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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2018-319-E

In the Matter of:	)	
	)	**DUKE ENERGY CAROLINAS,**
Application of Duke Energy Carolinas, LLC	)	**LLC'S PROPOSED ORDER**
for Adjustments in Electric Rate Schedules	)	
and Tariffs	)	

I. INTRODUCTION AND PROCEDURAL HISTORY

This matter comes before the Public Service Commission of South Carolina (the "Commission" or "PSCSC") on the Application of Duke Energy Carolinas, LLC ("DE Carolinas" or the "Company") filed November 8, 2018 (the "Application") requesting authority to adjust and increase its electric rates, charges, and tariffs. The Application was filed pursuant to S.C. Code Ann. §§ 58-27-820 and 58-27-870 and 26 S.C. Code Ann. Regs. 103-303 and 103-823.

Along with its Application, on November 8, 2018, the Company filed the direct testimony of Steven D. Capps, Senior Vice President of Nuclear Operations for Duke Energy Corporation ("Duke Energy"); James H. Cowling, Director of Outdoor Lighting for Duke Energy Business Services, LLC ("DEBS")[1]; Nils J. Diaz, Ph.D., Managing Director of The ND2 Group, LLC; David L. Doss, Jr., Director of Electric Utilities and Infrastructure Accounting for DEBS; Christopher M.

[1] DEBS provides various administrative and other services to DE Carolinas and other affiliated companies of Duke Energy.

Fallon, Vice President of Duke Energy Renewables and Commercial Portfolio; Kodwo Ghartey-Tagoe, State President – South Carolina for DE Carolinas and Duke Energy Progress, LLC ("DE Progress"); Janice Hager, President of Janice Hager Consulting, LLC; Robert B. Hevert, Partner at ScottMadden, Inc.; Retha Hunsicker, Vice President, Customer Connect-Solutions for DEBS; Jon F. Kerin, Vice President, Coal Combustion Products ("CCP") Operations, Maintenance and Governance for DEBS; Kimberly D. McGee, Rates and Regulatory Strategy Manager for DE Carolinas; Joseph A. Miller, Jr., Vice President of Central Services for DEBS; Jay W. Oliver, General Manager, Grid Solutions Engineering and Technology for DEBS; John Panizza, Director, Tax Operations for DEBS; Michael J. Pirro, Director, Southeast Pricing & Regulatory Solutions for DE Carolinas, DE Progress, and Duke Energy Florida, LLC ("DE Florida"); Donald Schneider, Jr., General Manager, Advanced Metering Infrastructure ("AMI") Program Management for DEBS; Kim H. Smith, Director of Rates and Regulatory for DE Carolinas; John L. Sullivan, III, Director, Corporate Finance and Assistant Treasurer for DEBS and Assistant Treasurer of DE Carolinas; and Dr. Julius A. Wright, Managing Partner, J.A. Wright & Associates, LLC. Exhibits were included with the direct testimony of witnesses Cowling, Diaz, Doss, Fallon, Hevert, Hunsicker, Kerin, McGee, Oliver, Pirro, Smith, and Wright. The Company filed supplemental direct testimony and exhibits for Company witness Smith on January 18, 2019.

The Company's general electric rates and charges were last approved by the Commission in Docket No. 2013-59-E, Order No. 2013-661, dated September 18, 2013.

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In its Application, the Company requested a revenue increase of approximately $168 million[2] and a return on equity ("ROE") of 10.50 percent.

On November 26, 2018, the Commission Clerk's Office issued the Notice of Filing and Hearing and instructed the Company to publish it in newspapers of general circulation in the areas affected by the Company's Application by December 6, 2018, to notify each affected customer of the hearing by December 6, 2018, and to provide a certification to the Commission by December 27, 2018. On November 27, 2018, the Company filed a letter requesting additional time to complete the notification to customers. On November 28, 2018, the Commission's Docketing Department issued a Revised Notice of Filing and Hearing and instructed the Company to publish it in newspapers of general circulation in the areas affected by the Company's Application by December 6, 2018, and to provide proof of publication by December 27, 2018. The Revised Notice of Filing and Hearing indicated the revenue being requested by the Company, the overall impact to residential customers, and other important details and references necessary to advise the public of the breadth and nature of the Company's request. The Revised Notice of Filing and Hearing also advised those desiring to participate in the proceeding, scheduled to begin March 21, 2019, of the manner and time in which to file appropriate pleadings. The Company also had to notify each affected customer of the hearing by January 11, 2019, and provide a certification to the Commission by February 1, 2019. On December 20, 2018, the Company filed affidavits with the Commission demonstrating that the Revised Notice was duly published in accordance with the

[2] The net annual revenue increase includes the impact of the return of deferred income taxes through the excess deferred income tax rider ("EDIT Rider") of approximately $63 million, as discussed below.

Docketing Department's instructions. On January 31, 2019, the Company filed an affidavit certifying that the Revised Notice of Filing and Hearing had been furnished to all applicable customers of DE Carolinas.

Pursuant to Commission Order No. 2019-119, the Docketing Department scheduled public hearings[3] in the Counties of Anderson, Greenville, and Spartanburg. On February 11, 2019, the Commission's Docketing Department instructed the Company to notify each affected customer of the Public Night Hearings by February 22, 2019. DE Carolinas requested that, in lieu of mailing customers Notice of the Public Night Hearings, it be permitted to provide notice of the hearings using the Company's automated calling system to place calls to customers between February 19 and 22, 2019, informing them of the dates, times, and locations of all three hearings. On February 13, 2019, pursuant to Commission Order No. 2019-15-H, the Standing Hearing Officer granted the Company's request for approval of alternative notice of public night hearings.

Walmart Inc. ("Walmart"), represented by Stephanie U. Eaton, Esquire; Carrie Harris Grundmann, Esquire; and Derrick Price Williamson, Esquire, filed a petition to intervene on November 27, 2018. Vote Solar, represented by Bess J. Durant, Esquire and Thadeus B. Culley, Esquire, filed a petition to intervene on December 27, 2018. CMC Recycling, represented by Alexander G. Shissias, Esquire, filed a petition to intervene on December 28, 2018. The South Carolina Solar Business Alliance ("SCSBA") represented by Richard L. Whitt, Esquire, filed a petition to intervene on January 2, 2019. On January 10, 2019, the petition to intervene of Hasala

[3] The purpose of the night hearings was to provide a forum, at a convenient time and location, for customers of DE Carolinas to present their comments regarding the Company's service and proposed rates.

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Dharmawardena was filed. The South Carolina Energy Users Committee ("SCEUC") represented by Scott Elliott, Esquire, filed a petition to intervene on January 10, 2019. Cypress Creek Renewables, LLC ("Cypress Creek"), represented by Richard L. Whitt, Esquire, filed a petition to intervene on January 18, 2019. Sierra Club, represented by Robert Guild, Esquire and Bridget Lee, Esquire, filed a petition to intervene on January 28, 2019. The South Carolina State Conference of the National Association for the Advancement of Colored People, South Carolina Coastal Conservation League, and Upstate Forever (collectively, "SC NAACP, et al."), represented by Stinson Woodward Ferguson, Esquire; David L. Neal, Esquire; and Gudrun E. Thompson, Esquire, filed a petition to intervene on February 1, 2019. The South Carolina Department of Consumer Affairs ("Consumer Affairs"), exercising its right to intervene to advocate for the interest of consumers pursuant to S.C. Code Ann. § 37-6-604(C), was represented by Becky Dover, Esquire and Carri Grube-Lybarker, Esquire. The Office of Regulatory Staff ("ORS"), automatically a party pursuant to S.C. Code Ann. § 58-4-10(B), was represented by Jeffrey M. Nelson, Esquire; C. Lessie Hammonds, Esquire; and Jenny R. Pittman, Esquire. DE Carolinas was represented by Heather Shirley Smith, Esquire; John T. Burnett, Esquire; Camal O. Robinson, Esquire; Frank R. Ellerbe, III, Esquire; Brandon F. Marzo, Esquire; Molly McIntosh Jagannathan, Esquire; and Len S. Anthony, Esquire. Collectively, DE Carolinas, Walmart, Vote Solar, CMC Recycling, SCSBA, Hasala Dharmawardena, SCEUC, Cypress Creek, Sierra Club, SC NAACP, et al, Consumer Affairs, and ORS are referred to as the "Parties" or individually as a "Party."

On February 26, 2019, ORS filed the direct testimony of Willie J. Morgan, P.E., Deputy Director of the Utility Rates Department; David C. Parcell, Principal and Senior Economist of

Technical Associates, Inc.; Zachary J. Payne, Senior Auditor in the Audit Department; Anthony Sandonato, Regulatory Analyst in the Utility Rates and Services Division; Matthew P. Schellinger II, Regulatory Analyst in the Utility Rates and Services Division; Michael L. Seaman-Huynh, Senior Regulatory Manager in the Utility Rates and Services Division; Gaby Smith, Audit Manager in the Audit Department; and Dan J. Wittliff, Managing Director of Environmental Services for GDS Associates, Inc. Exhibits were included with the direct testimony of witnesses Morgan, Parcell, Seaman-Huynh, Smith, and Wittliff. On February 26, 2019, Sierra Club filed the direct testimony and exhibits of Ezra D. Hausman, Ph.D., an independent consultant doing business as Ezra Hausman Consulting. Walmart filed the direct testimony and exhibits of Gregory W. Tillman, its Senior Manager, Energy and Regulatory Analysis, on February 26, 2019. SCEUC filed the direct testimony and exhibits of Kevin W. O'Donnell, President of Nova Energy Consultants, Inc., on February 26, 2019. Vote Solar filed the direct testimony and exhibits of Justin R. Barnes, Director of Research with EQ Research, LLC, on February 26, 2019. On February 26, 2019, SC NAACP, et al. filed the direct testimony and exhibits of John Howat, Senior Policy Analyst at the National Consumer Law Center, and Jonathan Wallach, Vice President of Resource Insight, Inc. On February 26, 2019, SCSBA filed the direct testimony and exhibits of Hamilton Davis, Director of Regulatory Affairs for Southern Current, LLC, and Christopher Villarreal, President of Plugged In Strategies. Hasala Dharmawardena filed direct testimony on February 26, 2019. On March 6, 2019, ORS filed the supplemental direct testimony and exhibits of witnesses Seaman-Huynh and Smith.

In Order No. 2019-154, issued on February 27, 2019, the Commission granted the Company's request for leave to file the direct testimony of Steve Immel, Vice President of

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Carolinas Coal Generation for Duke Energy, adopting the pre-filed direct testimony of Joseph A. Miller, Jr.

On March 12, 2019, the Company filed the rebuttal testimony of witnesses Capps, Doss, Ghartey-Tagoe, Hager, Hevert, Hunsicker, Immel, Kerin, Renee Metzler, Oliver, Pirro, Lesley Quick, Smith, Sullivan, and Wright. Exhibits were included with the rebuttal testimony of witnesses Doss, Hevert, Pirro, Smith, and Sullivan.

On March 18, 2019, the Sierra Club filed the surrebuttal testimony of witness Hausman. On March 19, 2019, SC NAACP, et al. filed the surrebuttal testimony of witnesses Howat and Wallach; Vote Solar filed the surrebuttal testimony of witness Barnes; intervenor Mr. Dharmawardena filed surrebuttal testimony; and the ORS filed the surrebuttal testimony of witnesses Steven W. Hamm, Morgan, Parcell, Payne, John C. Ruoff, Seaman-Huynh, Smith, and Wittliff. Exhibits were included with the surrebuttal testimony of Vote Solar witness Barnes; ORS witnesses Smith, Seaman-Huynh, Parcell, Wittliff, Ruoff, and Hamm; and SC NAACP, et. al. witness Howat.

On March 8, 2019, the ORS moved to establish a new and separate hearing docket to review and consider the Company's proposed Grid Improvement Plan ("GIP"). On March 12, 2019, ORS and DE Carolinas filed a Stipulation agreeing that the GIP shall be considered in a separate docket independent from the Application. The Company agreed to withdraw from Commission consideration the GIP and the associated cost recovery proposal for costs incurred related to plant placed in service on or after January 1, 2019. Pursuant to the Stipulation, all testimony and evidence relating to the GIP may be moved to the new docket, and all Parties who

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have expressed any position on the GIP shall automatically be granted intervenor status in the new docket. ORS and the Company further agreed that DE Carolinas may defer into a regulatory asset account all GIP-related costs until the underlying costs and proposed recovery are considered in a general rate case proceeding. On March 13, 2019, the Standing Hearing Officer approved the Stipulation pursuant to Order No. 2019-26H.

Public hearings were held on March 12, 2019 in Spartanburg; March 13, 2019 in Anderson; and March 14, 2019 in Greenville. Hundreds of customers attended these hearings and spoke to the Commission about their concerns regarding the Company's proposal.

On March 18, 2019, the Standing Hearing Officer excused from the hearing Company witnesses Cowling, McGee, and Panizza; SCSBA witnesses Davis and Villareal; Walmart witness Tillman; and ORS witnesses Schellinger and Sandonato. Witnesses Davis and Villareal will testify in a subsequent hearing addressing the GIP, and witnesses Tillman, Cowling, McGee, Panizza, Schellinger, and Sandonato's pre-filed verified testimony was entered into the record without the witnesses being required to appear in person at the hearing. On March 20, 2019, the Standing Hearing Officer excused from the hearing Company witness Oliver and Sierra Club witness Hausman. On March 25, 2019, the Commission excused from the hearing SC NAACP, et al. witnesses Howat and Wallach.

The Commission conducted an evidentiary hearing on this matter from March 21, 2019 through March 27, 2019 in the hearing room of the Commission with the Honorable Comer H. Randall presiding.

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The following witnesses appeared, gave summaries of their testimonies, and answered questions from counsel and the Commission: DE Carolinas witnesses Ghartey-Tagoe, Smith, Fallon, Diaz, Capps, Immel, Doss, Hunsicker, Quick, Schneider, Metzler, Kerin, Wright, Pirro, Hager, Hevert, and Sullivan; ORS witnesses Parcell, Wittliff, Smith, Payne, Hamm, Morgan, Seaman-Huynh, and Ruoff; Vote Solar witness Barnes; and SCEUC witness O'Donnell.

On March 21, 2019, DE Carolinas witnesses Ghartey-Tagoe and Smith testified as the Company's first panel of witnesses. Witness Ghartey-Tagoe provided an overview of the reasons for the Company's request for an increase in electric rates and charges. Company witness Smith explained the Company's pro-forma accounting adjustments and revenue requirements for the test period. Company witnesses Fallon and Diaz testified as the Company's second panel regarding the abandoned Lee Nuclear Station project. Witness Fallon provided background on the Lee Nuclear Station Units 1 and 2 ("Lee Nuclear Project") development activities and addressed the reasonableness and prudence of the associated costs incurred to obtain the Lee Nuclear Project Combined Operating License ("COL" or "Lee COL"). Witness Diaz testified that the Company's strategy and efforts were reasonable and prudent in securing the COL, as was the Company's decision to extend the units' target operation dates.

The Commission reconvened on March 22, 2019 with testimony from Intervenor Dharmawardena. Mr. Dharmawardena testified regarding the appropriateness of the Company's proposed rate design and cost allocation, as well as the costs being requested for recovery in this proceeding. The Company then presented its third panel of witnesses, Capps and Immel. Witness Capps discussed the Company's nuclear generation fleet, capital and operating and maintenance

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("O&M") expense, and operational performance during the test period ending December 31, 2017, as well as the Company's request to begin collecting a reserve for nuclear End-of-Life ("EOL") costs. Witness Immel described the Company's new generation assets and other capital additions since the Company's last general rate case in 2013 and operational performance of DE Carolinas' fossil, hydroelectric, and solar portfolio during the test period ending December 31, 2017. Next, DE Carolinas presented its fourth panel of witnesses, Hunsicker, Quick, and Schneider. Witness Hunsicker testified regarding the Company's Customer Connect program currently under implementation to replace its current customer information system ("CIS"). Witness Quick's testimony responded to ORS witness Smith's recommendation to not include the Company's growth projections in the Company's proposed adjustment for credit, debit, and Automated Clearing House ("ACH") payment (collectively, "credit card") convenience fees; and SC NAACP, et al. witness Howat's request that the Company publicly file with the Commission monthly billing, payment, arrearage and disconnection data regarding general residential and low-income customer accounts. Witness Schneider testified regarding the Company's AMI deployment and the proposed commercialization of the Company's Prepaid Advantage program. Next, Company witness Doss addressed the financial position and results of DE Carolinas' operations for the test period, the Company's request for approval of revised depreciation rates, the status of the nuclear decommissioning trust fund, and the propriety of the Company's Asset Retirement Obligation ("ARO") accounting for coal ash closure costs.

