

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-7, SUB 1214
DOCKET NO. E-7, SUB 1213
DOCKET NO. E-7, SUB 1187

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 1214)
)
In the Matter of)
Application of Duke Energy Carolinas,)
LLC for Adjustment of Rates and Charges)
Applicable to Electric Utility Service in)
North Carolina)
)
DOCKET NO. E-7, SUB 1213)
)
In the Matter of)
Petition of Duke Energy Carolinas, LLC,)
for Approval of Prepaid Advantage)
Program)
)
DOCKET NO. E-7, SUB 1187)
)
In the Matter of)
Application of Duke Energy Carolinas,)
LLC for an Accounting Order to Defer)
Incremental Storm Damage Expenses)
Incurred as a Result of Hurricanes)
Florence and Michael and Winter Storm)
Diego)

PARTIAL PROPOSED ORDER
OF THE TECH CUSTOMERS

HEARD: Wednesday, January 15, 2020, at 7:00 p.m., Macon County
Courthouse, 5 W. Main Street, Franklin, North Carolina.

Thursday, January 16, 2020, at 7:00 p.m., Burke County
Courthouse, 201 S. Green Street, Morganton, North Carolina.

Wednesday, January 29, 2020, at 7:00 p.m., Alamance County
Historic Courthouse, 1 S.E. Court Square, Graham, North Carolina.

Thursday, January 30, 2020, at 7:00 p.m., Mecklenburg County Courthouse, 832 E. 4th Street, Charlotte, North Carolina.

Monday, August 24, 2020, at 2:00 p.m., via WebEx Videoconference (Consolidated Hearing).

Thursday, September 3, 2020, at 9:00 a.m., via WebEx Videoconference (DEC-specific issues)

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

APPEARANCES:

For Duke Energy Carolinas, LLC:

Camal O. Robinson, Associate General Counsel
Brian Heslin, Deputy General Counsel
Duke Energy Corporation
550 South Tryon Street
Charlotte, North Carolina 28202

Lawrence B. Somers
Deputy General Counsel
Duke Energy Corporation
410 South Wilmington Street
Raleigh, North Carolina 27601

Kiran H. Mehta
Molly McIntosh Jagannathan
Troutman Pepper Hamilton Sanders LLP
301 South College Street, Suite 3400
Charlotte, North Carolina 28202

Brandon F. Marzo
Troutman Pepper Hamilton Sanders LLP
600 Peachtree Street, NE, Suite 5200
Atlanta, Georgia 30308

Andrea Kells
McGuireWoods, LLP
501 Fayetteville Street, Suite 500
Raleigh, North Carolina 27601

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

For the Using and Consuming Public:

Dianna W. Downey, Chief Counsel
Elizabeth D. Culpepper, Staff Attorney
Layla Cummings, Staff Attorney
Tim R. Dodge, Staff Attorney
Lucy E. Edmondson, Staff Attorney
William E. Grantmyre, Staff Attorney
Gina C. Holt, Staff Attorney
Nadia L. Luhr, Staff Attorney
Megan Yost, Staff Attorney
John D. Little, Staff Attorney
Public Staff - North Carolina Utilities Commission (Public Staff)
4326 Mail Service Center
Raleigh, North Carolina 27699

Margaret A. Force, Assistant Attorney General
Teresa L. Townsend, Special Deputy Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27603

For Tech Customers (Apple Inc., Facebook, Inc., and Google LLC):

Marcus W. Trathen
Craig Schauer
Brooks, Pierce, McLendon, Humphrey & Leonard, LLP
Suite 1700, Wells Fargo Capitol Center
150 Fayetteville Street
Raleigh, NC 27601

Matthew B. Tynan
Brooks, Pierce, McLendon, Humphrey & Leonard, LLP
Suite 2000 Renaissance Plaza
Greensboro, North Carolina 27401

For Carolina Utility Customers Association, Inc. (CUCA):

Robert F. Page
Crisp & Page, PLLC

4010 Barrett Drive,
Suite 205 Raleigh,
North Carolina 27609

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

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

For North Carolina Sustainable Energy Association (NCSEA):

Peter H. Ledford, General Counsel
Benjamin W. Smith, Regulatory Counsel
North Carolina Sustainable Energy Association
4800 Six Forks Road, Suite 300
Raleigh, North Carolina 27609

For North Carolina Clean Energy Business Alliance (NCCEBA):

Karen Kamerait
Fox Rothschild LLP
434 Fayetteville Street, Suite 2800
Raleigh, North Carolina 27601

For North Carolina Justice Center (NC Justice Center), North Carolina Housing Coalition (NC Housing Coalition), Natural Resources Defense Council (NRDC), and Southern Alliance for Clean Energy (collectively, NC Justice Center):

Gudrun Thompson, Senior Attorney
David L. Neal, Senior Attorney
Tirrill Moore, Associate Attorney
Southern Environmental Law Center
601 West Rosemary Street, Suite 220
Chapel Hill, North Carolina 27516

For NC WARN:

Matthew D. Quinn
Lewis & Roberts, PLLC
3700 Glenwood Avenue, Suite 410
Raleigh, North Carolina 27612

For the Center for Biological Diversity and Appalachian Voices:

Howard Crystal, Senior Attorney
Anchun Jean Su, Staff Attorney and Energy Director
1411 K Street NW, Suite 1300
Washington, D.C. 20005

Perrin de Jong, Staff Attorney
Center for Biological Diversity
P.O. Box 6414
Asheville, North Carolina 28816

For the Commercial Group:

Alan R. Jenkins
Jenkins at Law, LLC
2950 Yellowtail Avenue
Marathon, Florida 33050

Brian O. Beverly
Young Moore and Henderson, P.A.
3101 Glenwood Avenue
P.O. Box 31627
Raleigh, North Carolina 27622

For Harris Teeter:

Kurt J. Boehm
Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East 7th Street, Suite 1510
Cincinnati, Ohio 45202

Ben M. Royster
Royster and Royster, PLLC
851 Marshall Street
Mount Airy, North Carolina 27030

For Sierra Club:

Catherine Cralle Jones
Law Office of F. Bryan Brice, Jr.
127 West Hargett Street, Suite 600
Raleigh, North Carolina 27601

Bridget M. Lee
Sierra Club
9 Pine Street, Suite D
New York, New York 10005

For North Carolina League of Municipalities (NCLM):

Deborah K. Ross
Fox Rothschild LLP
434 Fayetteville Street, Suite 2800
Raleigh, North Carolina 27601

BY THE COMMISSION: On December 21, 2018, Duke Energy Carolinas, LLC (DEC or the Company) filed an Application in Docket Number E-7, Sub 1187, requesting that the Commission approve the deferral of DEC's cost of restoring electric service after Hurricanes Florence and Michael and Winter Storm Diego.

On August 2, 2019, DEC filed a petition for approval of its Prepaid Advantage Program in 14 Docket Number E-7, Sub 1213, pursuant to which DEC would offer customers the billing option to prepay for service.

On September 30, 2019, DEC filed an Application to Adjust Retail Rates and Request for Accounting Order (Application), along with a Rate Case Information Report Commission Form E-1 (Form E-1), in Docket No. E-7, Sub 1214, together with the direct testimony and exhibits of Stephen G. De May, President; Marc W. Arnold, General Manager Lighting Programs, DEC;¹ Jessica L. Bednarcik, Vice President, Coal Combustion Products Operations, Maintenance and Governance, DEBS; Steven D. Capps, Senior Vice President of Nuclear Operations, DEC; Janice Hager, President, Janice Hager Consulting, LLC; James P. Henning, Senior Vice President of Customer Service, Duke Energy Corporation (Duke Energy);^{2,3} Robert B. Hevert, Partner, ScottMadden, Inc.;⁴ Steve Immel, Vice President of Carolinas Coal Generation; Rufus S. Jackson, Vice President for Carolina East Operations, Duke Energy Corporation; Kimberly D. McGee, Rates and Regulatory Strategy Manager, Duke Energy Progress, LLC (DEP) and DEC; Jane L. McManeus, Director of Rates and Regulatory Planning, DEC; Karl W. Newlin, Senior Vice President,

¹ Arnold's testimony was subsequently adopted by DEC witness Teresa Reed, Pricing and Solutions Director, Duke Energy Business Services, LLC (DEBS). DEBS provides various administrative and other services to DEC and other affiliated companies of Duke Energy.

² DEC is a wholly-owned subsidiary of Duke Energy Corporation.

³ Henning's testimony was subsequently adopted by DEC witness Larry E. Hatcher, Senior Vice President of Customer Service, Duke Energy Corporation.

⁴ Hevert's testimony was subsequently adopted by DEC witness Dylan D'Ascendis, Director, ScottMadden, Inc.

Corporate Development and Treasurer, DEBS; Jay W. Oliver, General Manager, Grid Solutions Engineering and Technology, DEBS; John Panizza, Director, Tax Operations, DEBS; Michael J. Pirro, Director, Southeast Pricing & Regulatory Solutions; Donald L. Schneider, Jr., General Manger, Advanced Metering Infrastructure Program Management, DEBS; John J. Spanos, President, Gannett Fleming Valuation and Rate Consultants, LLC; Nicholas G. Speros, Accounting Manager, DEBS.

Petitions to intervene in Docket No. E-7, Sub 1214, were filed by CIGFUR III on September 3, 2019; CUCA on September 11, 2019; NCSEA on September 16, 2019; Vote Solar on September 30, 2019; Sierra Club on October 8, 2019; Center for Biological Diversity and Appalachian Voices on October 17, 2019; NC WARN on October 23, 2019; Commercial Group on November 1, 2019; Apple, Inc., Facebook, Inc., and Google, LLC. (Tech Customers) on November 14, 2019; NCJC, NCHC, NRDC and SACE (NC Justice Center) on December 9, 2019; Harris Teeter LLC January 3, 2020; NCCEBA on January 8, 2020; and the North Carolina League of Municipalities on January 15, 2020. Notice of Intervention was filed by the Attorney General on October 1, 2019.

The Commission entered Orders granting the petitions to intervene of CIGFUR III on September 6, 2019; CUCA on September 13, 2019; NCSEA on September 18, 2019; Vote Solar on October 3, 2019; Sierra Club on October 9, 2019; Center for Biological Diversity and Appalachian Voices on November 1, 2019; NC WARN on November 1, 2019; Commercial Group on November 4, 2019; Tech Customers on November 14, 2019; NC Justice Center on December 11, 2019; Harris Teeter on January 6, 2020; NCCEBA on January 15, 2020; and North Carolina League of Municipalities on January 16, 2020.

The Public Staff's intervention is recognized pursuant to N.C. Gen. Stat. § 62-15(d) and Commission Rule R1-19. The intervention of the Attorney General's Office (AGO) is recognized pursuant to N.C. Gen. Stat. § 62-20.

On October 29, 2019, the Commission issued its Order Establishing General Rate Case, Suspending Rates, Scheduling Hearings, and Requiring Public Notice.

On November 20, 2019, the Commission issued an Order consolidating Docket No. E-7, Subs 1213 and 1214 (DEC's petition for approval of prepaid program with DEC's rate case application).

On June 26, 2020, the Commission issued an Order consolidating Docket No. E-7, Subs 1214 and 1187, consolidating DEC's application for deferral of storm costs with its general rate case application.

On March 10, 2020, Governor Roy Cooper issued an executive order declaring a state of emergency in North Carolina to coordinate response and

protective actions to prevent the spread of the novel coronavirus, COVID-19. In doing so, the Governor ordered state agencies to cooperate in the implementation of the provisions of the executive order. By subsequent executive orders, the Governor restricted nonessential movement of the State's residents and ultimately prohibited gatherings of certain numbers of persons in order to limit the spread of COVID-19.

In a filing made on March 16, 2020, DEC waived its right to implement temporary rates under N.C. Gen. Stat. § 62-135 and gave notice of its prospective waiver of its right to implement its proposed rates by operation of N.C. Gen. Stat. § 62-134, in the event that the postponement of the hearing rendered it infeasible for the Commission to issue an order prior to the expiration of the rate suspension period under N.C. Gen. Stat. § 62-134.

On March 16, 2020, in response to the COVID-19 pandemic and the Governor's declared state of emergency, and upon the motion of DEC, the Commission issued an order postponing hearing and addressing procedural matters in Docket No. E-7, Sub 1214.

