

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-7, SUB 1155

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke Energy Carolinas, LLC for Approval of Residential New Construction Program))))	ORDER REQUIRING IMPLEMENTATION OF REVISED RNC PROGRAM AND RENEWAL OF OFFER TO JOINT MARKET
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HEARD: Monday, January 27, 2020, at 2:00 p.m., in Commission Hearing Room 2115,
Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

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

APPEARANCES:

For Duke Energy Carolinas, LLC:

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For the Using and Consuming Public:

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For Piedmont Natural Gas Company, Inc:

James H. Jeffries, IV, Attorney at Law, McGuireWoods LLP, 201 North
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For Public Service Company of North Carolina, Inc:

Mary Lynne Grigg, Attorney at Law, McGuireWoods LLP, 434 Fayetteville
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BY THE COMMISSION: On September 21, 2017, Duke Energy Carolinas, LLC
(DEC or Company) filed an application in the above-captioned docket for approval of
DEC's proposed Residential New Construction Program (RNC Program). In summary,

DEC requested that the Commission find that the RNC Program meets the requirements of Commission Rule R8-68 for a new energy efficiency (EE) program, and that all costs incurred by DEC and incentives associated with the RNC Program will be eligible for recovery through DEC's DSM/EE rider filed in accordance with Commission Rule R8-69. In addition, DEC stated that the RNC Program would provide incentives to residential builders in order to encourage the use of energy efficient building practices and equipment/appliances for new home construction. Further, DEC stated that eligibility would be based on the High Efficiency Residential Option (HERO) standard and upon requirements for energy efficient appliances, and that its proposal was intended to mirror Duke Energy Progress, LLC's (DEP's) Residential New Construction Program, as approved by the Commission in Docket No. E-2, Sub 1021.

On October 23, 2017, the Public Staff filed comments recommending approval of DEC's application.

No additional filings were made in the docket for over a year and a half, and the docket was not placed on a Regular Staff Conference agenda by the Public Staff, as is typically done in such applications.

On June 7, 2019, DEC filed a motion requesting that the Commission allow DEC to withdraw the RNC Program application. DEC stated:

Following numerous discussions with natural gas utilities subject to the Commission's jurisdiction aimed at resolving their concerns regarding potential unintended consequences of the program design, the Company has decided to withdraw the request for approval of the RNC Program at this time.

Motion to Withdraw Program, at 1.

After DEC filed its motion to withdraw the Application, the Commission received more than 50 consumer statements of position generally expressing support for the RNC Program or a similar measure and urging rejection of the motion to withdraw the Application.

On August 8, 2019, the Southern Alliance for Clean Energy (SACE) filed a letter in support of the RNC Program and requested that the Commission reject DEC's motion to withdraw the Application.

On August 16, 2019, the North Carolina Sustainable Energy Association (NCSEA) and the North Carolina Building Performance Association (NCBPA) filed letters similar to that of SACE. On November 19, 2019, NCBPA filed additional support for DEC's RNC Program and urged the Commission to schedule a hearing.

On November 25, 2019, the Commission issued an order scheduling a hearing for January 27, 2020, and providing notice of topics to be addressed at the hearing, as follows:

1. Details of the concerns of the natural gas providers regarding potential unintended consequences of the RNC Program.
2. Details of the efforts made by DEC to resolve the concerns of the natural gas providers regarding potential unintended consequences of the RNC Program.
3. The factors that allowed the RNC Program to be successfully implemented by DEP, without concerns of the natural gas providers in DEP's service territory regarding potential unintended consequences of the RNC Program being a barrier.

On January 22, 2020, Piedmont Natural Gas Company, Inc. (Piedmont) and Public Service Company of North Carolina (PSNC, collectively natural gas companies or LDCs), although not parties to this proceeding at that time, filed letters stating that they would have representatives at the hearing who would be available to answer questions from the Commission.

The case came on for hearing on January 27, 2020, as scheduled. DEC presented as a panel witnesses Timothy J. Duff, General Manager of Portfolio and Analysis and Regulatory Strategy for the Customer Solutions Organization for Duke Energy, and Robert P. Evans, Senior Manager of Strategy and Collaboration for the Carolinas (collectively, DEC Panel). At the request of the Commission during the hearing, Piedmont presented witness Bruce P. Barkley, Vice President of Gas Supply and Rates, and PSNC presented witness William A. McAulay of William A. McAulay & Associates, who testified together as a panel (collectively, LDC Panel).

On March 5, 2020, DEC and the Public Staff filed a Joint Proposed Order (JPO).

On June 23, 2020, the Commission issued an Order Holding in Abeyance Decision on Motion to Withdraw Program and Requiring Filing of Modified Program (Abeyance Order). In summary, in the Abeyance Order the Commission concluded that: (1) DEC filed its proposed RNC Program in good faith as a cost-effective EE program and did not design the RNC Program with the intent to encourage fuel switching or promote unfair competition; (2) there is a significant difference in the financial resources available to the electric utilities for funding EE programs compared to those available to the LDCs for such purposes; (3) concerns about losses in the LDCs' new residential construction market share merit further consideration and analysis; and (4) the Commission's challenge is to balance the benefits of an electric EE program, which is supported by statutory mandate and has proven successful in DEP's service area, with the need to prevent unfair or destructive competition between electric and natural gas utilities. The Abeyance Order directed DEC to engage the LDCs and Public Staff in further discussions in an attempt to reach agreement on acceptable modifications to the RNC Program that are reasonably fuel choice neutral and, within 90 days, to file a modified RNC Program that DEC deems appropriate for achieving EE savings and addressing the LDCs' fuel choice concerns. The Abeyance Order also directed DEC to provide certain additional information with its

modified RNC Program. Finally, the Abeyance Order allowed the LDCs and Public Staff to file comments on any proposed modifications to the proposed RNC Program within 30 days after DEC's filing.

Subsequent to the Abeyance Order, petitions to intervene were filed and granted for PSNC, Piedmont, and NCSEA.

DEC's Revised RNC Program

DEC filed its Revised RNC Program (Revised Program) on September 21, 2020. In summary, DEC stated that the Revised Program's purpose is to provide incentives to encourage new residential construction that meets or exceeds the whole house incentive standards (WHI incentives) of the current Energy Conservation Code HERO, and the installation of high efficiency appliances. DEC stated that the Revised Program is expected to achieve significant energy efficiency savings and is reflective of substantive changes associated with feedback received from the LDCs. In compliance with the Abeyance Order, DEC provided an updated cost-effectiveness analysis, and estimated participation that showed the number of impacted homes and kWh saved (Attachment B to Revised Program, and Attachment H, Response No. 2).

The Revised Program filed by DEC also provided specific information about how the per kWh incentive for a home will be calculated, including a sample calculation for a home with and without natural gas, and an explanation of how the "up to \$0.75/kWh" savings incentive applies to various types of energy savings. (Attachment H to Revised Program, Response No. 3). The details of the Revised Program show that DEC made the following changes, among others, to the incentive levels in response to the LDCs' concerns: (1) the Whole House HERO incentive was lowered from a maximum of a flat payment of \$750 to a maximum of \$650; (2) the per kWh incentive option for Whole House HERO for non-space heating savings including hot water, lights and appliances savings was lowered from \$0.90 per kWh saved to \$0.75 per kWh saved; (3) the per kWh home heating savings incentive for homes with electric heat was lowered from \$0.75 per kWh saved to \$0.40 per kWh saved; and (4) the per kWh home heating savings incentive for homes with natural gas heating was not changed and remains at \$0.75 per kWh saved.

An example of the impact of the proposed per kWh incentives on two representative homes with electric heat and hot water systems and gas heat and hot water systems showing a calculated incentive of \$1,366.50 for 2,291 kWh saved by an all-electric home, and \$895.50 for 1,094 kWh saved by a home with gas heating and hot water. (Attachment H to Revised Program, Response No. 3). The Commission makes two observations about the example provided by DEC. First, it is unclear what period of time is covered by the example. Second, homes with gas space heating are expected to have low heating electricity use with or without the incentivized improvements so this part of the incentive has relatively little impact on the overall incentive.

The maximum amount of kWh savings used to calculate incentives for any house participating in the Revised Program for the three years in which incentives are paid is a total of 6,000 kWh saved, the same as the maximum amount in the original RNC Program.

DEC also included statistics from 2016 through 2019 in support of its statements that approximately 66% of participating new homes that received DEP's RNC Program WHI chose gas heat, and that approximately 50% of the new homes that participated in the kWh savings incentive chose gas heat. (Attachment H, Response No. 4) The response states that the data sources were participating Home Energy Rating System (HERS) raters and DEP's RNC Program data.

In addition, in response to the Commission's directive in the Abeyance Order, DEC requested data and analysis from Piedmont and PSNC that was relied on by the LDCs as the basis for their contentions that the kWh incentive offered by DEP's RNC Program had an effect on fuel choice decisions made by housing developers. DEC included the information provided by the LDCs in Attachment H, Response No. 6. The information is ten statements by PSNC and three statements by Piedmont that identify subdivisions and state that the LDCs lost sales because the developers of these subdivisions were motivated by DEP's RNC Program to choose electricity as their energy source rather than natural gas. (*Id.*, Response No. 6)

Finally, DEC provided clarification that participants in the RNC Program can receive only one of the three types of incentives – HVAC equipment, Whole House HERO, or Whole House HERO PLUS incentive - for the same premise. (*Id.*, Response No. 5)

The matrix below is the Commission's summary comparison of the main features of DEC's original RNC Program and DEC's Revised Program.