The Commission reconvened on March 25, 2019 with testimony from DE Carolinas witness Metzler. Witness Metzler testified regarding the Company's employee incentive compensation

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program and why the Company believes it is appropriate to recover those costs from customers, as well as the appropriateness of certain expenses being included in rates. ORS witness Parcell testified regarding the appropriate ROE based on his analyses, the Company's capital structure, and his recommended ROE for the Company. DE Carolinas presented its fifth panel of witnesses, Wright and Kerin. Witness Wright testified that the Company's practices around coal ash management were reasonable and prudent. Company witness Kerin testified regarding the Company's coal ash expenditures. Next, ORS witness Wittliff testified regarding the Company's coal ash expense request and his recommended disallowances for certain coal ash expenses.

The Commission reconvened on March 26, 2019 with the testimony of Vote Solar witness Barnes. Witness Barnes testified in response to the Company's request to increase its Basic Facilities Charge ("BFC"). Next, SCEUC witness O'Donnell testified that the Commission should disallow a significant portion of the Company's request to recover its coal ash expense. DE Carolinas presented the testimony of witness Pirro regarding rate design and the Company's request to increase the BFC. ORS presented its first panel of witnesses, which consisted of witnesses Smith, Payne, and Hamm. ORS witness Smith explained the findings and recommendations as reflected in the ORS Audit Exhibits resulting from ORS' examination of DE Carolinas' Application and supporting books and records. Witness Payne offered recommendations for the treatment of the Company's requests for recovery of accounting deferrals. Witness Hamm addressed regulatory policy issues related to certain legal expenses sought by the Company.

The hearing reconvened on March 27, 2019. The Company presented its sixth panel of witnesses, Hevert and Sullivan. Witness Sullivan addressed the Company's financial objectives,

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capital structure, cost of capital, and cost of debt. Company witness Hevert presented his independent analysis of a fair ROE which would allow DE Carolinas to attract capital on reasonable terms and maintain financial strength. Next, Company witness Hager testified regarding the Company's cost of service study and change in methodology to use the Minimum System Method. ORS presented its second panel of witnesses consisting of witnesses Morgan, Seaman-Huynh, and Ruoff. Witness Morgan testified regarding the Company's request to recover costs for the Lee Nuclear Project COL, nuclear EOL reserve, the appropriate amortization period for certain Company deferral requests, and storm cost normalization. Witness Seaman-Huynh addressed the Company's cost of service study, depreciation study, rate design, revenue verification, and revenue requirement distribution. Witness Ruoff addressed the impact to customers if the Commission adopted the Company's positions outlined in its rebuttal testimony and testified that the Company's request for recovery was in excess of reasonable levels necessary to support safe, reliable, and high-quality utility service.

As requested by the Commission, ORS entered one late-filed hearing exhibit provided on March 27, 2019 as composite Hearing Exhibit #49 consisting of the Company's response to ORS Audit Request #55-5 addressing coal ash litigation expenses. DE Carolinas filed late-filed Hearing Exhibit #56 which was marked and received in evidence upon receipt on April 2, 2019 and provides additional detail on the Company's coal ash litigation expenses as requested by the Commission. On April 5, 2019, the ORS objected to the Commission's consideration of Hearing Exhibit #56. The Parties filed proposed orders and legal briefs on April 18, 2019.

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II. GUIDING LEGAL PRINCIPLES

It bears noting the legal standards applicable to rate applications in South Carolina. The overarching legal standard that must be met by all electric utility rates approved by this Commission is found in S.C. Code Ann. § 58-27-810. That statute provides: "Every rate demanded or received by any electrical utility . . . shall be just and reasonable." This "just and reasonable" standard incorporates the rule that unjust or insufficient rates constitute an unconstitutional taking of private property for public use without just compensation in violation of the Takings Clauses of the United States and South Carolina Constitutions. U.S. Const. amends. V, XIV; S.C. Const. art. I, § 13(A); *see also Duquesne Light Co. v. Barasch*, 488 U.S. 299, 308 (1989) ("If the rate does not afford sufficient compensation, the State has taken the use of utility property without paying just compensation and so violated the Fifth and Fourteenth Amendments."). As related to these matters, the South Carolina Supreme Court has reasoned as follows: "the fixing of 'just and reasonable' rates involves the balancing of the investor and the consumer interests. . . . [T]he investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. *Southern Bell Tel. & Tel. Co. v. Pub. Serv. Comm'n*, 270 S.C. 590, 596-97 (1978) ("*Southern Bell*") (quoting *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602-03 (1944) ("*Hope*").

These legal standards have been consistently employed by the Commission and the South Carolina courts and reflect the fact that utility customers have a direct interest, not only in low rates today, but also in the financial soundness of the utilities that serve them going forward. This is especially true for electric utility customers because of the universal and immediate importance of the electric utility service to the public and the capital investment that a utility must be able to make

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month-by-month to provide the quality of service that customers expect and depend on. As the U.S. Supreme Court stated in *Hope*:

> From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.

320 U.S. at 603 (citations omitted). This principle is often supplemented with language from *Bluefield*, where the U.S. Supreme Court held that:

> The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

Bluefield Waterworks & Imp. Co. v. Pub. Serv. Comm'n of W. Va., 262 U.S. 679, 692-93 (1923) ("*Bluefield*") (citations omitted).[4] Indeed, long-standing precedent entitles utilities to rates that are sufficient "to yield a reasonable return on the value of the property used by a utility company to furnish its service to the public." *See Potomac Elec. Power Co. v. Pub. Serv. Comm'n*, 380 A.2d 126, 131 (1977) (citing *Fed. Power Comm'n v. Natural Gas Pipeline Co.*, 315 U.S. 575, 585-86 (1942); *McCardle v. Indianapolis Water Co.*, 272 U.S. 400, 408 (1926); *Bluefield*, 262 U.S. at 690)). Further, a utility is entitled to an opportunity to earn a reasonable return on "the value of that which it employs for the public convenience." *Bluefield*, 262 U.S. at 690 (quoting *Smyth v. Ames*, 169 U.S.

[4] Together, the *Hope* and *Bluefield* cases provide "the basic principles of utility rate regulation" in South Carolina. *Southern Bell*, 270 S.C. at 595, 244 S.E.2d at 281; *Patton v. S.C. Pub. Serv. Comm'n*, 280 S.C. 288, 291, 312 S.E.2d 257, 259 (1984).

467, 547 (1898)). Rates that are not sufficient to yield a reasonable return on the value of that which is employed for the public convenience "are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment." *Id.*

This Commission must exercise its dual responsibility of permitting utilities an opportunity to earn a reasonable return on the property it has devoted to serving the public, on the one hand, and protecting customers from rates that are so excessive as to be unjust or unreasonable, on the other, by "(a) Not depriving investors of the opportunity to earn reasonable returns on the funds devoted to such use as that would constitute a taking of private property without just compensation[, and] (b) Not permitting rates which are excessive." *Southern Bell*, 270 S.C. at 605. Ultimately, this balancing act takes place within the context of a utility setting forth proposed rates—pursuant to Title 58, Chapter 27, Article 7 of the S.C. Code of Laws—for the exclusive purpose of the utility receiving revenue sufficient to yield a reasonable return.

Practically, although the burden of proof in showing the reasonableness of a utility's costs that underlie its request to adjust rates ultimately rests with the utility, the S.C. Supreme Court has concluded that the utility is entitled to a presumption that its expenses are reasonable and were incurred in good faith. *Hamm v. S.C. Pub. Serv. Comm'n*, 309 S.C. 282, 422 S.E.2d 110 (1992) (internal citations omitted). Other parties are therefore required to produce evidence that overcomes both this presumption and any evidence the utility has proffered that further substantiates its position. *See Utils. Servs. of S.C., Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 110, 708 S.E.2d 755, 762–63 (2011) ("Utility is correct that it was entitled to a presumption that its expenditures were

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reasonable and incurred in good faith . . . . [I]f an investigation initiated by ORS or by the PSC yields evidence that overcomes the presumption of reasonableness, a utility must further substantiate its claimed expenditures."). Ultimately, therefore, in the absence of sufficient countervailing evidence, the Commission must conclude that the utility's expenses are reasonable and were incurred in good faith. Finally, this Commission "has the power to independently determine whether an applicant has met its burden of proof," and the Commission is not bound by ORS' determination. *Util. Serv. of S.C., Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 106 (2011).

Another long-standing regulatory standard applied by this Commission in setting rates is the application of a test year. As routinely recited by this Commission: "The test year is established to provide a basis for making *the most accurate forecast of the utility's rate base, revenues, and expenses in the near future when the prescribed rates are in effect.* The historical test year may be used as long as adjustments are made for any known and measurable out-of-period changes in expenses, revenues, and investments." *See* Order No. 2018-445, Docket No. 2016-384-S (2018) (citing *Porter v. S.C. Pub. Serv. Comm'n*, 328 S.C. 222, 493 S.E.2d 92 (1997)) (emphasis added); Order No. 2018-369, Docket No. 2017-28-S (2018); Order No. 2017-80, Docket No. 2016-29-WS (2017). The object of using test year figures is to reflect typical conditions. Where an unusual situation indicates that the test year figures are atypical, the Commission should adjust the test year data. *Parker v. S.C. Pub. Serv. Comm'n*, 280 S.C. 310, 312, 313 S.E.2d 290, 292 (1984). Indeed, the Commission must make adjustments for known and measurable changes in expenses, revenues, and investments so that the resulting rates will accurately and truly reflect the actual rate base, net operating income, and cost of capital. *Southern Bell*, 270 S.C. at 602–03, 244 S.E.2d at 284–85.

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Such adjustments are within the discretion of the Commission and, although they must be known and measurable within a degree of reasonable certainty, absolute precision is not required. *Hamm*, 309 S.C. at 291, 422 S.E.2d at 115 (citing *Michaelson v. New England Tel. & Tel. Co.*, 121 R.I. 722, 404 A.2d 799 (1979)); *Porter*, 328 S.C. at 230. Therefore, the test of whether known and measurable should apply is not whether a forecast or estimate is used, but if that forecast or estimate is shown to have a reasonable certainty of being accurate. The words "forecast" or "estimate" are not enough to render a cost "not" known and measurable—a more specific, factual inquiry should be made to see if the particular cost or revenue item in question is reasonably certain.

The purpose of this regulatory scheme of using a test year and making adjustments based on atypical conditions is to permit sufficient and accurate cost recovery as the expenses are incurred by the utility in real-time. In other words, the purpose of this ratemaking exercise of using a test year and making appropriate adjustments is to match—as closely as possible—the utility's revenue to the costs it will incur after the rates are implemented. *See Southern Bell*, 270 S.C. at 602, 244 S.E.2d at 284 ("[W]e believe that the Commission should make any adjustments for known and measurable changes in expenses, revenues and investments occurring after the test year, in order that the resulting rates will reflect the actual rate base, net operating income, and cost of capital."). In that regulatory context, there is no need to consider the time value of money or the carrying costs of debt because the utility's revenue matches its expenses as they are incurred.

The Commission's Findings of Facts and Legal Conclusions reflect these standards.

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III. AREAS OF DISPUTE

The Company's case is its first contested rate case in many years. While many areas are not in dispute, other areas are contested. Specifically, there are nine accounting and pro forma adjustments proposed by the Company that are not contested and ten additional adjustments recommended by the ORS that the Company has agreed to accept as discussed further. Other accounting adjustments remain contested and addressed herein. In addition, no party in this proceeding opposed the Company's request to revise its depreciation rates; the Company's proposed base fuel and fuel-related factors; the prudency of the Company's investments in nuclear, fossil, hydro, solar, or its transmission and distribution system; the Company's proposed modifications to its lighting tariffs, or the manner in which the Federal Tax Cuts and Jobs Act of 2017 ("Tax Act") should be addressed in this case. The Company's request to commercialize its Prepaid Advantage Pilot program, remove the customer cap and make it available to residential customers across its entire service territory is also uncontested.

The Company initially requested to increase the amount of the BFC to $28 a month but later agreed with the ORS to increase the BFC to $11.96 for residential non-TOU, $13.09 for residential TOU, and $11.70 for SGS customers, and to put the remaining revenue requirement ultimately determined by the Commission in the variable component of the Company's base rates. The parties also agreed to address the Company's proposed GIP in a separate docket. The Company suggested updating the cost of long-term debt in this case and the ORS agreed with the Company's proposal. Initially, the Company proposed to increase its storm cost recovery using a ten-year average but later accepted the ORS suggestion to remove the highest and lowest cost years and use an eight-

year average. The Company's application of a historic inflation adjustment to the storm cost calculation remains contested. No party contested the Company's proposal to eliminate credit card convenience fees, but the ORS opposed the Company's adjustment to recover the forecasted uptick in customer usage of credit cards once the program is deployed. The Company's requests to recover deferred costs related to its AMI and Customer Connect deployments are also uncontested except with respect to the ORS' recommendation concerning recovery of a return on the deferred costs.

The other contested areas in this case include: (1) the appropriate ROE that the Company should be allowed in this case; (2) the appropriate recovery of the Company's deferred costs including the appropriate amortization period and whether the Company should be permitted to earn a return on its deferred costs both during the deferral period and the amortization period; (3) whether the Company should be permitted to begin collecting EOL nuclear reserve for materials & supplies and the unused portion of nuclear fuel remaining when the Company's nuclear units are retired; (4) whether it is appropriate to allow a return on the unamortized balance related to the Company's Lee Nuclear Project during the amortization period; (5) the Company's use of the Minimum System Method to allocate distribution costs as customer-related costs in the Company's cost of service studies; (6) whether the Company's proposed adjustment to include Customer Connect projected two-year average O&M expense is sufficiently known and measurable to appropriately include in rates; (7) whether certain costs the ORS has flagged as "non-allowable" (such as expenses related to employee recognition awards, state and local chambers of commerce and other community organization membership dues, the Lineman's Rodeo, costs imposed by other jurisdictions such as motor vehicle registration expenses, and costs that were billed outside the test

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period but paid during the test period) should be included in rates; (8) whether a portion of the Company's incentive compensation relating to shareholder and earnings metrics should be disallowed; (9) whether the Company should be required to submit monthly billing, collection and disconnect data on residential and low-income customers; (10) whether the Company should be required to perform comprehensive economic analyses before making investments needed to continue to operate its coal plants; (11) treatment of the Company's coal ash expenses including whether costs imposed as a result of the Coal Ash Management Act ("CAMA") should be collected from South Carolina customers, whether the Company's ARO accounting for coal ash closure costs is appropriate, and whether ORS' criticism of the Company's response to data requests from the ORS is justified and sufficient enough to overcome the presumption of reasonableness related to the requested recovery of certain legal expenses related to coal ash litigation, including litigation to pursue insurance monies to help offset coal ash compliance costs for customers; (12) whether the Company has submitted sufficient documentation to support recovery of certain rate case expenses; and (13) whether the Company has provided appropriate notice of the proposed rate increase to meet the due process requirements of S.C. Const., Art. 1, § 22.

IV. FINDINGS OF FACT

Based upon the Application, the testimony, and exhibits received into evidence at the hearing and the entire record of these proceedings, the Commission makes the following findings of fact:

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A. Jurisdiction

1. DE Carolinas is a limited liability company duly organized and existing under the laws of the State of North Carolina. It is a public utility under the laws of the State of South Carolina and is subject to the jurisdiction of this Commission pursuant to S.C. Code Ann. § 58-3-140(A). The Company is engaged in the business of generating, transmitting, distributing, and selling electric power to the public in western South Carolina and a broad area of central and western North Carolina. DE Carolinas is a wholly-owned subsidiary of Duke Energy, both having their offices and principal places of business in Charlotte, North Carolina.

2. The Commission has jurisdiction over the rates and charges, rate schedules, classifications, and practices of public utilities operating in South Carolina, including DE Carolinas, as generally provided in S.C. Code Ann. §§ 58-27-10, *et seq*.

3. DE Carolinas is lawfully before the Commission based upon its Application for a general increase in its retail rates pursuant to S.C. Code Ann. §§ 58-27-820, 5827-870, and 26 S.C. Code Ann. Regs. 103-303 and 103-823.

4. The appropriate test period for use in this proceeding is the 12 months ended December 31, 2017, adjusted for certain known changes in revenue, expenses, and rate base.

B. DE Carolinas' Request For a Rate Increase

5. DE Carolinas, by its Application and initial direct testimony and exhibits, originally sought a base increase of $230,807,000,[5] in its annual electric sales revenues from its South

[5] The additional base revenue requested in the Application was $230,807,000. (Hearing Ex. 10 (Smith Ex. 1, p. 2).) As described below, in the Application, the Company has also proposed an EDIT Rider, which was originally

Carolina retail electric operations, including a rate of return on common equity of 10.5% and a capital structure consisting of 47% debt and 53% equity.