On February 18, 2020, the Public Staff filed the testimony and exhibits of Jay B. Lucas, Utilities Engineer, Electric Division, Michael C. Maness, Director, Accounting Division, John R. Hinton, Director, Economic Research Division, Jeff Thomas, Utilities Engineer, Electric Division, J. Randall Woolridge, PH.D., Pennsylvania State University, Scott J. Saillor, Utilities Engineer, Electric Division, James S. McLawhorn, Director, Electric Division, Charles M. Junis, Utilities Engineer, Water, Sewer and Telephone Division, Roxie McCullar, Consultant, William Dunkel and Associates; Jack L. Floyd, Utilities Engineer, Electric Division, Dustin R. Metz, Utilities Engineer, Electric Division, David M. Williamson, Utilities Engineer, Electric Division, Tommy C. Williamson, Jr., Utilities Engineer, Electric Division, Michelle M. Boswell, Staff Accountant, Electric Section, Accounting Division, John Howat, Senior Policy Analyst, National Consumer Law Center, Bernard Garrett, Secretary/Treasurer, Garrett and Moore, Inc., Vance F. Moore, President, Garrett and Moore, Inc.

Also on February 18, 2020, CUCA filed direct testimony and exhibits of Kevin W. O'Donnell, CFA; Vote Solar filed the direct testimony of James M. Van Nostrand, Energy Policy Expert, EQ Research, LLC, and Tyler Fitch, Southeast Regulatory Manager, Vote Solar; NC Justice Center filed the testimony and exhibits of Paul J. Alvarez, President, Wired Group; Dennis Stephens, Senior Technical Consultant, Wired Group, and Johnathan F. Wallach, Vice President, Resource Insight, Inc.; NCSEA filed direct testimony and exhibits of Justin Barns, Director of Research, EQ Research, LLC; Commercial Group filed the direct testimony and exhibits of Steve W. Chriss, Director, Energy and Strategy; Sierra Club filed the direct testimony and exhibits of Mark Quarles, P.G., Principal Scientist and Owner, Global Environmental, LLC, and Rachel S. Wilson, Principal Associate, Synapse Energy Economics, Incorporated; Harris Teeter filed direct testimony and exhibits of Justin Bieber, Senior

Consultant, Energy Strategies, LLC; CIGFUR III filed direct testimony and exhibits of Nicholas Phillips, Jr. Consultant, Managing Principal of Brubaker & Associates, Inc.; Center for Biological Diversity and Appalachian Voices filed direct testimony and exhibits of Greer Ryan, Energy Policy Analyst, Center for Biological Diversity, Shaye Wolf, Ph.D., Climate Science Director, Climate Law Institute, and Rory McIlmoil, Senior Energy Analyst, Appalachian Voices; the AGO filed testimony and exhibits of Richard A. Baudino, Consultant, Kennedy and Associates and Steven C. Hart, President and Principal Hydrogeologist, Hart & Hickman, PC; the Tech Customers filed testimony and exhibits of Kurt Strunk, Director, National Economic Research Associates; and NC WARN filed direct testimony and exhibits of William E. Powers, P.E., Environmental Engineer, Founder and Principal of Powers Engineering.

On February 19, 2020, the AGO filed exhibits for witness Steven C. Hart, and the Public Staff filed a correction to the testimony of witness McCullar.

On February 24, 2020, Public Staff filed corrections to exhibits for witness John R. Hinton.

On February 25, 2020, the Sierra Club filed corrections to the testimony of witness Rachel Wilson; and the Public Staff filed First Supplemental Testimony and Exhibits for witness Michael C. Maness. On this same date, the North Carolina Attorney General's Office filed corrections to the testimony and exhibits of witness Paul J. Alvarez.

On February 26, 2020, the Sierra Club filed corrections to the testimony of witness Rachel Wilson, and on March 3, 2020, Public Staff filed corrections to the testimony of witness Charles Junis.

On March 4, 2020, DEC filed the rebuttal testimony of Contisha B. Barnes, rebuttal testimony and exhibits of Marcia E. Williams, Rudolph Bonaparte, Steven D. Capps, Stephen G. De May, Steven M. Getter, James Wells, David L. Doss, Janice Hager, Larry Hatcher, Robert Hevert, Nicholas Speros, Lon Huber; John Spanos, Steve Immel, Renee Metzler, Michael Pirro, Jay Oliver, Sean Riley, Karl W. Newlin, Jessica Bednarcik, Steve Young, and Jane McManeus.

On March 25, 2020, Public Staff filed supplemental and settlement testimony and exhibits for witness Michelle M. Boswell, second supplemental testimony and exhibits for witness Jack L. Floyd, and supplemental testimony and exhibits for witnesses Dustin Metz, Scott J. Sallor, J. Randall Woolridge, and Roxie McCullar.

Also on March 25, 2020, DEC filed an Agreement and Stipulation of Settlement between DEC and the Public Staff (Public Staff First Stipulation) relating to storm costs and various accounting issues.

On April 6, 2020, DEC filed supplemental rebuttal testimony for witness Jane L. McManeus, and Janice Hager and rebuttal testimony of Zachary Kuznar.

On April 23, 2020, CUCA filed and update to the direct testimony of witness Kevin W. O'Donnell, CFA.

On May 4, 2020, DEC filed supplemental rebuttal testimony and exhibits for Jessica L. Bednarcik, Erik Lioy, and Marcia E. Williams.

On May 28, 2020, DEC filed an Agreement and Stipulation of Settlement between DEC and Harris Teeter, LLC (Harris Teeter Stipulation), relating to DEC's proposed Grid Improvement Plan, DEC's OPT-VSS tariff charges, return on equity and capital structure, meter data access, and Green Button functionality. On August 6, 2020, DEC filed an Amendment to the Harris Teeter Stipulation modifying the rate of return and capital structure portion of that Stipulation.

On May 29, 2020, DEC filed an Agreement and Stipulation of Settlement between DEC and CIGFUR III (CIGFUR Stipulation) relating to rate of return and capital structure, DEC's proposed Grid Improvement Plan, and climate-resilience planning.

On June 1, 2020, DEC filed an Agreement and Stipulation of Settlement between DEC and the Commercial Group (Commercial Group Stipulation) relating to DEC's proposed Grid Improvement Plan, DEC's OPT-VSS tariff charges, return on equity and capital structure, meter data access, and Green Button functionality. On August 5, 2020, DEC filed an Amendment to the Commercial Group Stipulation modifying the rate of return and capital structure portion of that Stipulation.

On June 17, 2020, the Commission ordered that the expert witness hearings in the above-captioned proceeding would be consolidated for hearing beginning on Monday, July 27, at 2:00 p.m., solely for the purpose of considering testimony on topics for which the evidence is identical and equally admissible as to DEC and to DEP; and additionally, that this consolidated hearing would be conducted remotely.

On July 9, 2020, DEC filed an Agreement and Stipulation of Settlement between DEC and Vote Solar (Vote Solar Stipulation) relating to rate of return and capital structure, DEC's proposed Grid Improvement Plan, unprotected Excess Deferred Income Taxes (EDIT), and various cost allocation and rate design issues. On August 5, 2020, DEC filed an Amendment to the Vote Solar Stipulation modifying the rate of return and capital structure portion of that Stipulation.

On July 10, 2020, the AGO filed the supplemental testimony of Richard Baudino.

On July 20, 2020, DEC and DEP filed the supplemental rebuttal testimony of Dylan W. DAscendis.

On July 23, 2020, DEC filed an Agreement and Stipulation of Settlement between DEC and NCSEA and the NC Justice Center (NCSEA/NC Justice Center Stipulation) relating to rate of return and capital structure, DEC's proposed Grid Improvement Plan, DEC's agreement to make a monetary contribution to the Helping Home Fund, collaboration on low-income EE/DSM pilot programs, and collaboration on a tariffed on-bill pilot program, and distributed generation guidance/hosting capacity analyses. On August 10, 2020, DEC filed an Amendment to the NCSEA/NC Justice Center Stipulation modifying the rate of return and capital structure portion of that Stipulation.

Also on July 23, 2002, the Commission issued an order requiring DEC to file additional testimony on its Grid Improvement Plan and coal combustion residual costs.

On July 27, 2020, in response to a joint motion of the Public Staff and DEC, the Commission issued an order further rescheduling the consolidated remote hearings. Among other things, the Commission ordered that the consolidated hearing be rescheduled to begin at 2:00 p.m. on Monday, August 24, 2020.

On July 31, 2020, DEC filed a Second Agreement and Stipulation of Partial Settlement between DEC and the Public Staff (Public Staff Second Stipulation) relating to EDIT, cost of capital, DEC's proposed Grid Improvement Plan, the appropriate methodology to determine cost of service, and various other accounting adjustments.

On September 8, 2020, Public Staff filed second supplemental testimony of witnesses Metz, Thomas, Floyd, and Maness; corrected first supplemental testimony of witness Floyd; and second supplemental and settlement testimony of witness Boswell.

On September 9, 2020, Public Staff filed third supplemental testimony of witness Maness.

On September 15, 2020, DEC filed supplemental rebuttal testimony of witness Oliver.

The consolidated, remote hearing commenced on August 24, 2020, to consider financial issues (return on equity, capital structure, and credit quality), issues relating to the return of EDIT, DEC's proposed Grid Improvement Plan, and proposals relating to the affordability of electric rates. Thereafter, a separate hearing addressing DEC-specific issues commenced on September 3, 2020.

After the conclusion of the hearing, various parties submitted late-filed exhibits responding to requests from the Commission during the hearings.

On November 4, 2020, proposed orders and briefs were filed by the parties.

Based upon consideration of the pleadings, testimony, and exhibits received into evidence at the hearings, the Stipulations, and the record as a whole, the Commission makes the following:

FINDINGS OF FACT

Grid Improvement Plan

1. The Company's request for deferral accounting for its proposed Grid Improvement Plan (GIP), as modified by the Public Staff Second Stipulation, would include more than \$800 million in planned investment in the following programs from 2020 to 2022: Self-Optimizing Grid (SOG), Integrated Volt Var Control (IVVC), Integrated System and Operations Planning (ISOP), Transmission System Intelligence, Distribution Automation, Power Electronics, DER Dispatch Tool, and Cyber Security.

2. The GIP substantially overlaps with, but is not identical to, the Power Forward Carolinas plan proposed in the Company's last rate case. Primarily, the differences are that proposed GIP spending is less than the \$13 billion Power Forward Carolinas plan, would be implemented over three years rather than ten, and has modified programs and spending levels for each.

3. The Company contends the GIP is motivated by a number of "Megatrends" including (1) population and business growth; (2) advancing DER and renewables technologies; (3) advancing grid technologies; (4) changing customer expectations; (5) increased environmental commitments; (6) worsening weather patterns; and (7) increased threat of physical and cyber attacks on the grid.

4. The Megatrends cited by the Company are not new, are expected to continue into the foreseeable future, and are not unique to North Carolina. In fact, many of the reasons cited by DEC in this proceeding were proposed as the basis for the Power Forward Carolinas plan. Responding to such trends is part of the ordinary course of business for regulated utilities. DEC and Duke Energy's affiliated utilities in other jurisdictions have already begun implementing many of the technologies proposed as part of the GIP.

5. The Company, therefore, has failed to provide clear and convincing evidence that the GIP costs proposed in this case are extraordinary.

6. DEC has not evaluated in any detailed manner what its implementation of GIP programs would look like in the absence of deferral accounting. On a qualitative level, the Company believes that it would implement the identified programs "at a much smaller scale and a much slower pace."

7. DEC has not calculated what the likely financial impact of a denial of deferral accounting would be, with DEC's witnesses indicating their belief that doing so would be "impossible." The Company calculated an impact of approximately 70 basis points over the three years but indicated that that calculation "doesn't reflect the real-world impact of a decision not to grant deferral." Instead, the calculation reflects the impact to DEC's financial condition if the GIP were implemented as planned, but without deferral accounting.

8. Because DEC would implement the GIP programs at a smaller scale and at a slower pace in the absence of deferral accounting, the aggregate 70-basis point impact calculated by DEC is not substantial evidence of the required adverse financial impact on DEC. The likely financial impact on DEC is unknown but is expected to be much less than 70 basis points and spread over a much longer period of time than three years.

9. The Company has failed to provide clear and convincing evidence that, absent deferral, DEC will experience an adverse impact on its financial condition.

10. The budgeted spending for GIP is based on estimates from which substantial variation may occur. Accordingly, actual spending on the GIP programs, if implemented as proposed, could significantly exceed the budgeted amounts.

11. The GIP was presented to stakeholders over the course of several meetings in 2018 and 2019. While the Company made substantial efforts to provide information regarding its plans during and in association with the stakeholder meetings, the testimony offered by stakeholders is that they had very little influence over the programs and spending levels ultimately incorporated into the GIP. Changes to the GIP appear to have little connection to any stakeholder feedback as reported in the stakeholder meeting materials. Changes to the GIP from the last stakeholder presentation to the filing of the plan with the Commission do not appear to reflect stakeholder feedback.

12. The settlement agreements entered into between DEC and various parties concerning the GIP provides some evidence of support for elements of the proposed spending plan but does not provide independent support for the elements of the legal test that must be satisfied for the Commission to approve deferral accounting. Moreover, in many cases the evidence presented by the expert witnesses for the parties to the settlement agreements suggests that DEC has not satisfied the applicable legal test.