Program Attributes	Original RNC	Revised RNC
HVAC Equipment Incentives		
Central Air (15 SEER+)	Up to \$300	Up to \$300
Heat Pump (15 SEER+)	Up to \$300	Up to \$300
Whole House – HERO (Flat payment option)	Up to \$750	Up to \$650
Whole House – HERO Plus – (Payment based on kWh saved)		
Max. amount of kWh Savings used to calculate incentive	6,000	6,000
All-Electric Home – Heating Savings	\$0.75 per kWh saved	\$0.40 per kWh saved
All-Electric Home – Other Savings ¹	\$0.90 per kWh saved	\$0.75 per kWh saved
Natural Gas Heating – All types of Savings ²	Not differentiated	\$0.75 per kWh saved
Total Projected Program kWh Savings ³	40.1 million kWh saved	55.4 million kWh saved
Total Program Incentives	\$33.8 million	\$42.6 million
Total Program Costs	\$42.4 million	\$49.1 million
Cost Effectiveness Test Results		
Utility Cost Test	1.56	1.83
Total Resource Cost Test	1.41	1.31
Rate Impact Measure Test	0.80	0.77
Participant Test	2.12	2.14

¹ Cooling, hot water, lights, and appliances.

² Heating, cooling, lights, and appliances. Not hot water.

Summary of Parties' Comments

Public Staff

The Public Staff recounted the procedural history of the docket, and summarized the changes made by the Revised Program. Further, the Public Staff opined that:

Attachment H of the Modified Application also included information about the impact of the DEP Program on past new construction activities. This information cites data on the number of homes in particular subdivisions where the installation or selection of natural gas service might have been adversely impacted by the DEP Program. However, this data is inconclusive and nearly impossible to verify. The Public Staff is not able to draw any discernable "causal effect" or determine whether the DEP Program hindered the extension of natural gas utility service or in cases where gas service was already available, to forgo building homes that included natural gas appliances, based on this limited information.

Public Staff Comments, at 8-9.

The Public Staff opined that it is difficult to show what type of energy sources builders would have selected if the DEP RNC Program did not exist. While the Public Staff confirmed that no party has demonstrated that the Revised Program is promotional in nature, the Public Staff also acknowledged the LDCs' concern that the dollar per kWh incentive structure could influence a builder's decision to install natural gas service or not because a builder can receive a larger incentive by installing all electric appliances for space and water heating, rather than using natural gas service to heat the home and water.

The Public Staff stated that DEC's reduced incentive for the Whole House HERO-Plus measure in the Revised Program is a more precise way of incentivizing EE when compared to the flat rate incentive that is part of the current RNC Program because the flat rate incentive lumps large and small homes together and pays the incentive on an average-sized home basis. The Public Staff further stated that the reduced incentive is a reasonable concession to the LDCs' concerns.

In addition, the Public Staff suggested another option to develop an incentive rate based on the percentage of reduced kWh between standard construction and EE construction. The Public Staff provided the Puget Sound Energy program as an example for this option. According to the Public Staff, the Puget Sound Energy program pays a flat rate incentive based on the percentage of energy reduction and its structure allows incentives for either all-electric homes or homes using gas and electricity. The Public Staff stated that this type of EE program incorporates savings for gas and electric utility service, and recommended that DEC evaluate the effects of restructuring the Revised Program to provide an incentive for both electric and natural gas savings similar to the Puget Sound

³ All totals for five year duration of program.

Energy program, and provide a report to the Commission in 60 days regarding the legality and feasibility of offering such a program in North Carolina, or offering a joint program with the LDCs. The Public Staff stated that this could be accomplished through DEC's DSM/EE Collaborative.

The Public Staff further stated that based on the available evidence it is not convinced that any market harm has occurred to the LDCs. The Public Staff recommended that the Commission encourage DEC, DEP and the LDCs to collaboratively work towards the joint development of gas and electricity EE programs that would serve their respective customers, and opined that these joint programs would not only reduce the use of electricity and natural gas, but would also address several public policy objectives now being considered at federal and state levels regarding clean energy initiatives.

LDCs

The LDCs filed joint comments stating that they appreciated DEC's attempts to reduce the level of some incentives in the Revised Program, but believe that the Revised Program continues to offer incentives that create a substantial preference for the use of electricity over natural gas and, and will result in an anti-competitive impact on the LDCs. The LDCs stated that the information included in DEC's Revised Program Attachment H shows that the HERO-Plus incentive favors the use of electricity over natural gas in new homes, and that a home must be HERS rated to qualify for the HERO-Plus incentive. According to the LDCs, the HERS ratings are agnostic as to fuel choice and the energy efficiency of the installed equipment. The LDCs stated that since the HERS rating is agnostic to fuel choice, then the incentive payments should also be agnostic to fuel choice. The LDCs concluded that basing an incentive on a per-kWh saved metric favors selection of electricity over natural gas, even though the kWh savings are not dependent on the installation of higher efficiency electric space and water heating equipment. The LDCs cautioned that DEC's Revised Program would lead to an increase in electric load and demand by incentivizing the installation of electric space and water heating equipment over natural gas equipment, that electric customers' rates will increase in order to cover the cost of the incentives paid, and that natural gas customers' rates will also increase since the LDCs have to spread fixed costs over a lower number of customers when potential gas customers are not brought onto the system.

In addition, the LDCs stated that both the DEC and DEP RNC Programs can be made fuel-neutral by applying the DEP RNC Program guidelines introduced in 2012. According to the LDCs, the 2012 DEP RNC Program used HERS ratings as the basis for incentives paid to builders for energy-efficient construction. The LDCs stated that the 2012 DEP RNC Program is a reasonable approach that encourages energy efficiency while being agnostic to fuel choice. The LDCs requested the Commission to review and modify DEC's Revised Program and revisit DEP's RNC Program to make them competitively neutral.

Moreover, the LDCs contended that DEC's Revised Program is contrary to the settlement agreements entered into between Piedmont and DEC, and PSNC and DEC, and approved by the Commission in Docket No. E-7, Sub 831. Order Resolving Certain Issues, Requesting Information on Certain Unsettled Matters, and Allowing Proposed Rider to Become Effective Subject to Refund, Findings of Fact Nos. 51 and 52 (February 26, 2009). The LDCs appended copies of the settlement agreements to their comments, and cited and discussed several of the provisions that they contended apply to the issue of whether the Revised Program will promote unfair or destructive competition. (LDCs' Joint Comments, Exhibits 2 and 3).

DEC's Reply Comments

DEC stated that the LDCs are relying on the settlement agreements approved in Docket No. E-7, Sub 831 (Sub 831 docket), in 2009 (Legacy Settlement Agreements or LSAs), and that the LDCs contend that the Commission should require DEC to comply with the LSAs' provisions to prevent unfair competition between the LDCs and DEC. According to DEC, in the Sub 831 docket the Commission approved DEC's proposed Save-A-Watt EE portfolio and the LSAs. Further, DEC stated that the Commission later approved the DEC cost-recovery mechanism for its EE portfolio in the same docket as a pilot program with a four-year term.

According to DEC, in Docket No. E-7, Sub 1032 the Commission subsequently approved a new EE portfolio and cost recovery mechanism to go into effect after the Save-A-Watt pilot expired, but did not include the LSAs in that order. DEC stated that although the LSAs are no longer applicable and are beyond the scope of the present docket, its Revised Program meets the general intent of the LSAs and does not result in destructive competition between DEC and the LDCs.

DEC stated that the LDCs cited a provision of the LSA between DEC and Piedmont that provides:

The energy efficiency programs included in Duke Energy Carolinas' Energy Efficiency Plan: (a) are not intended to displace or replace natural gas appliances with competing electric appliances; (b) are not designed to encourage fuel-switching; and (c) require demonstrated electric energy savings in each application utilizing cost-effectiveness testing.

LDCs' Joint Comments, at 14.

DEC contended that the first requirement of this provision was that the proposed EE programs are not intended to displace or replace natural gas appliances with competing electric appliances. It cited the testimony of DEC witness Duff during the January 27, 2020 hearing that

Obviously, the one important thing is that we're incentivizing cost-effective energy efficiency for electric use and that's what the Program is designed

to do. That's really its only intent is to help our electric customers become more efficient. Now, obviously there's whole home benefits as well, but that's what the incentives that they designed are intended to do.

Transcript (Tr.) at 17-18.

Moreover, DEC submitted that several commenters, including several home builders, also believed that the proposed RNC program was fuel agnostic. (Tr. at 19.) DEC stated that even though the original RNC Program was not designed or in any way intended to displace or replace natural gas appliances with electric appliances, DEC's Revised Program is intended to further protect against any displacement of natural gas appliances. DEC pointed to the Revised Program's reductions in the per kWh incentive on electric space heating measures by nearly 50%, and contended that this means a kWh saving associated with an electricity appliance or device that has a natural gas consuming appliance or device substitute would receive a far lower incentive than an efficient electric device that does not have a natural gas substitute.

In addition, DEC maintained that the second pertinent requirement of the LSAs was that the proposed EE programs were not designed to encourage fuel switching. According to DEC, its Revised Program is designed to encourage, through incentives, building energy efficient homes, and specifically, as witness Duff testified:

[s]peaking from Duke Energy's standpoint we felt our Application was for a program that was agnostic to the installation of a fuel source in a home but would drive energy efficiency.

Tr. at 21.

DEC stated that it modified the original RNC Program in its Revised Program to reduce the per kWh incentive for electric space heating measures, and that the initial RNC Program was not designed to result in fuel switching, nor is the Revised Program. Instead, according to DEC, the Revised Program is specifically designed to eliminate the potential for unintended consequences, and especially fuel switching. In addition, DEC noted that although Attachment H, Response No. 6, lists communities and homes that the LDCs provided as locations that they believe were impacted by DEP's RNC Program, the LDCs have not provided sufficient support for their assertions that DEP's Program impacts builders' choices between electricity and natural gas. DEC stated that it recognizes that making after-the-fact determinations on what motivated a builder's decision about fuel choice is challenging, but that in DEC's investigation of the homes and communities provided by the LDCs at least one instance may suggest that fuel availability, rather than DEP's RNC Program, influenced a builder's decision regarding the fuel source in the subdivision's homes. DEC stated that with respect to the Channel Watch Subdivision, which accounts for over 16% of the total homes cited by Piedmont, DEC determined that the closest viable natural gas line was over 1.5 miles away from the neighborhood. (DEC Revised Program, Exhibit 1). As a result, DEC maintained that its RNC Program may likely have had little to no impact on the builder's choice in Channel Watch. In addition,

DEC acknowledged that although DEC's ability to find a clear rationale behind builders' decisions on fuel choice in the neighborhoods referred to by the LDCs was limited, it also was unable to find any information that would support the LDCs' contention that DEP's RNC Program was the driver for those decisions.