6. DE Carolinas submitted evidence in this case with respect to revenue, expenses, and rate base using a test period consisting of the 12 months ended December 31, 2017, adjusted for certain known changes in revenue, expenses, and rate base.

7. DE Carolinas, by its rebuttal testimony and exhibits, revised its requested base revenue requirement to $225,214,000[6] to incorporate the Company's adjustments filed in its supplemental filing and the Company's rebuttal position.

8. The increased capital costs reflected in the Company's request for a rate increase were reasonably and prudently incurred. The Commission finds and concludes that the capital investments by the Company provide significant benefits to all of its customers. These capital investments are necessary for DE Carolinas to meet its obligation to provide safe, adequate, and reliable electric service. There is no credible or substantial evidence disputing the prudency, reasonableness, or necessity of these costs.

C. Return on Equity, Cost of Debt, and Capital Structure

9. Based on the record in this proceeding, the Commission finds 10.5% to be a reasonable ROE for DE Carolinas for purposes of this general rate case.

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calculated to decrease year 1 revenues by ($62,612,000), for a net increase of $168,195,000. (*See* Hearing Ex. 10 (Updated Smith Ex. 2, p. 2).)

[6] As shown in Smith Rebuttal Exhibit 1, the additional base revenue requested by the Company in this case has been adjusted to $225,214,000. (Hearing Ex.10, (Smith Rebuttal Ex. 1, p. 2).) The Company also adjusted its proposed EDIT Rider decrement to year 1 revenues to ($61,888,000), for a net increase of $163,326,000. (*See* Hearing Ex. 10 (Smith Rebuttal Ex. 2, p. 2).)

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10. Based on the record in this proceeding, the Commission finds 53% equity and 47% debt to be a reasonable capital structure for DE Carolinas for purposes of this general rate case.

11. Based on the record in this proceeding, the Commission finds 4.53% to be a reasonable cost of debt for purposes of this general rate case.

12. The Commission finds that DE Carolinas, through sound management, shall have the opportunity to earn an overall rate of return of 7.69%. The overall rate of return is derived from applying an embedded cost of debt of 4.53% and an ROE of 10.5% to a capital structure consisting of 47% long-term debt and 53% equity. The Commission finds and concludes that evidence in this case supports DE Carolinas' overall rate of return, cost of debt, ROE, and capital structure.

D. Accounting and Pro Forma Adjustments

13. The Company and ORS made certain accounting and pro forma adjustments, some of which the Company and the ORS agreed upon and some of which are in dispute, as further described below. The Commission finds and concludes that the accounting adjustments outlined in Smith Rebuttal Exhibit 1 are just and reasonable to all Parties in light of all the evidence presented.

Carolinas West Primary Distribution Control Center

14. DE Carolinas has deferred into a regulatory asset account costs incurred from the time its Carolinas West Primary Distribution Control Center ("CWPDCC") was placed into service until the time the costs are reflected in new rates from this proceeding. The costs deferred are the return and depreciation on the capital costs at the Company's weighted average cost of capital. DE Carolinas is seeking recovery of deferred costs relating to the CWPDCC over a three-year period

including a net of tax return on the unamortized balance of the regulatory asset through inclusion in rate base. The Commission finds and concludes that the Company's request to recover the regulatory asset over a three-year period, including the after-tax return on the unamortized balance, is just and reasonable to all Parties in light of the evidence presented.

W.S. Lee Combined Cycle Facility ("Lee CC")

15. The Company has deferred into a regulatory asset account costs incurred from the time its Lee CC facility was placed into service until the time the costs are reflected in new rates from this proceeding. The costs deferred are the return and depreciation on the capital costs, the associated incremental non-fuel O&M expenses, property taxes, and the carrying cost on the deferred costs at the Company's weighted average cost of capital. The Company is seeking recovery of the deferred costs over a three-year period. The Commission finds and concludes that the Company's request to recover the regulatory asset over a three-year period, including the after-tax return on the unamortized balance through inclusion of rate base, is just and reasonable in light of the evidence presented.

AMI

16. The Commission finds and concludes that DE Carolinas' AMI project will provide significant benefits to the Company's customers and that the test year costs for the AMI project are reasonable and prudently incurred.

17. The Company has deferred into a regulatory asset account the incremental O&M expense and depreciation expense incurred once the AMI meters were installed, as well as the associated carrying costs on the investments and the deferred costs at its weighted average cost of

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capital. The Company is seeking recovery of the deferred costs over a three-year period including a net of tax return on the unamortized balance of the regulatory asset through inclusion in rate base. The Commission finds and concludes that the Company's request to recover the regulatory asset over a three-year period, including the after-tax return on the unamortized balance, is just and reasonable in light of the evidence presented.

Grid Deferral

18. The Company has deferred costs incurred in connection with grid reliability, resiliency, and modernization work in a regulatory asset account until the time the costs are reflected in new rates from this proceeding. The Company is seeking recovery of the deferred costs over a two-year period, including a net of tax return on the unamortized balance of the regulatory asset through inclusion in rate base. The Commission finds and concludes that the Company's request to recover the regulatory asset over a two-year period, including the after-tax return on the unamortized balance, is just and reasonable in light of the evidence presented.

End of Life Nuclear Costs

19. DE Carolinas requests an accounting order for approval to establish a reserve for end-of-life nuclear costs that are not captured in the decommissioning study. The Company is proposing to create a reserve to start accruing for these end-of-life expenses to create a better matching of cost and benefit for ratemaking purposes. The annual accrual amount will be determined by dividing the projected inventory balance at the end of each unit's life by the number of years remaining in the unit's life and summing this result for the Company's three nuclear plants.

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The annual accrual amount can be reviewed and adjusted, if needed, in each future general rate case before the end of the plant's life.

20. The Company is also proposing to create a reserve to start accruing for the expenses related to a portion of the last core of nuclear fuel in the reactor at the end-of-life of its nuclear generating plants to create a better matching of cost and benefit for ratemaking purposes. The annual accrual amount will be determined by dividing the projected remaining value of the last core of nuclear fuel at the end of each unit's life by the number of years remaining in the unit's life and summing this result for the Company's three nuclear plants. The annual accrual amount can be reviewed and adjusted, if needed, in each future general rate case before the end of the plant's life. The reserves, once they are created, will be included as an offset to rate base in the cost of service.

21. The Commission finds that the Company's request to adjust depreciation and amortization expenses to establish a reserve for these end-of-life nuclear expenses is just and reasonable in light of the evidence presented.

Storm Costs

22. DE Carolinas made a proforma adjustment to normalize storm restoration costs to the average level of costs the Company experienced over the past ten years. ORS witness Morgan recommended eliminating the expenses in the highest and lowest years to use an eight-year average expense level. The Company does not oppose this recommendation, and the Commission finds that it is appropriate to use the eight-year average method to normalize storm restoration costs as proposed by witness Morgan.

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23. The Company also adjusted each storm cost year included in the average to be comparable to the test year on a historic inflation adjusted basis. Given the annual average rate of inflation during the historic period used in the normalization process and the demonstrated increase in costs associated with storm restoration, the Commission finds the Company's historic inflation adjustment to be reasonably calculated, and results in a storm amount to be included in rates below what the Company could have requested, less than actual adjustments and is therefore just and reasonable in light of the evidence presented.

O&M Non-Labor Expenses

24. The Company's adjustment to O&M Non-Labor Expenses to reflect the change in costs that occurred during the test period and to annualize the impacts of historic inflation realized through the end of the test period is based on known and measurable inflation metrics and is just and reasonable in light of the evidence presented.

Employee Compensation

25. The Company proposed to remove 50% of the compensation of the four Duke Energy executives with the highest level of compensation allocated to DE Carolinas in the test period. The ORS agreed to this adjustment, and it was not contested by any Party. The Commission finds this adjustment is just and reasonable in light of the evidence presented.

26. The Company adjusted O&M labor expenses – wages, salaries, and related employee benefit costs – to reflect annual levels of costs as of July 1, 2018 and also reflects changes in related payroll taxes. The ORS recommends updating the salary allocator for DE Carolinas to the same date as the O&M labor expense – i.e., July 1, 2018. The Company does not oppose this

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recommendation. The Commission finds this adjustment is just and reasonable in light of the evidence presented.

27. The ORS has proposed to remove 50 percent of the Company's long-term incentive ("LTI") program costs and 50 percent of the Company's short-term incentive ("STI") costs incurred as of July 1, 2018. The Commission finds and concludes that the proposed removal of a portion of the Company's LTI and STI costs is inappropriate and would result in rates that are not just and reasonable. Accordingly, the Commission rejects ORS' proposed adjustment.

Rate Case Costs

28. The Company proposes to amortize the incremental rate case costs incurred for this docket over a five-year period and to recover a net of tax return on the unamortized balance through inclusion in rate base. The Commission finds and concludes that the rate case expenses the Company has included in this docket are reasonable and prudently incurred. The Commission further finds and concludes that the Company's request to recover the regulatory asset over a five-year period, including the after-tax return on the unamortized balance, is just and reasonable to all Parties in light of the evidence presented.

Credit Card Fees

29. The Company has proposed to allow residential customers to pay their electric bills using credit cards, debit cards, and ACH payments without being charged a convenience fee. Instead, the Company proposes to recover the costs of credit card convenience fees through the Company's cost of service. The Company has included an adjustment to cost of service to reflect a reasonable level of growth associated with the projected increase in usage of credit cards resulting

from removal of the convenience fee. The Commission finds and concludes that the Company's proposal to recover the costs of credit card convenience fee expenses through the Company's cost of service is just and reasonable in light of the evidence presented.

30. The Commission further finds and concludes that the Company's growth projections in its calculation of credit card convenience fee expenses are modest, and reasonably calculated, and that incorporation of the growth adjustment is necessary to ensure the Company is not penalized for offering this option to customers and that the Company is required to report to the Commission the actual credit card convenience fee expenses incurred on an annual basis.

Customer Connect

31. The Company is seeking recovery of its deferred costs associated with implementing its new billing and CIS (known as "Customer Connect"), which will replace the Company's current CIS. Specifically, the Company is seeking recovery of the deferred costs over a three-year period including a net of tax return on the unamortized balance of the regulatory asset through inclusion in rate base.

32. The Commission finds and concludes that the deferred costs incurred for Customer Connect are reasonable and prudent and shall be amortized over a three-year period, as requested by the Company, and shall include a net of tax return on the unamortized balance of the regulatory asset through inclusion in rate base.

33. The Company has proposed to recover approximately $4.7 million annually in O&M expenses associated with the ongoing deployment of Customer Connect. The Company is required to report to the Commission the actual Customer Connect O&M costs incurred on an

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annual basis. The Commission finds and concludes that the annual Customer Connect expenses the Company seeks to recover in this case are known and measurable and shall be recovered by the Company as requested.

Non-Allowables

34. The ORS recommends removing O&M expense from the test period for certain costs, including: (1) employee incentives, service and safety awards, and costs that recognize and reward the Company's employees; (2) costs relating to the Lineman's Rodeo; (3) organization dues, such as membership dues for local South Carolina Chambers of Commerce and other local South Carolina civic organizations; (4) costs that are not 100 percent related to South Carolina, such as registration fees paid to the North Carolina Department of Motor Vehicles for transmission vehicles that are system assets; (5) costs relating to timing differences, such as transactions where the invoice due date and payment date were in different years; and (6) coal ash litigation expenses. The Commission finds and concludes that these costs are properly included in rates and therefore rejects the ORS' recommendation to disallow these costs.

Adjustments #33, 37, 38

35. For Company Adjustment #33 (Adjust 1/8 O&M for Accounting and Pro Forma Adjustments), ORS Adjustment #37 (Customer Growth), and ORS Adjustment #38 (Adjust Revenue, Taxes, and Customer Growth for Proposed Increase), the Company and the ORS agree on the concept of and the method used to calculate these adjustments. The ORS and Company amounts differ only due to the underlying adjustments of the ORS and the Company and the recommended ROE. Because the Commission has found in favor of DE Carolinas on the

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underlying adjustments and ROE, the Commissions finds and concludes that the Company's Adjustment #33, and ORS Adjustments #37 and #38 are just and reasonable in light of the evidence presented in this proceeding.

E. Lee Nuclear Project

36. As a result of the cancellation of the Lee Nuclear Project, the Company is requesting permission to establish a regulatory asset consisting of the balance of project development costs adjusted to remove non-depreciable land costs, and estimated expenditures through May 31, 2019. The Company is requesting the recovery of the regulatory asset over a 12-year period, as well as a return on the unamortized balance.

37. The Commission finds and concludes that DE Carolinas' project development costs incurred for the Lee Nuclear Project, with the exception of costs relating to the Visitors Center, which were recommended for disallowance by the ORS and that the Company agreed to exclude, are reasonable and prudent and shall be amortized over a 12-year period, as requested by the Company.

38. The Commission finds and concludes that it is just and reasonable for the Company to be permitted to earn a return on the unamortized balance of these Lee Nuclear project development costs during the amortization period, as requested.

F. Fuel Factors

39. The fuel cost factors utilized in the Company's initial November 8, 2019 filing were the Company's fuel cost factors as of October 1, 2017. These fuel factors were the most recently approved billing factors at the time the Company prepared its Application in this proceeding. In

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its January 18, 2019 supplemental filing, the Company updated the fuel costs based on the new fuel and fuel related cost rates as of October 1, 2018 approved in Docket No. 2018-3-E. Accordingly, the Company proposes to use the following base fuel factors by customer class (excluding gross receipts tax and regulatory fees):

- Residential 2.1094 cents per kWh
- General Service/Lighting 2.1004 cents per kWh
- Industrial 2.0721 cents per kWh

The Commission finds and concludes that the proposed base fuel and fuel-related factors, as updated by the Company in its supplemental filing, are just and reasonable in light of all the evidence presented.

G. Cost of Service

40. The Company has proposed the Summer Coincident Peak ("SCP") methodology for cost allocation between jurisdictions and among customer classes in this case. The Commission finds and concludes that for purposes of this proceeding, the Company may continue to use the SCP methodology for allocation between jurisdictions and among customer classes and that the Company's cost of service methodology is just and reasonable to all Parties in light of all the evidence presented. The Commission also finds the Company's use of the Minimum System Method to allocate customer-related distribution costs is reasonable and appropriate for the purposes of allocating costs to the respective rate classes, which is a separate and distinct issue as to whether the Minimum System Method alone is appropriate for rate design.

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H. Rate Design and Basic Facilities Charge

41. DE Carolinas proposes modification of certain rate schedules to reflect more accurately its cost of service. Except for the amount of the BFCs, which is addressed below, the rate design proposed by Company witness Pirro's revised tariffs in Exhibit B to the Application are just and reasonable in light of the evidence presented.

42. The Company proposes to modify its BFCs for various customer classes to better reflect the underlying cost of service. In its Application, the Company originally proposed an increase in the Residential BFC from $8.29 to $28.00 per month.[7]

43. In a letter filed in this Docket on March 20, 2019, DE Carolinas notified the Commission and Parties that based upon the Company's review of the surrebuttal testimony of ORS witness Seaman-Huynh and testimony heard at the public hearings, the Company does not contest the BFC proposed by witness Seaman-Huynh's surrebuttal testimony as follows: $11.96 for residential non-TOU, $13.09 for residential TOU, and $11.70 for SGS customers, and to put the remaining revenue requirement ultimately determined by the Commission in the variable component of the Company's base rates.

44. The numeric values for BFCs as set forth in the surrebuttal testimony of witness Seaman-Huynh and the Company's March 20, 2019 letter are just and reasonable and are therefore approved by the Commission.

[7] The increase in the BFC is not additive to the rate increase requested in this case. Rather, the Company proposes to collect fixed costs through the fixed monthly charge – i.e., the BFC – based on the cost to serve instead of the variable, volumetric energy rate.

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I. Customer Notice

45. The notice provided of the Application in this proceeding meets the due process requirements of S.C. Const., Art. 1, § 22.

J. Lighting

46. DE Carolinas proposes modifications of certain outdoor lighting fees and schedules to help modernize the Company's outdoor lighting products and services to reflect the continued adoption of light emitting diode ("LED") technology. These modifications, as set forth in the testimony of Company witnesses Cowling and Pirro, are just and reasonable.

K. Prepaid Advantage Program

47. DE Carolinas is seeking approval to commercialize its Prepaid Advantage program by removing it from pilot status, by removing the customer cap and making the program available to customers across its entire jurisdiction. The proposed modifications to commercialize the Prepaid Advantage program, as set forth in the testimony of Company witnesses Schneider and Pirro, are just and reasonable.