13. The Company's proposal includes cost-benefit analyses based upon expected customer reliability improvements and other benefits. However, the Company has not offered to meet any particular targets in implementing its programs. Further, the Company has not proposed specific, adequate reporting requirements, although it has agreed to disclose information about its

implementation of the GIP programs and the Company and Public Staff have agreed to develop reporting requirements.

14. DEC has failed to show at this time that GIP costs qualify for deferral accounting treatment.

Credit Metrics

15. DEC testified that a lowering of DEC's credit ratings would make securing future debt more costly and more difficult.

16. In August of 2020, DEP successfully raised \$700 million of debt at a 2.5% interest rate. At the time DEP raised this debt, it had a lower debt rating than DEC.

17. DEC's cost of debt at the time it filed this rate case was 4.51%. Should DEC secure new debt with an interest rate of 2.5%, the debt will reduce its overall cost of debt.

18. DEC admitted that, should DEC suffer a downgrade in its credit ratings, the interest rates for its debt would increase only five basis points, which would result in an increase of only \$225,000 in annual interest.

19. It is not certain that DEC would receive a debt downgrade as a result of not receiving its requested return for coal ash costs. Although Duke Energy Corporation's Funds from Operations (FFO) to debt ratio might drop below 15% in such a situation, the Company admitted that its FFO/debt ratio has been below 15% in the past. In addition, DEC did not identify any instances in which the credit rating was dropped because of a decrease in the FFO/debt ratio.

20. DEC has the "very highest" credit rating of electric utilities, and other utilities have been able to raise debt despite having lower credit ratings (e.g., DEP raised \$700 million of debt in the midst of the pandemic). DEC does not need to maintain its current credit ratings to retain "flexibility" in the timing of its access to debt markets, particularly given that DEC routinely raises debt at the beginning of the year.

Return on Equity

21. In the testimony filed by witness D'Ascendis, DEC requested approval of a return on equity (ROE) of 10.5%, representing an increase from DEC's current authorized ROE of 9.9%.

22. In the Public Staff Second Stipulation, DEC and the Public Staff agree that the Commission should approve a ROE of 9.6%, along with an embedded cost of debt of 4.27% and a capital structure consisting of 48% long-term debt and 52% members' equity.

23. While the Public Staff Second Stipulation is material evidence entitled to appropriate weight in determining DEC's ROE and other rate of return inputs, the ROE approved by the Commission must be justified by substantial, competent evidence from the record as a whole.

24. Based on the various empirical models used by Public Staff witness Woolridge, AGO witness Baudino, and CUCA witness O'Donnell, each of these three witnesses independently recommended an ROE no greater than 9.0%.

25. D'Ascendis relied on the Discounted Cash Flow (DCF), the Capital Asset Pricing Model (CAPM), the Empirical Capital Asset Pricing Model (ECAPM), Expected Earnings, and Bond Yield Plus Risk Premium models in supporting his recommended ROE. The CAPM, ECAPM, Expected Earnings, and Bond Yield models as utilized by D'Ascendis suffer from serious flaws that call into question their application in this proceeding. The only empirical model with indicia of reliability for application in this proceeding presented by D'Ascendis—his DCF model—suggested an ROE of 8.82%.

26. The average ROE awarded in the United States to vertically integrated electric utilities from January 1, 2019, to February 19, 2020 was 9.65%.

27. DEC, by all available objective metrics, has a risk profile that is lower than its peer utilities.

28. The pandemic has caused unprecedented economic damage and left hundreds of thousands of North Carolinians without jobs. The Commission is obligated by statute to consider changing economic conditions in setting fair and equitable rates for the Company and its ratepayers. The ongoing pandemic, which is of unprecedented scope and magnitude and is likely to cause ongoing significant economic harm for the foreseeable future, is a matter that the Commission must take into consideration.

29. The ROE agreed to by the stipulating parties is above the range previously advocated by those parties, with the exception of DEC, which advocated for an ROE far above the Settlement ROE. The Stipulation, standing alone, cannot support the recommended ROE, particularly when the lone party that advocated for an ROE at or above the Settlement ROE based its figures on unreliable empirical models.

30. Given the results of the empirical models and the expert witness testimony supporting them, the objective evidence that DEC presents a lower risk profile than the peer group, the authorized ROE rates approved pre-pandemic, and current ongoing economic conditions, the Stipulated ROE of 9.6% is unreasonably high. Accordingly, this evidence, when put into proper context, lends substantial support for an authorized rate of return on equity of 9.4%.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-14 Grid Improvement Plan

The evidence supporting these findings and conclusions related to DEC's proposed GIP is contained in the Company's verified Application and Form E-1, and the testimonies and exhibits of DEC witnesses Oliver and McManeus, Public Staff witnesses Maness, Williamson and Williamson, and Thomas, Tech Customers witness Strunk, CIGFUR III witness Phillips, CUCA witness O'Donnell, NC Justice Center *et al.* and NCSEA witnesses Alvarez and Stephens, NC WARN witness Powers, Vote Solar witnesses Van Nostrand and Fitch, and Harris Teeter witness Bieber.

Summary of the Evidence

DEC's primary witness in support of its GIP was Jay Oliver, DEC's General Manager, Grid Solutions Engineering and Technology. In his direct testimony, Oliver described seven "Megatrends" impacting DEC's transmission and distribution grid: (1) population and business growth; (2) advancing DER and renewables technologies; (3) advancing grid technologies; (4) changing customer expectations; (5) increased environmental commitments; (6) worsening weather patterns; and (7) increased threat of physical and cyber attacks on the grid. (Tr. vol. 11, 611-14.) Witness Oliver described the process for developing the GIP, in which DEC identified tools to respond to the Megatrends, created a plan, and then invited stakeholder feedback. (Tr. vol. 11, 615-16). Witness Oliver presented the proposed plan in Oliver Exhibit 10, and described the proposed GIP programs as falling into one of three categories: (1) compliance-driven programs, (2) grid modernization programs, and (3) programs to optimize the customer experience. (Tr. vol. 11, 617-24.) Witness Oliver also presented cost-benefit analyses for a number of GIP programs, including Self-Optimizing Grid and Integrated Volt/Var Control. (See Oliver Exhibit 7.) The cost-benefit analyses primarily estimated direct benefits on the basis of customer savings resulting from projected reliability improvements. (*Id.*)

In the Second Agreement and Stipulation of Partial Settlement between DEC and the Public Staff (Public Staff Second Stipulation), DEC agreed to withdraw its request for deferral accounting for all GIP programs other than Self-Optimizing Grid (SOG), Integrated Volt/Var Control (IVVC), Integrated System and Operations Planning (ISOP), Transmission System Intelligence, Distribution Automation, Power Electronics, DER Dispatch Tool, and Cyber Security. DEC witness McManeus confirmed that the Company was withdrawing its deferral request for programs other than those listed in the Second Stipulation. (Tr. vol. 11, 583-84.)

Witness Oliver described a stakeholder process, which included meetings with interested stakeholders on May 17, 2018, November 8, 2018, and April 25,

2019. (Tr. vol. 11, 628-33; Oliver Exhibits 11-16.) Witness Oliver also stated that DEC has plans to continue grid projects beyond the proposed three-year plan. (Tr. vol. 11, 634-35.) Oliver explained DEC's request for deferral accounting treatment for the GIP, and indicated that, if deferral is not granted, DEC would "try and perform small pieces of the Grid Improvement Plan over a much longer period." (Tr. vol. 11, 635-38.) Witness Oliver also testified that settlement agreements entered into by DEC with the Commercial Group, CIGFUR, Harris Teeter, NCSEA, NC Justice Center, Vote Solar, and the Public Staff represented "the culmination of the GIP stakeholder process." (Tr. vol. 4, 125.)

DEC witnesses Oliver and McManeus submitted joint testimony regarding the GIP in response to the Commission's July 23, 2020 Order Requiring Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC, to File Additional Testimony on Grid Improvement Plans and Coal Combustion Residual Costs. The joint testimony included rate impacts analyses for two scenarios: one in which deferral is granted, and one in which deferral is denied. (Tr. vol. 11, 709-16; Oliver/McManeus GIP Exhibits 1-3.) Witness Oliver's portion of the joint testimony made clear various limitations inherent in DEC's analysis: Namely, that DEC "has not performed a budget analysis for the 'Deferral Denied' scenario requested by the Commission so it cannot predict with any degree of certainty how much it would scale back GIP spending if deferred asset treatment is denied in the pending rate case" (Tr. vol. 11, 704); that DEC "will likely delay significant portions of its intended GIP spending" if deferral is denied (Tr. vol. 11, 704); that the assumptions built into its analysis of the deferral denial scenario "[p]robably [do] not" reflect reality (Tr. vol. 11, 708); that the analysis "likely does not reflect decisions the Company will actually make" (Tr. vol. 11, 709); and that the analysis is "purely hypothetical in nature." (*Id.*)

On cross-examination, witness Oliver conceded that the stakeholder process undertaken by DEC did not produce consensus prior to DEC's filing of the GIP and that stakeholders were dissatisfied with their ability to influence what became the GIP (Tr. vol. 5, 26-27), but he contended that the various settlement agreements entered into with various parties in this proceeding represents an extension of the stakeholder negotiation process. However, Oliver conceded that these settlement agreements included more issues than the GIP, and that all of those agreements represented compromises between the respective parties about the issues they settled. (Tr. vol. 5, 33-34.) Witness Oliver agreed that grid modernization and grid improvement will continue over decades (Tr. vol. 5, 38-39) and conceded that DEC has already been implementing a number of the GIP program technologies in the past and that DEC will not be finished modernizing the grid upon the completion of the three-year GIP. (Tr. vol. 5, 39-40.) Witness Oliver further agreed there is no set timeline under which the proposed GIP programs must be implemented and that the programs could be implemented in "5 years or 10 years, or more if that's what DEC decided to do." (Tr. vol. 5, 41.) Witness Oliver agreed that it would be "impossible to predict what DEC would do in the absence of deferral accounting." (Tr. vol. 5, 46.)

On examination by the Commission, witness Oliver conceded that quantitative and qualitative evaluation criteria for examining the cost-effectiveness of GIP projects have not been established. (Tr. vol. 5, 15-17.) Witness Oliver further confirmed that the Public Staff Second Stipulation does not provide any cap on GIP program spending (Tr. vol. 5, 33) and further confirmed that DEC's implementation plan, in the absence of deferral, is unknown. (Tr. vol. 6, 57.) Witness Oliver indicated that the pace of DEC's GIP investments, absent deferral, is unknown, but that DEC would seek to implement the programs "at a much smaller scale and a much slower pace." (Tr. vol. 5, 51.) Witness Oliver further made clear that, notwithstanding its presentation of various cost-benefit analyses in support of GIP investments, DEC is not promising that customers will see the reliability improvements indicated in those analyses. (Tr. vol. 5, 61-62.)

DEC witness McManeus presented testimony explaining DEC's deferral accounting request, including an estimate that the program investments are expected to cause a cumulative earnings degradation of more than 100 basis points by 2022. (Tr. vol. 11, 497-99.)

On cross-examination, witness McManeus confirmed that the Public Staff Second Stipulation does not include any cap for GIP spending. (Tr. vol. 6, 94.) Witness McManeus also acknowledged information provided by DEC in discovery in this proceeding indicating that DEC's estimates relating to the Self-Optimizing Grid (SOG) and Integrated Volt/Var Control (IVVC) programs could be low by as much as 50 percent. (Tr. vol. 6, 96-97; McManeus/Smith Tech Customers Cross Exhibit 1.) On examination by the Commission, witness McManeus estimated that the impact of the programs included in the Public Staff Second Stipulation would be approximately 70 basis points in the aggregate over three years—or 13 basis points in year one and 29 basis points in each of years two and three. (Tr. vol. 6, 108; see also Tr. vol. 9, 85-86.) On further cross-examination, witness McManeus agreed that the estimated financial impact "doesn't reflect the real-world impact of a decision not to grant deferral." (Tr. vol. 6, 119.)

Public Staff witnesses Williamson and Williamson testified that the Public Staff's evaluation of DEC's deferral request examined whether the proposed GIP programs were extraordinary in type and outside the scope of DEC's normal course of business, and also assessed whether the cost of any projects identified as extraordinary were of sufficient magnitude to justify deferral. (Tr. vol. 17, 300.) Witnesses Williamson and Williamson noted that no consensus was reached among stakeholders "on any items presented by the Company." (Tr. vol. 17, 310.) Witnesses Williamson and Williamson also described the significant overlap between the GIP and Power Forward, and stated that DEC has already begun implementing programs in many of the areas identified as part of the GIP. (Tr. vol. 17, 310-14.) The witnesses indicated that the Public Staff does not consider the Megatrends to be "new, novel, or outside the scope of normal business." (Tr. vol. 17, 317.) Witnesses Williamson and Williamson also described a framework for

analyzing which GIP programs are properly considered “grid modernization,” and concluded that only the ISOP, SOG Automation and Control, Transmission System Intelligence, SOG ADMS, UG System Automation, and IVVC programs are “extraordinary type” programs. (Tr. vol. 17, 325-338; see *also* T. and D. Williamson Exhibit 5.) All other programs were identified as not extraordinary, particularly because many of the programs are part of DEC’s normal course of business. (Tr. vol. 17, 343-58.)

