Public Staff Response to
Duke Energy Carolinas, LLC's & Duke Energy Progress, LLC's Data Request
Data Request No. 1-1

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

Date of Request: **December 21, 2020**
Date of Response: **December 29, 2020**

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Confidential Responses (if any) are provided pursuant to Confidentiality Agreement

The attached response was prepared by William E. H. Creech, Staff Attorney, Public Staff – North Carolina Utilities Commission.

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Item No. 1-1
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Request:

1-1. Duke Energy Carolinas, LLC and Duke Energy Progress, LLC adopt as their own all of the interrogatories, requests for production of documents, and other requests for data (individually or collectively) of all other parties and participants, whether written or oral, formal or informal, propounded to the Public Staff in this proceeding. All such requests should be treated by the Public Staff as being independently asked by the Company as of the date such requests are received by the Public Staff, and the Public Staff's initial and revised responses to such formal or informal interrogatories or data requests should be provided accordingly. This request applies to any such interrogatories, requests for production of documents, and other requests for data that have been propounded to the Public Staff since the commencement of this proceeding as well as going forward.

Response:

To-date, apart from requirements in the Commission's Procedural Order and the Data Requests from the Companies, the Public Staff has received no interrogatories, requests for production of documents, or other requests for data from any other parties or participants.

Public Staff Response to
Duke Energy Carolinas, LLC's & Duke Energy Progress, LLC's Data Request
Data Request No. 1-2

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

Date of Request: **December 21, 2020**
Date of Response: **December 29, 2020**

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Docket No. E-7, Sub 1243
Item No. 1-2
Page 1 of 1

Request:

1-2. **Please provide copies in electronic, native file format of all documents, exhibits and supporting workpapers, cited or referenced in the testimony of any witness on behalf on the Public Staff filed in the above-captioned proceeding ("Public Staff witness"), irrespective of whether such documents are appended to said witness testimony. Please also provide copies of all documents that any Public Staff witness relied on; all documents, tables, charts or figures that are referenced in the exhibits appended to or embedded in any Public Staff witness's testimony, including all workpapers and/or analysis prepared for and by any Public Staff witness that relate to such exhibits and tables. Again, please provide all copies in electronic, native file format, and with respect to all such documents that are Microsoft ("MS") Excel files, please provide such copies as working MS Excel files with all formulas, cell references and links left intact.**

Response:

Attached are the requested documents of Public Staff witnesses.

Public Staff Response to
Duke Energy Carolinas, LLC's & Duke Energy Progress, LLC's Data Request
Data Request No. 1-2 (Supplemental – Fichera)

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

Date of Request: **December 21, 2020**
Date of Response: **December 29, 2020**

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Confidential Responses (if any) are provided pursuant to Confidentiality Agreement

The attached response was prepared by Public Staff witness Joseph S. Fichera, Chief Executive Officer, Saber Partners, LLC, and provided to William E. H. Creech, Staff Attorney, Public Staff – North Carolina Utilities Commission.

Docket No. E-2, Sub 1262
Docket No. E-7, Sub 1243
Item No. 1-2
Page 1 of 1

Request:

1-2. **Please provide copies in electronic, native file format of all documents, exhibits and supporting workpapers, cited or referenced in the testimony of any witness on behalf on the Public Staff filed in the above-captioned proceeding ("Public Staff witness"), irrespective of whether such documents are appended to said witness testimony. Please also provide copies of all documents that any Public Staff witness relied on; all documents, tables, charts or figures that are referenced in the exhibits appended to or embedded in any Public Staff witness's testimony, including all workpapers and/or analysis prepared for and by any Public Staff witness that relate to such exhibits and tables. Again, please provide all copies in electronic, native file format, and with respect to all such documents that are Microsoft ("MS") Excel files, please provide such copies as working MS Excel files with all formulas, cell references and links left intact.**

Response:

In providing the statement on line 22 of page 60 through line 2 of page 61 of his testimony, Public Staff witness Joseph Fichera relied on publicly-available information set forth in prospectuses for prior Ratepayer-Backed Bond transactions, as reported on the SEC's EDGAR website (https://www.sec.gov/edgar/searchedgar/companysearch.html) or on the MSRB's EMMA website (https://emma.msrb.org/Search/Search.aspx).

Public Staff Response to
Duke Energy Carolinas, LLC's & Duke Energy Progress, LLC's Data Request
Data Request No. 1-2 (Supplemental Maness Boswell 1 of 2)

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

Date of Request: **December 21, 2020**
Date of Response: **December 29, 2020**

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Confidential Responses (if any) are provided pursuant to Confidentiality Agreement

The attached response was prepared by MICHAEL C. MANESS, DIRECTOR – ACCOUNTING DIVISION, and MICHELLE M. BOSWELL, MANAGER – ACCOUNTING DIVISION ELECTRIC SECTION, Public Staff – North Carolina Utilities Commission, and provided to William E. H. Creech, Staff Attorney, Public Staff – North Carolina Utilities Commission.

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Docket No. E-7, Sub 1243
Item No. 1-2
Supplemental Maness Boswell 1
Page 1 of 3

Request:

1-2. **Please provide copies in electronic, native file format of all documents, exhibits and supporting workpapers, cited or referenced in the testimony of any witness on behalf on the Public Staff filed in the above-captioned proceeding ("Public Staff witness"), irrespective of whether such documents are appended to said witness testimony. Please also provide copies of all documents that any Public Staff witness relied on; all documents, tables, charts or figures that are referenced in the exhibits appended to or embedded in any Public Staff witness's testimony, including all workpapers and/or analysis prepared for and by any Public Staff witness that relate to such exhibits and tables. Again, please provide all copies in electronic, native file format, and with respect to all such documents that are Microsoft ("MS") Excel files, please provide such copies as working MS Excel files with all formulas, cell references and links left intact.**

Response:

Below are narrative responses, references, attachments, and links supporting the Joint Testimony of Public Staff witnesses Maness and Boswell filed on December 22, 2020 in this proceeding.

a. Testimony page 5, Lines 4-20 – References to N.C. Gen. Stat. § 62-172:

SL 2019-244 (SB 559)
NCGS 62-172.pdf

b. Testimony page 6, Line 7, through Page 7, Line 19 – References to Partial Stipulations in Docket Nos. E-7, Sub 1214 and E-2, Sub 1219:

Please see Maness-Boswell Exhibits 1 and 2, filed in this proceeding.

c. Testimony page 8, Lines 6-12 – Description of Storms:

The storms are listed in DEC/DEP witness Abernathy's workpapers filed with her testimony in the present securitization case, Storm Impacts Tab, for both the DEC and DEP files. "Storms" are also defined in Heath Exhibit 2a,

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Page 2 of 3

page 46 of 50, and Heath Exhibit 2b, page 80 of 82. Additional information is provided in DEC/DEP witness Atkins' testimony, page 6, Lines 21–23; witness Abernathy's testimony, page 3, Lines 8-10; and witness Abernathy's testimony, page 3, Lines 15-22 and page 4 Lines 1-13.

d. Testimony page 8, Lines 12-22 – Quantification of Storm costs:

Please see DEC/DEP witness Abernathy's Exhibits 2 for DEC and DEP, respectively, as well as her supporting schedules included in the filing.

e. Testimony page 9, Lines 6-22 – Differences in Storm costs from amounts presented in general rate cases:

Please see DEC/DEP witness Abernathy's testimony, page 11, Lines 7–18. Also, the Public Staff made a comparison of witness Abernathy's exhibits to Company schedules filed in each respective rate case regarding Storm Costs. Finally, please see the Company's response to Public Staff Data Request 11, Question 3.

f. Testimony page 10, Lines 14-16 – Reference to supporting documentation gathered:

Please see DEC/DEP witness Abernathy's testimony, page 4, Lines 6-8. Also, please see the Company's response to Public Staff Data Request 11, Question 3.

g. Testimony page 10, Lines 16-20 – Verification of carrying cost calculation:

Please see DEC/DEP witness Abernathy's Exhibits filed in this proceeding. Public Staff Accounting Division personnel verified that the ROE, capital structure, and tax rates matched the general rate case stipulations, and reviewed formulas to verify the calculations. No additional workpapers were generated.

h. Testimony page 15, Lines 10-11 – Reasonableness of regulatory liability approach for overrecoveries of up-front financing costs:

The Public Staff believes that its proposed regulatory liability approach for overrecoveries of up-front financing costs is reasonable for ratemaking purposes and consistent with the ratemaking treatment authorized by N.C.G.S. § 172(a)(14)c for true-ups of storm recovery costs and other appropriate ratemaking adjustments.

i. Testimony page 25, Lines 5-11 – Traditional ratemaking treatment of storm O&M amortization, depreciation and return on capital investments, and carrying charges on deferred costs between the time the storms occur and the dates rates in the next general rate case go into effect:

Please see the Evidence and Conclusions for Findings of Fact Nos. 37-43 in the attached general rate case order issued by the Commission in Docket No. E-2, Sub 1142, on February 23, 2018, for discussion of the Commission's historical treatment of these items.

Sub 1142 Fina

Public Staff Response to
Duke Energy Carolinas, LLC's
&
Duke Energy Progress, LLC's
Confidential Data Request No. 1-2
(Supplemental Maness Boswell 2 of 2)

Public Staff Response to
Duke Energy Carolinas, LLC's & Duke Energy Progress, LLC's Data Request
Data Request No. 1-3

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

Date of Request: **December 21, 2020**
Date of Response: **December 29, 2020**

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The attached response was prepared by Public Staff witness Joseph S. Fichera, Chief Executive Officer, Saber Partners, LLC, and provided to William E. H. Creech, Staff Attorney, Public Staff – North Carolina Utilities Commission.

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Docket No. E-7, Sub 1243
Item No. 1-3
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Request:

1-3. Other than the West Virginia transactions introduced by Public Staff in PS DR 2-3, please provide examples of two utility securitizations sponsored by the same investor owned utility that were marketed and priced on the same day, where the larger transaction was index eligible and the smaller transaction was not. Please also provide the pricing information, including tranches, benchmarks, spreads and interest rate coupons.

Response:

As a preliminary matter, we point out that the West Virginia transactions introduced by Public Staff in PS DR 2-3 do not involve two utility securitizations sponsored by "the same investor owned utility" that were marketed and priced on the same day, as assumed by Data Request 1-3. In each case, two utility securitizations were sponsored by different investor-owned utilities: The Potomac Edison Company (PE) and Monongahela Power Company (MP). PE and MP were separate wholly-owned subsidiaries of a common parent corporation.

The Public Staff is not aware of any case in which two utility securitizations sponsored by "the same investor owned utility" were priced on the same day.

However, the Public Staff is aware of two additional cases in which two utility securitizations were sponsored by utilities that were directly or indirectly owned by a common parent corporation were priced on the same day. These are the same two cases previously identified by the Companies' witness Charles Atkins. In response to PS DR 2-3.e, witness Atkins states:

> Witness Atkins served as an advisor to Entergy on 2 sets of transactions, involving two Entergy subsidiaries, that were marketed and priced by Citi as lead underwriter on the same day in July of 2010, and again in July of 2014 -- the LCDA/ELL and LCDA/EGSL transactions of those years.

The Public Staff assumes that Companies' witness Atkins already has the pricing information, including tranches, benchmarks, spreads and interest rate coupons requested in this Data Request 1-3; we believe the Company's witness is already in possession of the information.

Public Staff Response to
Duke Energy Carolinas, LLC's & Duke Energy Progress, LLC's Data Request
Data Request No. 1-4

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

Date of Request: **December 21, 2020**
Date of Response: **December 29, 2020**

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The attached response was prepared by Public Staff witness Joseph S. Fichera, Chief Executive Officer, Saber Partners, LLC, and provided to William E. H. Creech, Staff Attorney, Public Staff – North Carolina Utilities Commission.

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Docket No. E-7, Sub 1243
Item No. 1-4
Page 1 of 1

Request:

1-4. Please provide examples of utility securitization transactions where principal amortization started 5 years or later after issuance, in cases other than "wrap-around" transactions that were designed to start amortization after the final bond payment associated with a prior transaction.

Response:

Apart from the "wrap-around" transactions that were designed to start amortization after the final bond payment associated with a prior transaction, the Public Staff is not aware of any utility securitization transactions where principal amortization started 5 years or later after issuance.

Public Staff Response to
Duke Energy Carolinas, LLC's & Duke Energy Progress, LLC's Data Request
Data Request No. 1-5

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

Date of Request: **December 21, 2020**
Date of Response: **December 29, 2020**

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The attached response was prepared by Public Staff witness Joseph S. Fichera, Chief Executive Officer, Saber Partners, LLC, and provided to William E. H. Creech, Staff Attorney, Public Staff – North Carolina Utilities Commission.

Docket No. E-2, Sub 1262
Docket No. E-7, Sub 1243
Item No. 1-5
Page 1 of 1

Request:

1-5. Please provide a list of utility securitization transactions since January 1, 2007, where the permitted return on the capital subaccount was equal to the interest rate on the last maturing bond tranche or permitted at a higher stated rate. Include in the list the name of the state utility commission advisor, if any.

Response:

Attached in native format is a list of utility securitization transactions from 1997, together with the permitted return on the capital subaccount.

