Exhibit 2 -- Exhibit Number 2.

17 (WHEREUPON, Public Staff Heath
18 Cross Examination Exhibit 2 is
19 marked for identification.)

20 CHAIR MITCHELL: You may proceed.

21 MR. CREECH: All right.

22 BY MR. CREECH:

23 Q Mr. Heath, this is a Service Agreement executed
24 by DEF in connection with the 2016 Florida

1 ratepayer-backed bond transaction, and Section
2 5.04 describes the circumstances under which DEF
3 may resign as servicer. If we can let's go down
4 to that.

5 A I see Section 5.04 to be *Effective Date and*
6 *Termination*.

7 Q Right. And will you read -- will you read the
8 last sentence of that section, please?

9 A *Duke Energy Florida shall not resign as Servicer*
10 *if such resignation does not satisfy the Rating*
11 *Agency Condition or without consent of the*
12 *Commission*.

13 Q Okay. So and let's go -- let's go to your -- the
14 form Service Agreement attached to your direct
15 testimony.

16 A Okay. I'm not sure I have that in my binder
17 here. Yeah, I think I only have my Exhibit 1. I
18 don't believe I have the formal documents here
19 unless someone can direct me to them.

20 Q That is Exhibit 2b which is the form -- it's the
21 Storm Recovery Property Servicing Agreement.

22 A Yeah, I know that's -- I know it's an exhibit,
23 but I don't think it's in my materials here.

24 Q All right. Let's see here.

1 A Yeah, I'm just not seeing it here with my
2 testimony in our -- in my binder.

3 MR. ROBINSON: Chair Mitchell, this is Camal
4 Robinson. For whatever reason, I'm not sure why, we
5 didn't get him that, but I can get that to him in
6 about two minutes if you'd give us a second to get him
7 that document.

8 CHAIR MITCHELL: We'll take a brief hold
9 while Mr. Robinson gets the document to the witness.
10 Thank you.

11 MR. ROBINSON: Thank you, Chair Mitchell..

12 (Pause).

13 Chair Mitchell, he should have it any second
14 now. Mr. Heath, if you would just check your email,
15 please.

16 CHAIR MITCHELL: Thank you, Mr. Robinson.
17 Mr. Heath, let us know when you have the document.

18 THE WITNESS: I have it opening up now. It
19 should just be a second. I have it open and I'm in
20 Section 5.04.

21 BY MR. CREECH:

22 Q Perfect. Thank you. And then -- and again,
23 that's -- right -- page 13 of that document, but
24 page 542 of the overall combined exhibits.

1 A Okay.

2 Q All right. Can you read -- can you please read
3 the final sentence of that 5.04?

4 A Sure. It says *Duke Energy Carolinas/Progress*
5 *shall not resign as Servicer if such resignation*
6 *does not satisfy the Rating Agency Condition.*

7 Q And that's different from the DEF final sentence;
8 is it not?

9 A Let me get back to it. I think there is
10 something different there. Yes, the DEF
11 Agreement also has the words at the end "or
12 without consent of the Commission".

13 Q All right. Now, I guess the point is you've
14 indicated in your testimony that it's your
15 understanding that the financing documents
16 attached to your testimony -- let's use your
17 words here -- "contain similar customer
18 protections as the DEF transaction documents"; is
19 that correct?

20 A That is correct.

21 Q But in this instance there could be a servicer,
22 that the Utility could resign as servicer and
23 inform the rating agency but not the Commission;
24 is that correct, under the forms you submitted --

1 or not you submitted, but attached to your
2 testimony?

3 A It says without the -- the Florida Agreement has
4 the words "without consent of the Commission", so
5 I'm not sure that we would not notify the
6 Commission at least. I do think that we -- I
7 thought we did have that provision in there. I
8 know we're not trying to limit the Commission's
9 ability on anything here, so if that was an
10 oversight, we certainly apologize for that. I
11 know we are trying to -- we weren't -- also there
12 in some aspects we weren't trying to presume that
13 the Commission wanted to have the ongoing
14 responsibilities and obligations that the Florida
15 Commission accepted in the Florida transaction,
16 so -- and that was part of our consideration as
17 well.

18 Q All right. And this is just merely one of
19 several transaction documents; isn't that
20 correct, Mr. Heath; this Service Agreement?

21 A Yes, there are many. Yes.

22 Q All right. Well, we could continue to go through
23 some of these documents, but I think -- I think
24 that will be it for now, Mr. Heath. I really

1 appreciate your time and thank you.