On cross-examination, Public Staff witness T. Williamson conceded that the Public Staff has struggled with identifying “grid modernization” technologies because the term is broad and “very subjective.” (Tr. vol. 7, 17.) Witness T. Williamson further testified that the “concept of good utility practice” requires “always adapting and moving forward responding to stresses and stressors on the system.” (*Id.*)

Public Staff witness Maness described the process followed by Public Staff to determine if it is appropriate to approve deferral of GIP costs. (Tr. vol. 20, 527-28). Witness Maness further testified that he calculated the impact of the entire proposed GIP program to be approximately 20.33 basis points per year and indicated the Public Staff would not normally support deferral of costs with such a low impact. (Tr. vol. 20, 537.) However, witness Maness testified that he believed the Commission’s 2018 DEC Rate Order allows the application of “leniency” regarding “the magnitude of costs or financial impacts necessary to justify deferral.” (Tr. vol. 20, 538-39.) Witness Maness also advocated for various conditions to be imposed upon any approval, including reporting requirements. (Tr. vol. 20, 539-40.)

On cross-examination, witness Maness reaffirmed his continued belief, based on testimony in prior proceedings, that deferral accounting should be used “sparingly” and that it “upsets the balance set by the precepts of G.S. 62-133” by splitting apart one item or group of items for single-item ratemaking. (Tr. vol. 7, 21-22.)

On examination by the Commission, witness Maness testified that the Public Staff, in absence of the application of leniency as described in the 2018 DEC Rate Order and in the absence of the Public Staff Second Stipulation, would recommend rejection of deferral accounting for all GIP programs. (Tr. vol. 7, 31-32.) Witness Maness also testified that, if the Commission were to adopt the Public Staff’s stipulated approval of DEC’s “decision to incur” GIP costs, the Commission would not be able to revisit that question in later reviewing the prudence of GIP costs. (Tr. vol. 7, 54-56.)

Public Staff witness Thomas offered testimony regarding the cost-benefit analyses provided by DEC for certain GIP programs and provided a number of recommendations for improving the analyses. (Tr. vol. 17, 366-73, 436-39.) Witness Thomas’s primary critiques of DEC’s cost-benefit analyses were that the

primary benefits are customer reliability benefits, which are difficult to quantify; that the reliability benefits may not accurately reflect North Carolina costs; that the lion's share of benefits were attributable to industrial customers, with only three percent of benefits accruing to residential customers; that no sensitivity analyses were performed; and that some analyses ignored or minimized unfavorable costs. (Tr. vol. 17, 376-77.) Witness Thomas testified that, given the relatively preliminary "estimate class" for GIP program investments, significant variation from the proposed costs could be expected. (Tr. vol. 17, 430-32.)

CUCA witness O'Donnell testified in opposition to the GIP. He pointed out that utility grid modernization efforts are driven by a desire to grow earnings to satisfy utility investors during a time of stagnant demand growth, which has decreased the need for new generation. (Tr. vol. 20, 35-36, 47-48.) Witness O'Donnell further testified regarding evidence, based on media reports, that Duke anticipates investing \$13 billion over ten years as proposed in its original Power Forward Carolinas plan. (Tr. vol. 20, 38-40.) Witness O'Donnell criticized the lack of cost-benefit analyses for certain programs (Tr. vol. 20, 51-52) and recommended the Commission deny deferral accounting for any program for which a cost-benefit analysis was not conducted. He recommended making cost recovery for any GIP program contingent on DEC achieving the reliability improvements set forth in the GIP cost-benefit analyses presented by DEC witness Oliver. (Tr. vol. 20, 53-54.) Witness O'Donnell noted that DEC has not guaranteed any reliability results and would not agree to make cost recovery contingent on achieving any reliability targets. (Tr. vol. 20, 56-57.) Witness O'Donnell also criticized the GIP stakeholder process for failing to involve the input of the general public. (Tr. vol. 20, 57-58.) DEC did not cross-examine O'Donnell on this testimony.

NC Justice Center and NCSEA witness Alvarez recommended that the Commission deny DEC's request for deferral accounting of GIP costs in favor of establishing a separate proceeding for stakeholder-involved planning and capital budgeting. (Tr. vol. 16, 425.) Witness Alvarez further testified regarding potentially significant understatement of GIP costs. (Tr. vol. 16, 428-32.) Witness Alvarez also expressed concern that this proceeding could establish a "tacit endorsement of the technical or economic merits of the program," which he criticized as a "\$2.3 billion subset of the 10-year, \$13 billion Power/Forward plan." (Tr. vol. 16, 433.) He further criticized the GIP proposal as overstating customer benefits (Tr. vol. 16, 437-56) and testified that DEC's GIP plan did not reflect genuine stakeholder engagement. (Tr. vol. 16, 459-60.) Witness Alvarez contrasted DEC's process with one designed to allow more stakeholder involvement and input. (Tr. vol. 16, 461-66.) Finally, witness Alvarez recommended the Commission reject deferral accounting because "it encourages suboptimal capital investment." (Tr. vol. 16, 467.)

On cross-examination, witness Alvarez clarified that the GIP stakeholder process allowed stakeholders to evaluate the proposed programs, but not “to actually help develop the proposals.” (Tr. vol. 8, 85-86.)

NC Justice Center and NCSEA witness Stephens recommended that the Commission reject the GIP plan and establish a separate proceeding to develop future distribution plans and capital budgets. (Tr. vol. 16, 476.) Failing that, witness Stephens recommended the Commission consider each GIP program component separately and identified several plan components as meriting “approval with conditions.” (Tr. vol 16, 476-78.) As conditions, witness Stephens proposed requiring cost controls, operating audits, and performance measurement. (Tr. vol. 16, 480-81, 489-91.) Witness Stephens also recommended modifications to certain GIP programs. (Tr. vol. 16, 493-501.)

CIGFUR witness Phillips recommended that the Commission deny DEC’s request for deferral accounting, suggesting the proposal would shift risk to ratepayers, would create a single-issue ratemaking process, would reduce incentives for the utility to manage its expenses. (Tr. vol. 22, 117-20.) Witness Phillips further testified that the GIP program costs are not unpredictable or outside the Company’s control. (Tr. vol. 22, 120.) Witness Phillips concluded that DEC is likely to make grid investments without the need for deferral accounting. (Tr. vol. 22, 120.)

Harris Teeter witness Bieber testified that a grant of the GIP deferral request would amount to single-issue ratemaking, and that the request does not meet the Commission’s test for deferral accounting. (Bieber⁵ at 17.) Witness Bieber testified that the GIP costs are not volatile or outside control of the Company, and that such investments “are fundamental responsibilities for a utility company.” (Bieber at 19.) Witness Bieber therefore recommended the Commission reject DEC’s request for deferral accounting. (*Id.*)

Tech Customers witness Strunk characterized the GIP as similar to DEC’s prior Power Forward Carolinas plan—for which the Commission previously rejected deferral accounting—citing similar categories of spending between the two plans. (Tr. vol. 16, 114, 116-20.) Witness Strunk testified that the two-prong test for deferral previously used by the Commission is appropriate use with regard to DEC’s request but concluded that DEC has not satisfied that test. (Tr. vol. 16, 122.) First, citing DEC discovery responses, witness Strunk noted that the GIP investments do not appear to be distinguishable from DEC’s ordinary investments because the Company already makes ordinary expenditures on compliance

⁵ Witness Bieber’s testimony was entered into the record (Tr. vol. 16, 314), but was inadvertently omitted from the transcript. The testimony was added to the official transcript by an errata filing made on October 29, 2020, but was not paginated as part of any transcript volume. The citations for witness Bieber’s testimony herein refers to the pagination in the testimony as filed.

programs, grid modernization, and optimization of customer experiences. (Tr. vol. 16, 122-23.) Witness Strunk noted that the Megatrends cited by DEC “are nothing new,” have been impacting utilities for decades, and will continue to do so into the future. (Tr. vol. 16, 127.) As witness Strunk testified, the “very nature of Megatrends is that utilities must address them as part of their prudent utility planning and practices,” making such trends the opposite of the unusual or extraordinary factors that justify deferral accounting. (Tr. vol. 16, 127.) Second, witness Strunk explained that DEC witness McManeus’s calculation of financial impact is flawed because it “assumes that the Company’s grid improvement investments will be the same amount (and on the same timeframe) irrespective of whether the Commission approves the deferral,” and considers the impact of GIP investments in isolation. (Tr. vol. 16, 128.) Witness Strunk pointed to discovery responses from DEC in which DEC admits it had not “estimated what Grid Improvement Plan programs and projects it would undertake – and the timing of these – in the absence of this Commission’s approval of deferral.” (Tr. vol. 16, 131-33; Strunk Exhibit KGS 12 at 2.) Witness Strunk also suggested that DEC should implement the ISOP process before attempting to identify and implement grid improvement projects. (Tr. vol. 16, 134-36.)

Vote Solar witnesses Van Nostrand and Fitch testified regarding their experiences in the GIP stakeholder process. Witness Fitch explained that he attended all three GIP workshops and that:

[he] cannot characterize the workshops as ‘collaborative,’ in the true definitional sense of a process where stakeholders would be expected to have more input on shaping the objectives or parameters of the process. In general, the prevailing feeling during workshops was unidirectional information-sharing by the Company. Stakeholders did not appear to play a role in choosing which investments should be selected, or shaping the process by which the Grid Improvement Plan was developed.

(Tr. vol. 16, 221.) Witness Fitch characterized the plan as “already baked” by the time stakeholders became involved. (Tr. vol. 16, 221.) Witness Fitch also testified regarding the feedback provided by other participants in the GIP stakeholder meetings. (Tr. vol. 16, 222-25.) Witnesses Van Nostrand and Fitch also testified regarding best practices for grid modernization and climate resilience and stated that DEC’s development of the GIP failed to follow these best practices. (Tr. vol. 16, 274-83.) Witnesses Fitch and Van Nostrand also indicated that multi-year rate plans may provide a better means for recovering GIP expenses. (Tr. vol. 16, 293.) The witnesses also noted that deferral accounting “reduces the regulatory oversight that results from the general rate case process, and largely eliminates the economic incentive from regulatory lag to hold down costs.” (Tr. vol. 16, 297.) The witnesses took no position on whether deferral accounting should be granted, noting the Commission’s discretion in this area. (Tr. vol. 16, 294.)

NC WARN witness Powers recommended the Commission reject the GIP deferral accounting request. (Tr. vol. 16, 35.) Witness Powers characterized the stakeholder process as “essentially sales presentations by Duke Energy to stakeholders.” (Tr. vol. 16, 37.) Witness Powers also criticized a number of specific programs within the GIP. (Tr. vol. 16, 38-51.)

The Center for Biological Diversity and Appalachian Voices witness Ryan criticized the GIP plan as not adequately formed to address the Megatrends identified by DEC. (Tr. vol. 17, 475-79.) Witness Ryan also testified that DEC has provided insufficient information regarding the impact of GIP spending on ratepayers, and ultimately recommended the Commission reject DEC’s deferral request. (Tr. vol. 17, 480-81.)

In his rebuttal testimony, DEC witness Oliver identified additional projects meeting the Public Staff’s criteria for “extraordinary spending.” (Tr. vol. 11, 643-52.) He responded to concerns of the various intervenor witnesses regarding DEC’s cost-benefit analyses. (Tr. vol. 11, 655-80.) Witness Oliver also responded to criticism of the GIP regarding the need for metrics to evaluate GIP performance, indicating that the Company “intends to track project/program scope, schedule, cost and benefits as appropriate during implementation.” (Tr. vol. 11, 681.) He further responded to criticism of the GIP stakeholder process and claimed that the GIP is not simply a subset of DEC’s Power Forward Carolinas plan proposed in the last rate case. (Tr. vol. 11, 689-92.)

On further examination, witness Oliver testified that DEC’s Ohio affiliate has already implemented IVVC, and that both DEC and DEP have already implemented SOG programs. (Tr. vol. 9, 52-53.) Witness Oliver also testified that installing the switches used for SOG technology is something Duke Energy has done “in every jurisdiction.” (Tr. vol. 10, 21-22.)

On further cross-examination, DEC witness McManeus testified that approval of deferral accounting in this case under the terms of the Public Staff Second Stipulation would preclude the Commission from reviewing DEC’s decision to incur costs, stating that:

it would be inappropriate to get to a rate case and have the outcome be, well, you shouldn't have even undertaken these programs to begin with. So I would view the Commission's approval of the deferral accounting as an indication that, yes, these programs seem reasonable and the costs seem of the nature that customers should pay, given the benefits of the programs

(Tr. vol. 9, 88-89.)