DEC stated that the final requirement outlined by the LSAs cited by the LDCs is that the proposed EE program "demonstrated electric energy savings in each application utilizing cost effectiveness testing." DEC contended that its Revised Program clearly meets this last requirement, and that no party has challenged the Revised Program's cost-effectiveness, based on the Revised Program's ability to deliver energy savings. DEC submitted that its Revised Program is therefore consistent with Commission Rule R8-68, the mechanism approved in Docket No. E-7, Sub 1032, and the State's policy of encouraging EE as outlined in Chapter 62 of the North Carolina General Statutes. DEC also noted that the Public Staff filed comments in support of approval of the Revised Program.

DEC further stated that the LDCs' comments also referenced Section 3(c) of the LSA between PSNC and DEC. According to DEC, Section 3(c) states that DEC "will promote on an equal basis and offer equivalent incentive payments for heat pumps and air conditioning." DEC noted that its original RNC Program included the same \$0.75 per kWh incentive level for both space heating and space cooling measures (air conditioners and heat pumps), meaning that they were incentivized and promoted equally. It stated that in its Revised Program, however, the Company proposed to incentivize air space heating measures at \$0.40 per kWh of energy savings, while maintaining the incentive level for all other measures, including air conditioners at \$0.75 per kWh. According to DEC, one could argue that due to its efforts to alleviate the LDCs' concerns DEC's Revised Program more heavily promotes energy efficient air conditioners than energy efficient heat pumps. Accordingly, DEC contended that if the Commission concludes that the LSAs associated with DEC's previous EE portfolio continue to apply, DEC's Revised Program is consistent with the LSAs' requirements not to incentivize fuel switching in equipment or appliances where there is a choice of fuels.

Lastly, DEC stated that if the Commission approves the Revised Program it will work with an independent third-party evaluator to develop a component of the Evaluation, Measurement and Verification (EM&V) process that will assess whether DEC's Revised Program has had any unintended impact on builders' decisions to install natural gas service in new homes. DEC stated that the process would include research from builders that participated in the Revised Program and those that did not, and that data from this EM&V effort would be included in DEC's annual DSM/EE cost recovery proceedings.

Piedmont's Proposed RNC Program

On March 19, 2021, Piedmont filed an Application for Modifications to Existing Energy Efficiency Programs and Approval of New Energy Efficiency Programs in Docket No. G-9, Sub 786 (Piedmont EE Application). Piedmont's EE Application proposed three new EE programs, including a Residential New Construction Program (Piedmont RNC). In

summary, Piedmont stated that its RNC will offer incentive payments to single-family home builders who are installing high efficiency natural gas equipment and/or meeting or exceeding the whole house HERO standards. Piedmont stated that measures offered under its RNC include, but are not limited to, natural gas high-efficiency furnaces, water heaters, and smart thermostats, and that the RNC will enable builders to help offset some of the higher cost of choosing a more efficient piece of equipment and/or building a more energy efficient home. In particular, Piedmont's proposed RNC includes a HERO WHI of \$500, or equipment incentives such as a natural gas furnace incentive of \$225, and a natural gas water heater incentive of \$200. It does not include kWh or dekatherm (dt) savings incentives. Piedmont stated that its proposed EE programs do not encourage fuel selection or fuel choice, and that the incentives in the proposed programs are designed to offset the cost of installing higher efficiency natural gas equipment.

On April 19, 2021, the Commission issued an Order consolidating Piedmont's EE Application with Piedmont's general rate case in Docket No. G-9, Sub 781 (Piedmont Consolidation Order). The Piedmont Consolidation Order also required Piedmont to file a statement on or before May 5, 2021, stating whether, due to its application for approval of its RNC Program, Piedmont no longer objects to the DEC and DEP (collectively Duke) RNC Programs.

On May 5, 2021, Piedmont filed a statement informing the Commission that it continues to object to the Duke RNC Programs as they are currently structured, and that its EE Application does not change Piedmont's position as stated in its comments in Docket No. E7, Sub 1155. Further, Piedmont stated that it does not object to electric company EE programs in general, but only objects to EE programs that motivate fuel switching or influence fuel selection by financially incentivizing customers on a per kWh basis. Moreover, Piedmont stated that it does not oppose conservation but does oppose customer-funded marketing programs that build electric load under the guise of energy efficiency. Finally, Piedmont went into some detail recounting its previous contentions about the alleged fuel switching characteristics of the Duke RNC Programs.

PSNC's Proposed RNC Program

On April 1, 2021, in Docket No. G-5, Sub 634, PSNC filed an Application for Approval to Modify Existing Conservation Programs and Implement New Conservation Programs (PSNC EE Application). The PSNC EE Application requested Commission approval to expand PSNC's existing Energy Efficiency Rebate Program and High Efficiency Discount Rate Program, and to implement three new conservation programs, including a Residential New Construction Program (PSNC RNC). PSNC stated that its proposed RNC provides financial incentives to participating builders who construct homes that include eligible measures, thereby encouraging the construction of homes that are more energy efficient. According to PSNC, the program includes two participation paths: (1) a WHI that requires homes to meet or exceed HERO standards; or (2) an individual equipment incentive with incentives offered based on the installation of qualifying natural gas equipment in the home. In addition, PSNC stated that its RNC Program aligns with proposed modifications to its High Efficiency Discount Rate program, under which homes

that qualify through the WHI will be eligible for the High Efficiency Discount Rate. Specifically, the incentives offered by PSNC's proposed RNC include a HERO WHI of \$500, or equipment incentives such as a natural gas furnace incentive of \$250, and a natural gas water heater incentive ranging from \$200 to \$250. PSNC stated that the most significant difference between its proposed RNC and DEC's Revised RNC is that PSNC's RNC does not pay incentives on a per-therm saved basis and, therefore, does not incentivize fuel choice. According to PSNC, the incentive in its proposed programs would help offset the higher cost of more efficient equipment, and its proposed RNC Program is like the flat-rate EE incentives included in the DEP and DEC RNC Programs, which PSNC does not oppose.

On May 18, 2021, the Commission issued an Order consolidating PSNC's EE Application with PSNC's general rate case in Docket No. G-5, Sub 632 (PSNC Consolidation Order). The PSNC Consolidation Order also required PSNC to file a statement on or before June 18, 2021, stating whether, due to its application for approval of its RNC Program, PSNC no longer objects to the Duke RNC Programs.

On June 18 2021, PSNC filed a statement informing the Commission that PSNC's application for approval of its RNC program does not in any way change its objections to the Duke RNC Programs. PSNC stated that it carefully designed its proposed RNC program in light of its objections to the HERO-Plus offerings in the Duke RNC Programs, and that PSNC proposes its RNC program while continuing to object to the Duke RNC Programs because the structure and results of PSNC's RNC program and HERO-Plus include critical key differences from those in the Duke RNC Programs. Finally, Piedmont went into some detail recounting its previous contentions about the alleged fuel switching characteristics of the Duke RNC Programs.

Based upon consideration of DEC's Application, the pleadings, the testimony at the hearing, DEC's and the Public Staff's JPO, the Revised RNC Program, the parties' comments and reply comments, and the whole record in this matter, the Commission makes the following:

FINDINGS OF FACT

1. DEC is a public utility with a public service obligation to provide electric utility service to customers in its service area in North Carolina and is subject to the jurisdiction of the Commission.
2. DEC filed its Application for approval of its RNC Program as an energy efficiency program under Commission Rule R8-68 on September 21, 2017. The purpose of the RNC Program is to provide incentives to residential builders to encourage the use of energy efficient building practices, equipment, and appliances for new home construction.
3. The RNC Program was intended to mirror Duke Energy Progress, LLC's Residential New Construction Program (DEP RNC Program), which was approved on

October 2, 2012, in Docket No. E-2, Sub 1021. On September 20, 2017, DEP filed a request for approval of modifications to its RNC Program. With these modifications, the DEP RNC Program is essentially the same as the originally proposed DEC RNC Program.

4. DEC was unaware of any concerns from the natural gas companies when it filed its RNC Program.

5. The DEP RNC Program has been a successful energy efficiency program for DEP.

6. After DEC moved to withdraw its Application, the Commission received more than 50 consumer statements of position supporting the proposed RNC Program and objecting to its withdrawal.

7. Upon review of the DEC Application and responses to its data requests, the Public Staff filed Comments on October 23, 2017, stating that the Application contained the information required by Commission Rule R8-68(c), and was consistent with N.C. Gen. Stat. § 62-133.9, and Commission Rule R8-68(c).

8. The Public Staff also concluded that the RNC Program had the potential to encourage energy efficiency, was consistent with DEC's integrated resource plan, and was in the public interest. Accordingly, the Public Staff recommended that the Commission approve the RNC Program.

9. The RNC Program is cost-effective under the Utility Cost Test, the Total Resource Cost Test, and the Participant Test, but not under the Rate Impact Measure cost test.

10. Based on reports from the field, the natural gas companies believed that the similar DEP RNC Program had caused them losses in the marketplace.

11. The natural gas companies were concerned that the kilowatt-hour (kWh) savings incentives in the RNC Program would cause builders to forego the installation of natural gas service in new homes.

12. DEC and DEP and the natural gas companies have worked together in the past through discussions and settlements to mitigate concerns involving competition between them, but in this case, DEC was unable to satisfy the natural gas companies' concerns about competition.

13. It has not been clearly shown that the RNC Program as modified by DEC (Revised Program), will result in fuel switching from natural gas to electricity, or that it will promote unfair or destructive competition.

14. DEC and DEP should offer to co-market the Revised RNC Program with the LDCs and DEC, DEP, and the LDCs should work together to investigate the potential for joint development of energy efficiency programs.

15. The Revised Program is properly designed and meets the requirements of a new energy efficiency program under Rule R8-69.