Covenant Study
Limits on Rate of Re

Public Staff Response to
Duke Energy Carolinas, LLC's & Duke Energy Progress, LLC's Data Request
Data Request No. 1-6

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

Date of Request: **December 21, 2020**
Date of Response: **December 29, 2020**

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The attached response was prepared by William E. H. Creech, Staff Attorney, Public Staff – North Carolina Utilities Commission.

Docket No. E-2, Sub 1262
Docket No. E-7, Sub 1243
Item No. 1-6
Page 1 of 1

Request:

1-6. In preparing its discovery requests and testimony, has Public Staff engaged, or does the Public Staff intend to engage, outside counsel or advisors other than Saber Partners? If so, please name.

Response:

The Public Staff has engaged Saber Partners, LLC.

The Public Staff reserves the right to engage outside counsel, consultants, and/or other professionals, including, without limitation, as authorized by N.C.G.S. § 62-172(n).

Public Staff Response to
Duke Energy Carolinas, LLC's & Duke Energy Progress, LLC's Data Request
Data Request Nos. 2-1 to 2-6

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

Date of Request: **December 28, 2020**
Date of Response: **January 4, 2021**

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Confidential Responses (if any) are provided pursuant to Confidentiality Agreement

The attached response was prepared by or under the supervision of Public Staff witness Barry M. Abramson, CFA, Senior Advisor, Saber Partners, LLC, and provided to William E. H. Creech, Staff Attorney, Public Staff – North Carolina Utilities Commission.

Docket No. E-2, Sub 1262
Docket No. E-7, Sub 1243
Data Request Nos. 2-1 to 2-6

2-1. Witness Abramson states "securitization that enables a utility to recover significant costs with the smallest impact on rates, is considered a positive." Are there any circumstances in which securitization would be seen as detrimental by investors, rating agencies, or other parties?

Response:

Witness Abramson respectfully objects to this question as vague and requiring speculation. If the Companies believe circumstances might exist or arise that could cause investors, rating agencies or other parties to see securitization as detrimental, please specify those circumstances. Notwithstanding this objection, Witness Abramson draws attention to Witness Sutherland's response to DR 2-48.

2-2. Witness Abramson states "I believe that the ability to securitize significant storm damage costs is an important factor that will make the holding company Duke Energy, and its subsidiaries in North Carolina, more attractive to investors." Are there any circumstance in which securitization would make the holding company Duke Energy, and its subsidiaries in North Carolina, less attractive to investors?

Response:

Witness Abramson respectfully objects to this question as vague and requiring speculation. If the Companies believe circumstances might exist or arise that could make the holding company, Duke Energy Corporation (Duke Energy), and its subsidiaries in North Carolina, less attractive to investors, please specify those circumstances. Notwithstanding this objection, Witness Abramson draws attention to Witness Sutherland's response to DR 2-48.

2-3. Witness Abramson states "I believe that the current storm damage securitization financing in this docket should be considered the first of many."

a. What is the basis of Witness Abramson's belief?

b. In Witness Abramson's opinion, which party or parties should make the decision as to whether particular storm recovery costs should be securitized?

c. In Witness Abramson's opinion, are there any constraints to issuing additional storm recovery bonds?

Response:

a. Please see Abramson Exhibit 1 and Abramson Exhibit 2.

b. Witness Abramson notes that N.C.G.S. § 62-172(c)(2) states: "The Commission may not order or otherwise directly or indirectly require a public utility to use storm recovery bonds to finance any project, addition, plant, facility, extension, capital improvement, equipment, or any other expenditure. After the issuance of a financing order, the public utility retains sole discretion regarding whether to cause the storm recovery bonds to be issued, including the right to defer or postpone such sale, assignment, transfer, or issuance. Nothing shall prevent the public utility from abandoning the issuance of storm recovery bonds under the financing order by filing with the Commission a statement of abandonment and the reasons therefor. The Commission may not refuse to allow a public utility to recover storm recovery costs in an otherwise permissible fashion or refuse or condition authorization or approval of the issuance and sale by a public utility of securities or the assumption by the public utility of liabilities or obligations, solely because of the potential availability of storm recovery bond financing."

c. Witness Abramson respectfully objects to this question as vague. Does this question concern (i) constraints under N.C.G.S. § 62-172? (ii) constraints under other provisions of North Carolina law? (iii) constraints under federal securities laws? (iv) constraints under federal tax law? (iv) constraints under bankruptcy law? (v) other legal constraints? (vi) constraints based on covenants in other Company agreements? (viii) rating agency constraints? (ix) other non-legal capital market constraints? If the Companies wish Witness Abramson to respond about any particular constraint, please specify. Notwithstanding this objection, Witness Abramson draws attention to Witness Sutherland's response to DR 2-48 below.

2-4. Witness Abramson states "[w]hen one of the parties has no financial stake in the outcome of the pricing process, the results can become skewed in the direction of the party that does have a financial stake in the outcome. In this case that would be the underwriters and the investors."

a. Please provide examples of instances in which Witness Abramson believes a utility intentionally allowed a securitization transaction to be skewed toward the underwriters and investors.

b. If any, did these transaction also require the utility to deliver a "lowest cost" certification similar to what the Companies have proposed?

Response:

a. and b. Witness Abramson has not testified that any utility has "intentionally" allowed a securitization transaction to become skewed toward the underwriters. The results can become "skewed in the direction of" the underwriters and investors if the sponsoring utility is not keenly and pro-actively alert to ensuring that all aspects of the structuring, marketing, and pricing of Ratepayer-Backed Bonds result in the lowest securitized charges at the time the bonds are priced, consistent with the terms of the financing order.

2-5. Witness Abramson states "I am concerned about investor perception if the NCUC and the Public Staff are excluded from the most important part of this financial transaction, and the resulting impact on the relationship between the utility and regulatory bodies." Please elaborate on these concerns.

a. Specifically, how would investors perceive an offering in which the NCUC and the Public Staff are "excluded" compared to one in which they were actively included?

b. Please provide examples of transactions where investors had a negative perception due to the aforementioned exclusion.

c. For those transactions where a commission and/or an intervenor have been excluded from "the most important part" of the transaction, what have the pricing impacts been?

d. Was this exclusion noted in any reports about the transaction? If so, please provide.

e. How would a transaction in which the NCUC and the Public Staff were "excluded" impact the relationship between the Companies and the NCUC?

Response:

a., b., c., d. and e. Please see Sutherland Exhibit 2, Sutherland Exhibit 3, Sutherland Exhibit 4 and Sutherland Exhibit 6.

In addition, the NCUC, the Companies, the Public Staff and many underwriters and investors are aware that Duke Energy Florida (DEF), another utility operating subsidiary of the holding company Duke Energy, used a Bond Team in a Ratepayer-Backed Bond financing in 2015-16. That Bond Team included the Florida Public Service Commission's independent advisor. Witness Heath participated on that Bond Team as the primary DEF representative. DEF's issuance advice letter filed with the Florida Public Service Commission stated that the Bond Team's post

financing order / pre-bond issuance review process resulted in the lowest cost to ratepayers. Total net present value savings to ratepayers exceeded all pre-pricing DEF estimates. If the same procedure is not agreed to in North Carolina, it raises serious questions. Among them are why the same holding company, Duke Energy, allowed DEF to stipulate including similar parties in a Bond Team then but now seeks to exclude the NCUC Public Staff and its independent advisor, as ratepayer advocates, from being involved in a possible North Carolina Bond Team.

2-6. Witness Abramson states the Commission should "[i]nclude the Public Staff and its independent expert (Financial Advisor) in the structuring, marketing and pricing." Please provide examples of securitization transactions in which an intervening party, and not the commission itself, were included in the manner being proposed by the Public Staff.

Response:

Please see page 24 of the direct testimony of Public Staff Witness Klein: "As petitioners, the Companies are parties to the Commission proceeding and are expected to participate on the Bond Team with a view to protecting their own interests. Witness Abramson, who has been an equity analyst following Duke Energy and its affiliates for 40 years, believes the Public Staff's participation on the Bond Team would enhance the symmetry of ratepayer interests and viewpoints. The direct testimonies of Public Staff Witnesses Schoenblum and Fichera discuss this as well. The Public Staff, given its express legislative mandate to advocate and protect ratepayers, should also be included as a member of a Bond Team.

8ublic Staff Response to
Duke Energy Carolinas, LLC's & Duke Energy Progress, LLC's Data Request
Data Request Nos. 2-7 to 2-8

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

Date of Request: **December 28, 2020**
Date of Response: **January 4, 2021**

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The attached response was prepared by or under the supervision of Public Staff witness Calvin C. Craig III, Public Staff financial analyst, and provided to William E. H. Creech, Staff Attorney, Public Staff – North Carolina Utilities Commission.

Docket No. E-2, Sub 1262
Docket No. E-7, Sub 1243
Data Request Nos. 2-7 to 2-8

2-7. Witness Craig quotes the NC securitization statue by saying that it "requires that the financing order include a finding that the issuance of storm recovery bonds and the imposition and collection of a storm recovery charge are expected to provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of storm recovery bonds." However, he goes on to state "[t]hese statutes require the maximization of benefits to the ratepayers." Please provide a citation to the relevant North Carolina law to explain how you interpret "quantifiable benefits" to be the same as "maximization of benefits."

Response:

Witness Craig does not interpret "quantifiable benefits" to be the same as "maximization of benefits."

In requiring a Commission finding of "quantifiable benefits," N.C.G.S § 62-172(b)(3)b.2. states: "A financing order issued by the Commission to a public utility shall include all of the following elements: . . .2. A finding that the proposed issuance of storm recovery bonds and the imposition and collection of a storm recovery charge are expected to provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of storm recovery bonds."

Further, N.C.G.S § 62-172(b)(3)b.3. states "A financing order issued by the Commission to a public utility shall include all of the following elements: (3) A finding that the structuring and pricing of the storm recovery bonds are reasonably expected to result in the lowest storm recovery charges consistent with market conditions at the time the storm recovery bonds are priced and the terms set forth in such financing order."

Separately, and in addition, N.C.G.S § 62-172(b)(3)b.12. states: "A financing order issued by the Commission to a public utility shall include all of the following elements: . . . 12. Any other conditions not otherwise inconsistent with this section that the Commission determines are appropriate." Public Staff witnesses in this proceeding propose that the Commission's financing order follow the template adopted by the Florida Public Service Commission in the 2016 DEF transaction (applying similar language in Florida Statutes § 366.95(2)(c)2.i.) by determining that it is appropriate for the financing order to require that the structuring, marketing, and pricing of storm recovery bonds in fact result in the lowest storm recovery charges consistent with market conditions at the time of pricing and the terms of the financing order. (See page 16 of the proposed form of Financing Order attached as

Appendix B to the Joint Petition, which defines the "Standards of this Financing Order" to include "7) the structuring and pricing of the Storm Recovery Bonds, including the issuance of SRB Securities, resulted in the lowest Storm Recovery Charges consistent with market conditions at the time the Storm Recovery Bonds are priced and the terms set forth in this Financing Order.")

Witness Craig agrees that the specific phrase "maximization of benefits to ratepayers" is not in the statute. In his direct testimony, Witness Craig used "maximization of benefits to ratepayers" as shorthand for structuring, marketing, and pricing of storm recovery bonds that result in the lowest storm recovery charges consistent with market conditions at the time of pricing and the terms of the financing order. Witness Craig does not believe the legislature would intend the statute to be interpreted not to maximize benefits to ratepayers.

2-8. Witness Craig states "[s]ince a longer amortization period does not penalize the utility but does benefit the ratepayer, an amortization period longer than fifteen years strikes a more appropriate balance." Please explain why a longer amortization period does not penalize a utility.

Response:

A longer amortization period does not penalize the sponsoring utility because, upon receiving all net proceeds from the sale of the Ratepayer-Backed Bonds, the utility recovers all its costs that are eligible to be financed by the Ratepayer-Backed Bonds. The utility's future revenues are not diminished or encumbered by any liability to repay the Ratepayer-Backed Bonds while the net present value of savings for ratepayers is increased compared to traditional utility financing mechanisms.

Public Staff Response to
Duke Energy Carolinas, LLC's & Duke Energy Progress, LLC's Data Request
Data Request Nos. 2-9

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

Date of Request: **December 28, 2020**
Date of Response: **January 4, 2021**

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The attached response was prepared by or under the supervision of Public Staff witness Joseph S. Fichera, Chief Executive Officer, Saber Partners, LLC, and provided to William E. H. Creech, Staff Attorney, Public Staff – North Carolina Utilities Commission.

Docket No. E-2, Sub 1262
Docket No. E-7, Sub 1243
Data Request No. 2-9

2-9. Witness Craig discusses the importance of obtaining AAA bond ratings.

a. Does the Public Staff and its advisors understand that the rating agencies are likely to rate the securitization bonds AAA(sf), indicating they are what the rating agencies consider structured finance bonds?

b. Does the Public Staff and its advisors make any distinction between bonds rated AAA and those rated AAA(sf)? If yes, please explain those distinctions.

Response:

Witness Fichera notes that the Joint Petition and the proposed form of Financing Order attached as Appendix B to the Joint Petition use "AAA," "AAA-equivalent" and "AAA(sf)" interchangeably.