L. Customer Data

48. SC NAACP et al., recommended that DE Carolinas should be required to provide detailed monthly residential and low-income customer usage data by zip code in a format accessible to the public. Investor-owned utilities are already subject to certain quarterly reporting requirements regarding disconnections in Docket No. 2006-193-EG and it is not appropriate to unilaterally require DE Carolinas to provide a different level of detailed customer and billing data at this time. The parties and the Commission will know more about the availability of such data,

and the cost of collecting and reporting it, once the Customer Connect Program is fully implemented. As a result, the Commission declines to adopt SC NAACP et al.'s proposal.

M. Depreciation

49. The depreciation study, as filed by the Company as Doss Exhibit 2 (part of composite Hearing Exhibit 22), and the depreciation rates proposed by DE Carolinas in this case, as filed by the Company as Doss Exhibit 3 (part of composite Hearing Exhibit 22), are just and reasonable and should be approved in this case.

50. The Company seeks to adopt these new depreciation rates effective August 1, 2018, and defer into a regulatory asset account the incremental depreciation expense resulting from the new depreciation rates. The Company proposes to amortize the regulatory asset over a three-year period with inclusion of the unamortized balance of the regulatory asset in rate base. The Commission finds and concludes that the new depreciation rates approved by the Commission shall be effective as of August 1, 2018, and the Company's deferral request relating to incremental depreciation expense is just and reasonable in light of the evidence presented.

N. EDIT Rider

51. The Company has proposed to implement flow back of excess deferred income taxes to customers through an EDIT Rider, as follows:

a. For Federal EDIT protected under Internal Revenue Service ("IRS") normalization rules, in accordance with those rules;

b. For Federal EDIT not protected by normalization rules, but related to property, plant and equipment, over a 20-year period;

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c. For Federal EDIT not protected by normalization rules, but not related to property, plant and equipment, over a five-year period;

d. For deferred revenue, net of deferred balances related to the Distributed Energy Resource Program ("DERP"), over a five-year period; and

e. For North Carolina EDIT, over a five-year period.

52. The Company's proposed EDIT Rider is just and reasonable, and will result in rates that are just and reasonable, and should be implemented. The appropriate annual revenue requirement for the EDIT Rider is a decrement of ($61,888,000) in year 1.

O. Environmental Compliance Costs

53. Since its last rate case, DE Carolinas has become subject to new legal requirements relating to its management of coal ash. These new legal requirements mandate the closure of the coal ash basins at all of the Company's coal-fired power plants. Since its last rate case, DE Carolinas has incurred significant costs to comply with these new legal requirements. The Company is not seeking recovery of any fines or penalties, nor is it seeking recovery of remediation costs to correct conditions that led to any fines or penalties.

54. The actual coal ash basin closure costs DE Carolinas has incurred during the period from January 1, 2015 through September 30, 2018, as of the time of filing, and updated through December 2018, amount to $241 million. The Commission finds and concludes that the actual coal ash basin closure costs incurred by DE Carolinas are reasonable, prudent and used and useful in the provision of service to the Company's customers in South Carolina. DE Carolinas is entitled to recover these costs in rates. Further, DE Carolinas proposes that these costs be amortized over a five-year period, and that it earn a return on the unamortized balance through inclusion in rate

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base. The Commission further finds and concludes that the five-year amortization period proposed by the Company is appropriate and reasonable, is approved, and the Company is entitled to earn a return on the unamortized balance through inclusion in rate base.

55. The Company expects to continue to invest significant amounts related to coal ash compliance after the December 2018 cut-off in this case. However, instead of requesting recovery of an ongoing level of these costs in this rate case, DE Carolinas proposes that the Commission approve a continuation of the deferral, similar to what the Commission approved in Docket 2016-196-E, for costs not included in this case. Specifically, the Company proposes deferral of environmental compliance spend related to ash basin closure beginning January 1, 2019, deferral of the depreciation and return on compliance investments related to continued plant operations placed in service on or after January 1, 2019, and a return on both deferred balances at the overall rate of return approved in this case. The Company's proposal to continue deferral of these ongoing costs is reasonable and appropriate and is approved.

P. Revenue Requirement

56. Based on the foregoing, the appropriate base revenue requirement is $225,214,000, after accounting and pro forma adjustments, as set forth in Smith Rebuttal Exhibit 1.[8]

53. The base non-fuel and base fuel revenues approved herein are just and reasonable to the customers of DE Carolinas, to the Company, and to all Parties in this proceeding, and serve the public interest.

[8] The base revenue increase does not include the impact of EDIT Rider year 1 reduction of ($61,888,000) as calculated in Smith Rebuttal Ex. 2, page 2. (*See* Hearing Ex. # 10.)

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V. EVIDENCE AND CONCLUSIONS

EVIDENCE FOR FINDINGS AND CONCLUSIONS NOS. 1-4

DE Carolinas is an electric utility subject to the jurisdiction of the Commission pursuant to S.C. Code Ann. Sections 58-3-140(A) (Supp. 2010). The test year is the period of time selected to evaluate the cost of providing service and the adequacy of existing rates. Essential to this method of evaluating rates is the establishment of a cut-off date to ensure some degree of finality in the rate making process. *Parker v. S.C. Pub. Serv. Comm'n*, 313 S.E. 2d 290, 291-92 (S.C. 1984). South Carolina uses a historic twelve-month test period. 26 S.C. Code Ann. Regs. 103-823(A)(3). The historic test year approach uses the most recent twelve-month period for which data is available at the time of filing a rate proceeding. A historic test year is based primarily upon the recorded results for the twelve-month period, although the Commission can recognize adjustments to these results that are designed to shape the recorded year into a "normal" representation of the period. The Commission finds the twelve months ending December 31, 2017, adjusted for certain known changes in revenue, expenses, and rate base, to be the reasonable period upon which to base its ratemaking determination.

These findings and conclusions are informational, procedural and jurisdictional in nature and are not contested by any of the Parties.

EVIDENCE FOR FINDINGS AND CONCLUSIONS NOS. 5-8

The Commission last approved the Company's general electric rates and tariffs in Order No. 2013-661 in Docket No. 2013-59-E (the "2013 Rate Case"), which allowed the Company a

10.2 percent ROE. The test period in that case was the twelve months ended June 30, 2012, adjusted for known and measurable changes.

On November 8, 2018, DE Carolinas filed its Application and initial direct testimony and exhibits, seeking a net increase of approximately $168 million or 10 percent average increase in its annual electric sales revenues from its South Carolina retail electric operations. The additional base revenue requested in the Application was $230,807,000. As described below, in the Application, the Company has also proposed an EDIT Rider, which was originally calculated to decrease year 1 revenues by ($62,612,000), for a net increase of $168,195,000. The Company requested a 10.5 percent ROE.

On March 12, 2019, the Company filed rebuttal testimony and exhibits adjusting its proposed base revenue requirement to $225,214,000. The Company also adjusted its proposed EDIT Rider decrement to year 1 revenues to ($61,888,000), for a net increase of $163,326,000.

DE Carolinas submitted evidence in this case with respect to revenue, expenses and rate base using a test period consisting of the twelve months ended December 31, 2017, adjusted for certain known changes in revenue, expenses, and rate base.

Company witness Ghartey-Tagoe testified that the Company's need for a rate increase is driven by capital investments and environmental compliance progress made by the Company since the 2013 Rate Case. (Tr. Vol. 4, p. 645-13 – 645-14.) Such investments include further implementation of the Company's generation modernization program, which consists of retiring, replacing, and upgrading generation plants, investments in customer service technologies, and the

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Company's continued investment to maintain its transmission and distribution system.[9] (Application at 6.) Witness Ghartey-Tagoe detailed the Company's recent investments driving the Company's requested rate increase. (*Id*. at 645-13 – 645-16.) He described numerous nuclear, fossil, hydro, and solar projects that DE Carolinas has completed since its last rate case, explaining that the Company has invested approximately $639 million in new gas-fueled generation through the test year.[10] (*Id*. at 645-13 – 645-14.) For example, he described the Company's new Lee CC plant, which features state-of-the-art technology for increased efficiency and significantly reduced emissions. (*Id*. at 645-14.) In addition, the Company has invested $152 million to add two solar facilities to DE Carolinas' generating mix and recently completed its relicensing effort for the Catawba-Wateree hydro project totaling $126 million in capital investment through the test year. (*Id*.)

Witness Ghartey-Tagoe further explained that environmental costs associated with compliance with new regulations relating to the management and storage of coal combustion residuals is also a driver for the Company's rate increase request. The Company is requesting to recover coal ash compliance costs of $242 million over five years. (*Id*. at 645-18.) The Company expects to continue to incur significant amounts of CCR environmental compliance costs after the December 2018 cut-off period in this case and is requesting continuation of the deferral of CCR

[9] *See also* Tr. Vol. 4, p. 796-6 – 796-7 (testimony of Company witness Oliver regarding the Company's capital investment in its transmission and distribution infrastructure).
[10] *See also* Tr. Vol. 2, p. 905, 909-4, 909-7 – 909-14 (testimony of Company witness Immel (adopting the direct pre-filed testimony of Company witness Miller) regarding the Company's capital investment in its fossil/hydro/solar generation assets); Tr. Vol. 2, p. 912-913, 915-3 – 915-4, 915-7 – 915-10 (testimony of Company witness Capps regarding the Company's investment in its nuclear generation assets).

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compliance-related costs similar to the one approved in Docket No. 2016-196-E. (Application at 12.) No fines or penalties associated with coal ash basin closure are being sought for recovery in this case. (*Id.*)

Mr. Ghartey-Tagoe testified that the Company is also seeking to recover project development costs for the Lee Nuclear Project as discussed by Company witness Fallon. (Tr. Vol. 4, p. 645-14 – 645-15.) Company witness Smith explained that the Company is seeking to recover its investment in the Lee Nuclear Project in the amount of $20 million per year for 12 years. As explained by Company witnesses Fallon and Diaz, the Company plans to continue to maintain the Lee Nuclear Project COL as an option in the future if new nuclear generation is needed. The Company is also seeking approval to establish a reserve and accrual for EOL nuclear costs for nuclear fuel and materials and supplies at its operating nuclear plant sites. (Application at 7.)

Since the last rate case, the Company has also made investments designed to improve reliability and customer service. Mr. Ghartey-Tagoe testified that the Company has completed deployment of new AMI meters that will complement its investment in the ongoing implementation of the new billing and CIS known as Customer Connect. (Tr. Vol. 4, p. 645-10.) Customer Connect will give customers more information and service options, as explained more fully in the testimony of Company witnesses Hunsicker and Schneider. (*Id.*) The Company is also requesting amortization of regulatory assets related to the Lee CC facility, AMI, Customer Connect, grid investments, the CWPDCC, and rate changes from the most recent deprecation study as further explained in the testimony of Company witness Smith. (*Id.* at 645-16.) In addition, the Company is seeking approval to remove its Prepaid Advantage program from pilot status by removing the

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customer cap and making the program available to all customers across its entire jurisdiction. (Application at 7.) Mr. Ghartey-Tagoe also outlined the Company's proposal for a fee-free credit/debit card program for residential customers, including its request to recover the costs associated with the program from all customers through all rates. (Tr. Vol. 4, p. 645-24.)

Witness Ghartey-Tagoe testified that the impact of the Tax Act had also been incorporated into the Company's request and explained the Company's proposed EDIT Rider, which will flow back to customers excess deferred income taxes resulting from the change in the federal corporate income tax rate in a manner that maintains the Company's financial strength. (*Id*. at 645-16.) He explained that the Tax Act balances applied in this case include an offset to DERP costs that have yet to be recovered that total $40 million as of September 30, 2018. (*Id.*)

Witness Ghartey-Tagoe testified that electricity in South Carolina is still an excellent value, even with the Company's proposed investments. (*Id*. at 645-26.) He explained that while other consumer goods such as gas prices have risen over the past year, the cost of electricity in the Southeast has dropped 2.6 percent from September 2017 to September 2018. (*Id.*) Mr. Ghartey-Tagoe testified that even with DE Carolinas' proposed adjustment, its customers will continue to pay rates below the national average and competitive with other utilities in the region. (*Id.*)

Witness Ghartey-Tagoe also described the Company's ongoing efforts to mitigate customer rate impacts. (*Id*. at 645-27 – 645-28.) He noted that through fuel diversity and prudent management, as well as through significant cost containment measures, the Company has been able to manage its costs. (*Id.*) He stated that to help customers reduce bills, the Company is continuing to expand and enhance its portfolio of Demand Side Management ("DSM") and Energy Efficiency

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("EE") programs. (*Id*. at 645-29.) According to witness Ghartey-Tagoe, the Company offers customers more than a dozen energy-savings programs for every type of energy user and budget; EE programs currently save its customers in the Carolinas 4.3 billion kWh annually or more than $357 million, which is about 5.4% of total retail kWh sales. (*Id.*) Combined, the Company's DSM and EE programs offset capacity requirements by the equivalent of more than seven power plants. (*Id.*) Witness Ghartey-Tagoe also described the Company's Neighborhood Energy Saver Program, which is a residential EE program targeted at low-income customers that includes direct installation of a number of EE measures installed at no direct cost to the customer, potentially saving the average household over $45 per year on energy costs. (*Id*. at 645-30.) Witness Ghartey-Tagoe also discussed the Company's Share the Warmth program which helps low-income individuals and families cover home energy bills and has provided approximately $8.6 million in assistance to DE Carolinas' customers in South Carolina. (*Id*. at 645-30 – 645-31.) During the hearing, Commissioners inquired as to whether the Company would also consider a "round-up" program as an option for customers to volunteer to round-up their bill total to the next dollar and donate the difference to help offset costs for low-income customers. (*Id*. at 721, 760.) Mr. Ghartey-Tagoe explained that the Company was currently looking into offering the "round-up" option as well. (*Id.* at 721-722.) He also explained that the Company offers customers a bill management option that allows them to spread out the impacts of seasonal fluctuations into 12 equal monthly payments. (*Id*. at 645-31.) The Company also offers payment arrangements to eligible customers who are having difficulty paying their entire bill by the due date. (*Id.*)

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Witness Ghartey-Tagoe indicated that the Company's most important objective is to continue providing safe, reliable, affordable, and increasingly clean electricity to its customers with high quality customer service, both today and in the future. (*Id*. at 645-40.) He concluded that the request for a rate increase is made to support investments that benefit DE Carolinas customers, and the Company strives to ensure that those investments are made in a cost-effective manner that retains the Company's level of service and competitive rates. (*Id*.)

The Commission finds and concludes that these capital investments by the Company provide significant benefits to all of its customers. They are necessary for the Company to continue to provide safe, adequate, and reliable electric service, which is essential to the well-being of the people, businesses, institutions, and economy of South Carolina. The Commission notes that no credible or substantial evidence was presented disputing the prudency, reasonableness, or necessity of the capital improvements[11] which are reflected in the Company's request for a rate increase, as well as their cost.

[11] In his direct testimony, Sierra Club witness Hausman recommends the Commission require the Company to undertake comprehensive economic and retirement analyses prior to making capital investments at its Allen or Marshall units in the future. (Tr. Vol. 7, p. 1522-5.) In his rebuttal testimony, Company witness Immel testified that the Company performs retirement analyses on an as-needed basis and that requiring the Company to perform formal retirement analyses before making any capital improvements would not be a prudent use of the Company's resources. (Tr. Vol. 5, p. 917-3 – 917-4.) Specifically, the Company performed a comprehensive retirement analysis for Allen Station in April 2017 and at Marshall, considered system operational and timing impacts, age of the plant, and overall feasibility of a potential retirement scenario when assessing future environmental costs. (*Id.*). Further, witness Immel stated that many of the factors witness Hausman recommends the Company consider in future analyses are evaluated in the Company's Integrated Resource Planning ("IRP") process. (*Id.* at 917-3.) Therefore, according to witness Immel, no additional directives on when to perform these analyses are warranted at this time. (*Id.*). When evaluating whether a capital investment is eligible for inclusion in rate base, the Commission assesses the prudency of the investment and whether the asset is "used and useful." While the Commission appreciates Sierra Club's recommendation, the Commission does not deem it appropriate at this time to mandate retirement analyses be performed by the Company at its generation plants before seeking recovery of investments in the future. The Company is responsible for managing its generation fleet, including what analyses to perform and when to perform

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EVIDENCE FOR FINDINGS AND CONCLUSIONS NOS. 9-12

The evidence in support of the findings of fact are found in the verified Application, pleadings, testimony and exhibits in this Docket, and the entire record in this proceeding.

Return on Equity / Cost of Equity Capital

In its Application, DE Carolinas noted that its evidence, particularly the analyses prepared and submitted by Company witness Hevert, supported a return on equity of 10.75%. However, as a rate mitigation measure and in recognition that a rate increase may create hardship for some customers, the Company requested approval for its rates to be set using a Return on Equity ("ROE") of 10.5%. For the reasons set forth herein, the Commission finds that an ROE of 10.5% is just and reasonable.