16. The Revised Program is in the public interest.

17. The appropriate ratemaking treatment for the Revised Program, including program costs and the level of incentives, should be determined when DEC seeks cost recovery in a future DSM/EE rider proceeding in accordance with N.C.G.S. § 62-133.9, Commission Rule R8-69.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

This finding of fact is jurisdictional in nature and not subject to dispute.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 2-4

The evidence supporting these findings of fact is found in the Application, the Public Staff's comments on the Application, the testimony of DEC witnesses Duff and Evans, and the Commission's Order Approving Program in Docket No. E-2, Sub 1021.

DEC filed the RNC Program to become part of its portfolio of energy efficiency programs for which it is eligible to recover its costs, as well as net lost revenues and a utility incentive, under N.C. Gen. Stat. § 62-133.9 and Commission Rules R8-68 and R8-69. According to excerpts from DEC's Application:

The purpose of this Program is to provide incentives to encourage residential construction that meets or exceeds the whole house standards of the current Energy Conservation Code High Efficiency Residential Option (HERO) and the installation of high efficiency appliances.

This Program provides cash incentives to residential builders to encourage the use of energy efficient building practices and equipment/appliances for new home construction.

Application, at Sections (c)(2)(i)(b) and (c)(2)(ii)(a).

In addition, the cover letter accompanying the Application stated, "[T]his proposal is intended to mirror Duke Energy Progress, LLC's Residential New Construction proposal."

The proposal included three types of incentives. First, for whole-house measures where the home is built to HERO standards, the RNC Program included incentives for a

high energy efficiency residential envelope option up to \$750. Second, where the home is built to HERO standards and there are confirmed annual kWh savings, the homeowner can receive up to \$0.90/kWh saved. Third, where central air conditioning with a Seasonal Energy Efficiency Ratio (SEER) of 15 or higher is installed, and/or a similarly rated air source heat pump is installed, the builder could receive up to \$300 for each. Application, at Section (c)(2)(iv)(b).

The DEC RNC Program as originally proposed was very similar to the DEP RNC program, as modified. The DEP Program was approved on October 2, 2012. *Petition of Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc. for Approval of Proposed Residential New Construction Program*, Docket No. E-2, Sub 1021, Order Approving Program (DEP RNC Order). Like the DEC proposal, the DEP Program includes a kWh savings incentive:

With respect to the feature of the Program that would provide builders and developers who build to or exceed the 2012 NCECC HERO code the opportunity to participate in a limited heating and cooling bill guarantee as a means of marketing the improved energy efficiency of their product to prospective homebuyers, the Public Staff observed that the homeowners participating in the guarantee would receive a payment based on heating and cooling energy usage that is deemed to exceed the stated guarantee. The guarantee would be applicable solely to the initial homeowner and would apply for no longer than three years from registration. In response to a Public Staff data request, PEC indicated that the Program's third-party administrator would be responsible for managing and financially backing the guarantee. The Public Staff recommended that PEC provide for Public Staff review a copy of the contract with the third-party administrator, the guarantee application, and all other Program forms prior to executing the administrator contract and using the forms in the Program.

DEP RNC Order, at 4.

In the DEP RNC Order, the Commission also approved DEP's proposal for flexibility in making changes to the DEP RNC Program.

In regard to the amount of the participant incentive, the Commission recognizes that the level of incentive necessary to entice builders and developers to participate in the Program is uncertain and, therefore, PEC should have some flexibility to make adjustments to the level of the participant's incentive for this specific program to maximize its results. Further, the Commission understands that the incentives will be awarded on a consistent and nondiscriminatory basis to eligible program participants. Consequently, the Commission finds and concludes that the flexibility provisions as quoted hereinbefore and as set forth on Page 13 of PEC's Amended Petition filed on February 24, 2009, in Docket No. E-2, Sub 938, and approved by the Commission, relating to the flexibility and program

modifications, should be applicable to the Residential New Construction Program.

Id. at 6-7.

On September 20, 2017, DEP filed a letter notifying the Commission of modifications to DEP's RNC Program. In pertinent part, the letter stated:

The proposed modifications to the RNC Program are intended to increase the cost effectiveness of the Program by modifying incentives and by eliminating non-cost-effective measures and measures that are no longer applicable. As the Commission is aware, the Company's RNC Program incentivizes builders for the construction of energy efficient new residential housing rated at or above the current Energy Conservation Code High Efficiency Residential Option (HERO) or for the installation of high efficiency air conditioners and heat pumps that meet minimum Program requirements. DEP is requesting the Commission to approve the following modifications to the Program:

1. Eliminate the existing tier structure for HVAC incentives;
2. Remove incentives for HVAC equipment with a Seasonal Energy Efficiency Ratio (SEER) of less than 15;
3. Remove Quality Installation and Heat Pump Water Heater measures, as they are typically included when building to HERO standards and rarely implemented on a stand-alone basis; and
4. Provide the maximum potential levels of incentives as opposed to fixed incentives in order to provide the Company with the ability to promptly react to changes in market conditions in a manner consistent with its flexibility guidelines approved by the Commission in its January 20, 2015 Order in Docket No. E-2, Sub 931. The current incentive amounts will be posted on the Company's website, www.duke-energy.com.

No objections to DEP's proposed modifications of the Program were filed, and the modifications were implemented by DEP in accordance with the flexibility provisions of the DEP RNC Order. DEP's modifications to its RNC Program were primarily in response to building code changes and to remove the limit of one thousand participants. These changes made the DEP Program essentially the same as the proposed DEC Program. Tr., 15-16 and 32.

DEC witness Evans stated that DEC was unaware of any concerns of the natural gas companies when it filed its RNC Program. *Id.* at 15-16. DEC witness Duff stated that the Company did not believe that the RNC Program would incent fuel switching or result in unfair competition. He stated that DEC believed that the Program would be in the public

interest. *Id.* at 17-19, 21-24. In particular, in response to a Commission question about whether the Program was fuel neutral, he stated:

I can tell you that our program managers who designed the Program and worked with the builders, many of whom submitted comments, purposely tried to design it that way. Obviously, the one important thing is that we're incentivizing cost-effective energy efficiency for electric use and that's what the Program is designed to do. That's really its only intent is to help our electric customers become more efficient. Now, obviously there's whole home benefits as well, but that's what the incentives that they designed are intended to do.

...

Again, the intent of the Program to my knowledge of it since the Duke, the Duke Energy and Progress Energy merger so it's been the joint operations, is that the Program is designed to incent cost-effective energy efficiency in new construction and has no intent to make any sort of fuel choice a part of the decision.

Id. at 17-20.

The Commission finds and concludes that DEC's RNC Program was filed in good faith as a cost-effective energy efficiency program, that it was intended to replicate the DEP RNC Program, and that DEC believed that the program would serve the public interest. Further the Commission finds and concludes that DEC did not design the Program with the intent to encourage fuel switching or to promote unfair competition.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5-6

The evidence supporting these findings of fact is found in the testimony of DEC witnesses Duff and Evans and Docket No. E-2, Sub 1021.

DEC witness Evans testified that the DEP RNC program has been a very successful energy efficiency program for DEP.

Now, we've had to make several changes due to building code changes and so forth, but in its current form we have stand-alone appliances, the AC and the heat pump, the incentives are the same. We also have whole house incentives. We have a HERO and a HERO Plus incentives for the building envelopes and those have been very successful as well. In fact, I guess as a modicum of success we have more gas-heated customers taking advantage of that portion of the program than we do electric-heated power customers. So it's kind of an ironic situation to say the least, but needless to say it is still very effective. There is a great deal of energy being saved through that program. And DEP -- I, with DEP and DEC, of course now, up

until the RNC situation on the DEC side of things, I had not heard any complaints about our Residential New Construction Programs. And, as such, on the DEP side it was smooth sailing; a lot of changes and a lot of problems with the economy and conforming to building codes. But in the end, it continues to do quite well and saves a great deal of energy on behalf of our customers and, of course, as a high -- reasonably high cost-effectiveness test scores.

Tr., 15-16.

After DEC filed its motion to withdraw the RNG Application, the Commission received more than 50 consumer statements of position. All of them appear to be from residential housing construction or energy efficiency professionals, and all of the statements attest to positive experiences with the DEP Program. Below are a few excerpts from these statements of position.

Amy Musser:

As a ratepayer and leader of an energy efficiency company in Western North Carolina, I cannot stress enough how much DEP's Residential New Construction Program has done to promote efficiency, save money, and reduce greenhouse gasses in North Carolina. ... Our company performs home energy ratings in both DEP and DEC territory, and I can testify firsthand that we are seeing more savings in the DEP territory where the incentive has been in place for several years. Having the incentives available in DEC territory would be good for residents of our state. It's been frustrating to be on the sidelines as a member of the public, not really knowing what the opposition to the expansion is, or what may have been done to try to resolve it.

Bob Kingery, Southern Energy Management:

It is disappointing to see our Utilities Commission not expand this highly successful program...Expanding this financially proven program would have allowed our company to hire another 6 people to service our builders. And if they expanded they would build better homes – that will use electricity for 50 plus years. Now NC ratepayers are going to get more electricity demand and usage for 50 plus years and our utilities will make more money off of all of us.

Sam Ruark-Eastes, Executive Director Green Built Alliance, Asheville:

As energy efficiency and green building program implementer throughout Western NC and the state as a whole we, and our builder members, highly value DEP's Residential New Construction Program. These incentives motivate builders and clients to design and construct homes advanced in

energy efficiency. Having these incentives available for DEC territory would greatly assist those residents and building professionals in creating homes that are more comfortable, less expensive to heat and cool, and better for the environment.

Colin Walker:

As a ratepayer and building industry professional, I cannot stress enough how much Duke Energy Progress' Residential New Construction Program has done to promote efficiency, save money, and reduce greenhouse gases in that territory. The incentive has produced quantifiable savings and our industry has seen firsthand more savings in the Progress territory where the incentive has been in place for several years, versus the Carolinas territory where it is not available. Having the incentive available in the Carolinas territory would be good for residents of our state. I am asking the Commission to weigh in on Docket No E-7 Sub 1155 by directing Duke Energy and gas utility industry stakeholders to come up with a solution that will allow this incentive to be available for Duke Energy Carolinas customers. Thank you.