2 MR. CREECH: Thank you, Commissioner.

3 THE WITNESS: You're welcome.

4 CHAIR MITCHELL: All right. Mr. Jeffries,
5 any redirect for the witness?

6 MR. JEFFRIES: Thank you, Chair Mitchell. I
7 have just a couple of questions for Mr. Heath.

8 REDIRECT EXAMINATION BY MR. JEFFRIES:

9 Q Mr. Heath, do you have Public Staff Heath Cross
10 Examination Exhibit Number 1 handy? That's the
11 package of statutes that Mr. Creech was --

12 A Yeah. Yes, I'll get to them. Yes, I'll get to
13 it in just a second. Okay. I have them.

14 Q All right. So starting with the second statute
15 in that packet which is 62-15, which begins on
16 page 4 of that package.

17 A Yes.

18 Q Mr. Creech was asking you -- and to be clear, and
19 I think everyone understands this, but 62-15 is
20 the portion of Chapter 62 that talks about the
21 Public Staff's duties and responsibilities, and
22 you recall he asked you -- down under (d) I think
23 he asked you to look at a couple of those
24 provisions. And then ultimately pointed you

1 toward paragraph 12.

2 A Yes.

3 Q And this is a description of what the Public
4 Staff's -- the lead-in language to that laundry
5 list of duties and responsibilities is it shall
6 be the duty and responsibility of the Public
7 Staff to, and then it's one, two, three, four,
8 five, six all the way down to 12 and --

9 A Correct.

10 Q And 12 says *When deemed necessary by the*
11 *executive director, in the interest of the Using*
12 *and Consuming Public, advise the Commission with*
13 *respect to securities, regulations, and*
14 *transactions, pursuant to the provisions of*
15 *Article 8, correct?*

16 A That's correct.

17 Q And I think we all agree that 62-172 falls within
18 Article 8. My question to you is the word
19 "advise" there, does that -- in your opinion is
20 that -- is that equivalent with the proposal to
21 make the Public Staff a coequal decision maker in
22 the issuance of these bonds in your opinion?

23 A In my opinion, no, it's not. Advising the
24 Commission is -- it's not what the Public Staff

1 proposed in their creation of a bond team in
2 which they would have joint decision-making
3 authority with the Company.

4 Q Do you have -- does Duke -- does DEC and DEP have
5 any issue with the Public Staff advising, at
6 least as you understand that term, the Commission
7 on your Phase 2 of the process of the
8 structuring, marketing, pricing process?

9 A As I understand advising it, and I would really
10 say that in terms of I believe they have a role
11 to advise a bond team should the Commission
12 decide to implement one and that bond team would
13 consist of the Companies, their advisor and
14 counsel, as well as the Commission -- or a
15 designated Commissioner or member of Commission
16 staff along with their advisor and counsel as
17 joint decision makers on this transaction in all
18 aspects of the structuring, marketing, and
19 pricing of the bonds. And I would see
20 underwriters, other parties including the Public
21 Staff as advising that bond team, advising those
22 two joint decision makers, but those joint
23 decision makers, again, the Company and the
24 Commission would be the ones to make final

1 decisions and as to how we structure, market, and
2 price these bonds, not the -- I don't believe
3 it's appropriate based on this statute or the
4 Securitization Statute for the Public Staff to
5 have a role that it has proposed.

6 Q Thank you, Mr. Heath. Mr. Creech also raised the
7 prospect of a -- asked you a couple of questions
8 about a market-clearing price and the prospects
9 that you could sell 95 percent of the bonds but
10 not -- apparently not sell the other 5 percent.
11 Could you provide at a 50,000-foot level for
12 those of us that aren't experts on issuances of
13 corporate bonds what -- how does this -- how does
14 this pricing process work? How does the
15 marketing/pricing process work for these kind of
16 securities?

17 A Sure. Sure, I'd be happy to. Typically, in most
18 corporate bond issuance, there is an evaluation
19 by the issuer and its advisors and underwriters
20 that where we would look at comparable securities
21 of equivalent duration or tenor. And so we're
22 looking here to maybe a 15-to-18, 20-year bonds.
23 We would look at comparable securities at those
24 levels and we would come up with some expectation

1 of pricing levels for those bonds.

2 Based on that collaborative effort
3 as well, we would come out with an idea of a
4 initial price talk, which would typically be
5 something -- probably a little wider than where
6 we would expect the deal to clear so that when we
7 go out and talk to investors and that we're
8 giving them something that kind of incentivizes
9 them to start getting attracted to the offering
10 or having interest in the offering.

11 And through different rounds of
12 price discovery, we would build an order book
13 along with the underwriters, and so these
14 different investors would come into the book with
15 a indication of interest at some pricing level or
16 really at that IPT level. And as we built that
17 book, we would look and see how many orders are
18 in there, at what level, and what sort of pricing
19 sensitivity those investors might have, and based
20 on that understanding, we would look and say
21 okay, well, now we can lower that spread a little
22 bit.