Discussion and Conclusions

DEC is seeking approval of deferral accounting treatment of certain infrastructure expenses associated with its GIP. The total amount of the potential expenditures falling within the scope of this plan is presently unknown, but the tentative budget proposed by Duke, as modified by the Public Staff Second Stipulation, is approximately \$820 million for DEC alone and \$1.36 billion for DEC and DEP combined.⁶ The expenditures in question are, according to the evidence presented by DEC, prudent, necessary and an essential component of DEC's ongoing efforts to "modernize" its network. DEC asserts that the investments will "substantially improve the functionality, flexibility, and responsiveness of the electric grid" and allow its network to respond to the "greater demands being placed upon our Transmission and Distribution infrastructure by physical and cyber threats, demand for greater utilization of renewables and Distributed Energy Resources, stronger and more frequent storms, increased use of smart grid and smart meter technology, more concentrated population growth, and rising customer service expectations." (Tr. vol. 4, 124.) However, it is uncontroverted that the expenditures are not required by any order of the Commission or other regulatory requirement; they are not required in order to provide the services that DEC provides today; and they include components of investment that DEC is already making and will continue to make regardless of the accounting treatment afforded by the Commission. (See, e.g., Tr. Vol. 5, 50 (Cross-Examination of DEC witness Oliver: "[W]e're going to pursue self-optimizing grid if deferral accounting is denied."); Tr. vol. 26, 54-56 (Supplemental Rebuttal Testimony of Oliver: DEC's ongoing implementation of SOG is increasing in pace; "Once fully staffed we anticipate that it will take approximately 12 weeks between the point construction work is complete and full SOG enablement.").)

In DEC's last rate case, the Commission considered a similar request—Duke's Power Forward program. With Power Forward DEC sought approval of a rate rider or, alternatively, deferral accounting for a ten-year \$13 billion grid modernization plan. Of the \$13 billion, DEC sought to spend \$7.7 billion, including \$2.9 billion in capital and \$130 million in operations and maintenance expense during the first five years. See Order Accepting Stipulation, Deciding Contested Issues, and Requiring Revenue Reduction, Docket No. E-7, Subs 1146, 819, 1152, and 1110 (June 22, 2018) (2018 DEC Rate Order) at 128. The programs comprising Power Forward included (1) targeted undergrounding, (2) distribution system hardening and resiliency, (3) self-optimizing grid technology, (4) transmission system improvements, (5) Advanced Metering Infrastructure (AMI), (6) communication network upgrades, and (7) advanced enterprise systems. *Id.*

⁶ It does not appear that either party to the stipulation states precise total budget amounts for the projects subject to the stipulation. Witness McManeus states that the total amount is about \$1.25 billion with approximately \$800 million in DEC and \$400 million in DEC (Tr. vol. 4, 128), but the Commission's own calculations using the figures stated in Oliver Exhibit 10 support the numbers stated above.

DEC sought to justify these programs as accomplishing the following goals: improve the reliability and hardiness of the system while making it smarter, build a foundation for customer-focused innovation and new technologies, comply with prescriptive federal transmission reliability and security standards, address maintenance requirements for aging assets, further integrate and optimize intermittent distributed renewable energy generation, and address physical and cyber security, worsening weather, customer disruption, and wear and tear on equipment. *Id.*

As in the last rate case, no intervenor in this proceeding has expressed opposition to the Company's stated goals of improving and modernizing the grid. Instead the disagreement is around the use of deferral accounting for these investments. Similarly, while the Commission does not disagree with DEC's stated goals of improving reliability and modernizing the grid, and the Commission acknowledges the stipulations reached between DEC and various intervenors concerning the deferral accounting request, the Commission nonetheless concludes, consistent with its prior rejection of deferral accounting for Power Forward in the 2018 DEC Rate Order, that DEC has not satisfied the Commission's two-pronged test for deferral accounting treatment of GIP expenses.

As an initial matter, as it stated in the 2018 DEC Rate Order, the Commission recognizes that it has in the past "historically treated deferral accounting as a tool to be allowed only as an exception to the general rule, and its use has been allowed sparingly." DEC Rate Order at 146 (quoting Order Approving Deferral Accounting with Conditions, Docket No. E-7, Sub 874 (Mar. 31, 2009) at 24). In addition, the Commission recognizes that it:

has also been reluctant to allow deferral accounting because it, typically, equates to single-issue ratemaking for the period of deferral, contrary to the well-established, general ratemaking principle that all items of revenue and costs germane to the ratemaking and cost-recovery process should be examined in their totality in determining the appropriateness of the utility's existing rates and charges.

Id. The Commission observes that the Public Staff recognizes and shares these same concerns. (Tr. vol. 7, 21-22.)

The Commission recently examined the principles to be applied in examining a request for deferral accounting in its order relating to the deferral of Hurricane Florence storm damage expense. See Order Granting Partial Rate Increase and Requiring Customer Notice, Docket No. W-354, Sub 363 (Mar. 31, 2020) (Carolina Water).

In Carolina Water, the Commission explained that "deferral accounting must not be used routinely or frequently," and should only be used "when the costs at

issue ‘were reasonably and prudently incurred, unusual or extraordinary in nature, and of a magnitude that would result in a material impact on the Company’s financial position (level of earnings).’” Carolina Water at 42 (quoting Order Denying Request to Implement Rate Rider and Schedule Hearing to Consider Request for Creation of Regulatory Asset Account, Docket No. E-7, Sub 849 (June 2, 2008) at 19 (DEC request for rider to address drought conditions)). Under this precedent, requests for deferral accounting:

must be examined and resolved on a case-by-case fact-specific basis and will be approved only where the Commission is persuaded by clear and convincing evidence that the costs in question are unusual or extraordinary in nature and that, absent deferral, would have a material impact on the utility’s financial condition.

Id. The two-prong test thus requires (1) extraordinary costs and (2) a material impact on the utility’s financial condition, absent deferral. Furthermore, whether the costs are extraordinary in nature is the Commission’s primary concern:

The issue of whether an event or change results in revenues or costs that would materially impact a utility’s financial condition, while in some cases may be dispositive, it is secondary to the first prong of the test historically relied on by the Commission to determine whether deferral accounting should be permitted or required. If it is determined that the subject of a deferral request is not unusual or extraordinary, that decision is dispositive and the materiality issue is not reached.

Order Approving Amended Schedule NS and Denying Deferral Accounting, *Application by Virginia Electric and Power Company, d/b/a Dominion North Carolina Power, for Approval of Amended Schedule NS*, Docket No. E-22, Sub 517 (Mar. 29, 2016) at 11–12.

We consider below the application of this two-pronged test to DEC’s proposed GIP investments, compliance with the Commission’s directive regarding deferral accounting in the 2018 DEC Rate Order, and the effect of the stipulations regarding GIP entered into between DEC and various intervenors.

Application of Two-Pronged Test

As to whether costs are “extraordinary,” the Commission examines whether the “costs in question represent major non-routine, infrequent, non-regularly occurring investments of considerable complexity and significance or were beyond the control of the utility such as storm costs or new operating requirements/standards imposed by newly-enacted legislation or other governmental action.” Carolina Water at 42. Thus, the Commission may consider “whether costs were unanticipated, unplanned, beyond the control of the utility,

and of an infrequent, non-recurring nature.” *Id.* The costs must be extraordinary in type and magnitude. 2018 DEC Rate Order at 148.

As to whether there is a material impact on the utility’s financial condition, the Commission “often examines whether and to what extent the costs incurred will have a significant impact on the level of company earnings and the company’s ability to achieve its currently authorized rate of return on common equity.” *Carolina Water* at 43. For example, in *Carolina Water*, the Commission authorized deferral accounting for wastewater treatment plant investments that would “result in a 434-basis point rate of return on common equity reduction.” *Id.* at 44.

DEC contends that the set of programs included in the Public Staff Second Stipulation are extraordinary because the investments are made in response to the identified “Megatrends” and do not fall within the scope of DEC’s customary spending on transmission and distribution. However, as the Commission explained in DEC’s last rate case,

the reasons DEC says underlie the need for [grid modernization] are not unique or extraordinary to DEC, nor are they unique or extraordinary to North Carolina. Weather, customer disruption, physical and cyber security, DER, and aging assets are all issues the Company (and all utilities) have to confront in the normal course of providing electric service.

2018 DEC Rate Order at 146. The additional factors identified as Megatrends, including population growth, advancing technology, and changing customer expectations and commitments, are likewise the kinds of long-term trends that all utilities have dealt with on a historical basis and will continue to need to address in the future. As noted by Tech Customers witness Strunk, these trends have “impacted the electricity and utility sectors for decades” and “will continue into the future.” (Tr. vol. 16, 127.) Likewise, Public Staff witnesses Williamson and Williamson testified that “the Public Staff would not characterize a number of these trends as new, novel, or outside the scope of normal business.” (Tr. Vol. 17, 317.) Indeed, the Commission notes that DEC has presented such issues—and proposed solutions—to the Commission for more than a decade. For example, in testimony submitted in 2007, former Duke Energy CEO James Rogers testified:

Our existing . . . transmission and distribution grid are aging and require modernization. But the population within our service territory is projected to grow by over 32% over the next 20 years.

* * *

[W]e . . . intend to make major investments in our transmission and distribution system in the next five to seven years. These investments include transforming our electrical grid from an analog to a digital system such that our substations, transformers and meters are all part of an integrated grid - much like a computer

network. They also include upgrading transformers and other equipment to reduce "line losses," installing smart meters, and supporting the development and fueling of hybrid "plug-in" vehicles. Digital technology will enable a more efficient grid and enhanced interaction with our customers.

Duke Energy Carolinas, LLC - Investigation of Existing Rates and Charges Pursuant to Regulatory Condition No. 76 as Contained in the Regulatory Conditions Approved by Order Issued March 24, 2006, Docket No. E-7, Sub 828, Tr. Vol. 1, at 170, 174-75 (Oct. 16, 2007); see also Testimony of James L. Turner, Application of Duke Energy Carolinas, LLC for an Increase in and Revisions to its Rates and Charges Applicable to Electric Utility Service in North Carolina, Docket No. E-7, Sub 909, Tr. Vol. 1, at 49-50 (Oct. 22, 2009) ("The transmission and distribution business is changing. Changing expectations and aging infrastructure provide significant challenges to our business over the next few years. Customer expectations around reliability continue to evolve. New customers as well as existing customers are increasingly using equipment that is highly sensitive to voltage fluctuations; therefore, customers are demanding highly reliable service that minimizes the number of voltage fluctuations. . . . Digital two-way interconnection, sensing and communication equipment - components of what is commonly referred to today as a 'Smart Grid' - are necessary to enable the next generation of energy efficiency programs, distributed generation and renewable integration, as well as distribution automation-related reliability improvements and improved system functionality. In addition to meeting customers' expectations, we must ensure that our transmission and distribution system is sufficiently robust . . . to support renewable and distributed generation. Many of our existing systems are beginning to reach their maximum potential and new systems must replace them to ensure the level of reliability our retail customers have come to expect. The implementation of North Carolinas' renewable energy and energy efficiency portfolio standard, as well as the potential for a federal renewable portfolio standard will place new demands and stresses on the power delivery system as intermittent renewable generation and distributed generation on the system increases.").

Furthermore, as indicated by Tech Customers witness Strunk, DEC concedes that its base spending on transmission and distribution outside the GIP proposal "include[s] projects that utilize 'new' or 'modern' T&D technologies . . . not available or not commonly used a decade ago." (Tr. vol. 16, 123.) This concession is unsurprising, as the Commission expects DEC to make prudent investments in new technologies to provide low-cost, reliable electric service to ratepayers.

The Commission also acknowledges the substantial effort made by Public Staff to objectively evaluate whether the proposed GIP programs can be considered extraordinary type expenses based upon whether the programs "should be considered grid modernization." (Tr. vol. 17, 326.) However, the Commission does not find this analysis persuasive because, in light of the

foregoing, “grid modernization” to deal with the ongoing and evolving needs of society is in fact part of the ordinary course of business for electric utilities such as DEC and the conclusion that a given program is “grid modernization” does not show that the associated cost is extraordinary. The fact that DEC has already been implementing many of the programs identified as part of the GIP (as limited by the Second Stipulation with Public Staff) indicates that the plan is not a departure from DEC’s ordinary course of business.

The Commission therefore concludes that DEC’s presentation in this case has failed to establish that the proposed GIP costs are extraordinary in type.

Having concluded the GIP costs are not extraordinary, the Commission need not examine the financial impact on DEC. Nevertheless, based upon the similar request for deferral accounting for grid improvement activities in DEC’s prior rate case, the Commission expects such requests to be a continuing issue and therefore provides the following analysis.