Although not evidence, the Commission gives some consideration to the many statements of consumer position filed in this proceeding, as they corroborate the testimony of DEC witness Evans and are a part of the whole record of this docket. N.C.G.S. §§ 62-65 and 62-94(b)(5) and (c). *See also Savings & Loan Assoc. v. Savings & Loan Comm.*, 43 N.C. App. 493, 497-98, 259 S.E.2d 373, 375 (1979) (the application filed by petitioner to establish a savings and loan branch contained competent and substantial evidence and was properly considered by the Savings & Loan Commission under the whole record test).

The Commission finds and concludes that the DEP RNC Program has proven to be a cost-effective and well accepted energy efficiency program that is producing significant energy savings in DEP's service territory.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 7-9

The evidence supporting these findings of fact is found in the Application, the Revised RNC Program, and the Public Staff's comments on the Application.

The Public Staff filed its comments on October 23, 2017. In summary, the Public Staff stated that it reviewed the proposed RNC Program, including the Application and DEC's responses to data requests. Based upon this review, the Public Staff expressed concern that DEC had not yet fully developed a plan for the evaluation, measurement, and verification (EM&V) of the energy savings from the Program, noted that the Program passed three cost-effectiveness tests, but failed the Rate Payer Impact Test, and concluded that

[t]he Program has the potential to encourage EE, appears to be cost effective, is consistent with DEC’s IRP, is in the public interest, and should be approved on a Program basis as a “new” EE program.

Public Staff Comments, at 6.

In addition, the Public Staff found that the RNC Program was consistent with N.C.G.S. § 62-133.9, Commission Rule R8-68, and the Demand-Side Management/Energy Efficiency Incentive Mechanism (Mechanism) approved by the Commission in Docket No. E-7, Sub 1032. Further, the Public Staff determined that the RNC Program would encourage energy efficiency and was consistent with DEC’s integrated resource plan. Finally, the Public Staff concluded that the RNC Program was in the public interest and recommended approval.

The table below shows the cost-effectiveness test results for the DEC RNG Program as originally proposed and the Revised Program.

Cost-Effectiveness Tests	Original RNC Program (Application Cover Letter)	Revised RNC Program (Attachment H, Response 2)
Utility Cost Test (UCT)	1.56	1.83
Total Resource Cost Test (TRC)	1.41	1.31
Rate Impact Measure Test (RIM)	0.80	0.77
Participant Test	2.12	2.14

The Commission concludes that the Revised Program is cost-effective, as shown by the results of the Utility Cost Test, the Total Resource Cost Test, and the Participant Test. Further, based on the Public Staff’s original review and recommendation, as well as the absence of evidence to the contrary, the Commission concludes that the Revised Program has the potential to encourage energy efficiency by providing cash incentives to builders and developers of single- and multi-family housing who install energy efficient equipment or construct new residences that meet or exceed energy efficient whole-house building standards. As such, the Revised Program will provide the opportunity for DEC to compete to serve retail energy needs of residential customers that can be profitably met by both electricity and natural gas.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10-14

The evidence supporting these findings of fact is found in the testimony of DEC witnesses Duff and Evans, Piedmont witness Barkley, PSNC witness McAulay, the Revised RNC, and the parties’ comments.

DEC witness Duff testified that after filing the RNC Program, Piedmont and PSNC both expressed the same concern to DEC that the RNC Program's design would incent installation of electric over natural gas equipment. Tr., 9. Piedmont witness Barkley and PSNC witness McAulay confirmed at the hearing that their concerns about the RNC Program were indeed aligned. Tr., 44-61. The LDC Panel testified that they were concerned with the size and scope of the RNC Program. Witnesses Barkley and McAulay stated that they appreciated the efforts of DEC to mitigate their concerns, but the size of the incentives and the RNC Program in general led them to believe that the natural gas companies would lose market share if the RNC Program was approved as filed. *Id.* at 34-36. In support of their concerns, witnesses Barkley and McAulay cited reports from the field that the DEP RNC Program was adversely impacting their market share. *Id.* at 39-40; 53-55.) Witness McAulay stated:

It's just that we are unconvinced given the Program and the way the Program was designed and what we were hearing from the field with regard to the already in place Progress program, that it, in fact, it was influencing fuel choice.

Id. at 39

Witness Barkley stated:

We do have some reports from the field on some neighborhoods that we believe went electric that would have otherwise have gone natural gas. I'm not sure that we could ever say for sure because there may not be one factor that influences how a builder sets up a subdivision. So I think it's really relying on the intelligence and the perspective of our experienced field people that they do feel they lost -- that they have sustained loss of market share. And I would say again not catastrophic loss of market share but some denigration of market share due to the presence of some very -- of this program which offers some significant incentives.

Id. at 39-40.

In addition, witness Barkley highlighted the discrepancy between the financial ability of the electric utilities and the LDCs to implement energy efficiency programs.

[I]f we try to outspend each other here it's going to be a distinct advantage for the electric side. Our programs in totality are about \$2 million a year for PSNC and Piedmont so very small amounts of spending that go on as opposed to these again well-intended and perhaps well-constructed in some cases electric programs. But when the incentives are of the magnitude that they have grown in these programs we believe they do tilt

the playing field in a manner that's not consistent with competition, with fair competition.

Id. at 35.

Witness Barkley did, however, distinguish between the competitive effects of the WHI and the savings per kWh incentive.

And I think you asked Mr. Duff I believe, Commissioner Brown-Bland, about two out of the three aspects that are provided as incentives. You asked him about the \$300 and the \$750. I don't believe either one of those were a significant impediment. I think as long as there is a per-kWh, and I believe Mr. Jeffries hit upon this in his opening remarks, as long as the reward grows as the kWh grow, I just don't think we'll be able to make it work with that still a part of the Program, and I do believe Mr. Duff and his team tried.

Id. at 37.

The LDCs' witnesses and DEC's witnesses testified that DEC and the LDCs had worked in the past to mitigate any concerns about fuel switching and destructive competition between natural gas companies and electric companies and had reached settlements along those lines. Tr., 19, 43. Witness Duff testified regarding the discussions surrounding DEC's proposed RNC program. He stated that DEC and the LDCs went through a number of different issues, one being whether the RNC Program incentives would be especially attractive to builders and potential homeowners of smaller starter homes and, consequently, builders would be more likely to be discouraged from having natural gas installed. Witness Duff stated that DEC looked at the existing DEP RNC Program to get data and found that the average DEP RNC Program home was 2760 square feet with at least four bedrooms. He stated that such a home generally would not be considered a starter home and, therefore, DEC felt that the LDCs' concern about unfair competition in starter homes was not present in the implementation of the DEP Program. *Id.* at 10-11, 16-17.

In addition, witness Duff testified that DEC and the LDCs discussed the changes that were made in the DEC proposal versus the existing DEP RNC Program. In response to questions by the Commission, witness Duff testified that the cash incentive to the builder of up to \$750 for constructing the home in compliance with the HERO standards is available to a builder if the builder or the homeowner decides to install natural gas HVAC and appliances. *Id.* at 17-19.

Witness Duff testified that to further address the LDCs' concerns DEC lowered the per kWh incentive on electric heating measures from \$0.75 to \$0.45 per kWh of savings. In addition, DEC proposed a collaboration between DEC and the LDCs in a joint marketing approach whereby the gas and electric incentives would be included in a single application so that at the time the builders were considering the electric incentives they would also be considering similar incentives offered by the LDCs. He stated that the joint

marketing approach was not acceptable to the LDCs because the incentives currently offered by the LDCs for high efficiency gas equipment are for equipment replacements in existing homes, and not for new construction. *Id.* at 12-13.

DEC witness Evans stated that in the DEP Program approximately 66% of the new homes that participate in the WHI measure are gas heated homes, and that under the kWh incentive for the HERO Plus part of the Program it is about 50/50 of gas heating customers and electric heating customers. *Id.* at 52-53. The LDC witnesses did not disagree with witness Evans' testimony. Witness McAulay stated that although numbers in the range of 50% and 60% that utilize natural gas "sounds very positive, I just don't know what the outcome would have been otherwise." *Id.* at 58. Witness Barkley stated that he did not doubt witness Evans' numbers "but there's no way to know would it have been more gas. We certainly would like to get more than 50/50." *Id.* at 60.

Discussion

Standard of Review

Pursuant to N.C. Gen. Stat. § 62-65 the Commission's decision must be based on substantial evidence. In addition, Commission Rule R8-68(e) sets forth the following as some of the guidelines to be considered by the Commission in assessing a proposed energy efficiency program:

- (1) Whether the proposed measure or program is in the public interest and benefits the electric public utility's or electric membership corporation's overall customer body;
- (2) Whether the proposed measure or program unreasonably discriminates among persons receiving or applying for the same kind and degree of service;
- (3) Evidence of consideration or compensation paid by any competitor, regulated or unregulated, of the electric public utility or electric membership corporation to secure the installation or adoption of the use of such competitor's services;
- (4) Whether the proposed measure or program promotes unfair or destructive competition or is inconsistent with the public policy of this State as set forth in G.S. 62-2 and G.S. 62-140; and
- (5) The impact of the proposed measure or program on peak loads and load factors of the filing electric public utility or electric membership corporation, and whether it encourages energy efficiency.

With regard to Piedmont, the Commission is also guided by the terms of the Code of Conduct by which Piedmont and DEC must abide. On September 29, 2016, in Docket

Nos. E-2, Sub 1095, E-7, Sub 1100, and G-9, Sub 682, the Commission issued an Order Approving Merger Subject to Regulatory Conditions and Code of Conduct, approving the merger of Piedmont and Duke Energy Corporation. As part of the Merger Order, the Commission approved a Code of Conduct that, among other things, governs the affiliate relations between DEC, DEP and Piedmont. Section III.H. of the Code of Conduct states, in pertinent part:

DEC, DEP and Piedmont shall continue to compete against all energy providers, including each other, to serve those retail customer energy needs that can be legally and profitably served by both electricity and natural gas.

A similar provision is included as Sec. III. H. of the Code of Conduct approved for PSNC in its merger with Dominion Energy, Inc.