23 So just give me an example or give
24 you an example, we go out with an initial price

1 talk of 100 base points or 1 percent on top of
2 the underlying treasury rate, so we get a lot of
3 interest at that level. And say we're trying to
4 sell \$500 million worth of bonds, we get orders
5 for 6, 7, \$800 million, maybe more, we know that
6 there's more interest than we need from that
7 book, so we might go back out to investors and
8 say that 100 basis points is now 90 basis points.
9 Some of those orders might fall out of the book,
10 but we still end up with more demand than we --
11 more orders than we need to fill that book, so
12 now instead of \$800 million, maybe that's \$700
13 million or something.

14 And then based -- again, based on
15 what we understand to be the pricing sensitivity
16 there, you know, are there big orders in that
17 book that they're going to fall out legally if we
18 lower this spread another five basis points or
19 another 10 basis points. And so again, based on
20 that understanding and talk with our underwriters
21 and what we know of investors from our marketing
22 effort, we then make a decision as to whether
23 further compress that pricing. We may go back
24 out and that 90 is 85 and we'll see where that --

1 how that looks again. It may be multiple levels
2 of kind of cutting that spread level until you
3 get to a point where okay, we've got 500 -- maybe
4 we're down now to \$600 million worth of orders,
5 but I know there's someone in here with
6 \$100 million or maybe two people with \$75 million
7 orders and if I push anymore we -- those orders
8 may go away completely. And if that happens,
9 then I haven't sold \$500 million worth of bonds.

10 And so that discovery process is
11 not a -- I would not call it a science. I would
12 call it an art as to know how far to push, and
13 you really have to understand the quality of your
14 book and what the pricing sensitivities of those
15 investors are.

16 Q Thank you. Could you explain -- I mean, why is
17 it important with respect to storm recovery bonds
18 to sell a hundred percent of the amount that's
19 authorized?

20 A I don't think it's just with respect to storm
21 recovery bonds, I think that's applicable to
22 every public issuance or every issuance of debt
23 in the public markets. We take that same
24 approach for our holding company issuances. We

1 take that same approach for all of our first
2 mortgage bond issuances of DEC and DEP. That for
3 something to be -- to really get to a
4 market-clearing level, what the market is going
5 to bear, those bonds should be fully subscribed
6 and sold.

7 Q What -- could you help me understand, again, I'm
8 a layman, I'm not an expert on this stuff, but
9 what are the practical consequences if you sold
10 less than a hundred percent of the storm recovery
11 bonds in this particular context? What does that
12 mean for the Company?

13 A Well, it could mean that the bonds -- that we
14 don't have a successful deal, right? So it could
15 be that if we don't have enough orders to fill
16 and the underwriters are not willing to buy those
17 at a discounted price, then we don't have a
18 completed transaction.

19 Q One last question. Mr. Heath, you were -- Mr.
20 Creech asked you some questions about your
21 rebuttal testimony. I believe it was page 35.

22 A I'm getting back to that. Give me a second.

23 Q Yeah. Yeah. Actually, looking at this I think
24 maybe now I have the wrong page reference. It

1 was the discussion about customer protections.

2 A Yes.

3 Q Do you recall that?

4 A Yes. That's in my direct testimony.

5 Q Oh, okay. That would explain why I can't find it
6 in your rebuttal. So you made some statements in
7 there about the documents and this deal having
8 some of the similar protections that were
9 included in the Florida transaction. Do you
10 recall?

11 A I do.

12 Q And then Mr. Creech went from there and flipped
13 over to the transactional documents and started
14 asking you some questions, but is it -- you
15 explain what protections you're talking about in
16 the following Q and A, don't you, in your direct
17 testimony?

18 A Yes, I do.

19 Q Okay. I mean, that's the purpose of the
20 discussion after the -- your statement that these
21 transactional documents contain some of the same
22 protections, right?

23 A Correct.

24 Q Okay. Thank you.

1 MR. JEFFRIES: That's all the redirect I
2 have for Mr. Heath.

3 CHAIR MITCHELL: All right. Thank you, Mr.
4 Jeffries. We will now take questions from
5 Commissioners. I will start with Commissioner
6 Brown-Bland.

7 EXAMINATION BY COMMISSIONER BROWN-BLAND:

8 Q Mr. Heath, just a moment ago Mr. Jeffries asked
9 you to speak in lay terms about what certain
10 things would mean and you ended that series of
11 questions indicating if the underwriters didn't
12 buy all the bonds that it would mean you didn't
13 have a completed transaction. If you just carry
14 that out to its logical conclusion, what does
15 that, in effect, mean for the Companies?