One of the principal (and often most contentious) issues to be decided in any ratemaking determination is the proper return to be allowed on the common equity invested in the regulated utility. As the Commission very recently observed:

> While the cost of debt and preferred stock can be directly observed, the cost of equity is market-based and, therefore, must be estimated based on observable market information and by applying recognized financial models to market-based data. By their nature, those models produce a range of results, from which the market-required ROE must be determined. *The key consideration in determining the ROE is to ensure the overall analysis reasonably reflects investors' view of the financial markets in general, and the subject company (in the context of the proxy companies) in particular*.

them. However, the Commission notes the burden of proof resides with the Company to justify its capital investments, and such analyses may become more relevant in future proceedings.

Order Addressing South Carolina Electric & Gas Nuclear Dockets, Docket Nos. 2017-207-E, 2017-305-E, and 2017-370-E, PSCSC Order No. 2018-804 (Dec. 21, 2018) ("*SCE&G Order*") at 83-84 (emphasis added). The importance of reflecting the *investor's* view is based on the fact that the capital markets are highly competitive, and that the Company competes for capital in those markets. Investors have multiple alternative investment choices, and take into account authorized ROEs in selecting among those competing investment opportunities. Setting ROE too low, therefore, simply raises the cost of capital, in that investors will take the low authorized ROE as a signal to shift their investments elsewhere. As witness Hevert testified, responding to Vice Chairman Williams' questions, the 9.00% ROE testified to (without submitting any analysis or pre-filed testimony on this issue) by witness O'Donnell would be "extraordinarily low." (Tr. Vol. 8 p. 1874.)[12] But in addition, as witness Hevert indicated,

> If you look at the returns that are being authorized in other jurisdictions, even for the lower-rated jurisdictions, 9 percent is below that. … [I]f we look at the fact that the Company needs to compete for capital with other jurisdictions, it makes it difficult for a company in a jurisdiction authorizing 9 percent to compete with companies operating in jurisdictions that offer considerably higher returns.

(*Id.*)

The legal standards applicable to the ROE determination reflect the centrality of setting ROE in light of investor requirements and expectations in competitive capital markets. These

[12] Witness O'Donnell was not proffered as an ROE witness, and as witness Hevert testified, he has "no idea how Mr. O'Donnell … [could have] come to that conclusion." (*Id.*) The Commission likewise has no idea, and does not (indeed, could not legally) take into consideration witness O'Donnell's unsupported testimony on this point.

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standards are set forth in *Hope* and *Bluefield*. These standards were adopted by the South Carolina Supreme Court in *Southern Bell*, 270 S.C. at 595-96. The Court stated:

> What annual rate will constitute just compensation depends upon many circumstances, and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties ….

Southern Bell Tel., 270 S.C. at 595-96, 244 S.E.2d at 281 (quoting *Bluefield*, 262 U.S. at 692-93).

These cases also establish that the process of determining rates of return requires the exercise of informed judgment by the Commission. The South Carolina Supreme Court has held that:

> [T]he Commission was not bound to the use of any single formula or combination of formulae in determining rates. Its ratemaking function, moreover, involves the making of "pragmatic adjustments." … Under the statutory standard of "just and reasonable" it is the result reached not the method employed which is controlling. … The ratemaking process under the Act, *i.e.*, the fixing of "just and reasonable" rates, involves the balancing of the investor and the consumer interests. Thus we stated in the *Natural Gas Pipeline Co.* case that "regulation does not insure that the business shall produce net revenues." … [B]ut such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be

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> enough revenue not only for operating expenses but also for the capital costs of the business. These include service on debt and dividends on the stock. … By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.

Southern Bell Tel., 270 S.C. at 596-97, 244 S.E. 2d at 281 (quoting *Hope*, 320 U.S. at 602-03). These principles have been consistently employed by the Commission and the South Carolina Courts. The Commission's "exercise of informed judgment" begins with its review and evaluation of the expert witnesses who testified concerning the cost of equity capital, to which the Commission now turns.

Company witness Hevert recommended in his direct testimony an ROE of 10.75%, which was slightly above the midpoint of his recommended range of 10.25% to 11.00%. (Tr. Vol. 8, p. 1787-4 – 1787-5.) Witness Hevert states that ROE, or the cost of equity:

> [I]s the return that investors require to make an equity investment in a firm. That is, investors will provide funds to a firm only if the return that they *expect* is equal to, or greater than, the return that they *require* to accept the risk of providing funds to the firm. From the firm's perspective, that required return, whether it is provided to debt or equity investors, has a cost. Individually, we speak of the "Cost of Debt" and the "Cost of Equity" as measures of those costs; together, they are referred to as the "Cost of Capital."
>
> The Cost of Capital (including the costs of both debt and equity) is based on the economic principle of "opportunity costs." Investing in any asset, whether debt or equity securities, implies a forgone opportunity to invest in alternative assets. For any investment to be sensible, its expected return must be at least equal to the return expected on alternative, comparable risk investment opportunities. Because investments with like risks should offer similar returns, the opportunity cost of an investment should equal the return available

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> on an investment of comparable risk. In that important respect, the returns required by debt and equity investors represent a cost to the Company.

(*Id*. at 1787-7 (emphasis in original).)

Witness Hevert noted that as all financial models are subject to various assumptions and constraints, equity analysts and investors tend to use multiple methods to develop their return requirements. (*Id*. at 1787-8.) He therefore relied on three widely accepted approaches to develop his ROE determination: (1) the Constant Growth and Multi-Stage forms of the Discounted Cash Flow ("DCF") model; (2) the Capital Asset Pricing Model ("CAPM"); and (3) the Bond Yield Plus Risk Premium approach. He noted, however, weaknesses in the Constant Growth DCF Model (*id*. at 1787-25 – 1787-26) and, therefore, discounted its results. As he explained at the hearing in response to questions from Commissioner Whitfield, other regulatory commissions, including the Federal Energy Regulatory Commission ("FERC"), have understood that the DCF model, simply by virtue of its construction, is producing low results that do not reflect the true cost of equity capital, but instead reflect the impact of the Federal Reserve's post-Great Recession quantitative easing ("QE") policies that had the effect of pushing down stock yields. (*Id*. at 1852-1853.)

The models (including the Constant Growth DCF Model) produced ROE results ranging from a low of 8.47% with the Constant Growth DCF Model (*id*. at 1790-100) to a high of 11.67% in connection with one variant of the CAPM. (*Id.*) In tabular form, the full range of results from witness Hevert's quantitative analyses is as follows:

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Table 7: Summary of Analytical Results

Constant Growth DCF	**Low**	**Mean**	**High**
30-Day Average	8.47%	9.33%	10.30%
90-Day Average	8.49%	9.35%	10.32%
180-Day Average	8.57%	9.43%	10.40%
Multi-Stage DCF (Gordon Growth)	***Low***	***Mean***	***High***
30-Day Average	8.71%	8.93%	9.19%
90-Day Average	8.73%	8.95%	9.21%
180-Day Average	8.81%	9.03%	9.30%
CAPM Results		**Bloomberg Derived Market Risk Premium**	**Value Line Derived Market Risk Premium**
Average Bloomberg Beta Coefficient			
Current 30-Year Treasury (3.03%)		8.36%	10.04%
Near Term Projected 30-Year Treasury (3.33%)		8.65%	10.33%
Average Value Line Beta Coefficient			
Current 30-Year Treasury (3.03%)		9.47%	11.37%
Near Term Projected 30-Year Treasury (3.33%)		9.67%	11.67%
	Low	**Mid**	**High**
Bond Yield Plus Risk Premium	9.93%	9.98%	10.17%

(*Id.* at 1790-100.)

Witness Hevert provided extensive testimony concerning the capital market environment (*id*. at 1798-67 – 1798-80), and addressed the effect those market conditions have on the return investors require in order to commit their capital to equity securities. He indicated that the capital markets have "fundamentally changed" (*id*. at 1842) as a result of the decision of the Federal

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Reserve (sometimes, "the Fed") to begin to unwind its QE policies. As witness Hevert put it, the Fed's QE policy had the "intended effect of lowering long-term interest rates" (*id*. at 1843), leading to the reduction in his recommended ROE for the Company since the Company's last general rate case. However, as the Federal Reserve reverses course, investor expectations also reverse course:

> To me, the question becomes, "Can we assume that that level of intervention and its effects on the capital markets will remain in place forever, in perpetuity, going forward?" And I don't think we can. I think, as we look at the markets, as we look at how the Federal Reserve eventually normalizes its policy, eventually unwinds its balance sheet, we're going to see changes in the capital market, and we'll see a market different than it is now, so I do think we have to take all those things into account.

(*Id*. at 1843.) And the basic implication of the Federal Reserve's unwinding of QE – higher utility cost of capital – has not been altered by the Fed's decision on the eve of the hearings in this case to pause further interest rate hikes this year, in that while that decision may impact short-term rates, utilities "are more sensitive to long-term rates" (*id*. at 1868), which have not been as impacted. (*Id*. at 1868-1869.)

Beyond generally rising interest rates as the Fed's QE program eases, witness Hevert pointed to two additional major factors in the capital market environment: (1) increased market volatility, including investor expectations that volatility will continue to increase as the Fed's QE policies are reversed; and (2) the cash squeeze impact of the Tax Cuts and Jobs Act upon utilities generally. (*Id*. at 1787-72 – 1787-79.) Both of these factors increase investor-perceived risk, which, witness Hevert concluded, should lead the Commission to "focus on the upper end of the range of analytical results." (*Id*.)

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Based upon his econometric models, witness Hevert testified that the Company's cost of equity capital (*i.e.*, ROE) was in the range of 10.25-11.00%. (*Id*. at 1787-81.) And while his capital market analysis led him to put emphasis on the upper range of those results, he also considered several Company-specific business risks in arriving at his final ROE recommendation. These risks include: (1) the risks associated with certain aspects of the Company's generation portfolio, including specifically issues relating to coal-fired generation (including coal-ash basin closure), nuclear generation, and regulations motivating distributed generation and net metering; (2) the Company's significant capital expenditure plan; (3) the risk associated with severe weather; (4) the risk associated with the Company's regulatory environment; and (5) the cost of issuing common stock. (*Id*. at 1787-42.) Taking into account these business risks, the capital market environment, and the results of his econometric modeling, witness Hevert's single-point ROE recommendation was 10.75%, just 12.5 basis points above the midpoint of his ROE range.[13]

The only intervenor witness to provide ROE testimony based on econometric modeling and analysis was ORS witness Parcell. His ROE recommendation was 9.3%. He utilized three methodologies: DCF, CAPM, and comparable earnings, which yielded the following results:

- Discounted Cash Flow (DCF)
  - Midpoint – 9.1%
  - Range – 9.0 – 9.2%
- Capital Asset Pricing Model (CAPM)

[13] The Company's requested ROE (10.5%) is correspondingly 12.5 basis points *below* the midpoint of witness Hevert's ROE range.

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- Midpoint – 6.45%
- Range – 6.3 – 6.6%

- Comparable Earnings
  - Midpoint – 9.5%
  - Range – 9.0 – 10.0%

(Tr. Vol. 6, p. 1178-4.) Witness Parcell discounted the CAPM results in his evaluation because the results produced were too low in his opinion. Accordingly, his single-point ROE recommendation resulted only from his DCF and Comparable Earnings analyses. The recommendation is a midpoint of the midpoints – that is, his 9.3% recommendation is the midpoint between the 9.1% midpoint produced by his DCF method and the 9.5% midpoint produced by Comparable Earnings method. (*Id.*)

No other ROE econometric analyses were presented to the Commission. Walmart witness Tillman merely indicated that the Commission should "closely examine" the Company's ROE proposal (Tr. Vol. 7, p. 1519-17) and, while acknowledging that decisions of other regulatory commissions do not "bind" this Commission (*id.*), raises a concern that the Company's 10.5% proposed ROE "exceeds the average ROE" approved by other utility regulatory commissions in recent years. (*Id.* at 14.) He indicates that the average ROE for vertically integrated utilities authorized from 2016 to the present is 9.76%. (*Id.* at 15.)

In a letter to the Commission submitted March 25, 2019, ORS indicated that it was "willing to accept" an ROE of 9.76% as referenced by witness Tillman, which it calls its "Plan B." Of

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course, witness Tillman presented no econometric analysis to support this recommendation – it is merely a mathematical average, and acknowledged as such by ORS.

The Commission has carefully evaluated all of the expert ROE evidence. It agrees with witness Hevert that all of the econometric models utilized by the experts have their own limitations, and, therefore, it is necessary to carefully review their results and to apply those results "to observable, relevant market information." (Tr. Vol. 8, 1787-13.) The Commission further agrees with witness Hevert that "[t]o the extent a given model's assumptions are misaligned with … [observable market] data, or its results inconsistent with basic financial principles, it is appropriate to consider whether other methods likely provide more meaningful and reliable results." (*Id.* at 67.) In doing so, the Commission also discharges its duty under the *Hope* "end result" test: "Under the statutory standard of 'just and reasonable' it is the *result reached* not the method employed which is controlling." *Hope*, 320 U.S. at 602, quoted in *Southern Bell Tel.*, 270 S.C. at 596. Indeed, witness Parcell appears to agree, in that he discarded his CAPM results as too low in light of prevailing capital market conditions. (Tr. Vol. 6, p. 1178-46.)

The Commission is further persuaded by witness Hevert that the results of the experts' (both his and witness Parcell's) DCF analyses are also too low in light of current capital market conditions. These results do not adequately account for the Federal Reserve's policy reversals in recent years, and simply fail the *Hope* "end result" test. Inasmuch as witness Parcell continues to rely heavily upon his DCF analysis (apparently giving it equal weight to his Comparable Earnings analysis), the Commission questions the overall validity of witness Parcell's ROE recommendation.

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In addition, once witness Parcell's DCF and CAPM analyses are discounted – the CAPM by his own action and the DCF in light of the Commission's adoption of witness Hevert's criticisms – witness Parcell is left with only a single methodology for the estimation of the cost of the Company's equity capital, namely, his Comparable Earnings method, in which he estimated that the Company's ROE was in the range of 9.0-10.0%. The Commission has very recently held that it is "appropriate and reasonable to consider a range of estimates under *various* methodologies in order to more accurately estimate … cost of equity." *SCE&G Order*, at 90 (emphasis added). Basing results on a single analytical method, as the Commission would have to do were it to credit witness Parcell's testimony, is "inconsistent with decisions reached by regulatory commissions over the past several years and departs from the normal practice of estimating the Cost of Equity for utilities." (*Id*. at 89.) Accordingly, the Commission rejects witness Parcell's analysis.

In contrast, the Commission generally credits witness Hevert's testimony. His methodology is essentially the same as he employed in the recently concluded South Carolina Electric & Gas ("SCE&G") proceeding regarding the regulatory treatment of costs associated with SCE&G's recently abandoned nuclear development project in consolidated Docket Nos. 2017-207-E, 2017-205-E and 2017-370-E. In its order issued in that proceeding on December 21, 2018 – a scant four months ago – the Commission specifically held that "the Commission finds that there is ample evidence and reason to conclude that the analyses conducted by Mr. Hevert are accurate and reliable estimates of SCE&G's cost of equity." *SCE&G Order*, at 89-90. Nothing in the last four

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months has changed the Commission's view of the accuracy or reliability of witness Hevert's mode of analysis. [14]

To be sure, the ORS has itself abandoned witness Parcell's analysis in favor of its "Plan B," that is, its acceptance of the 9.76% "average" authorized ROE decisions made by regulatory commissions over the past few years.[15] But this "average" is not the result of the type of rigorous cost of capital analysis the Commission expects. The Commission is charged with the exercise of informed judgment, which is the essence of the *Hope* "end result" test. Simply accepting an average of authorized ROE decisions by other commissions, even if that average happens to fall within the range of ROE recommendations proffered by a single cost of capital estimation

[14] Witness Hevert withstood vigorous cross-examination seeking to portray his ROE recommendations as out of step with actual utility commission decisions. (*See, e.g.*, Tr. Vol. 8, p. 1813-21 (examination by counsel for Walmart).) The Commission rejects this portrayal. First, as witness Hevert points out, many decisions by other commissions have set ROE within his recommended range, or within a few basis points of that range. (*Id*. at 1815, 1872-73.) Further, as he testified, commissions seek to balance all kinds of factors in their ultimate ROE determinations, while he, as an ROE expert witness, provides his opinion to those commissions on his view of the utility in question's cost of capital. (*Id*. at 1873.) Accordingly, it is not in the least bit unusual for the authorized ROE ultimately selected by a commission to be different from an ROE expert's point recommendation, or even the expert's recommended range. (*Id*. at 1872-73.)