DEC contends that the GIP program, as modified by the Public Staff Second Stipulation, can be expected to erode DEC’s return on equity by an average of approximately 23.67 per year.⁷ As an initial matter, the Commission agrees with the testimony of Public Staff witness Maness that an impact in this range would typically not support grant of deferral accounting treatment. (Tr. vol. 20, 537 (referring to Public Staff calculation of 20.33 basis points per year).) However, it is not necessary to attempt to reconcile the evidentiary showing by DEC here with comparable showings in other proceedings because the evidence here is clear that the proffered estimate is based on projections that cannot reliably serve as the basis for conclusions as to financial impact.

The second prong of the test for deferral accounting asks what the impact of costs will be on the utility’s financial condition—in the real world—absent deferral. In the typical case, such as a request for deferral of storm recovery costs or environmental compliance costs, the utility has no choice about whether it spends money on the costs for which deferral is sought and has, at most, limited control over the pace of such expenditures. As a result, the denial of deferral accounting has a real effect on the utility’s financial condition because—even though deferral is denied—the utility *still must spend the money* and can do little to mitigate the financial impacts of such costs other than file a rate case if deferral is denied. In contrast, here, DEC is not required to spend the money at all, let alone over any particular timeframe, and therefore has significant ability to mitigate the financial effects of a deferral denial. DEC witness Oliver explained that DEC will do just that. Indeed, as discussed above, Duke representatives have made public statements to the Commission since at least 2007 of its intent to make

⁷ On cross-examination, DEC witness McManeus testified that she had calculated the impact as 13 basis points in year one and 29 basis points in each of years two and three. (Tr. vol. 9, 85-86.) This equates to an average of 23.67 basis points per year.

similar investments in the grid—further suggesting that these expenditures are both planned and discretionary.

As a result, the real-world effect of a deferral denial cannot be estimated based on an assumption that DEC's GIP spending will go forward as proposed—an assumption that contradicts the record evidence. The estimate offered by witness McManeus is “purely hypothetical” and based upon assumptions that do not reflect reality or the decisions the Company will actually make. As indicated by DEC witness Oliver, a denial of deferral in this case will cause DEC to make the proposed investments “at a much smaller scale and a much slower pace.” This leaves the Commission to evaluate the significance of an economic impact that is essentially unknown but is certainly “much” less than the claimed average yearly 23.67 basis points and is accrued over a “much” longer period than three years. DEC concedes that determining the actual financial impact on the Company is impossible. Based upon this record, the Commission cannot conclude that, absent deferral, the GIP program investments would have a material impact on DEC's financial condition.

The Commission's Instructions in Prior Rate Case

DEC and the Public Staff, in supporting the Second Stipulation, seek to invoke guidance offered by the Commission in the 2018 rate case as support for allowing deferral in this case. But the 2018 DEC Rate Order applied to a completely different set of facts, and, in any event, DEC did not follow any part of the Commission's guidance.

In 2018 DEC Rate Order, the Commission instructed:

[t]he Company may seek deferral at a later time outside of the general rate case test year context to preserve the Company's opportunity to recover costs, to the extent not incurred during a test period. In that regard, were the Company in the future *before filing its next rate case to request a deferral* outside a test year and *meet the test of economic harm*, the Commission is willing to entertain a requested deferral for Power Forward, as opposed to customary spend, costs. Should a *collaborative undertaking with stakeholders as addressed herein produce a list of Power Forward projects*, such designation would greatly assist the Commission in addressing a requested deferral. Were the Company to demonstrate that the costs can be properly classified as Power Forward and grid modernization, the Commission would seek to expeditiously address the request and to determine that the Company would meet the “extraordinary expenditure” test and conceptually authorize deferral for subsequent consideration for recovery in a general rate case.

The Commission can authorize a test for approving a deferral within a general rate case with parameters different from those to be

applied in other contexts. Consequently, with respect to demonstrated Power Forward *costs incurred by DEC prior to the test year in its next case*, the Commission authorizes expedited consideration, and to the extent permissible, reliance on leniency in imposing the “extraordinary expenditure” test.

2018 DEC Rate Order at 148-49 (emphases added). Notably, in that case, the Commission understood that DEC “would proceed with Power Forward as planned, within the same time frame, even without approval of the Grid Rider.” *Id.* at 132-33. In that light, the Commission’s guidance is clear: in order to obtain a deferral of grid modernization costs—which the Commission understood would be incurred regardless of the Commission’s decision—DEC was to come back to the Commission *prior to the next rate case with a list of projects produced through a collaborative stakeholder process*, which the Commission would use to determine whether expenses *that had already been incurred by that point* would be eligible for deferral. The Commission did not offer leniency with respect to a deferral request for grid modernization costs in *this* rate case.

The Public Staff, in its testimony—and presumably in reaching its settlement with DEC—has misinterpreted the 2018 DEC Rate Order. Public Staff witness Maness provided testimony regarding the application of “leniency” as “appearing to offer possible leniency regarding the magnitude of costs or financial impacts necessary to justify deferral.” (Tr. vol. 6, 145-146; see also Tr. vol. 20, 537-39.) However, witness Maness’s interpretation of the 2018 DEC Rate Order is incorrect. The Commission’s offer of leniency was limited to the circumstance in which DEC, having incurred appropriate costs *prior to its next rate case*, applied for deferral accounting. The Commission was not commenting on the availability of leniency regarding the relief sought here: pre-approval of deferral accounting *during the next rate case*.

Accordingly, the Commission’s instructions in the 2018 DEC Rate Order do not support grant of deferral accounting in this proceeding.

Consideration of Settlement Agreements

In support of its request, DEC relies heavily on the settlement agreements reached with the Public Staff as well as various intervenors regarding GIP. (See, e.g., Tr. vol. 4, 125-26 (referring to Public Staff Second Stipulation; CIFGUR Stipulation; Commercial Group Stipulation; Harris Teeter Stipulation; NC Justice Center/NCSEA Stipulation; and Vote Solar Stipulation.)) These parties, of course, do not include all the parties to the proceeding. Non-settling parties include the Attorney General, Tech Customers, CUCA, the Center for Biological Diversity and Appalachian Voices, and NC WARN.

As our Supreme Court has explained,

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

State ex rel. Utils. Comm'n v. Carolina Util. Customers Ass'n, Inc., 348 N.C. 452, 466, 500 S.E.2d 693, 703 (1998) (*CUCA I*).

The Commission takes note of the fact that each of these settlements support, to varying degrees, the compromise GIP proposal agreed to between DEC and the Public Staff in the Second Stipulation. While these stipulations do provide some evidence of *support* for DEC’s proposal, they do not speak to whether the proposed expenditures qualify under the legal test established for deferral accounting. Stated another way, evidence that certain intervenors—in the context of individual settlements reflecting compromise and the exchange of promises on a range of issues—agree not to oppose DEC’s request does not address the legal issue before the Commission. None of the settlement agreements provide any evidence as to whether the expenses are “unusual or extraordinary in nature, and of a magnitude that would result in a material impact on the Company’s financial position.” *Carolina Water* at 42.

As a general matter, settlement agreements resolving a number of issues simultaneously provide little or no insight into the settling parties’ respective stances with regard to any particular issue. In fact, each of the settlement agreements expressly refutes witness Oliver’s suggestion that the settlements reflect actual support of the settling parties for the proposed GIP program or deferral accounting. See, e.g., Commercial Group Stipulation at 3 (“[T]his Stipulation . . . reflects a give-and take of contested issues The provisions of this Settlement do not reflect any position asserted by any of the Settling Parties but instead reflect the compromise and settlement between the Settling Parties as to all of the issued covered hereby.”); *accord* NC Justice Center *et al.* and NCSEA Stipulation at 8-9; Harris Teeter Stipulation at 2.

To this point, the Commission observes a disconnect, in many cases, between what the settling parties have agreed to and what their expert witnesses have testified to. For instance, NC Justice Center *et al.* and NCSEA witness Stephens recommended the Commission impose cost controls on all GIP

programs and indicated the SOG program should not be approved as proposed but rather should be significantly cut. (Tr. vol. 16, p. 497.) CIGFUR witness Phillips recommended the Commission reject DEC's request for deferral accounting (Tr. vol. 22, p. 117), as did NC Justice Center *et al.* and NCSEA witness Alvarez (Tr. vol. 16, 425), and Harris Teeter witness Bieber (Bieber at 19).⁸

The Commission notes there was no expert testimony—other than by DEC's witnesses—fully supportive of DEC's proposal for deferral accounting. While it is true—and DEC places heavy reliance on this fact—that DEC was able to achieve support for (or non-opposition to) a modified GIP plan through individual negotiations with various intervenors, those settlements reflected negotiation and compromise on a range of issues, were based on the exchange of promises of value by DEC to the settling intervenor on matters unrelated to the GIP, and do not change the fact that the settling parties' own expert witnesses⁹ opposed deferral accounting for the GIP.

The stipulations do not supplant the record evidence that the Megatrends are long-term, continuing factors and that grid modernization costs are, or should be, part of DEC's regular, prudent planning process. The stipulations do not add any evidence to the record supporting a conclusion that the GIP costs are extraordinary. Furthermore, none of the stipulations addresses the financial impact of GIP costs, absent deferral. At most, the stipulations only suggest that—in context of give-and-take negotiations where separate consideration is provided by DEC—various parties are willing to agree to portions of the plan. It would be impermissible to take the stipulations as evidence that the plan meets the Commission's test, that there is broad stakeholder agreement, or that the plan is consistent with ratemaking principles or the Commission's statutory authority.

Finally, as specifically indicated by the settlement agreements, DEC was not able to obtain consensus stakeholder support for the GIP even among this limited set of parties. Among the settling parties, only Harris Teeter fully supports the proposed plan. Harris Teeter Stipulation at 1-2. NCSEA, NC Justice Center *et al.*, and Vote Solar all support some, but not all, programs agreed to by the Public Staff. NC Justice Center *et al.* and NCSEA Stipulation at 4; Vote Solar Stipulation at 3. The Commercial Group “does not oppose or specifically support the approval of a Grid Improvement Plan deferral.” Commercial Group Stipulation at 2. CIGFUR agreed to support a deferral request “without taking a position on the appropriateness of the individual items comprising” the GIP. CIGFUR Stipulation at 3. In sum, the Commission finds that the settlements reflect limited or no support for the GIP programs proposed by DEC. And, of course, the settlements do not

⁸ While these witnesses did not oppose or take issue with the settlement stipulations entered into by their sponsoring clients, they also did not retract their testimony criticizing DEC's deferral accounting request.

⁹ With the limited exception of the Public Staff, whose witness Maness would have opposed deferral but for his misreading of the Commission's 2018 DEC Rate Order.

reflect the support of other intervenors to this proceeding, including the Attorney General, Tech Customers, CUCA, the Center for Biological Diversity and Appalachian Voices, and NC WARN.

Conclusion

For the reasons discussed above, the Commission concludes that DEC has failed to demonstrate that its proposed GIP expenditures qualify for deferral accounting. The Company has therefore not provided clear and convincing evidence that the GIP costs proposed in this case are extraordinary. The Company has not provided clear and convincing evidence that, absent deferral, DEC will experience an adverse impact on its financial condition. This conclusion reflects, in part, the Commission's recognition that DEC's grid modernization efforts are likely to continue for many years, if not decades. Given the size of the expected investments vis-à-vis DEC's existing rate base, grid modernization costs have the potential to significantly influence future rates. A grant of deferral accounting for what appears to be merely the beginning of ongoing, significant expenses risks the development of a special class of utility investment that is treated differently for ratemaking purposes. Such a result would be inappropriate, particularly without any command to do so from the General Assembly. As noted above, the use of deferral accounting is disfavored because it establishes single-issue ratemaking for the period of deferral, contrary the general ratemaking principle that all items of revenue and costs should be examined in their totality in determining just and reasonable rates. That concern is amplified here, where grant of deferral accounting could be expected to encourage DEC to return to the Commission with similar future requests over a decade or more.

The Commission expects DEC will continue, as part of its prudent planning practices, to evaluate and undertake grid modernization and grid improvement programs. Based on the feedback from various stakeholders, as indicated by the testimony filed in this case and the reports of stakeholder meetings submitted to the Commission, the Commission acknowledges DEC's substantial efforts as well as the apparent frustration of many stakeholders. The Commission encourages DEC to continue engaging with stakeholders to develop its plans for future grid investments. In doing so, the stakeholder engagement processes outlined by NC Justice Center *et al.* and NCSEA witness Alvarez may provide useful guidance for DEC in structuring such discussions. Among other things, the Commission encourages DEC to approach such a stakeholder process without a defined plan in order to allow stakeholders to identify desirable grid modernization programs, timelines, and spending in the first instance. The Commission further encourages DEC to continue working with stakeholders, including the Public Staff, to develop verifiable performance metrics—including specific targets, such as reliability improvements, voltage reductions, energy savings, or other objective criteria—by which the Commission can evaluate whether grid modernization programs are achieving their objectives.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 15-20

Credit Metrics

The evidence supporting these findings and conclusions is contained in the Company's verified Application and Form E-1, and the testimony and exhibits of DEC witnesses Young and Newlin, and CUCA witnesses O'Donnell.