16 A I guess as a couple implications, one is we
17 could -- we could come back to the market at a
18 later date. Kind of, you know, pull the deal,
19 come back, approach the market a couple of months
20 later. The result would probably be maybe even
21 wider pricing than where we thought we would land
22 initially, because, you know, because of that
23 first unsuccessful transaction.

24 I guess it could also mean that we

1 just decide to not go forth with securitization
2 at all and seek to recover storm recovery costs
3 through the Storm Recovery Rider that we've
4 proposed in the pending rate cases.

5 Q So the bottom line is it means you couldn't issue
6 the bond; is that right?

7 A It could mean that you can't issue the bonds or
8 it could mean that you maybe go to the market
9 later and you have a -- and you may not be as --
10 you may not end at the pricing where you thought
11 you would initially.

12 Q All right. Thank you.

13 COMMISSIONER BROWN-BLAND: That's all my
14 questions at this time.

15 CHAIR MITCHELL: Okay. Commissioner Gray?

16 COMMISSIONER GRAY: Thank you.

17 EXAMINATION BY COMMISSIONER GRAY:

18 Q Mr. Heath, has DEF ever tried to issue the Storm
19 Securitization Bonds?

20 A No, Commissioner, we have not. There's only --
21 there's been two securitization issuances in the
22 State of Florida in all. One of those was the
23 DEF Nuclear Recovery Securitization that was done
24 in 2016. There has been a Storm Recovery

1 Issuance that was done by FP&L prior to that.

2 Q As a follow-up, were both subscribed at a 100
3 percent or was there -- following up on
4 Commissioner Brown-Bland's thought, were any of
5 them not issued because they were not fully
6 subscribed?

7 A So in the DEF transaction, it was a negotiated
8 transaction like we're proposing here where we go
9 to the market in this process that I talked
10 about. That transaction was fully subscribed and
11 with some slight over subscription. Right. So
12 if we're selling \$1.3 billion worth of bonds,
13 there were orders for probably 1.5 billion or
14 something like that. So it was fully subscribed;
15 actually a little bit over subscribed.

16 But the Florida transaction was
17 actually done in a completely different process
18 and it's the only securitization bond that I'm
19 aware of that was done in that manner where it
20 was really an auction process conducted with
21 several banks where FP&L got banks to just bid on
22 the transaction. They came up with -- you know,
23 they picked one to go forth with. Those -- they
24 sold all of those bonds to that bank, and then I

1 don't know if that bank held those bonds or if
2 they would have turned around and then kind of
3 sold them in a secondary-type market.

4 But the DEF transaction was fully
5 subscribed.

6 Q In the FP -- Florida Power & Light program is
7 it -- did the banks step in when FP&L was unable
8 to conclude their own effort? And is that an
9 option in this jurisdiction?

10 A The banks bought the entire deal through a
11 competitive bid process. That would be an
12 option, but we believe that the negotiated sale
13 process that I just talked about is the way that
14 we should approach it. That's how the vast
15 majority of public debt issuances are done in the
16 market, whether they're securitization bonds or
17 new, kind of general corporate bonds.

18 Q Thank you.

19 COMMISSIONER GRAY: That's all my questions
20 now.

21 CHAIR MITCHELL: All right. Commissioner
22 Clodfelter?

23 COMMISSIONER CLODFELTER: Yes. Thank you.

24 EXAMINATION BY COMMISSIONER CLODFELTER:

1 Q Mr. Heath, can you hear me fine?

2 A Yes, Commissioner, I can.

3 Q Okay. Thank you. I have just a couple of
4 questions. I want to ask a couple of things
5 about the option to use the grantor trust
6 structure. And I can draw some inferences of my
7 own, but I want to hear you talk about it rather
8 than me speculate about. Talk about what
9 considerations would come into play that would
10 cause you to determine that the use of a combined
11 issue through the grantor trust structure is the
12 way to go as opposed to separate issues by the
13 two SPEs. And when would you choose -- when
14 would you choose to go the grantor trust route?

15 A So we have it as an option today. Again, as I
16 mentioned, we're not -- you know, we haven't
17 decided that's the way to go. But we would need
18 to continue to research it. We would like to
19 have underwriters involved and get their opinion
20 on the best way to execute looking at, you know,
21 everything that's out in the market at that time.
22 I mean, I think we're talking about a
23 realistically kind of a mid-2021 issuance, so, I
24 mean, I would -- I mean, really I think the

1 decision has to be made a couple of months
2 probably in advance of that just from the
3 standpoint of you've got transaction documents to
4 put together and things that, you know, you
5 really need to just know which way you're headed,
6 whether it's combined issuances or separate
7 issuances. So it's, you know, I would speculate
8 a couple months prior to really being in the
9 market. You got to know what you're asking the
10 rating agencies to rate and that has to come
11 before you're in the market.