[15] Were the Commission to rely upon key decisions in other regulatory cases, it would look first at the recently concluded SCE&G case, in that all parties have agreed that the Company and SCE&G are comparable utilities. In that case the Commission expressly held upon reconsideration of its initial order that the analyses of Mr. Hevert (SCE&G's ROE witness) "are accurate and reliable" and support a cost of equity of 10.75% (Mr. Hevert's recommendation), but that in light of SCE&G's agreement to lower the ROE to be applied to rates to 9.9%, the Commission would set ROE at that 9.9% level. *Ruling on Petitions for Rehearing and Reconsideration*, PSCSC Order No. 2019-122, Docket Nos. 2017-207-E, 2017-305-E, and 2017-370-E, at 26- 27, (Feb. 12, 2019). The North Carolina Utilities Commission allowed a 9.9% ROE to the Company in the Company's most recent North Carolina rate case (*Order Accepting Stipulation, Deciding Contested Issues and Requiring Revenue Reduction*, Docket No. E-7, Sub 1146, N.C.U.C. (June 22, 2018)), as well as a 9.9% ROE to the Company's sister utility, Duke Energy Progress, in its most recent North Carolina rate case (*Order Accepting Stipulation, Deciding Contested Issues and Granting Partial Rate Increase*, Docket No. E-2, Sub 1142, N.C.U.C. (Feb. 23, 2018). Finally, this Commission set a 10.5% ROE for a water company, Carolina Water Services less than one year ago. *See In re: Application of Carolina Water Service, Inc. for Approval of an Increase in Its Rates for Water and Sewer Services*, Docket No. 2017-292-WS, Order Nos. 2018-345 (May 17, 2018) and 2018-494 (July 11, 2018) (rehearing denied on issue of ROE)).

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methodology, is decidedly not the "exercise" of informed judgment. To the contrary, it is the *abdication* of informed judgment.

Witness Tillman himself does not necessarily advocate that 9.76% is the Company's actual ROE; he simply proffers the average "to illustrate a nationwide electric utility customer's perspective on industry trends in authorized ROE." (Tr. Vol. 7, p. 1519-17.) The Commission simply has not been presented any credible evidence that this "average" is anything more than an arithmetic result – it is certainly not the result of the reasoned application of judgment by an ROE expert, nor would it constitute an appropriate result of "informed judgment" by the Commission. Were the Commission to simply adopt the average it would be indulging in an arbitrary and standardless ratemaking, which is the antithesis of "just and reasonable" rates.

The Commission set the Company's rates in its last rate case based upon a 10.2% ROE. There is no credible evidence supporting a 44 basis point reduction in the Company's cost of equity capital in the intervening years. To the contrary, current capital market conditions are pointing in the opposite direction based upon a generally higher interest rate environment, increased and increasing debt and equity market volatility, and pressure upon utility credit metrics following passage of the Tax Act.

Accordingly, the Commission accepts witness Hevert's analysis that the Company's cost of equity capital is in the range of 10.25-11.0%. The Company has requested that rates be set based upon an ROE of 10.5%, which is well within that range and, indeed, 12.5 basis points below the midpoint of that range. Based upon the record in this proceeding, the Commission finds 10.5% to be a reasonable ROE for the Company in this case.

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The Commission notes further that its approval of an ROE at the level of 10.5% – or for that matter, at any level – is not a guarantee to the Company that it will earn an ROE at that level. Rather, as South Carolina law demands, setting the ROE at this level merely affords DE Carolinas the opportunity to achieve such a return. The Commission finds and concludes, based upon all the evidence presented, that the ROE provided for here will indeed afford the Company the opportunity to earn a reasonable and sufficient return for its shareholders while at the same time producing rates that are fair to its customers.

Capital Structure

In its Application, DE Carolinas proposed using a capital structure of 53% members' equity and 47% long-term debt. The 53/47 structure is supported by the evidence presented by Company witness Sullivan, who indicates that its adoption will support the Company's long-term credit quality and financial strength. (Tr. Vol. 8, p. 1781-3 – 1781-20.) No party objects to the proposed 53/47 structure, and no party has introduced any evidence suggesting that structure is not just and reasonable.

Accordingly, based on the record in this proceeding, the Commission finds 53% equity and 47% debt to be a reasonable capital structure for DE Carolinas in this case.

Cost of Debt

The rebuttal testimony and exhibit of Company witness Sullivan indicates that the Company's cost of debt, to be applied to the approved capital structure so as to derive an approved overall rate of return, is 4.53%. (*Id*. at 1783-2 – 1783-4; Hearing Ex. 50 (Sullivan Rebuttal Ex. 1).) In his surrebuttal testimony, ORS witness Parcell indicated he is not opposed to the cost of debt

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proposed in Mr. Sullivan's rebuttal testimony. (Tr. Vol. 6, p. 1180-17, 1215-1216.) No party disputes the 4.53% cost of debt, and the Commission accepts this testimony and evidence.

Accordingly, based on the record in this proceeding, the Commission finds 4.53% to be a reasonable cost of debt for the purposes of this case.

Overall Rate of Return

The Commission finds that DE Carolinas, through sound management, shall have the opportunity to earn an overall rate of return of 7.69%. This overall rate of return is derived from applying an embedded cost of debt of 4.53% and an ROE of 10.5% to a capital structure consisting of 47% long-term debt and 53% equity. The Commission finds and concludes that evidence in this case supports DE Carolinas' overall rate of return, cost of debt, ROE, and capital structure.

EVIDENCE FOR FINDINGS AND CONCLUSIONS NOS. 13-35

The evidence in support of the findings of fact are found in the verified Application, pleadings, testimony and exhibits in this Docket, and the entire record in this proceeding.

The South Carolina Supreme Court has concluded that adjustments to the test year should be made for any known and measurable out-of-period changes in expenses, revenues and investments that would materially alter the rate base. *Parker*, 313 S.E.2d at 292. As explained by the Court, "[t]he object of the test year is to reflect typical conditions. 'Where an *unusual* situation exists which shows that the test year figures are *atypical* the [Commission] should adjust the test year data.' Any other standard would negate the aspect of finality created by a test year time limitation." *Id*. The Commission's findings regarding the adjustments to the test year data as proposed by the Company and other parties follows:

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Company witness Smith explained that DE Carolinas made certain accounting and pro forma adjustments to actual operating income and rate base for the test period to reflect known and measurable changes in order to: (1) normalize for abnormal events; (2) annualize part year recurring effects to a full year effect; and (3) show actual changes in costs, revenues or the cost of the Company's property used and useful, or to be used and useful within a reasonable time after the test period, in providing service. (Tr. Vol. 4, p. 655-5 – 655-6.) These adjustments are reflected in Hearing Ex. 10 (Smith Exhibit 1 and Smith Rebuttal Exhibit 1), and are further described in the testimony of Company witnesses Smith, McGee, and Pirro. The ORS' responses to these adjustments and additional adjustments recommended by the ORS, are reflected in Audit Exhibit GS-2, Supplemental Audit Exhibit GS-2, and Surrebuttal Audit Exhibit GS-2, and are further described in the testimony of ORS witnesses Smith, Morgan, Payne, and Seaman-Huynh.

A. Agreed Upon Adjustments

In her rebuttal testimony, Company witness Smith noted that DE Carolinas and the ORS agree on the following nine accounting adjustments proposed by the Company in its initial filing:

- Adjustment #6 – Adjust for costs recovered through non-fuel riders
- Adjustment #8 – Annualize depreciation on year end plant balances
- Adjustment #9 – Annualize property taxes on year end plant balances
- Adjustment #10 – Adjust for new depreciation rates
- Adjustment #16 – Adjust for coal inventory
- Adjustment #17 – Adjust for approved regulatory assets and liabilities
- Adjustment #24 – Levelize nuclear refueling outage costs

- Adjustment #26 – Adjust aviation expenses
- Adjustment #34 – Adjust for Federal tax rate change

(Tr. Vol. 4, p. 659-3.)

In addition, Company witness Smith noted that there are ten recommended adjustments, by the ORS, either in direct or supplemental testimony, with which DE Carolinas agrees. (*Id*. at 659-4.) These adjustments reflect the update of estimates to actuals and additional adjustments to the Company's cost of service as shown on Smith Supplemental Exhibit 1, and are incorporated in Smith Rebuttal Exhibit 1:

- Adjustment #1 – Annualize Retail revenues for current rates
- Adjustment #2 – Update fuel costs to approved rate and other fuel related adjustments
- Adjustment #3 – Adjust other revenue
- Adjustment #4 – Adjust the amount of CWIP in rate base
- Adjustment #5 – Eliminate unbilled revenues
- Adjustment #11 – Adjust for post year additions to plant in service
- Adjustment #12 – Reflect 2017 Lee CC addition to plant in service
- Adjustment #23 – Update benefit costs
- Adjustment #31 – Adjust vegetation management expenses
- Adjustment #32 – Synchronize interest expense with end of period rate base

(*Id*. at 659-4 – 659-5.)

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The adjustments listed in this Section have been agreed to by DE Carolinas and the ORS, and are not contested by any of the Parties. The Commission finds that these adjustments are just and reasonable to all Parties in light of all the evidence presented.

B. Adjustments relating to Deferrals

The differences in the Company's position and the ORS' position on the adjustments listed below are related to the treatment of deferrals:

- Adjustment #7 – Amortize deferred cost balance related to Carolinas West Control Center
- Adjustment #13 – Amortize deferred cost balance related to Lee CC
- Adjustment #19 – Amortize deferred cost balance related to SC AMI
- Adjustment #35 – Amortize deferred cost balance related to SC Grid

These adjustments are discussed in this Section.

For the following adjustments, not only does the Company oppose the ORS' recommended deferral treatment of these adjustments, the Company also opposes other aspects of the ORS' recommendations on these adjustments:

- Adjustment #14 – Adjust for Lee Nuclear amortization[16]
- Adjustment #18 – Amortize deferred environmental costs[17]

[16] Lee Nuclear Project development costs, and whether the Company should be allowed to earn a return on these costs, are addressed in the Evidence for Findings and Conclusions Nos. 36-38.
[17] The costs the Company has incurred relating to environmental compliance – in particular coal ash-related costs – are addressed in the Evidence for Findings and Conclusions Nos.53-55.

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- Adjustment #25 – Amortize rate case expenses[18]
- Adjustment #30 – Adjust for Customer Connect Project additional expense and deferral[19]

As noted, these adjustments are addressed elsewhere in this Order.

Background On the Company's Requests for Deferral Accounting

The Company proposed to begin amortizing several deferred cost balances for which the Commission had previously granted accounting orders permitting the Company to defer the costs for consideration for cost recovery in the Company's next rate case. The Company has requested that the deferrals be included in rate base during the amortization period and that the Company be permitted to recover its weighted average cost of capital ("WACC") on the unamortized balance during the amortization period. These specific accounting adjustments include deferred costs for the following:

- **Adjustment #7** – Amortize Deferred Cost Balance Related to CWPDCC[20]
- **Adjustment #13** – Amortize Deferred Cost Balance Related to Lee Combined Cycle[21]
- **Adjustment #18** – Amortize Deferred Environmental Costs[22]
- **Adjustment #19** – Amortize Deferred Cost Balance Related to South Carolina AMI[23]
- **Adjustment #30 –** Adjust for Customer Connect Additional Expense and Deferral[24]

[18] The Company's rate case expenses are discussed in Section C herein.
[19] The Company's Customer Connect expenses are discussed in Section C herein.
[20] Deferral approved in Order No. 2018-552 in Docket No. 2018-207-E.
[21] Deferral approved in Order No. 2018-552 in Docket No. 2018-207-E.
[22] Deferral approved in Order No. 2016-490 in Docket No. 2016-196-E.
[23] Deferral approved in Order No. 2016-489 in Docket No. 2016-240-E.
[24] Deferral approved in Order No. 2018-552 in Docket No. 2018-207-E.

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- **Adjustment #35** – Amortize Deferred Cost Balance Related to South Carolina Grid[25]

In addition to the accounting deferrals noted above and already approved for deferral by the Commission, in its Application, the Company also requested an accounting order to 1) continue the deferral for coal ash basin closure compliance costs after the cut-off date for this rate case of December 31, 2018; 2) adopt new depreciation rates effective August 1, 2018, and defer in a regulatory asset the incremental depreciation expense resulting from the new depreciation rates if and as approved by the Commission,[26] and 3) approve deferral of the Company's ongoing GIP costs.[27] (Application at 23-24.)

Deferral accounting is one regulatory mechanism among a wide range of mechanisms for the Commission to use in setting rates as acknowledged by ORS witness Parcell and Company witnesses. (Tr. Vol. 4, p. 716; Tr. Vol. 6, p. 1178-19 – 1178-21; Tr. Vol. 7, p. 1714.) As Company witness Wright testified:

> A deferred account mechanism is not unusual in ratemaking. In his book discussing utility regulation, Leonard Goodman indicates that "[t]he use of deferred cost accounting in the ratemaking context is so common and so fundamental a regulatory tool that no agency is

[25] Deferral approved in Order No. 2018-751 in Docket No. 2018-206-E.

[26] The Company's revised depreciation rates, as adjusted in Doss Direct Exhibit 3 in composite Hearing Ex. 22, are addressed in the Evidence for Findings and Conclusions Nos. 49-50. No Party contested the appropriateness of the Company's revised depreciation rates, as adjusted, and as noted in Findings and Conclusions Nos 49-50, the Commission approves these new depreciation rates and finds them to be just and reasonable.

[27] Per Order No. 2019-26H, the Commission will establish a new and separate docket to review and consider the Company's GIP per the Stipulation entered into between the ORS and the Company on March 12, 2019. In addition, the Company proposed that in the event the Commission does not find it appropriate for the Company to increase O&M expense to recover the projected costs for its Customer Connect project, in the alternative, the Company requests that the Commission approve continuation of the deferral of the incremental operating expenses incurred related to the Customer Connect project, including a carrying charge on the deferred costs, until the Company's next general rate case. (Tr. Vol. 4, p. 652-53.) As discussed further in Section C herein, we find the Company's request to increase O&M expense for the Customer Connect project to be reasonable and appropriate and, as a result, the Company's alternative request to continue the deferral for Customer Connect costs is not necessary.

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> likely to consider it necessary to study whether as a matter of policy costs should be deferred…" *citing* Goodman, Leonard, "*The Process of Ratemaking,"* Public Utility Reports, Vienna, VA, 1998, p. 322.

(Tr. Vol.6, p. 1242-20.) As noted by Company witness Smith, deferral accounting is a mechanism that can be used to delay the Company's need to file a rate case. (Tr. Vol. 4, p. 716.) She explained that other regulatory mechanisms that minimize the need for deferrals used in different jurisdictions might include step-up rates or projected test periods. (*Id.*) Deferrals can facilitate the implementation of new technologies, such as Smart Meters[28] and the Company's new billing system, known as Customer Connect,[29] and facilitate regulatory compliance, such as Fukushima and cybersecurity requirements.[30] Where such programs are in the customer interest, deferrals can and have been appropriate. Typically, this Commission has approved utility requests for deferral accounting orders for a number of items by issuing accounting orders with the caveat that the reasonableness of the deferred costs and mechanics of the cost recovery would be subject to review in a future rate case proceeding.[31] The issue of deferral accounting has typically been approached by the Commission on a case-by-case basis or through settlement, consistent with the regulatory policy that the "just and reasonable rate is set by balancing the interest of the ratepayers and the

[28] See Docket No. 2018-205-E, Order No. 2018-553 (2018).
[29] *Id.*
[30] See Docket No. 2013-472-E, Order No. 2016-36 (2016).
[31] *See Order No. 2014-138*, PSCSC Docket No. 2013-472-E, *In Re: Petition of Duke Energy Progress, Inc. for an Accounting Order for Deferrals Associated with Sutton, Fukushima, Cyber Security, Harris COLA & Decommissioning* (January 30, 2014); *Order No. 2009-254*, Docket No. 2009-55-E, *In Re: Petition of Duke Energy Carolinas, LLC, for an Accounting Order to Defer Certain Environmental Compliance Costs and the Incremental Costs Incurred from the Purchase of a Portion of Saluda River's Ownership in the Catawba Nuclear Station*, (April 9, 2009).