DENC and PSNC shall continue to compete against all energy providers to serve those retail customer energy needs that can be legally and profitably served by both electricity and natural gas.

Order Approving Merger Subject to Regulatory Conditions and Code of Conduct, Docket Nos. E-22, Sub 551 and G-5, Sub 585 (November 19, 2018).

Compliance with Rule R8-68(e)(1), (2), (3) and (5)

This matter has followed a somewhat unusual procedural path, wherein DEC proposed then later moved to withdraw an energy efficiency program initially supported by the Public Staff as being in the public interest. DEC stated that its requested withdrawal of the RNC Program was based on concerns of the LDCs that were not brought to the Commission's attention for over two years. As the Commission stated in the Abeyance Order, the Commission's challenge in this proceeding is to balance the benefits and corresponding public interest to be achieved by expanding an energy efficiency program that has a stellar record of acceptance in DEP's service area with the need to prevent unfair or destructive competition between DEC and the LDCs.

There is substantial evidence, and no disagreement among the parties, that DEC's Revised RNC Program satisfies the criteria in Rule R8-68(e)(1), (2), (3) and (5). However, the LDCs have presented evidence that raises the question under Rule R8-68(e)(4) of whether the Program promotes unfair or destructive competition between DEC and the LDCs, in particular by motivating a residential housing developer to choose electricity as the energy source for the homes being built in a subdivision, when the developer would have chosen natural gas absent the Revised Program incentives. The burden of proving that the Revised Program will not promote unfair or destructive competition between DEC and the LDCs is on DEC.

Compliance with Rule R8-68(e)(4) and Codes of Conduct

During the January 27, 2020 hearing, the LDCs' representatives indicated that their main concern was the incentive kWh savings structure associated with the HERO-Plus option in both DEC's and DEP's RNC Programs (collectively Duke's RNC Programs). The LDC representatives testified that DEC's proposed kWh incentive structure which uses a "dollar per kWh saved" basis had caused loss of market share in the DEP territory and would cause further loss if the DEC Program were approved. This same concern was expressed by the LDCs about the Revised Program in their joint comments.

The LDC witnesses opined that absent the RNC Program, or perhaps absent the kWh savings incentive being a part of the Program, that natural gas appliances and equipment would attract a higher percentage of new market share. The Commission recognizes that the kWh savings incentive may have provided DEP with some benefits in head-to-head competition with the LDCs in some circumstances. Healthy competition between electric utilities and LDCs is sound public policy. (Sections III.H. of Duke/Piedmont and Dominion/PSNC Codes of Conduct) The issue is whether the incentives promote unfair or destructive competition. Rule R8-68(e)(4). More specifically, in this docket the issue is whether the kWh savings incentives included in the Revised Program are causing residential housing developers to choose electric space heating, electric hot water, and other electric appliances rather than gas space heating, gas hot water and other gas appliances.

Weighing the Evidence

The Commission gives some weight to the LDCs' testimony about information from field personnel on losses in the LDCs' new residential construction market share. The LDC employees who are out in the towns and subdivisions obviously get a feel for whether the demand for their services in installing gas HVAC systems and water heaters is ebbing or flowing. As a result, their impressions are one of the first places to look to gather such evidence. On the other hand, witness Barkley acknowledged that there are many factors that influence a developer's choice between electric and natural gas for a home's energy source.

We do have some reports from the field on some neighborhoods that we believe went electric that would have otherwise have gone natural gas. I'm not sure that we could ever say for sure because there may not be one factor that influences how a builder sets up a subdivision. (Tr., 39-40)

In addition, in assessing potential competitive disadvantages of the LDCs vis a vis the electric utilities the Commission gives some weight to the testimony concerning the discrepancy between DEC's and the LDCs' potential for funding DSM/EE programs. Witness Barkley testified that the combined annual budgets of Piedmont and PSNC for DSM/EE programs is about \$2 million. In comparison, DEC's cost estimate over the five-year life of the Revised RNC Program is approximately \$49 million. (Revised Program, Attachment C)

DEP's RNC Program Experience

During the January 27, 2020 hearing, DEC witness Evans' testified that approximately 66% of the new homes that participate in DEP's RNC Program's WHI choose gas heat, and that under the kWh savings incentive for the HERO-Plus feature of the Program the result is about 50/50 of gas heating customers and electric heating customers. The Commission also notes that the LDC witnesses did not disagree with this testimony.

In the Abeyance Order, the Commission directed DEC to confer with the LDCs and obtain data or documentation in support of the LDCs contentions about fuel switching caused by the incentives. DEC included the LDCs' information in Attachment H to the Revised Program. (Attachment H to the Revised RNC Program, Response No. 6) It consists of 13 statements, ten by PSNC and three by Piedmont, that first identify a subdivision and state, for example:

Raleigh, NC - Stoneridge subdivision. PSNC's sales losses included natural gas heat.

The three Piedmont statements identify the number of homes in the three subdivisions, a total of 223 homes. But the PSNC statements do not provide the number of homes in the ten subdivisions.

The electric versus natural gas data provided by DEC is somewhat helpful. The data includes three tables, each accompanied by a pie chart. The first table shows the space heating fuel chosen in whole house incentive (WHI) homes under the HERO and HERO Plus choices. According to the tables, for each of four years - 2016 through 2019 - the number of homes that installed electric space heating is listed alongside the number of homes that installed gas space heating. The next two columns show the percentage of homes choosing electric space heating alongside the percentage of homes choosing gas space heating. The bottom line of the table shows the raw averages - 48.9% electric heated homes and 51.1% gas heated homes – based on the four year totals for each choice. Finally, the pie chart beside the table illustrates the percentages. The second table and pie chart breaks out the above statistics for WHI homes under the HERO Plus program. The result shown is 51.9% electric heated homes and 48.1% gas heated homes. The third table shows the same for WHI homes under the HERO program, with the result shown as 35.6% electric heated homes and 64.4% gas heated homes. (*Id.*, Response 4)

As previously discussed, the Public Staff expressed some doubt about the data in Attachment H, stating that "this data is inconclusive and nearly impossible to verify." Public Staff Comments, at 8. The Commission agrees that the DEP data is not optimal. For example, it would be more helpful to have data showing fuel choices by residential housing developers prior to the advent of the RNC incentives, thus enabling a before-and-after comparison. However, in the absence of better data the Commission must use the evidence presented.

DEP kept data on the numbers of homes included in the DEP RNC Program, and whether each home uses electricity or natural gas as its space heating energy source. The Commission accepts that data as some evidence that the RNC Program does not promote unfair or destructive competition. In addition, the Commission gives significant weight to the Public Staff's conclusion that based on the available evidence the Public Staff is not convinced that the LDCs have incurred any market harm. As the Public Staff stated, requiring DEC to prove that the Revised Program will not cause fuel switching is tantamount to requiring DEC to prove a negative. The Commission has taken this aspect of the burden of proof into consideration as it weighed the available evidence.

The Commission concludes that the evidence presented by the parties does not show that the Revised Program is likely to result in fuel switching from natural gas to electricity, or that it will promote unfair or destructive competition.

Moreover, the Commission finds the LDCs' objections to the kWh incentives in the Revised Program unpersuasive, for several reasons. First, in response to the LDCs' concerns DEC lowered the cents per kWh incentive for electric home heating from the original \$0.75 per kWh saved to \$0.40 per kWh saved, and the electric home non-space heating incentive from the original \$0.90 per kWh saved to \$0.75 per kWh saved. The Commission finds these concessions to be a significant good faith effort by DEC to soften any advantage that DEC might have based on the kWh incentives.

In addition, the Commission finds that there are many other circumstances beyond incentives that can impact fuel choice. For example, it is generally accepted, and often touted by the LDCs' customers, that natural gas is faster and more efficient than electricity for water heating and cooking. In addition, there are many who could be persuaded to choose natural gas based on the view that it is more economical and environmentally friendly to directly burn natural gas for heating and cooking as opposed to using it to generate electricity that is then used for heating and cooking.

Furthermore, the Public Staff identified potential options that could be investigated that would reduce the competitive impacts of incentives. For example, the Public Staff recommended that DEC evaluate the possibility of restructuring the Revised Program to provide an incentive for both electric and natural gas savings similar to the Puget Sound Energy program. The Commission concludes that DEC should follow the Public Staff's recommendation, and that DEC should investigate other options for offering joint programs. These options should be discussed by DEC with the DSM/EE Collaborative, and DEC should include a report on said discussions and conclusions in DEC's testimony filed in future DSM/EE rider proceedings beginning no later than the 2023 proceeding.

As discussed by DEC witness Duff, DEC offered to enter into a joint marketing approach with the LDCs whereby the gas and electric incentives would be included in a single application so that at the time the builders were considering the electric incentives they would also be considering similar incentives offered by the LDCs. The Commission finds that this type of joint marketing approach has merit as a means of balancing any competitive edge created by the kWh incentives, and it is discussed in more detail below.

The Commission gives some weight to the LDCs' point that the electric utilities are far larger with respect to capital investment and annual revenue streams than the LDCs. However, this is a fact of life that is not going to change anytime soon, if ever. In addition, there are other inherent differences in electric utilities and LDCs. One of the biggest differences is that the electric utilities have a legal obligation to serve every person in their assigned service territory, regardless of whether that person lives in a heavily populated area, large subdivision, sparsely populated area, or small subdivision. Conversely, the LDCs have no legal obligation to serve all persons in their assigned service territory. Rather, they generally serve only those persons and subdivisions that are economically feasible to serve. As a result, there are residential subdivisions that DEC will be required to serve, while the LDC can choose not to run its pipeline to that subdivision. In those circumstances there is not even the prospect of competition between the two, let alone the potential for unfair or destructive competition. These are factual realities that the Commission must consider in balancing the interests of the electric utilities, the LDCs, and ratepayers. On balance, the Commission is not inclined to allow these structural differences between electric utilities and LDCs to result in the denial of an EE program that has proven to be cost effective, energy efficient, and very well accepted.