12 Q Well, I appreciate that. I guess let me go to
13 really the core of what I want to explore with
14 you. Let's suppose that you're in that process
15 and you conclude that there is benefit to one of
16 the two SPEs from a combined issue and a
17 different level of benefit or maybe no benefit at
18 all to the other. I mean, you've got different
19 sizes here. You've got -- DEP has got a much
20 larger nut that it wants to crack here than DEC
21 does. And let's assume that you conclude that
22 it's a benefit to DEC to tag along and have a
23 combined issue, but maybe that's not so
24 beneficial to DEP. Maybe it's not really

1 important one way or the other for DEP, take it
2 or leave, and you conclude that there's a
3 differential there. How do you allocate -- how
4 do you propose -- and this is -- maybe it's in
5 the documents, but I'm not deep enough in the
6 documents to know the answer, so I'll ask you.
7 So how do you propose then to allocate the
8 incremental costs associated with the combined
9 issuance through a grantor trust as between the
10 two entities, the DEP entity and the DEC entity?
11 How do you allocate those costs?

12 A That's an excellent question. And what we've
13 laid out in my exhibits is we do show upfront
14 transaction costs, you know, assuming an SRB
15 issuance to try to give clarity. And so those
16 incremental costs today we have allocated kind of
17 on a pro rata basis of the issuance, right? So
18 we're talking about over 700 million for DEC --
19 or DEP and roughly 200 million or a little bit
20 more for DEC, so we've allocated based on those
21 percentages. But yes, as we go through time and
22 continue to evaluate this, I mean, I think
23 there's clearly a benefit to DEC. I think
24 there's a slight benefit to DEP. But as we go

1 through that analysis and if we see that DEP
2 would get no better deal than if it just went out
3 on its own and all the benefit of that combined
4 issuance economically is DEC's, we would
5 definitely consider giving all of those
6 incremental fees to DEC.

7 Q You would consider it and that's -- I appreciate
8 that, I respect that, and I accept that. You
9 know, I guess the old phrase was "trust but
10 verify". So how in the world would that be built
11 into the structure to ensure that that occurred?
12 How could we reasonably -- how could we
13 reasonably ensure that that occurred?

14 A Sure. So we contemplate in our -- in our initial
15 proposal as well as in our kind of revised
16 proposal that we laid out in our rebuttal
17 testimony that there is a -- there is certainly a
18 means for the Commission to stay involved
19 throughout this process and it's really up to the
20 Commission to decide how involved it wants to be.
21 So at a minimum in our initial proposal we were
22 laying out an issuance advice letter process, so
23 where we would deliver to the Commission a -- you
24 know, in advance of going into the market, a

1 letter that showed expected pricing on the bonds
2 as well as an updated estimate of transaction
3 expenses and if we -- we would -- and we would
4 have that either allocated to DEC and DEP if we
5 believed both benefited and we would have some
6 discussion about that. If it was strictly a DEC
7 benefit, we would show that in those updated
8 exhibits and the Commission would have clear
9 insight into which way we're thinking. If we --
10 go ahead.

11 Q Thank you. That addresses I think the point I
12 was driving at is that when we get the issuance
13 advice letter, we're not just getting the final
14 outputs - this is the pricing, this is the
15 structure - but we get the undergirding, the
16 rationale that supports that. We get the back
17 up. In other words, how you arrived at that and
18 why you arrived at that.

19 A Right.

20 Q I'll let that stand for now. That's good enough
21 for present purposes. Let me ask you another
22 question and really it's about market timing.
23 You said you're anticipating right now perhaps
24 something in the order of mid-2021 to go to

1 market with these. As I understand the Statute,
2 and I think I'm reading it correctly, is there
3 really is no limit on the timing. You can go to
4 market when you want to go if ever -- if ever --
5 or you can go when you want to go if ever.

6 And as I read the Statute, too,
7 you went through this with Mr. Creech, one of the
8 two financing conditions or structuring
9 conditions is that you need to -- we need to find
10 that your pricing will result in the lowest storm
11 recovery charge consistent with market conditions
12 at the time. So as long as you're at or better
13 than market at the time you go to market, you've
14 met that condition. My question to you really is
15 what kind of protection do we have about you
16 mistiming when you go to market?

17 If you go into a bad market or a
18 less favorable market and suddenly we find that
19 the net present value differential to the
20 ratepayers has shrunk. It's no longer 30
21 million. It's only 15 million now because you
22 mistimed the market. You've met the statutory
23 condition because you are selling into the market
24 at a price and structure that is the best in the

1 market conditions at that time. You've met the
2 condition, but you just mistimed. What's my
3 protection there? What's my protection? What's
4 the ratepayer's protection?