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right of the utility to earn a fair return."[32] The Commission has historically authorized deferral accounting for post-in-service costs of major generating plant additions from the date the units were placed in service to the date rates reflected the cost of the plants, and we have also permitted deferral accounting for abandoned plant.[33] In addition, we have authorized deferral accounting for significant O&M expenses incurred to comply with regulations such as new requirements for nuclear operating units after the Fukushima incident and new cyber-security requirements, finding the magnitude of the costs are material and could significantly impact the Company's earnings.[34] For example, we approved DE Progress' request for permission to adjust the level of decommissioning contributions applicable to South Carolina retail operations and defer in a regulatory liability account certain decommissioning expense credits, which were projected to be approximately $3 million annually to South Carolina retail operations. There, DE Progress asserted that the annual net costs it sought to defer were material and could substantially harm the Company's earnings if deferral accounting was not permitted. The Commission permitted deferral accounting of the decommissioning expense finding "[c]learly, it is reasonable that degradation of the Company's earnings be prevented; in so much as it is related to a lack of deferral of the regulatory assets and liability cited in the Company's Petition. Granting the deferrals will not

[32] *S.C. Cable Television Ass'n v. S.C. Pub. Serv. Comm'n, et al.*, 313 S.C. 48 (1993) (citing *Southern Bell*, 270 S.C. 590).
[33] *See PSCSC Order No. 2014-138*, PSCSC Docket No. 2013-472-E, *In Re: Petition of Duke Energy Progress, Inc. for an Accounting Order for Deferrals Associated with Sutton, Fukushima, Cyber Security, Harris COLA & Decommissioning* (January 30, 2014).
[34] *Id.* (citing *Accounting Order No. 2012-780* (October. 25, 2012) ("This Commission approved South Carolina Electric & Gas Company's request to defer costs related to compliance with Fukushima-related regulation."); *see also Order Approving Increase in Rates & Charges & Settlement Agreemen*t, *Order No. 2013-661* (Sept.18, 2013) ("The deferral and amortization of operations and maintenance expenses to comply with Fukushima and Cybersecurity-related regulation were approved by this Commission.")).

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preclude this Commission or any party from addressing the reasonableness of the costs deferred in regulatory asset and liability accounts in the next general rate proceeding."[35]

ORS Recommendation for Deferral Accounting Treatment in this Proceeding

In this proceeding, ORS witness Payne testified that the ORS will make a filing in 2019 to request a proceeding to adopt guidelines for future deferral accounting cost recovery requests. In general, witness Payne recommends that each deferral be separated into two categories of costs: operating-related costs and capital-related costs. (Tr. Vol. 7, p. 1613-4.) Mr. Payne recommends that the Company be allowed to recover prudently-incurred operating-related expenses which he considers to be O&M, depreciation expense and property taxes on plant-in-service, without WACC return or rate base treatment. (*Id*.) For capital-related costs which witness Payne defines as the deferred return on capital investments, he recommends that the Company be permitted to recover prudently incurred capital-related costs by recording capital-related costs to rate base and recovering those costs through depreciation expense over the life of the associated asset, while earning a WACC return on the undepreciated balance. (*Id.* at 1613-4 – 1613-6.) With the exception of the deferred environmental costs included in Adjustment #18, ORS recommends the Commission allow the Company to recover ("return of") its deferred expenses subject to its proposed guidelines concerning rate base treatment of operating-related and capital-related costs. Witness Payne testified the ORS recommendations for deferral accounting treatment are in the

[35] *PSCSC Order No. 2014-138*, at 6.

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public interest because the recommendations allow for a return of costs, and where appropriate, a return on costs.

Company witness Smith addressed the specific accounting treatment proposed by the ORS for accounting deferrals as well as ORS witness Morgan's suggested amortization periods. Company witness Smith testified that the ORS recommendations for deferral accounting would deny the Company recovery of prudently incurred costs by only permitting a "return of" but not a "return on" the Company's deferred costs. (Tr. Vol. 4, p. 659-5.) Company witness Smith explained that carrying costs on deferrals are necessary to ensure the Company recovers the full value and effect of the deferral. (*Id.*) Analogizing the deferrals to a loan an individual might get from a bank, witness Smith explained that shareholders have "loaned" the Company this money to finance investments that benefit the Company's customers and the carrying costs on the deferrals compensate the shareholders for the "interest" on that "loan." (*Id.* at 717-18.) Moreover, Company witness Smith argued that even though no party contests the prudency of the expenses in the deferrals, ORS devalues the deferrals by disallowing carrying costs, and in most cases, significantly extending the recovery period for the deferred costs. (*Id.* at 659-5.) The Company opposes ORS witness Payne's recommendation to disallow the return on the incremental costs deferred in a regulatory asset during the *deferral period* pointing out that witness Payne offers no rationale for this proposed disallowance other than citing the portion of the deferral orders that states that "[s]uch relief will not prejudice the right of any party to address the prudency of such costs in a subsequent rate proceeding." (*Id.*) The Company also opposes the ORS' recommendation to disallow a return on the unamortized balance of the deferred costs during the *amortization period* for the portion of

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regulatory assets that relate to operating expenses. (*Id.* at 659-5 – 659-6.) The Company argues that the ORS recommendation further diminishes its recovery of prudent costs because of the significantly longer amortization periods recommended by ORS witness Morgan, which Company witness Smith explains increases the amount of disallowance as a result of the time value of money. (*Id.* at 659-6.) She explained that ORS' rationale is inappropriate and inconsistent because it treats the costs as if they are capital costs in terms of length of recovery but does not allow them to be placed in rate base or collect carrying costs like undepreciated capital would receive. Company witness Ghartey-Tagoe summarizes the Company's criticism of the ORS position as follows: "[t]he ORS does not raise any imprudence allegations regarding the Company's actions relative to expenses included in deferred balances; it simply ignores that the timeliness of cost recovery matters and that the Company must finance the deferred balances." (*Id.* at 647-12.) Moreover, ORS's rote application of a position to not allow a return on any "operating costs" belies any fact-specific inquiry germane to the expenses at issue. For example, the "operating cost" related to AMI would not exist but for the capital being deployed, which is also the case for the Customer Connect and grid-related deferrals in this case. Whether a cost by accounting definition is truly an "operating cost" or capital-related cost—as the operating expense is necessary to deploy the capital—should also be a factor relevant in a fact-specific inquiry.

ORS witness Morgan argued that the ORS proposal is fair explaining that the Company would not have been permitted to earn a return on any of the costs had the costs not been approved for deferral treatment. DE Carolinas witness Smith argued that Mr. Morgan's logic is misplaced and inconsistent because there are carrying costs on regulatory liabilities that the ORS is willing to

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accept when they benefit customers. (*Id.* at 659-7.) Indeed, during the hearing, the Commission heard testimony that customers earn a return on a number of costs that they "pre-pay the Company."[36] To illustrate the inconsistency of ORS' recommendation Company witness Smith uses deferred income taxes as an example. She explained that income taxes are an operating expense and deferred income taxes result from a timing difference from when the Company pays the cash for the expense and when the costs are recovered in customer rates, resulting in a regulatory liability. Deferred income taxes are included in rate base, thus the Company pays customers a carrying charge on the deferred tax balance. Yet, the ORS is not recommending those costs be removed from rate base which would be a significant detriment to customers by increasing the Company's rate base by 30 percent. (*Id.* at 659-8.) Company witness Smith concludes that deferrals, by definition, recognize a cost that the Company is not currently recovering in rates. (*Id.* at 659-10.) She explained that those deferred costs, whether capital or operating-related, require cash that must be obtained by the Company's debt and equity investors and those investors require interest (a return on the deferred costs) on the cash they have invested in the Company. (*Id.*) Company witness Smith testified that these financing costs are a real cost to the Company and thus by disallowing the financing costs, the Commission would be disallowing prudently incurred costs. (*Id.*)

[36] *See* Tr. Vol. 5, p. 1116-18 (Company witness Doss testified that customers would receive a return on the costs being held in the end-of-life nuclear reserve); Tr. Vol. 4, p. 731 (customers are paid interest on deposits); Tr. Vol. 7, p. 1707 (Accumulated deferred income taxes ("ADITs") collected from customers are included in rate base as a credit and thus customers are earning a return on that balance as conceded by ORS witness Payne); *Id.* at 1708 (the Company is proposing that customers earn a return on the EDIT balance which would not have existed if the Commission had not ordered that deferral.)

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Company witness Hevert addressed the financial consequences of ORS witness Payne's deferral accounting recommendation and explained that witness Payne's recommendation is counter to fundamental corporate finance principles. (Tr. Vol. 8, p. 1790-95.) Witness Hevert testified that if the Company is not allowed to include the "operating-related" deferred costs in rate base, the Company will suffer a negative net present value, which would be borne by investors. (*Id.* at 1790-96.) Witness Hevert analogized the Company's proposal to include operating-related regulatory assets in rate base to corporate finance discounted cash flow valuation which includes both a "return of" and "return on" to calculate the present value of an investment. (*Id.*) Mr. Hevert used bond valuation as an illustrative example and explained that to derive the present value of a five-year bond valued at $10 million, both the amortization (or "return of" principal) and the interest (or "return on") must be included to correctly calculate the value. (*Id.*) He explained that when interest, or the "return on," is excluded from the calculation, there is a significant reduction in the present value which equates to 13.41 percent in his hypothetical example. (*Id.* at 1790-96 – 1790-97.) Thus, Mr. Hevert argued that the amortization or "return of" the regulatory asset is not a "sufficient level of recovery" as Mr. Payne suggests; rather, because the Company has expended cash upfront for these operating costs, a carrying charge is necessary to fully recover the costs on a present value basis. (*Id.* at 1790-97.) Mr. Hevert explained that carrying charges reflect the economic value required to avoid a loss in present value and absent the carrying charge, the Company's financial profile would be diminished. (*Id.* at 1790-98.) Mr. Hevert also disagrees with Mr. Payne's categorization that deferred depreciation expense is an operating-related cost

because Mr. Hevert views deferred depreciation expense as having financial implications analogous to capital-related costs, in that both represent a cash outlay that must be financed. (*Id.*)

Company witness Wright further adds that based on his experience, Mr. Payne's recommendation to disallow the recovery of a return on a large portion of the Company's deferred costs is inconsistent with the normal cost recovery allowed by regulatory bodies. (Tr. Vol. 6, p. 1247-28.) Mr. Wright explains that the ORS' deferral accounting recommendations violate the basic regulatory compact which states that:

> A rate-regulated entity incurs costs in order to provide reliable service to customers within its approved service territory in a not unduly discriminatory manner **with the expectation that it will have the right to recover those prudently incurred costs, plus earn a fair rate of return on the capital that has been invested** in the business to support reliable utility service. (emphasis added).[37]

(*Id.* at 1247-28 – 1247-29.) Witness Wright disagrees with Mr. Payne's assertion that his deferral accounting recommendation "still allows the Company to recover its actual deferred costs"[38] because there is a cost of money that is a real cost that Mr. Payne's recommendation does not permit the Company to recover. (*Id.* at 1247-29.) In addition, witness Wright explains that Mr. Payne's deferral accounting recommendation completely ignores the effect of inflation over time and this impact is further exacerbated by the ORS recommendations to increase the amortization periods significantly from a Company-proposed amortization period of three years to an ORS-

[37] "Accounting for the Effects of Rate Regulation," Edison Electric Institute, July 2011, at 5; *see also Southern Bell*, 270 S.C. at 595 ("the governing principle for determining rates to be charged by a public utility is the right of the public on one hand to be served at a reasonable charge, and the right of the utility on the other to a fair return on the value of its property used in the service") (citing *Bluefield*, 262 U.S. 679).
[38] Tr. Vol. 7, p. 1613-6, 1613-8, 1613-11.

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proposed amortization period of 30-39 years in some cases. (*Id.* at 1247-30.) Dr. Wright concludes that he is concerned that Mr. Payne's recommendation disallowing a return on much of the Company's deferred costs would elicit a negative response from the investment community. (*Id.* at 1247-31.)

In response to DE Carolinas witnesses Smith, Hevert and Wright, ORS witness Payne opined that the ORS recommended accounting treatment for deferrals is a relatively minor reduction to the Company's operating experience. Based solely on the aspect of a return and rate base inclusion incorporating the same amortization periods as the Company and no change to the allowable coal ash costs, the ORS' deferral accounting recommendation only reduces the Company's revenue requirement by approximately $4,000,000. (Tr. Vol. 7, p. 1617-3.) However, Company witness Smith testified that difference between the Company's position and the ORS' position totals $68 million. (Tr. Vol. 4, p. 713.)

Witness Payne testified that there is no statute or regulatory standard that ORS identified that governs recovery of a cost of capital return on a deferral balance; thus, the Commission has the duty to determine the most equitable treatment of the deferred balances for the Company and its customers. (*Id.* at 1617-3 – 1617-4.) ORS maintains that the Commission should apply the proper accounting treatment to the expenses contained in the deferral balances as it would absent the deferral account. (*Id.* at 1617-4). However, Mr. Payne admitted this is essentially a policy position and there is no accounting and financial requirement to do so. (Tr. Vol. 7, p. 1710). In fact, Company witness Smith testified that she contacted the Company's external accounting firm, Deloitte, to inquire about the ORS' deferral accounting recommendation and Deloitte confirmed

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that there is "no accounting [guidance] that follows that." (Tr. Vol. 8, p. 1950). In fact, Mr. Payne noted that state commissions largely decide regulatory asset recovery on a case-by-case basis similar to our current practice. (Tr. Vol. 7, p. 1617-5). Witness Payne provided an overview of deferral accounting guidelines in Minnesota, Connecticut, New York, New Hampshire and Utah noting that the guidelines and recovery permitted varies by state. (*Id.* at 5-6.) In fact, in Minnesota, we identified a case where the Minnesota Public Utilities Commission allowed Xcel Energy to include the unamortized balance of its deferred nuclear-refueling outage costs in rate base and earn the overall allowed rate of return on that balance to "compensate the Company for the time value of money foregone as part of this deferred recovery." *See In re: Application of Northern States Power Company for Authority to Increase Rates for Electric Service*, Minnesota Public Utilities Commission, Docket No. E-002/GR-13-868 at 25 (May 8, 2015) (the "2015 Xcel Order").[39] We note that Mr. Payne did not address other states where deferrals and recovery of the type sought by

[39] In this case, the Minnesota Public Utilities Commission explained that the Company had been deferring and amortizing its nuclear-refueling-outage costs and that the commission "had approved this cost treatment to ensure greater accuracy in cost recovery by reasonably matching the time these costs are incurred with the time they are recovered while avoiding substantial fluctuations in those costs between rate cases." 2015 Xcel Order at 28. As discussed further below, this order also supports the Company's position that the appropriate amortization period should align with the period over which the costs were incurred.

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the Company have been approved, such as Colorado,[40] Nevada,[41] New Jersey,[42] North Carolina,[43] Kentucky.[44] Notably, Mr. Payne attempted to argue at hearing that North Carolina did not allow the returns that were requested by the Company, but then admitted he did not understand the full range of deferral treatment in North Carolina. (Tr. Vol. 7, p. 1714.) Upon review, this Commission finds it notable that North Carolina has allowed the types of returns requested by the Company in this case, during the deferral period and amortization period, as has this Commission in the past. (*Id.* at 1713-14; *see supra* note 37.)

Mr. Payne also argued that the Company uses deferral accounting as a vehicle to preserve the Company's ability to recover costs incurred outside the test period in its next rate case

[40] *See, e.g., Pub. Serv. Co. of Colo.*, Decision No. C18-0762, P 18 (Colo. Pub. Utils. Comm'n Aug. 27, 2018) (granting Public Service Company of Colorado's request to establish a regulatory asset account for the incremental depreciation costs associated with the early retirement of two coal generating units and authorizing the Company to start earning a return on the regulatory asset at the utility's WACC rather than delaying decision until the Company's next base rate case in order to provide certainty to the utility and ensure customers receive the benefit of paying less on the regulatory assets than they otherwise would if the utility were not retiring the units early.)

[41] *Application of Nevada Power Company d/b/a NV Energy for Authority to Adjust its Annual Revenue Requirement*, 2017 Nev. PUC LEXIS 172 (December 29, 2017) (granting Nevada Power's request for rate base recognition and a six-year amortization period for the established voltage and volt-ampere reactive control and optimization project and Non-Standard Metering Option project regulatory assets, including corresponding carrying charges).

[42] *Re: Jersey Central Power & Light Company*, BPU Docket No. ER12111052 (Mar. 18, 2015) (finding that Jersey Central Power and Light Company's deferred O&M expenses associated with 2011 storm costs should be amortized over six over years with carrying costs on the unamortized balance).