Summary of the Evidence

DEC witness Steve Young, DEC's Chief Financial Officer, testified that DEC is "cash-flow negative" and, therefore, it must finance about half of its annual investments by securing capital from debt and equity markets. (Tr. vol. 11, 444–45.) Young testified that if DEC is unable to recover its costs of service in its rates, the company's credit ratings may be lowered by credit rating agencies, which will result in higher financing costs and higher costs for customers. (*Id.* at 445–46.) Young singled out DEC's ability to fully recover its coal ash costs as a particular concern for its ability to raise adequate capital. (*Id.* at 447–48.)

On cross examination, Young further testified concerning the "implications of the [Commission's] decision[s] on the capital markets." (Tr. vol. 3, 42–43.) Young cautioned that decisions regarding coal-ash recovery "will cause a lowering of [DEC's] credit ratings" which would make securing "future debt . . . more costly and more difficult." (Tr. vol. 3, 38, 40, 52.) Young opined that if the Commission adopted the Public Staff's proposed treatment of coal ash costs, "[i]t's going to make it very difficult for [DEC] to get into these markets and have the flexibility that we need on the debt and equity side." (Tr. vol. 3, 71.)

Similarly, DEC's witnesses, particularly witness Newlin, cautioned that the Commission would "breach" the "regulatory construct" if it does not allow full coal-ash recovery in this case. (See Tr. vol. 2, 67-68, 73, 74.)

Witness Young admitted that DEP had recently raised \$700 million of debt with 2.5% interest. (Tr. vol. 3, 59; Tr. vol. 4, 47.) Young agreed that, should DEC suffer a downgrade, its cost of debt would increase five basis points. (Tr. vol. 3, 69.) Based on DEC's forecast of its debt needs, this would result in an increase of \$225,000 in annual interest. (Tr. vol. 3, 69.)

Young testified that if DEC did not get a return on coal ash expenses, Duke Energy Corporation's Funds from Operations (FFO)/Debt ratio would drop from 15% to 14%, which "will result in a down rating." (Tr. vol. 3, 45–46.) He conceded, however, that Duke Energy Corporation's FFO/Debt ratio has been below 15% during several previous time periods, but did not state that Duke's credit rating was downgraded during those time periods. (Tr. vol. 3, 48.) Young ultimately declined to "speak for the credit agencies" and refused to "say what they will do." (Tr. vol. 3, 45.)

Witness Young further testified that “[t]he point is not what the delta is right now; the point is the ability to access markets over a long term.” (Tr. vol. 3, 69.) He described such access as DEC having “flexibility” over “when [DEC] can go into the marketplace” to raise debt. (Tr. vol. 3, 54, 69).

On cross-examination, Young testified that DEC routinely raises debt at the beginning of the calendar year (Tr. vol. 3, 58) and also admitted that DEC has one of the “very highest” credit ratings of all electric utilities. (Tr. vol. 4, 46.) Young admitted DEC’s debt ratings are higher than the ratings of Duke Energy Corporation (Tr. vol. 3, 76) and most other comparable electric utilities (Tr. vol. 4, 42). Young testified that these other utilities did not have difficulty operating despite their lower credit quality (Tr. vol. 4, 42) and admitted that DEC could operate with a lower credit rating as well. (*Id.*)

On cross-examination, CUCA’s witness O’Donnell stated that he was “stunned” by DEC’s arguments regarding credit metrics. (Tr. vol. 3, at 31.) Witness O’Donnell testified that the Commission “should not be swayed by rating agencies or stockholders” (*Id.*) and that “there’s an easy way to solve this problem [of a potential credit downgrade], but to assume that ratepayers have to pay a higher cost of debt is simply wrong.” (*Id.* at 32.) Illustrating this concern, witness O’Donnell observed that that the Commission can respond in future rates cases to changes in the cost of debt but that consumers should not be burdened in the current rate case by a higher cost of debt resulting from actions of the Company that could have been avoided. (*Id.*)

Discussion and Conclusions

DEC failed to present sufficient evidence to establish that the Commission must protect the Company’s current credit metrics in order ensure that the Company can secure adequate debt.

“[T]he Legislature intended for the Commission to fix rates as low as may be reasonably consistent with the requirements of the” constitution. *State ex rel. Utils. Comm’n v. Duke Power Co.*, 285 N.C. 377, 388, 206 S.E.2d 269, 276 (1974). Therefore, although the Commission must enable DEC to “compete in the market for capital,” the Commission’s “ultimate objective of rate making” is to set rates “which will enable the utility to do [this], and no more.” *State ex rel. Utils. Comm’n v. Gen. Tel. Co. of Se.*, 281 N.C. 318, 370, 189 S.E.2d 705, 738 (1972); see N.C. Gen. Stat. § 62-133.

In other words, the Commission must set rates no higher than what is necessary for DEC to secure *adequate* debt; to raise rates further so that DEC can obtain *cheaper* debt would violate the Legislature’s directives. Indeed, witness Young himself admitted under questioning that the Commission has no duty to “set rates and make decisions so that a company has one of the highest credit ratings” and can secure the best interest rates. (Tr. vol. 3, 42.)

DEC failed to establish that a credit ratings downgrade would result in future debt being more costly to the detriment of DEC's customers. As Young acknowledged, DEP recently raised \$700 million of debt with a 2.5% interest rate. (Tr. vol. 3, 59; Tr. vol. 4, 47.) DEP has lower credit ratings than DEC, (Public Staff Newlin Rebuttal Cross-Examination Exhibit 2), but it was nevertheless able to raise debt at 2.5% interest. Interest of 2.5% is lower than DEC's current 4.51% cost of debt (McManeus Exhibit 1, at 2)—which means that if DEC were to secure debt at an interest rate of 2.5%, DEC would *reduce* its cost of debt. In other words, if DEC's debt ratings were downgraded to match DEP's current ratings, DEC would nevertheless secure debt at interest rates that would still *lower the cost of debt* for DEC's customers.

Additionally, witness Young agreed that, should DEC suffer a downgrade, its cost of debt would increase a mere *five basis points*. (Tr. vol. 3, 69.) Based on DEC's forecast of its debt needs, this would result in an increase of \$225,000 in annual interest. (*Id.*) In other words, DEC claims it needs to extract \$86 million from customers so that it can save them the relative pittance of \$225,000.

Therefore, the Commission rejects DEC's argument that it should be awarded a full coal-ash recovery simply so that the Company can protect customers from future debt being more costly. Further the Commission rejects the construction of the "regulatory construct" advocated by DEC's witnesses. This interpretation would inappropriately require the Commission to put the interests of DEC's investors ahead of its ratepayers—something the Commission is not permitted to do under the existing statutory ratemaking scheme.

In addition, DEC's debt ratings protection argument is constructed from evidence which the Commission does not find to be convincing. As revealed by witness Young's testimony, it is not certain that DEC will experience a decline in its debt ratings. It is also not certain that, if the Company's credit is downgraded, DEC will have to pay more to secure debt. As our Supreme Court has held, the best gauge of a utility's ability to secure debt is "the actual experience of [the] utility in the attraction of capital, under the rates of which it complains[.]" *State ex rel. Utils. Comm'n v. Gen. Tel. Co. of Se.*, 281 N.C. 318, 371, 189 S.E.2d 705, 739 (1972). Therefore, the Commission refuses to take actions to shelter DEC's credit ratings when DEC has not established that it could not secure adequate debt because of a ratings downgrade or that a similar utility experienced difficulty in securing debt because of having a credit rating lower than DEC.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 21-30

Return on Equity

The evidence supporting these findings and conclusions is contained in the Company's verified Application and Form E-1, and the testimonies and exhibits of DEC witness D'Ascendis, Public Staff witness Woolridge, Tech Customers witness

Strunk, AGO witness Baudino, CIGFUR III witness Phillips, and CUCA witness O'Donnell.

Summary of the Evidence

In its Application, the Company requested approval for its rates to be set using a rate of return on equity of 10.3%. The Public Staff Second Stipulation provides for a rate of return on equity of 9.6%, which is a decrease from the 9.9% level authorized by the Commission in the Company's last rate case.

DEC witness D'Ascendis testified that his analysis (using the DCF, CAPM, ECAPM, Expected Earnings, and Bond Yield Plus Risk Premium approaches, taking into consideration factors such as DEC's risks associated with environmental regulations, flotation costs, and the current uncertainty in the capital markets) indicated that the Company's ROE was in the range of 10.00% to 11.00%. Based on his quantitative and qualitative analyzes, including the risk profile of the Company, D'Ascendis testified that 10.5% was a reasonable and appropriate estimate of DEC's ROE. (Tr. vol. 11, 47.)

Public Staff witness Woolridge employed two recognized methodologies (DCF and CAPM) to estimate DEC's cost of equity, each of which he applied to two proxy groups of electric utilities. Based upon these findings, he concluded that DEC's cost of equity was within a range of 6.90% to 8.4%, but recommended an ROE of 9.0% in light of his opinion on DEC's capital structure (50% debt and equity). (Tr. vol. 17, 89.) If the Commission approves a capital structure of 53% equity, Woolridge recommended an ROE of 8.4%. (*Id.* at 90.)

The Tech Customers' witness Strunk criticized D'Ascendis's ROE analysis on several grounds. Strunk noted that the relatively high equity ratio proposed by DEC should correspond to a lower ROE than that sought by DEC. He also testified that objective evidence demonstrates that DEC is less risky than the proxy group used by D'Ascendis in his analysis, but that D'Ascendis did not adjust his analysis to reflect these differing risk characteristics. Strunk outlined several empirical measures of risk in his testimony and the associated exhibits, and none suggests that DEC presents a higher risk profile than the proxy group companies. To the contrary, the objective evidence shows the opposite—that DEC is less risky than its peer group. Taken together, witness Strunk stated that the objective credit and business risk ratings demonstrate that DEC presents *lower* financial risk to equity investors than the proxy group companies, which should result in a significantly lower ROE than that proposed by DEC. (Tr. vol. 16, 136–145.)

The AGO's witness Baudino applied the DCF methodology and the CAPM methodology to his proxy group of electric utilities, and he used D'Ascendis's proxy group to conduct this analysis. He also looked at ROEs authorized for other utilities. His recommendation resulting from this analysis was that the appropriate ROE for the Company is 9.0%. (Tr. vol. 16, 318.) Witness Baudino also submitted supplemental testimony in July 2020 in which he updated his prior analysis in light

of the ongoing COVID-19 pandemic. He reiterated that his updated analysis continued to support his prior recommendation that ROE be set at 9.0%. (Tr. vol. 2, 129.) Witness Baudino testified:

I make my ROE recommendation to the Commission with confidence, even though we find ourselves in an unprecedented time with the world dealing with COVID-19 pandemic, shutdowns of wide swaths of the economy, and uncertainties about the length of our economic recovery. Because of the world economic situation, it is important for me to update my ROE analyses . . . so that the Commission would have the latest financial market information for its cost of capital decisions in these cases.

Id. Baudino further testified that his ROE recommendation was supported, indirectly, by a recent decision of the Kentucky public service commission awarding an ROE of 9.25% in a Duke Energy Kentucky rate case. (Tr. vol. 2, 130.) On cross-examination, witness Baudino admitted the existence of a June 2020 Indiana public service commission order awarding an ROE of 9.75% to a Duke affiliate but nonetheless referenced the Kentucky decision as consistent with his recommendation in this case. (Tr. vol. 3, 17-18; Baudino Duke Cross Exhibit 1.)

CIGFUR III's witness Phillips testified that DEC's ROE should not exceed the national average for electric utilities, which is currently 9.73%, noting that, generally, market costs of capital have declined since DEC's last rate case. (Tr. vol. 22, 121–22.)

CUCA witness O'Donnell relied on DCF, Comparable Earnings and, to a limited extent, CAPM analyses in support of a ROE of 9.0%, as this result is at the top end of his DCF results, at the low-end of the range of results for the comparable earnings test, and is well above the CAPM results. (Tr. vol. 22, 27.)

Discussion and Conclusions

The rate of return authorized to be earned on equity, which is also referred to as the cost of equity capital, is often one of the most contentious issues to be addressed in a rate case, even in a case such as this one in which a stipulation between the utility and the Public Staff has been reached. In the absence of a settlement agreed to by all parties, the Commission must still exercise its independent judgment and arrive at its own independent conclusion as to all matters at issue, including the rate of return on equity. *See, e.g., CUCA I*, 348 N.C. at 466, 500 S.E.2d at 707. In order to reach an appropriate independent conclusion regarding the rate of return on equity, the Commission should evaluate the available evidence, particularly that presented by conflicting expert witnesses.