5 I'm sorry. What's the ratepayer's
6 protection? I'm a ratepayer. I'm a ratepayer.

7 A Well, I am too, but --

8 Q What's the ratepayer's protection?

9 A It's really with -- you know, so as we --
10 especially as we've laid out in this bond team
11 where the Company and the Commission --
12 designated Commissioner or Commission staff
13 member are the decision makers, that would be the
14 way that we would, you know, we'd consider all of
15 that as much as how we structure, market, and
16 price the bonds, but when do we go into the
17 market and figuring out the most optimal time.

18 I think in the other manner it
19 would really be through the issuance advice that
20 we would give you information and say here's why
21 we -- here's why we think, you know, the timing
22 is appropriate now.

23 Q All right. I want to think on that one some.

24 I'll take that answer, but I'll need to think

1 some about that whether that works. But let me
2 ask this question on the same topic but ask it
3 this way. We're in a fairly decent market right
4 now. What if the Financing Order had as a
5 condition that you had to use it or lose it by
6 some date certain in the future? How would that
7 affect things?

8 A I guess we would have to know what that date
9 were, right? And I'll just -- I'll give you a
10 little -- an understanding of what the runway
11 leading up to an issuance is. I think we've
12 talked about this a little bit in testimony. And
13 we've committed in our testimony to get into the
14 market or to pursue rather, having promised to
15 pursue, an appropriately aggressive approach
16 timeline rather to get to market after the
17 receipt of the Financing Order. But as we talked
18 about in my cross examination, the issuer on
19 these bonds is the SPE. The Utilities are
20 co-registrants there.

21 So this is a brand new issuing
22 entity, so they're -- the first step is you've
23 got to get this entity rated with the SEC. We've
24 got to get the bonds rated, so we've got to know

1 what the structure is that we're asking rating
2 agencies to rate. Those aren't necessarily --
3 they're not strictly lock step kind of decisions
4 like you don't have to -- you don't do the
5 rating, and then when that's done, move -- or you
6 don't do the registration and then move the
7 rating. You can do some of that on a, you know,
8 joint timeline. And then you have to go out and
9 talk to your investors. And we would envision
10 doing some sort of road show or phone call
11 meetings with investors.

12 So, I mean, you know, what we laid
13 out in our schedule was, you know, receipt of
14 Financing Order in March, kind of being in the
15 market late June, early July, so that, you know,
16 four months -- three and a half, four months kind
17 of timeframe is really what we will need at a
18 minimum from the time the Financing Order is
19 issued.

20 And so I think you could -- there
21 may be some ability, I mean, I think that would
22 be up to the Commission to put some time
23 parameter on it, but I just want to lay that kind
24 of timeframe out, but if it were less than six

1 months it would be very difficult to ensure that
2 we would be able to get to market in that
3 timeframe.

4 Q Some familiarity with the issuance process, so I
5 understand that it cannot be too short. I
6 understand that. But I really was asking more
7 conceptually is -- would it impair your ability
8 to go forward if there was a end date for the
9 ability to exercise the Financing Order?

10 A As I think about it, I can't think of a practical
11 reason, but I guess I would have to defer to my
12 legal counsel to say whether there is really a
13 problem with that or not.

14 Q Okay. Well, let's leave that then for now. I
15 think we've explored that. I think most of the
16 other things -- questions I would've asked you
17 would have been answered or you've responded to
18 them on others but let me just be sure on one.

19 I want to make sure I'm making an
20 assumption you don't disagree with. And my
21 assumption is that you would not choose a
22 floating rate issue unless the all-in costs
23 including the cost of the swaps to hedge was
24 better -- gave you a better pricing than a

1 fix-rate issue. I'm correct in making that
2 assumption, right?

3 A Yes, certainly. But I also think that from my
4 familiarity in the market, the floating rate
5 issuance for -- you know, I think we agreed in
6 our Settlement for up to 20 years -- I'm not sure
7 you can have a floating rate product in the
8 public markets for 20 years. So -- but yeah,
9 that -- and conceptually, yeah, you would have
10 to -- you would have to evaluate and analyze that
11 floating rate with a swap back to fixed is more
12 beneficial than the fixed rate you could get in
13 the market. Absolutely.

14 Q That's fine. I did think of one other thing I
15 wanted to just hear you talk a little bit about
16 is the Companies have elected in this round not
17 to use the permission the Statute gives to set up
18 a reserve fund and to finance that reserve fund
19 or defund it out of proceeds from the
20 securitization. And obviously if you did set
21 that up, you'd have a larger issue that might
22 affect the terms, the structure and the pricing
23 and so forth. I understand all of that. But it
24 also would give you some protection -- give the

1 ratepayers some protection against pancaking in
2 the future as we get hurricanes and storms going
3 down the road.

4 Talk to me a little bit about what
5 considerations went into the Companies' thinking
6 about why not to -- why not to include a reserve
7 component in this issue.