The Companies' Witness Heath states at pages 16 and 17 of his testimony in this proceeding: "The targeted ratings on the storm recovery bonds are expected to be AAA from at least two rating agencies."

The Companies' Witness Atkins states at page 10 of his testimony: "The financing orders must be crafted in a manner to enable the storm recovery bonds to achieve AAA equivalent ratings . . ."

To avoid potential confusion in their direct testimony in this proceeding, various Public Staff Witnesses followed the convention of the Companies' Joint Petition and of Witnesses Heath and Atkins in using "AAA," "AAA-equivalent" and "AAA(sf)" interchangeably.

a. and b. Rating agencies commonly assign an "(sf)" subscript to ratings on instruments that are not backed by an unconditional promise to pay from an issuer that operates a business enterprise. Witness Fichera anticipates that the rating agencies will assign an "(sf)" subscript to the storm recovery bonds proposed by the Companies. Rating agency criteria related to the (sf) subscript in the case of Ratepayer-Backed Bonds indicates a focus on the legal structure of the financing entity, including enforceability of the True-up Mechanism, enforceability of the State Pledge, and accuracy of forecasts of electricity sales, among other things.

Public Staff witnesses have proposed "best practices" in accordance with the rating agency criteria. These "best practices" have been applied in multiple states for many utilities. All Ratepayer-Backed Bonds that were structured, marketed and priced

under similar "best practices" received the top credit ratings from Moody's, Standard and Poor's and Fitch. The rating agencies have monitored those transactions after issuance. None of the Ratepayer-Backed Bonds issued in accordance with such "best practices" has ever been downgraded or placed on a "watch list" for possible downgrade.

As part of the ratings process, the rating agencies also review all legal opinions delivered, including legal opinions that the Ratepayer-Backed Bonds were validly issued under applicable state law. If any "best practice" were to have been based on questionable legal authority or to have increased materially the liability of any participants in the transaction, that information should have been disclosed and the rating agencies would have questioned that and identified it as a potential risk to investors.

To the best knowledge of Witness Fichera, no legal opinion associated with any Ratepayer-Backed Bond was qualified in any way because participants followed "best practices" proposed by Public Staff witnesses in this proceeding.

In reviewing responses by Witness Atkins, Witness Fichera notes that Witness Atkins state various legal opinions about the meaning of North Carolina statutes. See especially Witness Atkins' response to PS DR 2-12: "Interest rates that are subsidized by private companies, whether underwriter firms or the Companies, through the purchase or retention of unsold utility securitization bonds, are not consistent with market conditions at the time of pricing, and therefore inconsistent with N.C. Gen. Stat. § 62-172."

Public Staff Response to
Duke Energy Carolinas, LLC's & Duke Energy Progress, LLC's Data Request
Data Request Nos. 2-10 to 2-17

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

Date of Request: **December 28, 2020**
Date of Response: **January 4, 2021**

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Confidential Responses (if any) are provided pursuant to Confidentiality Agreement

The attached response was prepared by or under the supervision of Public Staff witness Steven Heller, President of Analytical Aid, Consultant to Saber Partners, LLC, and provided to William E. H. Creech, Staff Attorney, Public Staff – North Carolina Utilities Commission.

Docket No. E-2, Sub 1262
Docket No. E-7, Sub 1243
Data Request Nos. 2-10 to 2-17

2-10. Witness Heller states that detailed modeling should be performed as part of the pre-issuance review process to "ensure compliance with the requirement that that customer costs be minimized and present value savings to customers maximized to the extent possible." Please provide statutory references to these requirements.

Response:

N.C.G.S § 62-172(b)(3)b.12. states: "A financing order issued by the Commission to a public utility shall include all of the following elements: . . . 12. Any other conditions not otherwise inconsistent with this section that the Commission determines are appropriate." Moreover, in Ratepayer-Backed Bond transactions where an active, independent advisor such as Saber Partners was involved, it has been Witness Heller's experience that the goal of minimizing customer costs and maximizing present value savings to customers has been the direction he received from the advisor and the utility with whom Witness Heller was working. Witness Heller considers such requirements "best practices" for Ratepayer-Backed Bonds.

2-11. With regard to Witness Heller's description, on pages 5 and 6 of his direct testimony, regarding his prior experience working on "Ratepayer-Backed Bond" offerings, please identify each such transaction (by state, docket number, year, and utility involved) and identify whether, with regard to each such transaction Saber Partners or any of its principals were also involved in the transaction.

Response:

Sponsoring Utility	Year	State	Docket No.	Was Saber Partners Involved?
Duke Energy Florida	2016	Florida	150171-EI	Yes
Monongahela Power	2009	West Virginia	05-0402-E-CN	Yes
The Potomac Edison Company	2009	West Virginia	05-0750-E-PC	Yes
Florida Power & Light Company	2007	Florida	060038-E1	Yes
AEP Texas Central	2006	Texas	32475	Yes
CenterPoint Energy	2005	Texas	30485	Yes
West Penn Power	2005	Pennsylvania	D.T.E. 04-70	No

2-12. Witness Heller states "my typical direction came from a syndicate or trading desk with a subjective guidance on average life targets and number of classes or tranches

including scheduled maturities. The objectives usually will be the easiest or fastest sale." Does Witness Heller intend to indicate that never is his time at an investment bank did he experience a sponsoring utility challenge the assumptions and modelled scenarios being presented to it by the investment bank?

Response:

No. "Typical" does not mean always. "Typical" in this context means more often than not.

2-13. Witness Heller references modeling work performed for the 2016 DEF transaction and that Saber Partners challenged the underwriters initial 4-tranche structure. The transaction was ultimately issued in a 5-tranche structure which was proposed by Saber Partners.

a. Please discuss the pricing and sales challenges that the 2016 DEF transaction experienced related to its 10-year tranche and whether these challenges were related to the fact that the 5-tranche structure had two tranches pricing on the same underlying benchmark treasury rate (10-year US treasury rate).

b. Did the initial 4-tranche structure proposed by DEF's underwriters have included multiple tranches priced on the same underlying benchmark treasury rate?

Response:

a and b. Witness Heller is confused by the premise of this request and the facts of the transaction. The Companies indicated in response to PS DR 4-5(a)ii that the 10-year tranche was "oversubscribed." Are the Companies suggesting that Ratepayer-Backed Bonds are successfully marketed only if they are easy to sell and there are no "challenges" that underwriters may need to address to achieve the lowest cost to ratepayers?

In an attempt to be responsive to the Companies question, Witness Heller has reviewed the descriptions of the marketing of the DEF Ratepayer-Backed Bonds by the two bookrunning underwriters, Royal Bank of Canada and Guggenheim Partners, that the Companies provided in response to PS DR 2-2(a). Neither underwriter mentions any such "sales challenge" on the 10-year tranche. Both underwriters speak of the success of the transaction and their broad distribution with all the securities sold under market conditions at the time of pricing. Witness Heller has also reviewed the transcript of the Florida Public Service Commission public meeting on the transaction in June 2016 at which time the Florida Commission could have stopped the transaction. DEF and others spoke about the transaction and pricing, and there was no mention of any marketing challenge.
The only specific information Witness Heller has on the 10-year tranche was provided by the Companies in response to Public Staff DR 5-4(a)ii:

Request

ii. Did the lack of being included in the Corporate Bond Index at the time of pricing the 2016 Duke Energy Florida Project Finance have an effect on the pricing of the 10-year tranche? If yes, please explain.

Response:

ii. DEC and DEP object to this question as it seeks information irrelevant and unrelated to an evaluation of the Companies' Joint Petition in this proceeding. Notwithstanding the objection, yes. Although certain investors indicated that the size of their orders could have been larger with certainty of index inclusion, it is difficult to attribute any effect on price for the bonds sold. An argument can be made that larger orders may have increased ability for additional pricing tension – however these bonds were oversubscribed and allocations were required. In light of the status in of the book for the 10 year at the time, a significantly larger order from this investor at that time could have positively affected pricing.

Witness Heller understands that both the 4-tranche and 5-tranche structures were priced in accordance with market conventions relating to benchmark U.S. Treasury securities and the weighted average life of specific tranches as proposed by the underwriters and agreed to by DEF and the independent advisor.

Witness Heller notes that the bookrunning underwriters (see Klein Exhibit 4) and the independent advisor all certified that the lowest cost objective was achieved, and Witness Heller knows of no reason to doubt that those certifications were accurate and true.

2-14. Witness Heller states "all transactions I have worked on were sold to investors at tight spreads." Please provide context to what you consider "tight spreads."

Response:

The West Penn Power transaction was a private placement. For the other transactions, please see Sutherland Exhibit 2, Sutherland Exhibit 3, Sutherland Exhibit 4 and Sutherland Exhibit 6.

2-15. Please provide the model prepared by Witness Heller for the rating agency cash flows and closing cash flows prepared in connection with the 2016 DEF transaction, in a format including the formulas.

Response:

Witness Heller respectfully objects to this request.
The financial model was provided to the Companies' affiliate under the direct supervision of Witness Heath without any restrictions.
Witness Heller's contract for that financial model has ended and the Ratepayer-Backed Bonds were issued for DEF with top ratings from three rating agencies. He should not be required to provide additional work product that the Companies could use in this transaction without providing him additional compensation. The Companies did not request an RFP response from Witness Heller.

2-16. Witness Heller states "the investment bank typically charges a fee for structuring between $300,000 and 500,000 and typically wants access to the underwriting fees which are higher in amounts since they are based on a percentage of the bond size and not a fixed fee. This fee is roughly three to five times the fee that I accept, which I believe is fair for the work involved." Please further explain the scope of work that Witness Heller performs compared to the scope of work normally undertaken by an investment bank serving as a sponsoring utility's structuring advisor.

Response:

Guggenheim Securities	Atkins Capital	Is This Work Typically Performed by Heller, as Structuring Agent?
Review and analysis of the business, financial condition and prospects of the Company, including historical Company performance data required for rating agency stress scenarios	Review and analysis of the business, financial condition and prospects of the Company, including historical Company performance data required for rating agency stress scenarios	Yes
Review and consideration of various structural and financial considerations relating to the Financing, including indicative interest rates, maturity and amortization profiles, certain servicing considerations and the proposed true-up adjustment mechanism	Review and consideration of various structural and financial considerations relating to the Financing, including indicative interest rates, maturity and amortization profiles, certain servicing considerations, and the proposed true-up adjustment mechanism	Yes
Development of the Company's application for the Financing Order,	Development of the Company's application for the Financing Order, including	Yes. If retained by a party other than the sponsoring utility, Witness Heller has

Guggenheim Securities	Atkins Capital	Is This Work Typically Performed by Heller, as Structuring Agent?
including written and oral testimony (including rebuttal testimony) to be provided by Charles Atkins or other qualified senior personnel of Guggenheim Securities in support of the application (collectively, "Testimony"	written and oral testimony (including rebuttal testimony) to be provided by Charles Atkins in support of the application (collectively, the "Testimony")	assisted in development of that party's response to the Company's application for the Financing Order, including written and oral testimony (including rebuttal testimony) provided by the other party's witnesses in response to the application.
Pre-hearing and post-hearing activities, including discovery, in each case, relating to the Testimony; including but not limited to communications with representatives of the Commissioners of the North Carolina Utilities Commission	Pre- hearing and post-hearing activities, including discovery, in each case, relating to the Testimony, including but not limited to communications with representatives of the Commissioners of the North Carolina Utilities Commission	Yes
Such other matters as the Company and Guggenheim Securities mutually agree	Such other matters as the Company and Atkins Capital mutually agree	Yes

2-17. During the time when Witness Heller worked at Salomon Brothers, Merrill Lynch, Credit Suisse and Andrew Davidson & Co., were models prepared by those firms that were similar to the model prepared by Guggenheim Securities considered proprietary work product? If not, please provide documentation outlying their terms of use.

Response:

Witness Heller does not have access to any work product from his time at these firms. His recollection is that the underwriting agreements did not assert that spreadsheet analysis was proprietary.

Public Staff Response to
Duke Energy Carolinas, LLC's & Duke Energy Progress, LLC's Data Request
Data Request No. 2-18

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

Date of Request: **December 28, 2020**
Date of Response: **January 4, 2021**

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The attached response was prepared by or under the supervision of Public Staff witness William Moore, Consultant to Saber Partners, LLC, and provided to William E. H. Creech, Staff Attorney, Public Staff – North Carolina Utilities Commission.

Docket No. E-2, Sub 1262
Docket No. E-7, Sub 1243
Data Request No. 2-18

2-18. Witness Moore states that the fact that the Public Staff is an intervening party does not impact his opinion about whether they should be included on the Bond Team, should one be implemented by the Commission.

a. In Witness Moore's opinion does the Public Staff, or any other member of the Public Staff's proposed Bond Team other than the issuer, absorb any securities law liability?

b. Further, in Witness Moore's term as a treasurer, CFO, and CEO, did Westar Energy ever allow the Citizens' Utility Ratepayer Board, another intervenor or third party to (i) have equal decision-making authority for its securities offerings, (ii) participate in the selection of underwriters for Westar securities offerings or (iii) speak with investors or potential investors during a securities offering?