Legacy Settlement Agreements in Docket No. E-7, Sub 831

The Commission finds that the primary purpose of the LSAs was to settle the issues surrounding the portfolio of Save-A-Watt EE programs proposed by DEC in Docket No. E-7, Sub 831. Indeed, both LSAs recite that the Stipulating Parties had engaged in discussions and that

NOW THEREFORE, following those discussions, the Stipulating Parties have each determined that their interests and the public interest would best be served by settling all issues pending in the above-captioned case under the terms and conditions set forth below:

LSAs, at 2.

In addition, the agreements stated in the LSAs are expressly tied to particular provisions of the EE programs proposed by DEC in Sub 831. See Piedmont LSA, pp. 3-5, and PSNC LSA, pp. 3-4. In particular, the discussion of the specific EE programs is introduced by this statement:

In order to clarify the intent and design of Duke Energy Carolinas' proposed energy efficiency programs described in the testimony of Company Witness Theodore Schultz and as a compromise to positions advanced by Duke Energy Carolinas and Piedmont [PSNC], the Stipulating Parties hereto agree to the proposal set out immediately below. This proposal is hereby adopted, accepted, and acknowledged as the agreement of the Stipulating Parties. The Stipulating Parties agree that:

Piedmont LSAs, Paragraph 3, at 3; PSNC LSA, Paragraph 2, at 3.

A more general statement of fair competition goals was included in the Piedmont LSAs, as follows:

The energy efficiency programs included in Duke Energy Carolinas' Energy Efficiency Plan: (a) are not intended to displace or replace natural gas appliances with competing electric appliances; (b) are not designed to encourage fuel-switching; and (c) require demonstrated electric energy savings in each application utilizing cost-effectiveness testing.

Piedmont LSA, Paragraph 4, at 3.

As DEC stated in its Reply Comments, the Sub 831 portfolio of EE programs was subsequently replaced by a new portfolio of EE programs in Docket No. E-7, Sub 1032, without any mention of the application of the LSAs to that docket.

In the final analysis, the Commission concludes that it is not necessary to determine in the present docket whether the LSAs are still binding and apply to DEC's Revised Program, for two reasons. First, the Commission fully agrees with the goals stated in the Piedmont LSA in Paragraph 4, and agrees that all incentives offered by electric and gas utilities should comply with those goals. Second, the Commission finds that Rule R8-68(e), and in particular subdivision (e)(4), embodies the intent and spirit of the LSAs. Therefore, the Revised Program's compliance with the Rule, as the Commission finds herein, is sufficient without delving into the question raised by the LDCs about the application of the terms of the LSAs to the Revised Program.

Joint Marketing and Program Design

DEC witness Duff stated that DEC had offered to begin to jointly market the RNC with the LDCs. According to witness Duff, the gas and electric incentives would be included in a single application so that at the time the builders were considering the electric incentives they would also be considering similar incentives offered by the LDCs. However, he testified that the joint marketing approach was not acceptable to the LDCs because at that time the LDCs were offering incentives only for equipment and appliance replacements in existing homes, and not for new construction. Tr., 12-13.

As previously discussed, Piedmont and PSNC have pending before the Commission in their respective rate cases proposals for RNC programs that would be similar to Duke's RNC Programs, with the main difference being that the LDCs would not offer kWh or dt savings incentives. If the Commission approves the LDCs' RNC programs, or either of them, the Commission will direct that DEC and DEP again offer to jointly market their respective RNC programs.

In the meantime, the Commission finds good cause to require Duke to offer to jointly market Duke's RNC Programs with Piedmont and PSNC. The Commission will leave the details of such a co-marketing approach to Duke and the LDCs. However, as an example it seems that having one application that sets forth the electric incentives and

gas incentives, provides balanced statements by Duke and the LDCs about the advantages of electricity and gas, respectively, and includes the contact information for Duke's and the LDCs' sales representatives, would go a long way toward ensuring the healthy competition envisioned by Rule R8-68(e) and the Codes of Conduct. Further, the co-marketing arrangement could require that the first discussion with a residential developer about Duke's RNC incentives be attended by both Duke's and the LDC's sales representative. The Commission encourages Duke and the LDCs to be creative in designing this cooperative marketing approach and to investigate other avenues of coordinating electric and gas energy efficiency programs with an eye towards creating a novel strategy that benefits both electricity and gas customers and could be applied to other EE programs.

Conclusion

The Commission finds and concludes that DEC presented prima facie evidence that the Revised Program is not likely to promote unfair or destructive competition between DEC and the LDCs, and that the LDCs did not come forward with sufficient evidence that shows otherwise. However, the Commission encourages DEC, DEP, and the natural gas companies to continue to work together to find common ground in promoting fair competition between electric and natural gas utilities.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 15-17

The evidence supporting these findings of fact is found in the Application, the comments of the Public Staff, the testimony of DEC witnesses Duff and Evans, and the Revised Program.

As previously discussed, witness Duff testified that DEC's proposed RNC Program was designed to be fuel neutral, and is essentially the same as the DEP Program. In addition, the Public Staff stated in its comments that it evaluated the DEC Program and found it to be in compliance with the requirements of N.C.G.S. § 62-133.9 and Commission Rule R8-68(c). In addition, the Public Staff stated that it believed the Program is in the public interest.

As previously discussed, in its reply comments DEC offered to work with an independent third-party evaluator to develop a component of the EM&V process that will assess whether DEC's Revised Program has had any unintended impact on builders' decisions to install natural gas service in new homes. The Commission concludes that this is a helpful suggestion and will, therefore, require this as a condition of its approval of the Revised Program.

In addition, the Commission concludes that DEC should be required to seek Commission approval before it makes any change in the amount, form, or duration of the incentives offered under the Revised Program, that any request for such modifications should be accompanied by cost-effectiveness test results based on the proposed modifications, and should also be accompanied by an analysis showing that the proposed

modifications will not incentivize fuel switching. Although this requirement modifies to some extent the Commission's Order Adopting Program Flexibility Guidelines issued on July 16, 2012, in the Sub 831 docket, the Commission concludes that such modification is justified as part of the ongoing review of the competitive effects of the Revised Program required by this Order.

Based on the foregoing and the whole record, the Commission concludes that DEC's Revised Program is in the public interest and should be approved. Further, the Commission concludes that the recovery of the costs and incentives for the Program should be determined under N.C.G.S. § 62-133.9 and Commission Rule R8-69 when DEC seeks such recovery in a future DSM/EE rider proceeding.

IT IS, THEREFORE, ORDERED as follows:

1. That the Commission hereby approves Duke Energy Carolinas, LLC's Residential New Construction Program, as revised, as a new energy efficiency program;

2. That the Commission shall determine the appropriate ratemaking treatment for the Program, including program costs and incentives (net lost revenues and PPI), when DEC seeks cost recovery for the Program in a future DSM/EE rider proceeding in accordance with N.C.G.S. § 62-133.9, Commission Rule R8-69, and the Commission's Order Approving Agreement and Stipulation of Partial Settlement, Subject to Certain Commission-Required Modifications issued June 15, 2009, in Docket No. E-2, Sub 931, as subsequently modified;

3. That DEC shall file its Revised Residential New Construction Program tariff with the effective date to be 60 days after the date of this Order. Such tariff shall explicitly state that all participant incentives shall be awarded on a consistent and nondiscriminatory basis;

4. That the Public Staff shall review DEC's Residential New Construction Program tariff and file comments with the Commission not later than 10 days after the date of the Company's filing;

5. That DEC shall provide the Public Staff, for its review, a copy of the contract with the third-party administrator, the Program application, the proposed co-marketing plan and materials, and all other Program forms prior to executing the administrator contract and prior to using the forms to implement the Revised Program. The Public Staff shall make suggestions to DEC, if any it has, for modifications to any of these materials, and shall file a report with the Commission stating whether DEC accepted the Public Staff's suggestions;

6. That the independent third-party evaluator shall perform sufficient analysis in its EM&V reports for the Revised Program to confirm the appropriateness of the baseline measures initially used to calculate the estimated program impacts. Further, the independent third-party evaluator shall conduct an assessment of whether DEC's

Revised Program has had any unintended impact on builders' decisions to install natural gas service in new homes, and this assessment shall be included in the EM&V reports, which shall be filed with DEC's future DSM/EE rider applications;

7. That DEC and DEP shall offer the LDCs the opportunity to co-market the Duke RNC Programs with DEC and DEP, and shall file a statement within 30 days after the date of this Order informing the Commission whether Piedmont and PSNC, or either of them, has accepted the offer;

8. That DEC and DEP shall seek Commission approval before they make any change in the amount, form, or duration of the incentives offered under their respective RNC Programs. Further, any request for such modifications shall be accompanied by cost-effectiveness test results based on the proposed modifications, and an analysis showing that the proposed modifications will not incentivize fuel switching; and

9. That DEC shall evaluate the possibility of restructuring the Revised Program to provide an incentive for both electric and natural gas savings similar to the Puget Sound Energy program and developing other types of joint programs, discuss these options with the DSM/EE Collaborative, and include a report on said discussions and conclusions in DEC's testimony filed in future DSM/EE rider proceedings beginning no later than its 2023 DSM/EE rider proceeding.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of November, 2021.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "A. Shonta Dunston". The signature is written in a cursive, flowing style.

A. Shonta Dunston, Chief Clerk

Chair Charlotte A. Mitchell and Commissioners ToNola D. Brown-Bland and Kimberly W. Duffley dissent.

Docket No. E-7, Sub 1155

Commissioner ToNola D. Brown-Bland, joined by Chair Charlotte A. Mitchell and Commissioner Kimberly W. Duffley, dissenting in part:

I dissent from the Commission's decision to approve the HERO-Plus incentive in DEC's Revised RNC Program.

In 2007, the General Assembly enacted Senate Bill 3, which included provisions designed to promote the development of energy efficient resources in North Carolina. N.C. Sess. Law 2007-397. Senate Bill 3 amended the Public Utilities Act to require that "[e]ach electric power supplier shall implement . . . energy efficiency measures" N.C. Gen. Stat. § 62-133.9(b). To further the development of energy efficiency programs, Senate Bill 3 provided that utilities may recover all reasonable costs of adopting and implementing new energy efficiency measures, including cost incentive payments to program participants. N.C.G.S. § 62-133.9(d). While it is the State's policy to encourage electric public utilities to implement energy efficiency measures that reduce energy used, Section 62-133.9 is not designed to promote the use of electricity over natural gas.