8 A My understanding from talking with our regulatory
9 folks back when we were drafting the Petition was
10 that we already have, you know, some level of
11 kind of base storm recovery cost in base rates,
12 and so we take this kind of deductible we call it
13 every time we have storms up to that level before
14 we start deferring anything for future recovery.
15 So I think that kind of that normalized level in
16 base rates kind of obviates the need for a
17 reserve at this point.

18 Q That's a satisfactory response. I appreciate
19 that. I just was curious to know if there was
20 any other thinking going on behind why you chose
21 not to use that authority.

22 I think that covers it. Those are
23 all the questions I have. Thank you, Mr. Heath.

24 THE WITNESS: Thank you.

1 CHAIR MITCHELL: Commissioner Duffley?

2 EXAMINATION BY COMMISSIONER DUFFLEY:

3 Q Good morning, Mr. Heath. I'd like to follow up
4 on some of Commissioner Clodfelter and
5 Commissioner Brown-Bland's questions. And it has
6 to do with the timing. And so is the current
7 position of the Companies to issue these bonds
8 within the next year?

9 A Yes. Our current proposal is that we -- after
10 receipt of a financing order, we put together a
11 calendar that would get us into the market this
12 year, within this calendar year.

13 Q And then hypothetically if an uncompleted
14 transaction scenario occurred, how long would you
15 attempt the securitization process before turning
16 back to the rider which hasn't been approved or
17 disapproved, but going back to a traditional
18 process?

19 A It's hard to say, but, I mean, I think we would
20 have to think about it collectively - the
21 treasury and our regulatory group, our
22 attorneys - to figure out, you know, how long we
23 would do that if we would go -- we would try to
24 go to market again. But I do think that that,

1 you know, if we tried to go in July and we didn't
2 have a successful transaction, I mean, just the
3 way I think about it today, I think it's really
4 later in the year before we would even try again.

5 Q And then my last question -- I'm going to switch
6 gears on you. Thank you for that answer. With
7 respect to the -- I understand the benefits of
8 allowing flexibility or what the benefits of
9 allowing the flexibility regarding the
10 structuring, and pricing, and marketing. But
11 what in your opinion would be the pitfalls or
12 negative aspects of the flexibility that you're
13 requesting?

14 A I mean, I guess it's some thought of loss of
15 control, right, that you don't have clear insight
16 into what we're thinking, but I think we propose
17 to mitigate that through issuance advice letter
18 process and potentially a bond team with the
19 Commission as a joint decision maker. So I
20 think, you know, one or either of those
21 approaches can help mitigate that -- that
22 concern.

23 Q Okay. Thank you.

24 COMMISSIONER DUFFLEY: I have no further

1 questions.

2 CHAIR MITCHELL: Commissioner Hughes?

3 COMMISSIONER HUGHES: No additional
4 questions at this time.

5 CHAIR MITCHELL: Commissioner McKissick?

6 COMMISSIONER McKISSICK: I have a couple of
7 questions, Madam Chair.

8 EXAMINATION BY COMMISSIONER McKISSICK:

9 Q Mr. Heath, could you contrast and compare the
10 advantages of going private placement group
11 versus selling the bonds in a more traditional
12 way?

13 A Sure. I mean the -- and to make sure that I
14 understand what you're asking in terms of private
15 placement. So there's the -- kind of the private
16 placement provision in the SEC registration
17 documents versus this kind of negotiated, or not
18 negotiated, but auction-type deal I described in
19 Florida, so I want to make sure I understand
20 which one you're asking about there?

21 Q Well, I know that what you're asking for is
22 authority from what I gather to go private
23 placement route, and are you limiting it to
24 simply the way that Florida does it or are you

1 looking at the way the SEC would do it? You
2 know, I'm just trying to understand fully what it
3 is that is being proposed as the model that we
4 would embrace in North Carolina and contrast that
5 otherwise. Uh-huh.

6 A Okay. So what we're proposing is a fully
7 negotiated publicly registered and marketed deal
8 to all investors that are out in the public
9 market and to the institutional investors. You
10 know, these are insurance companies, money
11 managers, you know, all those sorts of parties
12 where we go out and this deal is publicly
13 announced and we have underwriters who have a
14 list of investors that they go out and call upon
15 to bring into this deal and so that is, you know,
16 kind of the broadest marketing you can do, is
17 like you go out and reach out to everyone.

18 If you are doing a private
19 placement that's available in the -- under the
20 SEC rules, you're talking with a much narrower
21 audience of people, investors. And then if
22 you're doing something like FP&L did where you're
23 doing this auction process with a group of banks,
24 you're talking to an even smaller subset of

1 people.