Response:

a. Witness Moore respectfully objects to this request on the ground that it calls for a legal opinion. Witness Moore's testimony is as a former utility chief financial officer and chief executive officer with more than 30 years' experience, and not as a lawyer. His testimony in this proceeding is about using "best practices" for Ratepayer-Backed Bonds to allow the Companies to raise the capital in the public markets and protect ratepayer interests. It does not directly or indirectly opine on securities law matters.

b. Witness Moore has testified that there are material differences between traditional utility debt and Ratepayer-Backed Bonds. The interests and efforts of Westar Energy to achieve lowest cost bond offerings in traditional utility debt issues would be very similar to the Companies' interests and efforts in connection with traditional utility debt issues. Both utilities have ongoing regulatory review and oversight in connection with traditional utility debt issuances.

In connection with traditional utility debt issued by Westar, Witness Moore does not believe there was a need to, nor does he recall an intervenor or any other party ever proposing to, (i) have equal decision-making authority for Westar Energy's securities offerings; (ii) participate in the selection of underwriters for securities issued by Westar Energy; or (iii) speak with investors in connection with any offering of securities by Westar Energy. Westar's traditional utility debt costs, like the Companies' traditional utility debt costs, are subject to ongoing regulatory oversight.

However, in Ratepayer-Backed Bonds the utility is not responsible for repaying the bonds, and ongoing regulatory review and oversight concerning the cost of the bonds does not exist. Approval from the Kansas Legislature to issue Ratepayer-Backed Bonds similar to storm recovery bonds that are subject of the Joint Petition was not available during Witness

Moore's employment at Westar Energy. Witness Moore believes the "best practices" described by Witnesses Schoenblum and Fichera are appropriate in this case. Witness Moore saw the success of those practices in the initial public offering of Ratepayer-Backed Bonds in 2001, as described by Witnesses Klein, Fichera, Schoenblum and Sutherland. Witness Moore agrees with reasons for the "best practices" described by Witness Maher in response to DR 2-29. The issues in this Joint Petition are about what is the right thing to do for ratepayers, and that is to follow the proposed "best practices."

fPublic Staff Response to
Duke Energy Carolinas, LLC's & Duke Energy Progress, LLC's Data Request
Data Request Nos. 2-19 to 2-28

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

Date of Request: **December 28, 2020**
Date of Response: **January 4, 2021**

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Confidential Responses (if any) are provided pursuant to Confidentiality Agreement

The attached response was prepared by or under the supervision of Public Staff witness Rebecca Klein, Principal, Klein Energy LLC, Consultant to Saber Partners, LLC, and provided to William E. H. Creech, Staff Attorney, Public Staff – North Carolina Utilities Commission.

Docket No. E-2, Sub 1262
Docket No. E-7, Sub 1243
Data Request No. 2-19 to 2-28

2-19. Witness Klein states "[t]he utilities receive the proceeds determined through separate proceedings but the ratepayers are responsible for costs of issuance and principal interest on the bonds with no further review by the commission after the bonds are issued."

a. Does Witness Klein not recognize that a commission has the authority to reject a transaction after pricing but before bonds are issued (with or without "active commission oversight")?

b. Why doesn't this authority give a commission the ability to ensure a transaction that achieves the applicable statutory objectives?

c. Does Witness Klein believe that a sponsoring utility would be lackadaisical or careless in the execution of a transaction when this authority exists?

d. Does Witness Klein believe there are no reputational risks to a sponsoring utility for having a securitization transaction rejected by a commission?

Response:

a., c., and d. Witness Klein believes it would be more efficient and pragmatic for a commission to strive for lowest storm recovery charges with active Commission review and oversight prior to and during pricing of the proposed storm recovery bonds. By implementing "best practices" throughout the transaction cycle, the prospect of rejecting the transaction just before bonds are issued would be minimized. This would avert any prospect of risking the reputation of the utility and/or suggestion of utility carelessness about which the Joint Petitioners may be concerned.

The Companies' proposal for the Commission to use the heavy hand of totally rejecting the transaction at the end of the process with only updates as requested by a designated Commissioner is unwise. A designated Commissioner or staff designee may not be experienced in Ratepayer-Backed Bond capital market negotiations with underwriters and sophisticated investors. At pricing and at other critical "real time" moments, the designated Commissioner or staff designee would be without independent technical support from those who do have such experience and expertise. That is not an appropriate position in which to put a Commissioner.

Witness Klein agrees with Witness Maher in his response to DR 2-29 that the central issue in this Joint Petition is doing the right thing for the ratepayers. As described by Witnesses Moore, Schoenblum, Sutherland, Maher, Abramson and Fichera in their direct testimony, and as noted by the Companies in their response to PS DR 4-

3c.ii, the capital markets function on the basis of self-interest: "Underwriters, as do all participants in financing transactions, work in their own best interests consistent with the contractual and legal obligations under which they operate." The Companies will not be responsible for any of the costs of the proposed storm recovery bonds, and the Commission must give up future ongoing regulatory review and review that it has in connection with the Companies' traditional debt.

a. The Joint Petition proposes that the Commission have authority to issue an order stopping the storm recovery bond issuance before noon on the third business day after pricing if the Commission determines that the issuance advice letter and all required certifications have not been delivered or the transaction does not comply with the "Standards of this Financing Order." Page 16 of the proposed form of Financing Order attached as an exhibit to the Joint Petition defines the "Standards of this Financing Order" to include "7) the structuring and pricing of the Storm Recovery Bonds, including the issuance of SRB Securities, resulted in the lowest Storm Recovery Charges consistent with market conditions at the time the Storm Recovery Bonds are priced and the terms set forth in this Financing Order."

b. Witness Klein's direct testimony recommends that the Commission's Financing Order in this proceeding require that the structuring, marketing, and pricing of the approved storm recovery bonds in fact achieve the lowest storm recovery charges consistent with market conditions and the terms of the Financing Order. There are at least two reasons why the form of Financing Order proposed by the Joint Petition does not ensure that this will be achieved.

    1. First, the Joint Petition's proposed form of Financing Order does not require the Commission's involvement in the "marketing" of the storm recovery bonds to achieve the lowest storm recovery bonds. This stands in contrast with the financing order issued by the Florida Public Service Commission to DEF.

    2. Second, capital markets are dynamic and challenging, and the Ratepayer-Backed Bonds are complex. They are fundamentally different from traditional utility debt as discussed by former utility finance executives: Witnesses Moore, Schoenblum and Sutherland in addition to Witnesses Abramson, Fichera and Heller. N.C.G.S § 62-172(n) states: "In making determinations under this section, the Commission or public staff or both may engage an outside consultant and counsel." If the Commission adopts the Public Staff's recommendation, this will include a determination that the structuring, marketing, and pricing of the approved storm recovery bonds in fact achieve the lowest storm recovery charges consistent with market conditions and the terms of the Financing Order. N.C.G.S § 62-172(n) reflects the General Assembly's awareness that

> storm recovery bonds are unlike other securities previously reviewed and approved by the Commission, and that outside expertise is likely needed to enable the Commission to make the required determinations. This legislative purpose would be frustrated if any outside consultant or counsel retained by the Public Staff is excluded from "participating fully and in advance" in structuring, marketing, and pricing the storm recovery bonds.

Suggesting that the Commission only use the power to reject the entire transaction at the end of the process is like asking the Commission's representatives to sit outside the negotiating room and then ask the Commission to accept or reject what resulted from the negotiation. This kind of approach was discussed and rejected by my fellow commissioners in Texas more than 20 years ago. This option is not meaningful without having someone in the room and at the negotiating table who represents the ratepayers' interests and is not motivated by a desire either (a) to receive the bond proceeds quickly (as the Companies have) or (b) to receive the bonds themselves (as the underwriters and investors have).

2-20. Witness Klein states "[i]n my view, and based on my oversight of three Ratepayer-Backed Bond issues as Chair of the PUCT, it will be difficult or perhaps even impossible for the Commission to make this after-the fact determination that the structuring, marketing and pricing of the Companies' offerings achieved the "lowest storm recovery charge" with confidence unless the Commission Staff, the Public Staff and an independent financial advisor are involved as joint decision makers in all aspects of the structuring, marketing and pricing of the storm recovery bonds through the time when the utilities file their issuance advise letters and when the Commission has authority to disapprove the bond offering."

a. Please explain what is meant by "independent financial advisor" in this context (i.e. whom should this adviser be independent of).

b. Can an advisor to an intervening party be considered independent?

c. Please explain "joint decision making" in this context. Also please discuss how disputes between these various parties are to be resolved and whether one party ultimately has more authority than any other party.

Response:

a. During Witness Klein's term as Chair of the PUCT, the Financing Orders approving the issuance of Ratepayer-Backed Bonds all stated: "To properly advise the Commission, the Commission's financial advisor must not participate in the underwriting of the transition bonds and its fee should not

be based upon a percentage of the transition-bond issuance."[1]

In addition, in a PUCT open meeting held on March 8, 2000, Administrative Law Judge Journeay clarified that the PUCT's financial advisor would be required to deliver its certificate confirming that the lowest securitized charge in fact had been achieved, and that in delivering that certificate, the financial advisor may not rely on a similar certification from the utility: "the Company's certification will not in and of itself demonstrate compliance to you [the financial advisor], that you are to exercise your **independent** judgment". (Emphasis added.)[2] In the context of these three issues of Texas Ratepayer-Backed Bonds, Witness Klein uses the term "independent financial advisor" to mean a financial advisor that satisfies these criteria. See also page 37, lines 19 through 22 of the direct testimony of Witness Fichera in this proceeding: "Independent means no financial interest in the bond proceeds or the bonds themselves and with a duty of loyalty – a fiduciary responsibility to the ratepayer – the Commission and the Public Staff."

b. Yes. See response to 2-20(a).

c. Please see pages 29 through 32 of the direct testimony of Witness Schoenblum and pages 29 through 32 of the direct testimony of Witness Fichera, which recommend that the Commission adopt the approach adopted in the Florida Public Service Commission's financing order issued to DEF. If other members of the Bond Team cannot agree on any aspect of the proposed structuring, marketing, and pricing of the storm recovery bonds – other than matters affecting the Companies' direct liability under federal securities law – the designated member of the Commission who is a member of the Bond Team will have authority to cast the deciding vote.

2-21. Witness Klein states "PUCT staff and the PUCT's independent financial advisor also participated actively and were joint decision makers with the utility in the process of structuring, marketing, and pricing the "transition bonds." They acted as an informal "Bond Team."" Did any of the transactions in which Witness Klein was involved include an independent advisor for any party other than the utility or the commission on the informal "Bond Team?"

Response:

No, the Texas transactions in which Witness Klein was involved included only the sponsoring utility and the PUCT and its financial advisor on the informal "Bond Team."

[1] Finding of Fact 103 in the Financing Order issued to TXU Electric in PUCT Docket No. 25230; Finding of Fact 94 in the Financing Order issued to Reliant Energy in PUCT Docket No. 21665
[2] Transcript of March 8, 2000 Open Meeting at page 133 lines 4 through 7.

In Texas there was no separate state agency, other than the PUCT itself, charged with responsibility to represent the interests of all classes of electric ratepayers. This is unlike North Carolina where the Public Staff is statutorily charged in N.C.G.S. § 62-15(d)(3) to "Intervene on behalf of the using and consuming public, in all Commission proceedings affecting the rates or service of any public utility".

2-22. Witness Klein states "[t]he PUCT understood that the work required to give that certification was substantial and could add to the cost of the transaction. However, the PUCT believed the benefits would exceed the costs and that the certification, like an insurance policy, would provide protection that our mandate would be met." Please provide any financial analysis performed that led to the PUCT and Witness Klein's belief that "the benefits would exceed the costs and that the certification..."

a. Do financial advisors charge extra to provide such certifications?

b. If yes, please provide benchmarking and any other support for Saber's proposed costs for such certification.

Response:

In response to "Please provide any financial analysis performed that led to the PUCT and Witness Klein's belief that "the benefits would exceed the costs and that the certification..." please see Sutherland Exhibit 2, Sutherland Exhibit 3, Sutherland Exhibit 4 and Sutherland Exhibit 6.

a. In Witness Klein's experience, financial advisors in the three Texas Ratepayer-Backed Bond transactions she supervised as Chair of the PUCT did charge extra to provide such certifications. However, Witness Klein observes that the PUCT's financing orders for those Texas Ratepayer-Backed Bonds required a substantial portion of the financial advisor's fee to come from the underwriters' compensation. See Witness Klein's response to DR 2-28.

b. Neither the Commission nor the Public Staff has yet determined whether to request a "lowest storm recovery charge" certification from Saber Partners or anyone else.

2-23. Witness Klein states "[t]he incremental costs of the active financial advisor approach in each of the three Texas Ratepayer-Backed transition bond transactions I helped oversee as Chair of the PUCT were easily justified by savings in other issuance costs and savings in interest costs." Please provide any financial analysis performed that led to the PUCT and Witness Klein's belief the incremental costs were "easily justified by savings in other issuance costs and savings in interest costs."

Response:

See Sutherland Exhibit 2, Sutherland Exhibit 3, Sutherland Exhibit 4 and Sutherland Exhibit 6.