State ex rel. Utils. Comm'n v. Attorney Gen. Roy Cooper, 366 N.C. 484, 739 S.E.2d 541, 546-47 (2013) (*Cooper I*).

In a fully contested rate case such as this there will almost inevitably be conflicting ROE expert testimony. Even in a partially settled case, the Commission may be faced with conflicting ROE testimony, which in accordance with *CUCA I* and *Cooper I*, requires detailed consideration and, as necessary, evaluation by the Commission of competing methodologies, opinions, and recommendations. These were the circumstances in DEC's 2011 rate case, Docket No. E-7, Sub 989, which resulted in the *Cooper I* decision, as well as the DEP rate case in Docket No. E-2, Sub 1023 (2013 DEP Rate Order). In both of those cases, the ROE testimony of CUCA witness O'Donnell provided an alternate ROE analysis that pegged the utility's cost of capital at an amount lower than the settled ROE. The Supreme Court in *Cooper I* faulted the Commission for not making explicit its evaluation of this testimony, and, thus, the Commission in the 2013 DEP Rate Order made an express evaluation of witness O'Donnell's testimony in accordance with the *Cooper I* decision.

In addition to its evaluation of the expert evidence, the Commission must also make findings of fact regarding the impact of changing economic conditions on customers when determining the proper rate of return on equity for a public utility. *Cooper I*, 366 N.C. 484, 739 S.E.2d at 548. As the Commission stated in a previous order, "the Commission always places primary emphasis on consumers' ability to pay where economic conditions are difficult." 2013 DEP Rate Order, at 37.

In his Supplemental Direct Testimony, AGO witness Baudino discussed extensively the effects of the ongoing pandemic and its effect on the appropriate ROE in this case. Witness Baudino testified:

The COVID-19 pandemic and economic shutdowns that accompanied it, including that in North Carolina, caused an unprecedented economic contraction and skyrocketing unemployment. According to the U.S. Bureau of Labor Statistics, the unemployment rate for the United States rose from 3.5% in February 2020 to a high of 14.7% in April 2020. The unemployment rate for May 2020 was 13.3% and decline further in June 2020 to 11.1%. For North Carolina the unemployment rate rose from 3.6 in February 2020 to 12.9% in May the same as the rate for April.

Nationally, real Gross Domestic Product ("GDP") declined in the first quarter of 2020 by -5.0%, according to the Bureau of Economic Analysis ("BEA"). The BEA also reported that profits from current production (corporate profits with inventory valuation and capital consumption adjustments) decreased \$262.8 billion in the

first quarter, in contrast to an increase of \$53.0 billion in the fourth quarter of 2019.

...

[T]he ongoing COVID-19 pandemic continues to significantly affect economic activity, as well as the employment and incomes of North Carolinians. . . . The Companies' ratepayers simply cannot afford to be saddled with an excessive ROE in [the range requested by DEC].

(Tr. vol. 16, 393–94.) Notwithstanding these market and economic disruptions witness Baudino testified to his opinion that regulated electric utilities like DEC continue to be safe, conservative, and relatively stable investments and that electric utility stocks, as a group, have outperformed the broader market averages in 2020. (Tr. vol. 16, 387.)

With this background, in reviewing the evidence submitted by the parties on the issue of ROE, the Commission notes substantial concerns with the Company's proposal and the stipulation of a return on equity of 9.6%.

The stipulated ROE is at the middle of the range of pre-pandemic ROEs authorized in the United States. As Tech Customers' witness Strunk showed in his testimony, the mean awarded ROE was 9.63% for vertically integrated electric utilities from January 1, 2019, to February 19, 2020, with the median being 9.65%. (Tr. vol. 16, 139–40.)

Three factors strongly weigh in favor of DEC receiving an ROE below the pre-pandemic average ROE. First, by objective metrics, DEC is less risky than other vertically integrated utilities and, therefore, should have a lower ROE. Second, the only reliable expert testimony in this case supports an ROE below 9.6%. Third, an ROE of 9.6% is in the middle of pre-pandemic ROEs, and the current recession, as testified to by witness Baudino, warrants a lower ROE given the unprecedented challenges facing consumers.

Turning to the first factor, objective metrics establish that DEC is less risky than comparable electric utilities. DEC has an "Excellent" business risk ranking from Standard & Poor's, which is the highest possible score. (Tr. vol. 16, 142.) Almost half of the proxy group have lower scores. (*Id.*) DEC also received an "Intermediate" financial risk ranking from Standard & Poor's, and all but two in the proxy group have lower rankings. (*Id.* at 143.). Furthermore, as DEC's witness Young testified, DEC has the "very highest" bond ratings of all electric utilities (Tr. vol. 4, 46), which reinforces the relatively high level of security DEC's investor have compared to other utility investors. DEC did not offer evidence to suggest that it might be as risky or riskier than its peers. Because DEC presents a lower risk than comparable utilities, it is appropriate that its investors should have the opportunity to earn a lower-than-average ROE that corresponds to this level of risk.

Despite agreeing in the Public Staff Second Stipulation, DEC failed to provide independent justification supporting an ROE of 9.6%. DEC's only evidence on ROE was presented by its expert witness, D'Ascendis, who advocated for an ROE above 9.6%. D'Ascendis went so far as to advocate for an ROE in the range of 10% to 11% (Tr. vol. 11, 57), but only by using models previously found by this Commission to be flawed. By contrast, every other expert performing an independent analysis and calculation of the appropriate ROE opined that DEC's ROE should fall below the settlement ROE of 9.6%.¹⁰

As noted above, not only is D'Ascendis's recommendation an outlier, the key models upon which D'Ascendis relies to support his recommendation—CAPM, ECAPM, and Expected Earnings—have several demonstrable flaws and have previously been found unreliable.

- D'Ascendis's CAPM and ECAPM analyses improperly rely on EPS forecasts. The market-risk premium component of his CAPM and ECAPM analyses uses analyst projected EPS forecasts as the growth component. (Tr. vol. 11, 129–30, 132–33.) The Commission has given no weight to the CAPM analysis of DEC's expert in the past because it was “an outlier and upwardly biased due to [the] risk premium component of his CAPM . . . solely using analysts projected EPS forecasts as the growth component.” 2018 DEC Rate Order at 63.
- D'Ascendis further inflates his CAPM and ECAPM results by incorporating projected Treasury rates. (Tr. vol. 11, 344.) The Commission has repeatedly disapproved of models that rely on predictions of future risk-free rates. Order Accepting Public Staff Stipulation in Part Accepting CIGFUR Stipulation, Deciding Contesting Issues, and Granting Partial Rate Increase, Docket No. E-22, Subs 562 and 566 (Feb 24, 2020) (2020 Dominion Order) at 40–41 (“approv[ing] of the use of current risk-free rates rather than predicted near-term or long-term rates”); Order Approving Stipulation, Granting Partial Rate Increase, Line 434 Revenue Rider, EDIT Riders, Provisional Revenues Rider, and Requiring Customer Notice, Docket No. G-9, Sub 743 (Oct. 31, 2019) (2019 Piedmont Order) at 41 (same).
- D'Ascendis's Expected Earnings model also inappropriately relies on projections, having used projected earnings for 2022–2024.

¹⁰ CIGFUR's witness testified that DEC should earn an ROE below the average awarded ROE for vertically-integrated utilities, which he identified was 9.73% from January 1, 2019, to December 31, 2019 (Tr. vol. 22, 121–22), but he did not perform an independent analysis of what the appropriate ROE would be.

(D'Ascendis Rebuttal Exhibit DWD-6.) The Commission has rejected Expected Earnings models for this very reason. 2019 Piedmont Order at 43 (ruling the expected earnings model was “entitled to no weight” because the model was “based entirely on projected earnings . . . for the years 2022-2024”).

As with these three models that the Commission has rejected in prior rate cases, D'Ascendis's Bond Yield model also suffers from flaws. First, his Bond Yield model seeks merely to calculate the correlation between 30-year Treasury rates and the ROEs awarded by regulatory bodies; thus, this model is not empirical evidence of the marketplace returns that utility investors actually earn. Second, D'Ascendis, yet again, uses projected Treasury rates to inflate the upper-end returns of this model.

In contrast to the CAPM, ECAPM, Expected Earnings, and Bond Yield analyses used by D'Ascendis, his DCF analysis is untainted by these analytical flaws and does not rely on projections. The Commission has repeatedly found the DCF analysis presented by DEC's experts to be highly probative of a reasonable ROE. See, e.g., 2019 Piedmont Order at 41 (finding DCF model to be “credible, probative, and entitled to substantial weight”); 2020 Dominion Order at 40 (same). Notably, the mean results of D'Ascendis's most recently updated DCF analysis is 8.82%—well below the Settlement ROE of 9.6%. (Tr. vol. 11, 344.)

Finally, the Commission must take into account the current economic conditions facing DEC's customers. Were the Commission to award DEC the Stipulated ROE of 9.6%, DEC would be authorized to earn the average ROE that utilities were awarded shortly before the coronavirus pandemic hit. The onset of the coronavirus pandemic, however, resulted in perhaps the worst economic recession since the Great Depression. The Commission is required to set rates that “shall be fair both to the public utilities and to the consumer.” N.C. Gen. Stat. § 62-133(a). Indeed, in *Cooper I* the Supreme Court emphasized “changing economic conditions” and their impact upon customers. *Cooper I*, 366 N.C. at 484, 739 S.E.2d at 548. Raising consumers' electricity rates so that DEC—a company that possesses less risk than its peers—can earn a ROE that is in line with what its peers were authorized to earn before the pandemic is not fair to consumers.

Given these economic conditions, the results of the reliable empirical models and the lack of objective evidence offered by DEC that its risk profile is higher than or equal to the peer group, the Commission concludes that the Stipulated ROE of 9.6% is unreasonably high. This evidence and the evidence presented concerning pre-pandemic authorized rates of return on equity, when put into proper context, also lend substantial support to an authorized rate of return on equity of 9.4%. This ROE produces a fair return for DEC's investors because it is below the pre-pandemic average ROE awarded to vertically integrated electric utilities in the United States and accounts for current economic conditions and DEC's risk profile relative to its peers. See G.S. § 62-133(b)(4); *Cooper I*, 366 N.C. at 484, 739 S.E.2d at 548. A return of 9.4% is the midpoint between the low end

of D'Ascendis's range of reasonable ROEs (10.0%) and the 8.82% return suggested by the median of D'Ascendis's lone reliable model, his DCF analysis. It is also the midpoint between the low-end ROEs of witnesses Baudino, Woolridge, and O'Donnell (which average to be 8.92%) and the low end of D'Ascendis range of reasonable ROEs. In addition, 9.4% is a slight discount from the Stipulated ROE, thus placing the parties' agreed-upon return in the context of the empirical evidence before the Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That DEC shall recalculate and file the annual revenue requirement with the Commission within ten days of the issuance of this Order, consistent with the findings and conclusions of this Order and the Stipulation. The Company shall work with the Public Staff to verify the accuracy of the filing. DEC shall file schedules (North Carolina Retail Operations – Statement of Rate Base and Rate of Return, Statement of Operating Income, and Statement of Capitalization and Related Costs) summarizing the gross revenue and the rate of return that the Company should have the opportunity to achieve based on the Commission's findings and determinations in this proceeding.

2. That DEC is hereby authorized to adjust its rates and charges in accordance with the findings in this Order effective for service rendered on and after the following day after the Commission issues an Order accepting the calculations required by Ordering Paragraph No. 2.

3. That the Commission shall issue an Order approving the final revenue requirement numbers once received from DEC and verified by the Public Staff as soon as practicable.

4. That DEC's request to establish a regulatory asset for Grid Improvement Plan expenses is denied.

5. That within 30 days of this Order, but no later than ten business days prior to the effective date of the new rates, DEC shall file for Commission approval five copies of all rate schedules designed to comply with this Order, accompanied by calculations showing the revenues that will be produced by the rates for each schedule. This filing shall include a schedule comparing the revenue that was produced by the filed schedules during the test period with the revenue that will be produced under the proposed settlement schedules, and the schedule illustrating the rates of return by class based on the revenues produced by the rates for each schedule.

6. That DEC shall submit a proposed customer notice to the Commission for review and approval, and upon approval of the notice by the Commission, shall give appropriate notice of the approved rate adjustment by

mailing the notice to each of its North Carolina retail customers during the billing cycle following the effective date of the new rates.

This ____ day of _____, 2021.

NORTH CAROLINA UTILITIES COMMISSION

Certificate of Service

I hereby certify that a copy of the foregoing *Partial Proposed Order of the Tech Customers* has been served this day upon counsel for all parties of record in this proceeding by electronic mail.

This the 4th day of November, 2020.

BROOKS, PIERCE, MCLENDON,
HUMPHREY & LEONARD, LLP

/s/ Craig D. Schauer