2 So we believe that the fully
3 registered and marketed approach will bring the
4 biggest -- the broadest interest which helps to
5 drive pricing down.

6 Q Okay. Now, let me ask you this, assuming there's
7 a bond team and the bond team is in place, what
8 role do you see them playing in terms of say
9 coming up with say a marketing plan for the way
10 that these bonds might be offered to potential
11 investors?

12 A That's a great question. So I want to, again,
13 kind of preface my discussion about a bond team
14 as being a bond team that has joint
15 decision-making authority that is in the hands of
16 the Company and the designated Commissioner or
17 member of Commission staff, not in the hands of
18 the Public Staff, an intervening party.

19 And so we would -- that bond team
20 would then further have kind of advisory members
21 if you want to call it that, the underwriters,
22 potentially the Public Staff and its consultants,
23 and others who can give feedback on different
24 documents and approaches to things.

1 So we would -- our approach
2 similar to Florida would be that we would ask the
3 banks to put together a detailed marketing plan.
4 How would they go out and talk to accounts? Who
5 would they target both on the short end of the
6 maturity spectrum, you know, the one, two to
7 three, four, five years, and then the further out
8 periods. And those would probably be very
9 different investors. Different investors target
10 short term. Different investors target long
11 term. And so we would want to understand that
12 plan.

13 And so this bond team would be
14 looking at those plans that the underwriters put
15 together and that way -- and so if we come up
16 with a bond team, that's what we've outlined in
17 our rebuttal testimony, the underwriters would
18 have those -- put those plans together. The
19 Public Staff and other parties on that team would
20 comment on that. But ultimately it would be the
21 Commission -- or the Commission representative
22 and the Company representative who would decide
23 yeah, this is the way we want to go to market or
24 we want to target some additional investors or we

1 don't think this plan is efficient or those kind
2 of comments. Is that what you were looking for?

3 Q Sure. Yeah, that's exactly what I was looking
4 for. And let me ask you this, in terms of the
5 underwriters that are going to be involved, I
6 take it they're going to be identifying benchmark
7 or comparable securities that they would use to
8 measure against in terms of what this particular
9 offering would look like, you know, in terms of
10 pricing and returns and things of that sort. So,
11 I mean, to what extent do you see the
12 operators -- excuse me -- the underwriters
13 operating somewhat autonomously as opposed to
14 working with the bond team and to what extent do
15 you see the Commission playing as a part of that,
16 I mean, if there's a disagreement or there's not
17 a meeting of the minds?

18 A Okay. So if they're -- so the underwriters
19 certainly would not be going off doing their own
20 thing. Not in any stretch of the imagination.
21 So their charge really in how do we approach the
22 market would have to be signed off on by the
23 joint decision makers. And again, that joint
24 decision-making authority needs to be with the

1 Company and with the designated Commissioner or
2 member of Commission staff.

3 And so -- and you brought up the
4 point of underwriters developing pricing
5 expectations, right, and looking at comparable
6 securities. That is true to some extent, but
7 also the Company would have its opinion as well
8 as to what those comparable securities are to
9 make sure that the right comps are being used.
10 Right? That we're not looking at --

11 Q Exactly.

12 A -- comping this to a utility first mortgage bond.
13 This is a triple -- this will be AAA rated debt.
14 We're comping that to other AAA instruments and
15 potentially US Government Agency-type debt.

16 So we would have, you know, active
17 feedback including the Commission as that joint
18 decision making member on what do we believe are
19 the right comps to use in this analysis before
20 any conversations are had with investors.

21 And if there were a dispute -- if
22 there were a dispute between those two joint
23 decision makers, right, the Company rep and the
24 designated Commissioner or Commission staff, we

1 would look for the full Commission to resolve
2 those.

3 Q Got it. And I guess --

4 CHAIR MITCHELL: Commissioner McKissick, I'm
5 going to interrupt you, sir, just for a minute here.
6 We are at 12:00 -- or a little bit after 12:00 at this
7 point, so we're going to go ahead and take our break
8 and we will be in recess until 1:30. We'll resume
9 with questions from Commissioner McKissick for the
10 witness.

11 COMMISSIONER McKISSICK: Thank you, Madam
12 Chair.

13 CHAIR MITCHELL: All right. Everybody
14 please turn off your cameras and mute your
15 microphones.

16 (The hearing was recessed, to be continued
17 on January 28, 2021, at 1:30 p.m.)

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C E R T I F I C A T E

I, KIM T. MITCHELL, DO HEREBY CERTIFY that
the Proceedings in the above-captioned matter were
taken before me, that I did report in stenographic
shorthand the Proceedings set forth herein, and the
foregoing pages are a true and correct transcription
to the best of my ability.

Kim Mitchell

Kim T. Mitchell
Court Reporter II