2-24. In reference to Witness Klein's testimony at p. 6, ll. 11-15 of her direct testimony regarding the alleged statutory fiduciary duty of the PUCT to the public interest, please provide a reference to and copy of every law, statute, regulation, rule or administrative or judicial decision or precedent establishing such duty.

Response:

Witness Klein respectfully objects to this question as overbroad and requesting Witness Klein to perform legal research. Notwithstanding those objections, in Texas the Public Utility Regulatory Act, Chapter 11, Section 11.002 states:

> (a) This title is enacted to protect the public interest inherent in the rates and services of public utilities. The purpose of this title is to establish a comprehensive and adequate regulatory system for public utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities.
> * * *
> (c) . . . It is the purpose of this title to grant the Public Utility Commission of Texas authority to make and enforce rules necessary to protect customers of . . . electric services consistent with the public interest.

Additionally, please see pages 7 through 20 of the direct testimony of Witness Maher in this proceeding and Witness Maher's response to DR 2 -29.

2-25. In reference to Witness Klein's testimony at P. 6, ll. 15-17 of her direct testimony regarding the standard of conduct required of a fiduciary, please provide a reference to and copy of every law, statute, regulation, rule or administrative or judicial decision or precedent establishing such duty.

Response:

Witness Klein respectfully objects to this question as overbroad and requesting Witness Klein to perform legal research. Notwithstanding those objections, Witness Klein draws attention to pages 7 through 20 of the direct testimony of Public Staff Witness Maher, including in particular pages 10 and 11 of that testimony which discuss EBC I, Inc. v. Goldman, Sachs & Co., 5 N.Y.3d 11 (N.Y. 2005), 799 N.Y.S.2d 170, 832 N.E.2d 26 (2005). See also Maher Exhibit 3. This duty would necessarily arise given the statutory grant of authority to the PUCT "to protect the public interest inherent in the rates and services of public utilities" and "to protect

customers . . . consistent with the public interest" as noted in the previous response.

2-26. In reference to Witness Klein's description of the actions taken by the PUCT's financial advisor in the Texas Transition Bond proceedings at pages 12-13 of her direct testimony, please identify any party (other than the utility, the PUCT, or their respective advisors) who took an active and participatory role in accomplishing any of the tasks listed in items 1 through 5) on page 12 of Witness Klein's testimony and with respect to each such party:

a. Identify the status of such party relative to the proceedings in which the bonds were considered;

b. Identify the individuals involved in such active participatory roles and by whom they were employed;

c. Describe, in detail, their roles and actions with respect to the bond offerings and specifically with respect to achievement of the objectives identified on page 12 of Witness Klein's testimony;

d. Identify whether each such party had a fiduciary duty to utility customers under Texas law and the legal basis for the assertion of such duty.

Response:

a., b. and c. The bookrunning underwriters and their counsel took an active and participatory role in many aspects of the structuring, marketing, and pricing of the Texas Transition Bond transactions discussed at pages 12 through 13 of Witness Klein's direct testimony including, for example, working with the utility to:

- ensure that the Registration Statement contained proper disclosures to communicate the superior credit features of the Texas Transition Bonds as authorized by the statute and the PUCT's Financing Order which is the basis for the bond offering;

- develop rating agency presentations and work actively with the rating agencies during the rating agency process to achieve Aaa / AAA / AAA ratings from the three major rating agencies;

- submit marketing plans acceptable to the utility;

- develop all bond transaction documents, marketing materials and legal opinions in a plain English manner while balancing SEC disclosure requirements, in an effort to ensure investors could more easily understand the high-quality nature of the bond offering;

- allow sufficient time for investors to review relevant marketing materials

and a preliminary prospectus and to ask questions regarding the transaction;

- attend telephonic pre-marketing investor meetings;
- arrange issuance of rating agency pre-sale reports during the marketing period;
- during the period that the bonds were marketed, hold numerous market update discussions with the utility and the PUCT's financial advisor to develop recommendation for pricing;
- develop and implement a marketing plan designed to encourage each of the underwriters to aggressively market the bonds to a broad base of prospective investors, including investors who have not previously purchased this type of security;
- conduct in person and telephonic roadshows;
- provide other potential investors with access to an internet roadshow for viewing at investors' convenience;
- adapt the bond offering to market conditions and investor demand at the time of pricing consistent with the guidelines outlined within the Financing Order. Variables impacting the final structure of the transaction were evaluated including the length of the average lives and maturity of the bonds and the interest rate requirements at the time of pricing so that the structure of the transaction would correspond to investor preferences and rating agency requirements for the highest rating possible; and
- develop bond allocations and preliminary price guidance designed to achieve customer savings.

The bookrunning underwriters for those transactions were Merrill Lynch, Goldman Sachs, Lehman Brothers and Morgan Stanley. Witness Klein does not know or recall the specific individual personnel at these underwriting firms who were involved in such active participatory roles.

d. Witness Klein understands the underwriters assert that they had no fiduciary duty to utility customers.

2-27. Explain, in detail, the basis for witness Klein's conclusion on page 18, ll. 3-6 of her direct testimony that "in ratepayer-backed bond transactions generally, the utility has an interest in closing the transaction as expeditiously as possible, even if that requires the utility to settle for less than the lowest storm recovery charges to ratepayers" and state

whether this rationale applies to the pending DEC and DEP bond issuances.

Response:

Please see pages 18 and 19 of the direct testimony of Witness Schoenblum.

2-28. In reference to witness Klein's testimony on p. 33, ll. 13-17, please identify the outside advisor costs incurred by the PUCT with respect to the each of the three Transition Bond issuances supervised by witness Klein and each specific area of savings asserted by witness Klein achieved through the use of outside advisors.

Response:

Using the financial advisor did not cost ratepayers anything beyond the financing costs estimated by the utility before a PUCT financial advisor was proposed, and in fact saved ratepayers many, many millions of dollars.

First, the PUCT ordered that the cost of the independent advisor be absorbed in the cap on upfront costs that the PUCT approved based on the utility's estimated costs in their filing. Second, the PUCT ordered that nearly 30% of the independent advisor's fee be paid from the fees to be paid to the underwriters. The PUCT required that the caps are "ceilings not floors". The amounts paid to the advisor were negotiated with the advisor based on the required "lowest transition bond charge opinion" from the financial advisor and looking at disclosed fees for independent financial advisor opinions known as "fairness opinions" in financial transactions. See pages 6, 43 and 44 of the direct testimony of Witness Schoenblum.

Finally, the cumulative efforts and activities of the financial advisor in developing and implementing "best practices" produced substantial additional savings to Texas ratepayers. This was accomplished through the auditing of expenses submitted for the financing by the utility and by participating in negotiations with the underwriters and investors as to the credit spreads associated with the bonds. This resulted in lower interest rate costs applied to individual tranches of the Ratepayer-Backed Bonds creating additional present value savings. See Sutherland Exhibit 2, Sutherland Exhibit 3, Sutherland Exhibit 4, and attached press reports and a bookrunner assessment.


Attachment
2-28_News Reports.pd


Attachment
2-28_Bookrunner Asse

In addition, Witness Klein notes that the Financing Orders for these first three transactions specified that a substantial portion, approximately 30%, of the PUCT's outside advisor costs with respect to the each of the three Transition Bond issuances supervised by Witness Klein reduced the amount of compensation otherwise

payable to the underwriters. For example, see Finding of Fact 103 of the PUCT's 2002 Financing Order issued to TXU for approximately $1.3 billion in Ratepayer-Backed Bonds: "the financial advisor's fee should be capped at an amount not to exceed $2,450,000, of which $718,667 will come from the underwriting spread with the remainder to be included in the aggregate cap on the up-front costs to be securitized of $52,586,374 ($20,225,528 in connection with transition bonds issued before 2004)."

Public Staff Response to
Duke Energy Carolinas, LLC's & Duke Energy Progress, LLC's Data Request
Data Request Nos. 2-29 and 2-31 to 2-40

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

Date of Request: **December 28, 2020**
Date of Response: **January 4, 2021**

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Confidential Responses (if any) are provided pursuant to Confidentiality Agreement

The attached response was prepared by or under the supervision of Public Staff witness Brian A. Maher, Senior Advisor, Saber Partners, LLC, and provided to William E. H. Creech, Staff Attorney, Public Staff – North Carolina Utilities Commission.

Public Staff Response to
Duke Energy Carolinas, LLC's
&
Duke Energy Progress, LLC's
Confidential Data Request No. 2-30

Docket No. E-2, Sub 1262
Docket No. E-7, Sub 1243
Data Request No. 2-29 and 2-31 to 2-40

2-29. In reference to Witness Maher's assertion that Saber Partners has a fiduciary duty to North Carolina DEC and DEP customers, please explain the basis for such assertion including citations to and copies of each and every contract, agreement, stipulation, statute, rule, regulation, ruling or precedent establishing or supporting the existence of such alleged duty.

Response:

Witness Maher respectfully objects to this request as overbroad. In addition, Witness Maher respectfully objects to this request on the grounds that it calls for the provision of legal conclusions. Witness Maher's testimony is as a former finance executive with more than 30 years' experience in finance and the capital markets and not as a lawyer. Notwithstanding those objections, Witness Maher draws attention to pages 7 through 20 of his direct testimony, including in particular pages 10 and 11 which discuss EBC I, Inc. v. Goldman, Sachs & Co., 5 N.Y.3d 11 (N.Y. 2005), 799 N.Y.S.2d 170, 832 N.E.2d 26 (2005), and Maher Exhibit 3. Witness Maher also draws attention to page 17, lines 10 through 12 of his direct testimony in this proceeding: "As financial advisor to the Public Staff, Saber Partners considers itself as having a fiduciary duty to North Carolina ratepayers."

Witness Maher believes the central issue in this proceeding is about what is the right thing, the best thing, to do for the ratepayer in connection with the proposed storm recovery bonds. Witness Maher and other Public Staff witnesses recommend using "best practices" based on their experience. Apart from contracts, agreements, stipulations, statutes, rules, regulations, rulings or administrative or judicial decisions or precedents, based on more than 30 years of experience in business and specific experiences in the capital markets with bankers, underwriters and investors, Witness Maher knows the principles of ethical behavior in government and in business. From this experience, Witness Maher discusses what the "best practices" are for this unique type of financing.

SB559 authorizes this special type of bond. It allows the net bond proceeds to be provided to the utility as reimbursement for storm damage costs and the cost of the Ratepayer-Backed Bonds billed to the ratepayers. The utility and its shareholders are not responsible for paying back the Ratepayer-Backed Bonds. The statute protects the utility from any financial liability for the bonds and there is no ongoing regulatory review and oversight process with regard to the Ratepayer Backed Bonds. The statute (N.C.G.S. § 62-172(b)(3)b.12.) explicitly directs the Commission to add conditions to a proposed financing order that the Commission determines to be appropriate.

Witness Maher believes that the "best practices," the right thing to do, in this transaction is to give the Companies net bond proceeds for prudently incurred storm damage costs and to protect the ratepayers in the process of structuring, marketing, and pricing the bonds. Ratepayers should not overpay underwriters and investors. Ratepayers need to be represented in the bond offering process by someone with a responsibility, a duty to them and to be supported by technical ability. That is how the capital markets work best. Witness Maher believes this would be a "best practice" for the Commission, the Public Staff, the ratepayer, and the Companies in this proceeding.

2-31. In reference to witness Maher's testimony on pages 19 and 20 of his direct testimony regarding the need to maximize ratepayer interests at the negotiating table, please identify each and every prior "Ratepayer-Backed Bond" transaction of which the witness is aware where an entity commensurate with the Public Staff actively participated in the negotiation of bond terms with underwriters (in addition to the Commission and the Commission's advisors).

Response:

Witness Maher respectfully objects to this question as vague as to the meaning of "an entity commensurate with the Public Staff". Notwithstanding that objection, assuming "an entity commensurate with the Public Staff" means a necessary party to the proceeding, in each Ratepayer-Backed Bond transaction of which Witness Maher is aware, the sponsoring utility was a necessary party to the proceeding and also actively participated in the negotiation of bond terms with the underwriters. See also Witness Fichera's response to DR 2 -56.

In addition, Witness Maher notes that in Florida Public Service Commission proceedings where the utilities Florida Power & Light Company and DEF proposed using Ratepayer-Backed Bonds, staff of the Florida Public Service Commission sponsored witnesses from the commission's financial advisor who presented direct testimony, responded to data requests from the applicant utilities, and were subject to cross-examination by the utilities in public hearings. In connection with the DEF transaction, as members of the Bond Team, the Florida Public Service Commission's staff and financial advisor both participated visibly and in advance in all aspects of structuring, marketing and pricing the Ratepayer-Backed Bonds.

2-32. In reference to witness Maher's testimony regarding the need for the Public Staff and its advisors to participate in a bond team, please state whether witness Maher anticipates that the Public Staff's "advisors" in the scenario he describes would include Saber Partners? If yes, please explain how Saber Partner's alleged fiduciary duty to North Carolina customers is consistent with its own pecuniary interest in participating in the Public Staff's proposed bond team.