Here, the HERO-Plus incentive in DEC's Revised RNC Program is based on a dollar per kWh structure that has the potential to significantly influence preference for electricity over natural gas in new home construction. DEC proffers that the RNC Program was not intended or designed to motivate fuel switching or influence fuel selection. However, as noted by the LDCs, the consequence of the Program is more important than the intent behind it. Although the Program may be designed to be fuel neutral, it is apparent on its face that it is not.

The purpose of incentives under N.C.G.S. § 62-133.9 is to reduce energy consumption through the use of energy efficiency measures, not to enable unfair competition by enticing residential homebuilders to choose electricity over natural gas. The intent of the N.C.G.S. § 62-133.9 incentives is to promote energy savings in electric use, not to impact the competitive playing field between electric service and natural gas service. Senate Bill 3 energy efficiency measures are designed to drive real savings of electricity (starting from a baseline that includes reasonable future growth) rather than creating the impression of increased savings by first growing electric demand.

An energy efficiency measure that incorporates incentives based on savings measured by the kWh, by definition a measure of "electricity" use, is not only designed with electric energy savings in mind such that an all-electric appliance household has the most opportunity to increase its kWh savings (thus qualifying such homes for increased incentives and bill reductions), but, by default, is also designed to increase electric load by encouraging builders to choose to build new houses that are all-electric (with electric heating and hot water). Such a choice that is at all driven by an incentive whose value is dependent on kWh electric savings is made at the expense of natural gas utilities' ability to compete on equal footing.

As DEC's energy efficiency measure is proposed it will likely result in DEC's rates being increased so that DEC's customers will pay for incentives to builders and select customers, *plus* an incentive to be paid directly to DEC for implementation of the measure. If the gas utilities were to offer a Commission-approved per dekatherm energy efficiency savings program to reduce customer usage of natural gas, they would not be eligible to receive direct incentive payments for encouraging customers to use less of the product gas utilities sell for profit.

¹ The gas utilities "may" be reimbursed for their costs (which has not been determined permissible or appropriate), but they would not be permitted to collect any incentive payments for getting customers to use less gas and causing under-recovery of revenues against their authorized rate of return. Instead, gas utilities would shoulder all the lost sales from their own pockets (though their financial resources do not match those of the electric utilities), whereas the customers of the electric utilities would be called on as beneficiaries of energy efficient policies to help the electric utilities fund their energy savings programs. Thus, a per kWh savings incentive for new housing construction as proposed by DEC creates a competitive advantage for electric utilities that the regulated natural gas utilities are in no position to meet or counter.

The majority concludes both that DEC has the burden of proving that the Revised Program will not promote unfair or destructive competition and that the evidence presented by the parties does not support the LDCs' assertions that DEP's Program has impacted homebuilders' choices between electricity and natural gas. I believe these conclusions are inapposite because the majority framed the issue incorrectly. First, I agree with both the Public Staff and DEC that after-the-fact it is practically impossible to determine what motivated a homebuilder's past new construction decisions or what choices a homebuilder would have made had DEP's program not been in existence. Second, when evaluating a request to approve a proposed energy efficiency measure, the issue for the Commission is not about the burden of evidentiary proof. The proper inquiry on the present request for approval is whether the Program as proposed with incentives based on per kWh savings is appropriate, considering whether the Program could influence homebuilders' choice of electricity or natural gas in a manner that promotes unfair competition or destructive competition between LDCs and electric utilities.

On the face of the Revised Program alone, a kWh savings component provides homebuilders with the potential to increase achieved kWh savings and earn higher incentives by choosing to build all-electric new homes over those that have gas furnaces and gas hot water heaters. Thus, the Program is not neutral or indifferent on choice between whole home electric and a home that uses gas for space and hot water heating. The majority acknowledges as much when it states, "The Commission recognizes that the kWh savings incentive may have provided DEP with some benefits in head-to-head competition with the LDCs in some circumstances." The majority remains uncertain that

¹ N.C.G.S. § 62-133.9 does not permit gas utilities to receive direct incentive payments from customers for encouraging reduced use of gas because Senate Bill 3 was focused on reducing electricity use and slowing the need for electric utilities to build additional coal-fired plants.

the Program will not cause fuel switching, ordering an assessment to determine whether the “Program [will have] any unintended impact on builders’ decisions to install natural gas service in new homes” This uncertainty strongly suggests that the Program is not appropriate as it is proposed. Given that it is not neutral on the choice between gas and electric for heating purposes and that the competitive harm to the LDCs is likely permanent once builders choose all-electric over installation of natural gas furnaces and water heaters, the Commission should disapprove the Program because of its manifest potential to promote unfair competition. To the extent Commission Rule R8-68 embodies the substance of the Legacy Settlement Agreements, as the majority finds, the Program is contrary to the goals of the LSAs as, without regard to intent, it plainly has the potential effect of encouraging fuel-switching.²

Further, pursuant to Rule R8-68(e)(2), in determining whether to approve a proposed energy efficiency program, the Commission is to consider not only potential competitive effects but also whether the proposed program unreasonably discriminates among ratepayers. In the present case, at the builder’s discretion, the HERO-Plus incentive offers the homebuyer a bill guarantee on the total annual electric heating and cooling energy consumption of the home. The guarantee offers payment based on annual electric heating and cooling energy consumption that exceeds estimated consumption based upon the HERO standard used in constructing the home. The guarantee is applicable solely to the initial homeowner and applies for up to three years from registration. (DEC’s Revise Program, Attachment G). The terms of this incentive have the effect of decreasing rates for the initial homebuyer for the period that the payment is offered because these homeowners essentially pay a lesser rate for their service by the amount of the incentive payment received. *See BellSouth Telecomms., Inc. v. Sanford*, 494 F.3d 439, 442-443 (4th Cir. 2007) (holding the Commission correctly ruled that long-term promotional offerings to customers have the effect of decreasing the actual retail rate because customers effectively pay a lesser rate for their service by the amount of the incentives). I believe that in addition to subjecting the LDCs to unfair competition in contravention of state policy, the HERO-plus incentive is structured such that it “unreasonably discriminates among persons receiving . . . the same kind and degree of

² On June 7, 2019, DEC filed a motion to withdraw the application for approval of its original RNC Program. In support of the motion, DEC stated “[f]ollowing numerous discussions with natural gas utilities subject to the Commission’s jurisdiction aimed at resolving their concerns regarding potential unintended consequences of the program design, the Company has decided to withdraw the request for approval of the RNC Program at this time.” Additionally, at the January 27, 2020, hearing in this matter, Witness Duff stated, “given the Legacy Settlement and Agreement we felt it was appropriate to withdraw the Application.” Tr. 19. Witness Duff’s testimony suggests that DEC recognized that the use of a per kWh saved metric may influence homebuilders to construct all-electric residences in a manner as destructive and unfair today as it was when the Legacy Settlements were approved in 2008. In my opinion, the Commission’s decision ill-advisedly “requires” DEC to move ahead with a program that it withdrew after considering the LDCs’ concerns. Withdrawing the proposed program was one acceptable way for DEC and the LDCs to honor commitments made in the LSAs and in Docket No. G-9, Sub 682, where the Commission was assured that post-merger, Duke and Piedmont Natural Gas, Inc. would continue to market their products giving customers a real choice between gas and electric and that the nature of their pre-merger competition would not change. *Duke Energy Corporation and Piedmont Natural Gas Application to Engage in Business Combination Transaction and Address Regulatory Conditions and Code of Conduct*, Docket No. G-9, Sub 682, Tr. vol. 2, 50, 82-83.

service.” Rule R8-68(e)(2). The Program incentive is not equally available to existing customers, most of whom have no meaningful opportunity to receive lower rates for three years through the incentives offered by the Program. Thus, as proposed, the Program is likely to be unreasonably discriminatory by affording lower rates to certain initial new homeowners, as opposed to other ratepayers who own or live in existing older homes in DEC’s service area.³ The Program also appears to be in direct violation of N.C.G.S. § 62-140(c) which provides that “[n]o public utility shall offer or pay any compensation or consideration . . . to secure the installation or adoption of the use of such utility service except upon filing of a schedule . . . and offering such compensation, [or] consideration . . . to *all* persons within the same classification using . . . such public utility service” N.C.G.S. § 62-140(c) (emphasis added).

The changes to the HERO-Plus incentive reflected in the revised RNC Program do not remove the unfair competitive advantage or the discriminatory component that is built into the program. Changes notwithstanding, the Program continues to offer payment in exchange for building homes that are whole home electric. Therefore, I would reject the Revised RNC Program in its current form and require DEC to further modify the Program so that it incentivizes homebuilders for energy efficient construction in a manner that in no way relies upon a per kWh saved metric. This is a reasonable option that reflects the intent behind N.C.G.S. § 62-133.9 by encouraging energy efficiency while remaining fuel neutral. Any such modified program should avoid payments to customers that are not based on performance or consideration given by such customers.

For the foregoing reasons I respectfully dissent.

/s/ ToNola D. Brown-Bland
Commissioner ToNola D. Brown-Bland

³ Although other Commission-approved energy efficiency measures obtain customer participation using discounts or payments to customers, those programs are generally open to all of a utility’s customers, not just a small set of customers who purchase or move into newly built homes. These enticements or incentives to participate are payments (whether delivered by bill credit or otherwise) made in exchange for the customer’s taking an action or foregoing a specific use of energy, often at a specific time. Under these circumstances such payments do not result in a different or changed rate. Instead, they are payments given for mutual consideration of performance. However, the incentive that is available to the homeowner per the proposed Program does not involve a promise or forbearance from the customer. The customer may increase the kWh savings as any other homeowner might by reducing use of lighting and electrical appliances, but the kWh savings qualifying the customer to receive incentives will be achieved just by living in a newly constructed home built to the HERO standards.