Response:

As to the first sentence of DR 2-32, Witness Maher does anticipate that the Public Staff's "advisors" could include its outside financial advisor, whose engagement for such purposes is specifically authorized by N.C.G.S. § 62-172(n).
Witness Maher respectfully objects to the second sentence of DR 2-32 as based on a false premise: that Saber Partners has a "pecuniary interest in participating in the Public Staff's proposed bond team." Saber Partners is being compensated for its subject matter expertise as requested by the Public Staff pursuant to N.C. General Statute 62-15(h), similar to the payment of the Companies' advisors and counsel in this proceeding. This is not like the payment of the Companies' underwriters. Potentially unlike the Companies' advisor Guggenheim, Saber Partners will not be an underwriter and therefore will not be paid from proceeds of the proposed storm recovery bonds or based on the amount of bonds sold. In other words, Saber Partners' compensation is not dependent on the amount of storm recovery bonds issued.

2-33. Witness Maher states "[a]s financial advisor to the Public Staff, Saber Partners considers itself as having a fiduciary duty to North Carolina ratepayers." Does Saber Partners' contract with the Public Staff expressly create a legally binding fiduciary duty to North Carolina customers or anyone else?

a. If so, is Saber Partners liable as a fiduciary to DEC and DEP's customers in North Carolina?

b. If not, is Saber Partners liable as a fiduciary to anyone involved in this proceeding?

Response:

Witness Maher respectfully objects to this this request on the ground that it calls for the provision of legal conclusions. Witness Maher's testimony is as a former finance executive with more than 30 years' experience in finance and the capital markets and not as a lawyer. Witness Maher draws attention to page 12 of his direct testimony:

> **Q. Are you giving an opinion as to whether there is a legal requirement of any party in this transaction to have a fiduciary relationship?**
>
> A. No. I am discussing the important issues related to whether a fiduciary relationship exists and what the Commission should consider in deciding how to evaluate information it receives from different parties to the proposed transaction.

2-34. If Saber Partners' contract with the Public Staff creates a legally binding fiduciary duty to North Carolina customers then please confirm that it is Witness Maher's testimony that the Public Staff has a fiduciary duty to North Carolina customers. If so, is the Public Staff liable as a fiduciary to the customers in North Carolina?

Response:

Witness Maher respectfully objects to this this request on the ground that it is based on a premise that Saber Partners' contract with the Public Staff creates a legally binding fiduciary duty to North Carolina customers. Please see Witness Maher's response to DR 2-33.

2-35. Witness Maher suggests that the subject of fiduciary responsibility has become a public policy issue for corporate issuers, please provide citations to policy statements or other publications that support this statement.

Response:

Please see Maher Exhibit 3, Maher Exhibit 4 and Maher Exhibit 5. In addition, please see page 9, line 9 through page 10, line 11 of the direct testimony of Witness Maher.

2-36. Witness Maher states "I believe that the Bond Team should consist of the Companies, the Companies' advisor (provided such advisor is not one of the banks acting as underwriter for the transaction), the Commission, either directly or through a designated staff member(s), the Public Staff, and the independent advisors and counsel."

a. Why does Witness Maher desire to exclude the underwriters for the transaction from the Public Staff's proposed Bond Team, assuming one is implemented by the Commission?
b. Since the Public Staff is an intervening party, is it witness Maher's testimony that any intervening party should be a member of the Public Staff's proposed Bond Team? Why or why not?

Response:

a. Underwriters are on the other side of the negotiating table from the issuer in a bond offering. Their interests are not aligned with interests of the issuer, nor are their interests aligned with interests of the ratepayers who are responsible for all costs. When negotiating with anyone, it is important to have private and confidential discussions to evaluate all information including that provided by the other party in the negotiation. This allows one to decide on the approach to negotiating with the parties on the other

side of the table. Besides being a standard business practice in all negotiations, it is common sense. Why would one include the opposing party in discussions about the opposing party?

Moreover, Witness Klein's response to DR 2-20(a) observes that the PUCT financing orders she oversaw as PUCT chair state: "To properly advise the Commission, the Commission's financial advisor must not participate in the underwriting of the transition bonds". Witness Maher agrees that this PUCT finding is prudent and justified because the economic interests of underwriters are in direct conflict with the interests of ratepayers in connection with Ratepayer-Backed Bonds. For these same reasons, Witness Maher recommends that underwriters for the proposed storm recovery bonds be excluded from the proposed Bond Team.
In addition, underwriters should not be included in the Bond Team because the underwriters will conduct the transaction in their own interests as the Companies acknowledge in their response to PS DR 2-11(b). Underwriters should not have access to the private views of those representing the ratepayers' interests. The underwriters might make recommendations that benefit themselves, their investor clients and perhaps the Companies with whom the underwriters have other important business relationships. After discussion with the underwriters, these recommendations need to be considered and evaluated, but not in the presence of the underwriters.

b. No, it is not Witness Maher's testimony that any intervening party should be a member of the proposed Bond Team. It is Witness Maher's testimony that (i) each Company should be a member of the Bond Team with respect to storm recovery bonds to be issued on its behalf, because each Company is a necessary party to the Commission's proceedings with respect to the Joint Petition, and similarly (ii) the Public Staff also should be a member of each Bond Team because under North Carolina law the Public Staff is a necessary party to the Commission's proceedings with respect to the Joint Petition in representing the interests of ratepayers. Unlike other intervenors, the Public Staff is charged by N.C.G.S. § 62-15(d)(3) to "Intervene on behalf of the using and consuming public, in all Commission proceedings affecting the rates or service of any public utility". A post-Financing Order/pre-bond issuance review process, through a Bond Team, would be a continuation of this proceeding until the storm recovery bonds are issued and the Financing Order becomes irrevocable.

2-37. Witness Maher states "[t]herefore, the Commission, the Public Staff and their independent financial advisor(s) are in the primary position of having to look out for the ratepayers' best interests. It is critical that they play an active role in all aspects of the transaction. They must be willing to invest all the time necessary in the structuring and take an aggressive stance during the marketing process to capture the lowest cost of financing and the lowest storm recovery charges for the ratepayers."

a. Please provide context as to what "an aggressive stance during the marketing process" means. Please provide examples of "aggressive stances" taken by Saber Partners in prior transactions.
b. Explain why any party that does not bear any securities law liability be allowed to speak to potential investors with "an aggressive stance."

Response:

a. For examples of an active role in the structuring, marketing, and pricing of Ratepayer-Backed Bonds, see Ordering Paragraphs 41 and 51 of the Financing Order submitted as Klein Exhibit 2, the Florida Public Service Commission's 2015 Financing Order issued to DEF. For an example of an "aggressive stance" proposed by outside counsel for DEF in negotiations with Saber Partners, see pages 30 and 31 of the direct testimony of Witness Klein. While employed by ExxonMobil, Witness Maher experienced many transactions in which underwriters that were pressed to be aggressive in marketing and pricing publicly-offered ExxonMobil securities and achieved much lower credit spreads to benchmark securities for ExxonMobil than initial "price talk" had indicated.

b. Please see pages 28 through 32 of the direct testimony of Witness Fichera.

2-38. During Witness Maher's time at ExxonMobil Corporation ("ExxonMobil"):
a. Did ExxonMobil allow a third party to select its underwriters?

b. Did ExxonMobil permit a third party to speak with investors of its securities in connection with an offering of those securities?

c. Was any third party (other than an underwriter) given a role in marketing ExxonMobil's securities?

d. Was any third party (other than an underwriter) permitted to draft disclosure materials for an offering of ExxonMobil's securities?

e. Did any underwriter purchase and hold ExxonMobil securities offered by such underwriter?

f. How often did underwriters deliver to ExxonMobil the sort of certification suggested by Witness Maher on pages 22 and 23.

Response:

Witness Maher respectfully objects to this this request on the ground that it is based on a false premise that other parties at some time proposed (a) to select underwriters

for securities to be issued by ExxonMobil; (b) to speak with investors of ExxonMobil's securities in connection with an offering of those securities; (c) to be given a role in marketing ExxonMobil's securities; or (d) to draft disclosure materials for a public offering of ExxonMobil's securities. Witness Maher does not recall other parties ever to have proposed to perform any of these activities. Notwithstanding this objection, Witness Maher declares as follows:

(i) It is important to note that DEC and DEP operate regulated monopoly business enterprises. ExxonMobil does not. ExxonMobil is an investor-owned company governed by market forces. In fact, when a predecessor to ExxonMobil was found to have market power like the Companies, it was broken up.

(ii) During Witness Maher's time at ExxonMobil, it was not like the Companies which, in the absence of public regulation, could control the supply of an essential commodity – electricity - thereby influencing the rates customers pay. This is why the Companies are regulated by the Commission, and this is why North Carolina statutes require the Public Staff to intervene in rate cases "on behalf of the using and consuming public".

(iii) As an investor-owned company, regulated by market forces, ExxonMobil worked in the best interests of its shareholders to whom it had a fiduciary duty, as Witness Maher has discussed in his direct testimony in this proceeding. It is comparable to the duty the Companies have to Duke Energy and its shareholders.

(iv) However, market forces determined how ExxonMobil's prices were fixed, and competition was fierce. None of ExxonMobil's debt was paid directly from a dedicated component of charges on its customers for an essential commodity, enforced by government regulators, with no practical ability of customers to avoid the charge. The government did not pledge never to interfere with the rights of any of ExxonMobil's bondholders to be paid, and there was no government authority agreeing to raise charges on ExxonMobil's customers to whatever level needed to pay the bondholders. All of ExxonMobil's debt was a liability of ExxonMobil, ahead of ExxonMobil's distribution of dividends to shareholders to whom Exxon owed a duty to act in their best interests.

(v) In connection with Ratepayer-Backed Bonds, as Witnesses Fichera, Schoenblum and Maher point out in their direct testimony in this proceeding, similar market forces are not present, and the Commission will have no authority to take discretionary corrective action by adjusting storm recovery charges after the storm recovery bonds are issued. Ratepayers are exposed. They need to be

protected.

(vi) In N.C.G.S. §§ 62-15 and 62-172, the General Assembly set up a system to protect the ratepayer in general and in this storm securitization legislation in particular. It looks to the Commission and to the Public Staff. In this situation, Witness Maher believes having the ratepayer represented in negotiations by the Public Staff and supported by technical expertise reflects both common sense and prudent business practices. As noted in response to DR 2-29, this is a "best practice" upon which Witness Moore as a former CFO and CEO of a utility, Witness Schoenblum as a former Treasurer of a utility, Witness Klein as a former regulator of a utility, and Witness Abramson as a former equity analyst of utilities all agree. It is also a practice that Duke Energy agreed to and successfully implemented in Florida with its affiliate DEF's Ratepayer-Backed Bond offering in 2016.

e. While Witness Maher was employed by ExxonMobil, most of ExxonMobil's publicly-offered bonds were sold in competitive auction sales, conducted by ExxonMobil staff, to competing syndicates of underwriters or in some cases a single underwriter. It was common for the winning syndicate not to have immediate buyers for all of the bonds and thus for syndicate members to use their own capital to purchase and hold some bonds until they found purchasers for those bonds on the same day or at a later date.

f. In such competitive sales of bonds, the competing syndicates of underwriters do not participate in the structuring or marketing of the bonds prior to pricing, so they would not be in a position to know whether the structuring and marketing of the bonds resulted in the highest price (and lowest yield) for ExxonMobil. Consequently, to the best of Witness Maher's recollection, ExxonMobil never requested the sort of certifications from underwriters suggested by Witness Maher on pages 22 and 23 of his direct testimony.

2-39. On page 25, Witness Maher asserts, "the proposed bonds are likely to achieve a very strong "AAA" performance because they will be backed by a state regulatory guarantee to irrevocably provide for the timely payment of principal and interest from the revenues of an essential service (i.e., electricity)." Please cite the relevant provisions under North Carolina law that create a state regulatory guarantee.

Response:

Here is a link to the Prospectus used to offer the 2016 Ratepayer-Backed Bonds issued for DEF:
https://www.sec.gov/Archives/edgar/data/37637/000104746916013865/a2228973z

424b1.htm.

Page 49 of that Prospectus states:

> In the financing order, the Florida Commission determined that the broad-based nature of the FPSC-guaranteed true-up mechanism, as required to be implemented pursuant to the financing order, together with the state pledge, constitute a guarantee of regulatory action for the benefit of the nuclear asset-recovery bondholders.

The corresponding true-up mechanism in North Carolina law is found in N.C.G.S. § 62-172(b)(3)b.6. The corresponding state pledge in North Carolina law is found in N.C.G.S. § 62-172(l).

2-40. On page 26, Witness Maher suggests including the following disclosure: "The broad-based nature of the true-up mechanism and the State Pledge serve to effectively eliminate, for all practical purposes and circumstances, any credit risk to the payment of the bonds (i.e., that sufficient funds will be available and paid to discharge the principal and interest of each issue of bonds when due)." For those securitization bond offerings that included this disclosure, did they price better than, or do they or did they trade at a premium over, other securitization bonds that do not include such disclosure.

a. What evidence can the Public Staff present that this specific disclosure language was the cause of the pricing result, to the exclusion of other factors?

b. For the transactions with such disclosure language, was there a "credit spread" to the applicable benchmark, or did the tranches price at a rate equal to the benchmark?

c. Does the presence of a "credit spread" if any, indicate the market view that credit risk is not "effectively eliminated…."?

Response:

For background about the meaning of the quoted disclosure language, see the disclosure set forth on pages 100 and 101 of the prospectus for DEF's 2016 Ratepayer-Backed Bonds[1]:

> Sensitivity to Credit Risk
>
> A stress case analysis examined the maximum amount of forecast variance that could occur without causing an event of default due to insufficient funds available to pay all principal at final maturity for each WAL designation or insufficient funds available to pay interest on each payment date and expense obligations when due.

[1] https://www.sec.gov/Archives/edgar/data/37637/000104746916013865/a2228973z424b1.htm

> For an event of default to occur with respect to any such payment due under the indenture, the forecast variance for the forecast period leading up to such payment would need to be greater than minus 60%, or more than 16 standard deviations from the forecast variance mean.
>
> For there not to be enough funds available to pay principal at final maturity for each WAL designation, interest on each payment date and expense obligations when due, our stress case analysis demonstrated that there would need to be unexpected, extensive and persistent drops in electricity consumption or increases in defaults or write offs among electricity consumers that occur in each forecast period prior to the relevant payment date.
>
> We are not aware of any practical circumstance where such unexpected, extensive and persistent drops in the consumption of electricity or increases in defaults and write offs of that magnitude could occur in the DEF service territory. For comparison, during the most recent 10 years, DEF's mean annual forecast variance was minus 0.16% and the largest unfavorable annual forecast variance was minus 6.53%. See "Risk Factors", in particular "—Servicing Risks—Inaccurate forecasting of electric consumption or collections might reduce scheduled payments on the bonds", and "Cautionary Statement Regarding Forward-Looking Statements" in this prospectus.

For information about whether Ratepayer-Backed Bond offerings that included this disclosure and other "best practices" recommended by Saber Partners achieved lower credit spreads than other Ratepayer-Backed Bonds that did not include such disclosure, see Sutherland Exhibit 4, Sutherland Exhibit 5, Sutherland Exhibit 7 and Sutherland Exhibit 10.

a. Witness Maher respectfully objects to this request on the grounds that it is based on a false premise that the actions described in this specific disclosure language were the cause of the pricing result, to the exclusion of other recommended "best practices."

b. and c. Relative value – credit spreads to a benchmark security - in relation to other securities is affected by multiple factors. In some instances, one or more tranches of Ratepayer-Backed Bonds priced at no "credit spread" or at a negative "credit spread" to benchmark securities. For an example, see Fichera Exhibit 2 (Tranche A-1 and Tranche A-2).

More significantly, a positive pricing spread to benchmark securities does not necessarily reflect a "credit spread." For example, unlike benchmark securities, while they generally are assigned an AAA-level of risk that principal will not be paid on time by the legal maturity date, Ratepayer-Backed Bonds generally have some non-AAA-level of risk that principal will not be paid on the scheduled maturity

date. This can result in a positive pricing spread to benchmark securities that does not reflect a "credit spread." Another example is that the interest on benchmark U.S. Treasury debt is exempt from state income tax, whereas interest on most Ratepayer-Backed Bonds is subject to state income tax. If U.S. Treasury debt is used as the benchmark security, this can give rise to a pricing spread that does not reflect a "credit spread."

Public Staff Response to
Duke Energy Carolinas, LLC's & Duke Energy Progress, LLC's Data Request
Data Request Nos. 2-41 to 2-47

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

Date of Request: **December 28, 2020**
Date of Response: **January 4, 2021**

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Confidential Responses (if any) are provided pursuant to Confidentiality Agreement

The attached response was prepared by or under the supervision of Public Staff witness Hyman Schoenblum, Senior Advisor, Saber Partners, LLC, and provided to William E. H. Creech, Staff Attorney, Public Staff – North Carolina Utilities Commission.

Docket No. E-2, Sub 1262
Docket No. E-7, Sub 1243
Data Request No. 2-41 to 2-47

2-41. Witness Schoenblum states "[a]n actively involved and independent financial advisor to the Commission or to Public Staff, who has an implicit fiduciary relationship with the Commission, will add tremendously to the Commission's ability to reach this goal." What is meant by "implicit" fiduciary relationship? In Witness Schoenblum's opinion, is it a legally binding obligation?

Response:

Witness Schoenblum respectfully objects to this this request on the ground that it calls for the provision of legal conclusions. Notwithstanding this objection, Witness Schoenblum draws attention to pages 7 through 20 of the direct testimony of Witness Maher in this proceeding under the headings "Fiduciary Relationship – Best Interests of Ratepayers Missing" and "Importance of Fiduciary – Best Interests of Ratepayer Relationship." See also the response to Companies' DR 2-29.

2-42. During Witness Schoenblum's time at Consolidated Edison of New York, Inc. ("Con Ed"):

a. Did Con Ed allow the New York State Department of State Division of Consumer Protection (the "Division of Consumer Protection"), another intervenor or other third party to select its underwriters, including the utility securitization offering completed on behalf of Con Ed's affiliate in 2004?

b. Did Con Ed permit the Division of Consumer Protection, another intervenor or other third party to speak with investors of its securities in connection with an offering of those securities, including the utility securitization offering completed on behalf of Con Ed's affiliate in 2004?

c. Was the Division of Consumer Protection, another intervenor or third party (other than an underwriter) given a role in marketing its securities, including the utility securitization offering completed on behalf of Con Ed's affiliate in 2004?

d. Was the Division of Consumer Protection, another intervenor or third party (other than an underwriter) permitted to draft disclosure materials or make decisions with respect to the adequacy of such disclosure materials for an offering of Con Ed's securities, including the utility securitization offering completed on behalf of Con Ed's affiliate in 2004?

Response:

a., b., c. and d. As stated in Witness Schoenblum's direct testimony, and consistent with Witness Moore's testimony as a former CFO and CEO of another utility, the interests of Con Ed and ratepayers were aligned in connection with traditional utility debt (not Ratepayer-Backed Bonds) issued by Con Ed. Con Ed had the appropriate incentives to achieve low-cost debt issuances with ongoing regulatory review and oversight. Consequently, Witness Schoenblum does not recall the New York State Department of State Division of Consumer Protection, another intervenor or any other party ever proposing to (a) participate in the selection of underwriters for securities issued by Con Ed; (b) speak with investors in connection with any offering of securities by Con Ed; (c) be given a role in marketing any securities issued by Con Ed; or (d) be permitted to draft disclosure materials or make decisions with respect to the adequacy of such disclosure materials for any offering of securities by Con Ed.

In 2004, $46.3 million of Ratepayer-Backed Bonds were issued in a limited public offering to qualified institutional investors (under SEC Rule 144) for Rockland Electric Company (Rockland), an affiliate of Con Ed. Rockland's electric service area is located entirely in the State of New Jersey, not New York. The Ratepayer-Backed Bonds were issued under a New Jersey statute and were authorized by an order issued by the State of New Jersey Board of Public Utilities. The New York State Department of State Division of Consumer Protection had no jurisdiction over Rockland or this issue of Ratepayer-Backed Bonds. So, of course, the New York State Department of State Division of Consumer Protection did not (a) participate in the selection of underwriters for those Ratepayer-Backed Bonds issued for Rockland; (b) speak with investors in connection with those Ratepayer-Backed Bonds for Rockland; (c) be given a role in marketing those Ratepayer-Backed Bonds issued for Rockland; or (d) be permitted to draft disclosure materials or make decisions with respect to the adequacy of such disclosure materials for those Ratepayer-Backed Bonds issued for Rockland.

2-43. Witness Schoenblum suggests that the highest priority of the Companies in this transaction will be to get the issuance done quickly, with cost taking a lower priority. In connection with the issuance advice letter, each Company proposes to deliver a certificate that the structuring and pricing of the storm recovery bonds resulted in the lowest storm recovery charges consistent with market conditions at the time the storm recovery costs are priced and the terms set forth in the financing order. In light of this, please explain the basis for your suggestion.

Response:

Even though the Companies propose to deliver a certificate on the pricing of the bond issuance, Witness Schoenblum believes it is reasonable to assume that the pricing of the storm recovery bonds may be inefficient if certain "best practices" are

not adhered to, such as choosing underwriters who are committed to achieving the lowest cost and the lowest storm recovery charges for ratepayers. For a discussion of Witness Klein's experience as Chair of the PUCT as to why it is insufficient to obtain a lowest securitization charge certification solely from the utility receiving the bond proceeds, see the response to Companies' DR 2-20(a).

2-44. On page 51, Witness Schoenblum cites a financing order issued by the Wisconsin Public Service Commission, please provide the final offering documents and pricing for that transaction and how it compares with similar transactions. If none are available, please explain why.

Response:

None are available because the bonds have not been issued.

2-45. In reference to witness Schoenblum's testimony regarding avoidance of political risk on page 15 of his direct testimony, please identify each and every instance of which witness Schoenblum is aware where elected officials or appointees at a Commission have attempted to challenge the bond structure or recovery charges associated with Ratepayer-Backed Bonds on an after-the-fact basis and state whether in witness Schoenblum's opinion the law of the State of North Carolina would permit such a challenge of the bonds being considered in the pending dockets?

Response:

Witness Schoenblum respectfully objects to this this request on the ground that it calls for the provision of legal conclusions about the law of the State of North Carolina. Notwithstanding this objection, Witness Schoenblum is unaware of any instance where elected officials or Commission appointees have attempted to challenge the structure or the securitized charges pledged to pay debt service on Ratepayer-Backed Bonds. However, more than $6 billion of Ratepayer-Backed Bonds were issued in December 1997 for three California utilities – Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company. Shortly after those issuances, a voter initiative designated California Proposition 9 qualified for the November 1998 general election. If approved by the voters, California Proposition 9 might have prevented the continued billing and collection of the securitized charges which were pledged to repay those Ratepayer-Backed Bonds. California Proposition 9 was defeated in the November 3, 1998 general election.

2-46. With respect to witness Schoenblum's statement on page 20, ll. 20-23 that Public Staff and Commission direct involvement in all steps of the securitization process is supported by ample precedent, please provide a reference to each and every proceeding of

which witness Schoenblum is aware in which an entity comparable to the Public Staff has directly participated in all steps of the securitization process.

Response:

Witness Schoenblum respectfully objects to this request as vague as to what kind of entity is "comparable to the Public Staff" and suggesting that Witness Schoenblum conduct legal research. The composition and roles of the Commission and ratepayer advocate are different in different states. In Florida, the Commission staff offered testimony, though in North Carolina the Public Staff takes on that function. In North Carolina, the Public Staff is a statutory intervenor. N.C.G.S. § 62-15(d)(3) requires the Public Staff to "Intervene on behalf of the using and consuming public, in all Commission proceedings affecting the rates or service of any public utility". Without research, Witness Schoenblum is not aware of other states that have enacted legislation which authorize Ratepayer-Backed Bonds and also require a state agency to intervene on behalf of all classes of ratepayers in proceedings affecting electric rates. See Witness Maher's response to the Companies' DR 2-31.

2-47. With respect to witness Schoenblum's opinion on p. 32 of his testimony regarding the meaning of N.C. Gen. Stat. 62-172, please state whether witness Schoenblum is a licensed attorney authorized to practice before the NCUC and to provide "expert" legal opinions about the meaning of NC statutes.

Response:

Witness Schoenblum is not a licensed attorney. Witness Schoenblum's testimony is as a former investor-owned utility treasurer and finance executive with more than 30 years' experience as a utility finance professional, not as a lawyer.

N.C.G.S. § 62-172(b)(3)b. states: "A financing order issued by the Commission to a public utility shall include all of the following elements: . . . 12. Any other conditions not otherwise inconsistent with this section that the Commission determines are **appropriate**."

On pages 32 and 33 of his direct testimony, based on his experience as an investor-owned utility finance professional experienced in the capital markets for 30 years, Witness Schoenblum offers his views about conditions the Commission should consider to be "appropriate" to include in its financing orders in this proceeding from a financing and capital markets perspective. Witness Schoenblum did not intend to express any legal opinion about N.C.G.S. § 62-172(b)(3)b.

Public Staff Response to
Duke Energy Carolinas, LLC's & Duke Energy Progress, LLC's Data Request
Data Request Nos. 2-48 to 2-54

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

Date of Request: **December 28, 2020**
Date of Response: **January 4, 2021**

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Confidential Responses (if any) are provided pursuant to Confidentiality Agreement

The attached response was prepared by or under the supervision of Public Staff witness Paul Sutherland, Senior Advisor, Saber Partners, LLC, and provided to William E. H. Creech, Staff Attorney, Public Staff – North Carolina Utilities Commission.

Docket No. E-2, Sub 1262
Docket No. E-7, Sub 1243
Data Request No. 2-48 to 2-54

2-48. Witness Sutherland states "[t]he securitized storm recovery utility bonds themselves are simple and straightforward. As most commonly structured, they are carried as obligations of the consolidated entity for accounting and tax purposes, much like conventional corporate securities." Since securitization bonds "are carried as obligations of the consolidated entity for accounting and tax purposes," how are they viewed by rating agencies with respect to their ratings of the sponsoring utilities and their holding companies, including the potential impact on levels of funds from operations?

Response:

See the attached article by Moody's titled Utility Cost Recovery Through Securitization Is Credit Positive. The article states that "Utilities benefit because they receive an immediate source of cash from the securitization proceeds and are ensured recovery of large costs in a timely manner that may, otherwise be recovered over a lengthy period of time or denied recovery altogether." Regarding cash flow from operations, the article states "If the securitization is a significant component of total debt, then a utility's ratio of cash flow from operations pre-working capital to debt could be severely negatively affected." Given that this will be the first securitization by either of the Companies, Witness Sutherland does not believe the securitization will be large enough to "severely negatively affect" cash flow from operations.

Attachment
2-48_Moody's Securiti

2-49. Witness Sutherland states "[t]he biggest net present value (NPV) savings result from the fact that rating agencies generally treat utility securitization debt as off-balance sheet." Please provide supporting documentation that the three major rating agencies treat utility securitization debt as off-balance sheet.

Response:

See the attached article by Fitch titled Rating Action Commentary. Writing about a proposed $7.5 billion Ratepayer-Backed Bond transaction in California for Pacific Gas and Electric Company, the article says "Proceeds from the relatively low cost, **off-balance sheet** debt would be used to reduce debt and fund payments to wildfire victims more efficiently." (Emphasis added.)

In the article attached in Witness Sutherland's response to DR 2-48, Moody's writes

"Where the securitized debt is on balance sheet, our credit analysis also considers the significance of financial ratios that exclude securitization debt and related revenues to ensure the benefits of securitization are not ignored."

In the attached article by S&P titled Request for Comment: Ratios and Adjustments, S&P writes, under the heading Securitized debt adjustment, "For regulated utilities, we deconsolidate debt (and associated revenues and expenses) that the utility issues as part of a securitization of costs that have been segregated for specialized recovery by the government entity constitutionally authorized to mandate such recovery if the securitization structure contains a number of protective features:" going on to enumerate the standard features of utility securitizations such as an irrevocable, non-bypassable charge and periodic true-ups.

Witness Sutherland finds it odd and inconsistent with the premise of this data request 2-49 that the Companies now question the off-balance sheet treatment of utility securitization for rating agency purposes. The Companies' Witness Abernathy reflected off-balance sheet treatment in her calculation of savings by not including any cost of rebalancing equity and associated income taxes in the case where storm recovery bonds are employed. Alternatively, Witness Abernathy could have excluded the cost of equity and taxes from the case where storm recovery bonds are not employed. In that case, it would have been a pure debt-to-debt comparison. Since Witness Abernathy did neither, Witness Sutherland can only conclude that the Companies must be assuming off-balance sheet treatment of the storm recovery bonds for rating agency purposes.

Attachment 2-49_
Fitch Rating Action Co

Attachment 2-49_S&P
Ratios and Adjustmen

2-50. Witness Sutherland states "[i]n most cases the issuer has some control over both the interest rate and the structure. Also, when I refer to the issuer in this context, I am really talking about the entire Bond Team, defined as a team comprised of the sponsoring utility, the Utilities Commission, the Public Staff, their financial advisors, and others who are all, presumably, working on behalf of the ratepayers, since unlike conventional utility debt, with SRBs the ratepayer is directly responsible for repayment of the bonds."

a. Under federal securities laws, what entities are considered the "Issuer" of the storm recovery bonds?

b. Which, if any, of the members of the Public Staff's proposed Bond Team,

other than the sponsoring utility, have any securities law liability on a transaction as proposed by Witness Sutherland?

Response:

Witness Sutherland respectfully objects to this request on the ground that it calls for legal interpretations and conclusions. Witness Sutherland is not a lawyer. Notwithstanding that objection, Witness Sutherland observes that (a) the Joint Petition proposes that storm recovery bonds will be issued by special purpose entities (SPEs); (b) any securities law judgment against the SPEs would be a "financing cost" under N.C.G.S. § 62-172(a)(4)c.; and (c) the true-up mechanism appears designed to generate storm recovery charge revenues from all ratepayers within the Companies' service territories in amounts sufficient to allow the SPEs to pay any and all "financing costs."

2-51. Witness Sutherland states "[d]uring the period from 2001 through 2006, there were six utility securitizations completed in Texas with a total of 26 individual tranches with WALs from 1.9 to 13 years. Each of those transactions followed best practices as required by the PUCT. During that same period, there were 18 transactions outside of Texas which generally did not follow some or all of the best practices required in Texas. Exhibit 2 shows how all of those tranches were priced. The two regression lines demonstrate that, on average, the Texas tranches priced significantly better (i.e., 10 lower spreads to the swap benchmark and therefore lower interest rates) compared to the non-Texas tranches."

a. Please provide the issuance dates for each of the transactions reflected in Exhibit 2.

b. Please explain how transactions that price in the market in different months, quarters, or years can be considered comparable for such an illustration as show in Exhibit 2.

c. Does Witness Sutherland agree that the following illustrative example is possible? Note that in this example Transaction A priced with higher spread than Transaction B, yet Transaction A had a lower total interest rate than Transaction B.

Transaction	*Pricing Date*	*WAL (years)*	*Underlying Benchmark*	*Spread to Benchmark*	*Total Interest Rate*
A	*1/24/20X1*	*5.0*	*0.75%*	*0.25%*	*1.00%*
B	*6/15/20X2*	*5.0*	*0.90%*	*0.15%*	*1.05%*

d. Given the above example, why is it appropriate to compare multiple transactions priced at multiple points in time solely on the basis of the spread to the underlying benchmark rate as done in Exhibit 2?

e. What evidence can Witness Sutherland present that the alleged "best

practices" directly caused the specific pricing results for the cited transactions to the exclusion of other potential factors?

Response:

a. The information requested was provided in response to the Companies' first Data Request, DR 1-2.

b. Please see Sutherland Exhibit 4. While interest rates will vary over time, spreads from benchmark securities are much less variable under normal circumstances. Sutherland Exhibit 4 shows how securitization tranches with similar weighted average lives (WALs) of 9-10 years priced with similar spreads during the time in question. It was only during the last year and a half of the 6-year period that spreads decreased significantly for non-Texas deals, and it was Texas deals that led the way down.

c. Yes.

d. It is appropriate because, as Witness Sutherland explained in his direct testimony, issuers do not have any control over the underlying benchmark interest rate in the market at any particular time. But through well executed structuring, marketing, and pricing, the issuer does have the ability to obtain competitive credit spreads leading to a lowest cost result under market conditions at the time of pricing. This is the market standard for comparing the relative value of securities and the efficiency of pricing at any given point in time.

e. The evidence is shown in Sutherland Exhibit 2, Sutherland Exhibit 3, Sutherland Exhibit 4, Sutherland Exhibit 5, Sutherland Exhibit 7, and Sutherland Exhibit 10. While correlation does not necessarily mean causation, when the same result happens over and over again under various market conditions, one can reasonably conclude that it is highly likely there is cause and effect. As explained in the direct testimony of Witness Sutherland, the Saber Partners' methodology employed to evaluate pricing is very similar to that used by Citigroup, as shown in Sutherland Exhibit 3.

2-52. Witness Sutherland's analysis of the rate of return on the utility's capital contribution does not extend past 2014, what were the permitted returns transactions completed in 2015, 2016, 2018 and 2019.

Response:

Attached is a covenant study showing the data in question. The study includes the period from 1997 to present.

Attachment 2-52_RBB Covenant Study Chart

2-53. Witness Sutherland states that "[t]he second argument supporting a longer maturity with SRBs is simply that interest rates are within half a percent of the lowest they have been in the last century or more. Consequently, it is in both the ratepayers' and the utilities' interest to take full advantage of such low rates for as long as reasonably possible."

a. Is Witness Sutherland stating a position that he believes the current low interest rate environment will also exist in mid-2021 when the proposed transaction is priced?

b. If so, what is the basis of Witness Sutherland's position and how confident is he that rates will remain at the current level?

Response:

a. Yes.

b. See attached New York Times article dated 9/16/20 titled Fed Pledges Low Rates for Years, and Until Inflation Picks Up. Witness Sutherland is confident that rates will remain at historically low levels, although not necessarily "at the current level".
This level of confidence in the stability of interest rates through June 1, 2021 is even greater than what Witness Sutherland believed in 2015 when DEF and its advisor, Morgan Stanley, presented a $1.294 billion nine-month interest rate bond hedging proposal during their financing order application process, on the premise that interest rates might rise substantially above the cost of the hedge before the Ratepayer-Backed Bonds could be priced in 2016. Saber Partners recommended against hedging. (The Chairman of Saber Partners' Advisory Board since our founding is Alan Blinder, former vice chairman of the Federal Reserve Board.) The 10-year U.S. Treasury bond was at 2.25% when the proposal was made. At the time of pricing, the 10-year U.S. Treasury bond rate had dropped to 1.60%.

Attachment 2-53_Fed Pledges Low Rates fo

2-54. During the period when Witness Sutherland worked at Florida Power & Light ("FPL"):

a. Did the Florida Office of Public Counsel ("OPC") or any other intervenor have co-equal decision-making with FPL in planning and executing its financings?

b. Did FPL permit OPC or another intervenor to speak with investors of its securities in connection with an offering of those securities?

c. Was OPC or another intervenor given a role in marketing its securities?

d. Was OPC or another intervenor permitted to draft disclosure materials for an offering of FPL's securities?

Response:

Witness Sutherland respectfully objects to this request on the ground that it is irrelevant to the proposed transaction. During the period when Witness Sutherland worked at FPL, FPL did not issue any Ratepayer-Backed Bonds. In addition, FPL's traditional utility debt financings were not direct obligations of the ratepayer, as will be the case with storm recovery bonds proposed to be issued for the Companies in this proceeding. Unlike Ratepayer-Backed Bonds, traditional debt utility costs were subject to ongoing regulatory review and oversight. See also the testimony of Witnesses Fichera, Schoenblum, Moore and Klein about the distinction between the two types of bonds. Consequently, there was no reason to have OPC or another intervenor involved in the planning or execution of the financings on behalf of the ratepayer, and Witness Sutherland does not recall OPC seeking to intervene in connection with any of those FPL traditional utility debt financings.

Public Staff Response to
Duke Energy Carolinas, LLC's & Duke Energy Progress, LLC's Data Request
Data Request No. 3-1

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

Date of Request: **December 29, 2020**
Date of Response: **January 5, 2021**

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The attached response was prepared by MICHAEL C. MANESS, DIRECTOR – ACCOUNTING DIVISION, and MICHELLE M. BOSWELL, MANAGER – ACCOUNTING DIVISION ELECTRIC SECTION, Public Staff – North Carolina Utilities Commission, and provided to William E. H. Creech, Staff Attorney, Public Staff – North Carolina Utilities Commission.

Docket No. E-2, Sub 1262
Docket No. E-7, Sub 1243
Item No. 3-1
Page 1 of 2

Request:

3-1. Please provide a citation to the Companies' initial filing that supports the notion that "the Companies acknowledge that fees payable pursuant to their Servicing Agreements and Administration Agreements are expected to exceed the Companies' direct and incremental costs of providing those services" as stated on pages 13 and 14 of the Joint Testimony of Michael C. Maness and Michelle M. Boswell.

Response:

The sentence from which an excerpt is quoted in the question above, as set forth in the Joint Testimony of Michael C. Maness and Michelle M. Boswell, was included in its original form in error. The sentence as revised should read, in its entirety, "In addition, the fees payable to the Companies pursuant to their Servicing Agreements and Administration Agreements are likely to differ from the Companies' direct and incremental costs of providing those services." The Public Staff will be making an errata filing to reflect this revision.

Support for the sentence, as revised, is found in the following places in the Companies' initial filing. Each of these instances strongly implies that the fees received by the Companies may well differ from the actual costs incurred by the Companies to provide the servicing and administrative functions.

a. Joint Petition Exhibit B, Page 43 of 94, middle paragraph:

> However, the servicing fees collected by DEC, or any affiliate acting as the servicer under the Servicing Agreement, will be reflected in DEC's ongoing cost of service such that any amounts in excess of DEC's incremental costs of servicing the Storm Recovery Bonds shall be returned to DEC's retail customers in the Company's next rate case. The expenses incurred by DEC or such affiliate to perform obligations under the Servicing Agreement not otherwise recovered through the Storm Recovery Charges will likewise be included in DEC's cost of service.

b. Joint Petition Exhibit B, Page 45 of 94, final paragraph:

> The administration fees collected by DEC or any affiliate acting as the administrator under the Administration Agreement will be included in DEC's cost of service such that any amounts in excess of DEC's incremental costs of administering the SPE shall be returned to DEC's retail customers. The expenses incurred by DEC or such affiliate to perform obligations under the Administration Agreement not otherwise recovered through the Storm Recovery Charges will likewise be included in DEC's cost of service.

c. Joint Petition Exhibit C, Page 43 of 94, middle paragraph – The same language as quoted in [a] above, except with reference to DEP.

d. Joint Petition Exhibit C, Page 45 of 94, final paragraph – The same language as quoted in [b] above, except with reference to DEP.

Additionally, when an estimate of future expenses is used to determine a fee amount, common sense dictates that the future actual expense amount will very likely differ from the initial estimate used.