[43] *Order Accepting Stipulation, Deciding Contested Issues and Requiring Revenue Reduction*, In the Matter of Application of Duke Energy Carolinas, LLC, for Adjustment of Rates and Charges Applicable to Electric Utility Service in North Carolina, et al., NCUC Docket No. E-7, Sub 1146, et al., 15-16, 66-67 (June 22, 2018) (allowing a return on deferred coal combustion residuals expenditures, and also authorizing a regulatory asset account to defer and amortize certain operations and maintenance expenses through amortization); *Order Accepting Stipulation, Deciding Contested Issues and Granting Partial Rate Increase*, In the Matter of Application of Duke Energy Progress, LLC, for Adjustment of Rates and Charges Applicable to Electric Utility Service in North Carolina, NCUC Docket No. E-2, Sub 1142 et al. (February 23, 2018) at 19 (allowing a return on unamortized balance of coal combustion residuals expenditures to be recovered over a five-year amortization period, subject to a management penalty of $30 million.)

[44] *The Application of Louisville Gas and Electric Company for Approval of Its 2004 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2004-00421 (Ky. PSC June 20, 2005) (allowing one-time ash transfer costs to be deferred and amortized over four years and authorizing the opportunity to earn a reasonable rate of return on the unamortized balance of the deferred costs in the environmental rate base).

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proceeding. Mr. Payne maintains that a utility should be granted deferrals for costs that meet a certain level of "extraordinary" in terms of circumstance and magnitude. (Tr. Vol. 7, p. 1617-7.) He offered that deferrals should be permitted for costs that are "non-recurring, unforeseen, and out of management's control" such as uninsured storm damage, losses for early plant retirements or environmental and regulatory remedies imposed by local, state or federal governments. (*Id.*) Citing the FERC Electric Chart of Accounts definition of "Extraordinary Items" as guidance,[45] he recommends that a threshold of approximately five percent of a utility's income, computed before extraordinary items, as an appropriate threshold for deferral consideration and he does not believe the Company's Customer Connect, GIP or installation of new AMI meters meets his proposed threshold. (*Id.*) Witness Payne argues that the Company's definition of deferred costs is overly broad and may allow the Company to continue to seek more deferrals for non-extraordinary O&M costs in the future and shift the risk of regulatory lag onto the customer. (*Id.* at 1617-8.) We disagree.

Commission Conclusions on the Requested Treatment of Accounting Deferrals

During the hearing, the ORS implied that the Company's requests for deferral accounting orders is excessive. (Tr. Vol. 4, p. 1111.) While it is true the Company has requested several deferrals over the past several years, it is also true that ORS has not contested any of them. Witness Payne acknowledges that the use of deferrals is a unique state consideration, and could be impacted by any other regulatory mechanism which may be present in other states, such as the use of forward

[45] We note that the FERC guidance witness Payne relies upon in the General Instructions concerns the Uniform System of Accounts definition of "Extraordinary Items" which had nothing to do with deferral accounting.

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test years, alternative ratemaking, or riders which would otherwise allow recovery of costs not included in rates. (Tr. Vol. 7, p. 1714.) The Commission also notes that especially over the last decade, the electric utility industry has been encountering a period of intense capital investment needs driven by environmental compliance mandates, technological advances such as AMI, and efforts to strengthen utility infrastructure such as the Company's GIP to be addressed in a separate docket. Prior to 2009, the Company had not had a base rate case since 1991 in Docket No. 91-216-E. However, since the 2009 rate case in Docket No. 2009-226-E, the Company has filed for base rate increases in 2011 in Docket No. 2011-271-E and 2013 in Docket No. 2013-59-E to request increases in rates necessary to support its continued capital investment needs. As an alternative to requesting accounting orders for deferrals, the Company could instead choose to file rate cases more frequently. Rate cases are costly and require significant time and resource expenditures of the Company, Commission and ORS as well as other intervenors. In addition, we heard testimony from several public witnesses that were having difficulty paying their bills and are significantly impacted by the Company's requests to increase their rates. Rate stability is important to customers, especially low-income customers, who are struggling to pay their current electric bills. We must balance the interests of customers with ensuring the utility maintains its financial strength and ability to earn just and reasonable rates. Thus, we find that the Company's use of deferral accounting, where necessary, is an appropriate manner to address costs between rate cases. We also find that deferral accounting and recovery can be an appropriate way to mitigate the need for more frequent rate cases and rate shock for its customers. Further, we find that deferral accounting also mitigates the risk of degradation of the Company's earnings for certain types of costs incurred

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during periods for which the Company does not have a revised rates request pending. Deferral accounting may also be appropriate where there are new regulations that are not captured in current rates, or where the ratemaking formula may be inadequate to address the costs at issue. For example, deferral accounting can help bridge the gap for accounting effects from new technologies and unconventional investments that are not accorded Allowance for Funds Used for Accounting ("AFUDC") accounting. A key consideration for the Commission would be whether any of the costs being deferred were included in the Company's rates to begin with. In any case, the time to address overall deferral policy should be on a prospective, not a retroactive basis. In fact, witness Payne admitted at hearing that the ORS deferral accounting recommendation in this case is a "relatively new policy" and that the ORS "came up with [this] policy" to align the treatment of deferred costs with how they would have been treated had they not been deferred. (Tr. Vol. 7, p. 1710.) This policy has not been vetted through the generic docket sought by ORS. If the Commission is to change ratemaking policy in this state, it should be done in a more comprehensive fashion with the input of all utilities in this state and participation from stakeholders which would be affected.

Based on the evidence presented by the parties and our review of case law in other states[46] as explained above and below we continue to believe that the Company's deferred costs should be assessed for recovery on a case-by-case basis considering the unique facts of each case.

[46] *Investigation & Rulemaking Regarding When A Regulated Util. Should Be Permitted to Use Deferred Accounting Resulting in A Regulatory Asset or Liability*, 2014 Nev. PUC LEXIS 74 (March 27, 2014) (The Public Utilities Commission of Nevada ("PUCN") opened an investigation regarding when a regulated utility should be permitted to use deferred accounting resulting in a regulatory asset or liability, and whether the PUCN should establish a regulation regarding such issue. They concluded as follows: "Upon review of the information gathered in this investigation, the

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Based on the facts of this case and consistent with the basic regulatory compact that the Company should be permitted to earn a return on its prudent investment; we find it appropriate for the Company to earn a return on its prudently incurred deferred costs both during the deferral period and during the amortization period, particularly where amortization periods are lengthy. We are persuaded that there is a real cost to finance the Company's investments and a time value to money and thus it is fair for the Company to recover carrying costs on its deferred costs in order to both recoup the costs being deferred and the costs to defer them.[47] No party has disputed the prudency of the Company's deferred costs in this proceeding or the fact that the Company has incurred carrying costs on the deferral; therefore, we conclude that permitting both a "return of" and a "return on" the Company's deferred costs in this proceeding is appropriate.

Also at dispute was the appropriate amortization period for a number of the Company's deferrals. The differences between the Company's proposals and ORS witness Morgan's recommendations are as follows:

Commission has determined that promulgation of a regulation is not warranted at this time. **There is an overarching need for flexibility in dealing with unusual occurrences or events that may or may not reach some level of materiality…Addressing such matters on a case-by-case basis allows the Commission to revise its policy on regulatory assets/liabilities in response to changing conditions in the utility regulatory environment based upon new and/or updated information. It is a fluid process that does not necessarily lend itself to a regulation at this time**." (emphasis added)).

[47] See In re: Petition of Jersey Central Power & Light for Review and Approval of Increases and Other Adjustments to its Rates and Charges for Electric Service and For Approval of Other Tariff Revisions, New Jersey Board of Public Utilities, Docket No. ER12111052 (March 18, 2015) at 57 ("The Board agrees with the Company that there should be a carrying charge on the O&M costs associated with the Major Storms included in this case because money has a time value that deserves to be recognized as a matter of fairness to investors. Non-recognition raises concerns in the financial community, particularly with the credit rating agencies.").

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		Deferred Balance ($000)	Length of Amortization in years	
Adj #	**Adjustment**	**Company Position**	**Company Position**	**ORS Position**
SC -0700	CWPDCC	5,344	3	30
SC -1300	Lee CC Combined Cycle	22,913	3	39
SC -1900	SC AMI	35,957	3	15
SC -3500	SC Grid	6,160	2	5

ORS witness Morgan testified that it is within the Commission's discretion to set the amortization period over which a deferral account will be recovered. (Tr. Vol. 8, p. 2017-2.) Mr. Morgan also explained that the Company had provided no justification for its proposed amortization periods and that his recommendation to base the amortization on the service life of the underlying asset is appropriate because that is the period in which the asset is anticipated to benefit the customer. (*Id.*) Company witness Smith testified that while amortization periods are subjective, there should be a balance and consideration between the impact on customer rates and the impact on the Company's cash flow. (Tr. Vol. 4, p. 659-11.) She explained that given the amount of the Company's deferred balances, the amortization periods proposed by Mr. Morgan are excessive and unnecessarily long and because the ORS has recommended to disallow the return during the amortization period, the longer amortization periods exacerbate the disallowance. (*Id.*)

We agree with Company witness Smith. As previously noted, there is a time value to money and the amortization periods recommended by the ORS are unreasonably long. We continue to find that "[t]he selection of the proper amortization period is a matter of judgment, involving a

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number of factors." *In Re: Application of Piedmont Natural Gas Company for An Adjustment of its Rates and Charges and for Approval of Revised Depreciation Rates,* PSCSC Docket No. 2002-63-G, Order No. 2002-761 at 25. In the past we have looked at the average period between rate cases to guide us in determining an appropriate amortization period for deferred costs. (*Id.* at 40-41 (finding five years to be an appropriate amortization period for deferred environmental costs based on the average time between the utility's past four rate cases) *citing Re: Matanuska Telephone Association, Inc.*, ___ PUR 4th___, (Regulatory Comm'n of Alaska, 2000) ("A utility should be allowed to recover the best estimate of its expense on a prospective basis. The amortization period should reflect the best estimate of when the utility will file its next rate case. The amortization and recovery of expense should be matched with the most reasonable estimate of the benefit associated with the expense; that is the number of years between rate cases."). The average period of time between the Company's last rates case filings over the past ten years (2009, 2011, 2013, and 2018) is three years. We have also considered the accumulation period of the costs in determining a reasonable amortization period. (*In re: Application of South Carolina Electric & Gas Company for Adjustments in the Company's Electric Rate Schedules and Tariffs,* Docket No. 2004-178-E, PSCSC Order No. 2005-2 (January 6, 2005) at 63-64 ("We agree with the Company and Staff that it is reasonable to allow an amortization period that matches the accumulation period yet spreads the impact of the cost in a reasonable way"). Thus, considering that the Company's proposed amortization periods more closely aligns with the accumulation periods over which the costs were incurred and average time between the Company's last four rate cases, we find the

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Company' proposed amortization periods to be more reasonable and appropriate. Therefore, we approve the Company's proposed amortization periods as presented in the table above.

We also find it appropriate to grant an accounting order for the Company's requested accounting deferrals in this case to 1) continue the deferral for coal ash basin closure compliance costs after the cut-off date for this rate case of December 31, 2018; 2) defer in a regulatory asset the incremental depreciation expense resulting from the new approved depreciation rates, and 3) approve deferral of the Company's on-going Grid Improvement costs. We permit the Company to also defer the carrying charge on its investment as well as the carrying charge on the deferred costs at its WACC approved in this case during the deferral period. This order will not preclude the Commission from addressing the reasonableness of the costs deferred in the regulatory asset account in a future general rate proceeding.

Adjustment #7 – Amortize deferred cost balance related to CWPDCC

DE Carolinas has deferred into a regulatory asset account costs incurred from the time its CWPDCC was placed into service until the time the costs are reflected in new rates from this proceeding. DE Carolinas is seeking recovery of deferred costs relating to the CWPDCC over a three-year period including a net of tax return on the unamortized balance of the regulatory asset through inclusion in rate base. The CWPDCC was placed in service in September 2017. (Tr. Vol. 4, p. 796-17.) DE Carolinas witness Oliver explained that the CWPDCC is part of an enterprise program where the Company is updating and consolidating multiple regional centers into purpose-built, highly reliable, and hardened facilities and this facility supports increased North American

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Electric Reliability Corporation reliability standard requirements for Critical Infrastructure Protection and Emergency Operations Preparedness. (*Id.*)

In Docket No. 2018-207-E, we approved the Company's request to defer into a regulatory asset account, the return and depreciation on the capital costs of the CWPDCC at its WACC. The total projected deferred costs are approximately $5 million and in this case the Company is requesting to amortize the deferred balance over a three-year period including the balance less one year of amortization in rate base, resulting in an annual revenue requirement of $2 million including net of tax return on the unamortized balance of the regulatory asset through inclusion in rate base. (*Id.* at 655-15.)

No party contested the prudency of the Company's investment in the CWPDCC. However, ORS witness Payne proposes a deferral balance of $5,042,000, which provides the Company recovery of the same deferred cost of capital and deferred depreciation expenses but does not include a return on those deferred costs. (Tr. Vol. 7, p. 1613- 6.) Witness Payne recommends that the deferred cost of capital portion of the deferral balance be included in rate base but to exclude the deferred depreciation expense portion from rate base because he believes this is consistent with regulatory accounting practices for capital-related and operating-related expenses. (*Id.*) Further, ORS witness Morgan recommends that the Commission not permit the Company to earn a return on the unamortized balance during the amortization period. ORS witness Morgan recommends a 30-year amortization, the service life of the CWPDCC, in order to match the service life of the asset. (Tr. Vol. 8, p. 2015-3.)

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In his surrebuttal testimony witness Morgan testified that the Company had provided no justification for the amortization period the Company recommends for each deferred cost balance and absent the approval of an accounting order establishing the regulatory asset, the Company would not be able to recover all the costs it incurred because some of those costs were incurred outside the test year period. (*Id.* at 2017-2.)

For the reasons discussed above where we rejected the ORS' proposed deferral accounting recommendation, we find it appropriate to approve the Company's request to recover its deferred costs for the CWPDCC as presented in Smith Rebuttal Exhibit 1 over a three-year amortization period and to include the unamortized balance of the regulatory asset in rate base. We note the logical inconsistency of the ORS attempt to deny a return for the costs arguing they are "operating-related costs," but then treating the costs like capital costs for amortization purposes. (Tr. Vol. 4, p. 659-7.) We find that the ORS recommendation for a 30-year amortization period is unreasonably long and does not allow the Company to appropriately recover the cost of its prudent investment.

Adjustment #13 – Amortize deferred cost balance related to Lee CC

In Order No. 2018-552 in Docket No. 2018-207-E, the Commission approved the Company's request to defer into a regulatory asset account costs incurred from the time its Lee CC facility was placed into service until the time the costs approved in this proceeding are reflected in new rates. The costs deferred are the return and depreciation on the capital costs, the associated incremental non-fuel O&M expenses, property taxes, and the carrying cost on the deferred costs at the Company's weighted average cost of capital. The total projected costs are approximately $23 million on a South Carolina retail basis. The Company proposes to recover its deferred costs for

this adjustment over a three-year amortization period, resulting in an $8 million annual revenue requirement, which includes a net of tax return on the unamortized balance of the regulatory asset through inclusion in rate base.

No party contested the prudency of the Company's investment in the Lee CC facility. However, ORS recommends the deferred cost of capital portion of the deferral balance be included in rate base but not the deferred depreciation, O&M, and property tax expense portion of the deferral balance. (Tr. Vol. 7, p. 1613-7 – 1613-8.)

For the reasons discussed above where we rejected the ORS' proposed deferral accounting recommendation, we find it appropriate to approve the Company's request to recover its deferred costs for the Lee CC plant as presented in Hearing Exhibit 10 (Smith Rebuttal Exhibit 1) over a three-year amortization period and include the unamortized balance of the regulatory asst in rate base. Again, we note the logical inconsistency of the ORS attempt to deny a return for the costs arguing they should be treated as "operating-related costs," but then treating the costs like capital for amortization purposes. (Tr. Vol. 4, p. 659-7.) Accordingly, we find that the ORS recommendation for a 39-year amortization period is unreasonably long and does not allow the Company to appropriately recover the cost of its prudent investment.

Adjustment #19 – Amortize deferred cost balance related to AMI

The evidence in support of the findings of fact are found in the verified Application, pleadings, testimony and exhibits in this Docket, and the entire record in this proceeding.

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In its Application, the Company requested recovery of its deferred costs,[48] plus a net of tax return on the unamortized balance (through inclusion in rate base) for three years, associated with the completed deployment of AMI across the DE Carolinas system. (Application at 11.) Company witness Don Schneider, Jr. testified about the Company's deployment of AMI.

Witness Schneider explained that AMI is the term used to refer to a comprehensive metering solution – including meters, communication devices, communication networks, and back office systems – used to create two-way communications between customer meters and the utility. (Tr. Vol. 5, p. 989-4.) It is an overall metering solution, as opposed to just a new type of meter, which allows for remote meter reading, which eliminates walk-by and/or drive-by meter reading. (*Id.*) AMI meters are digital electricity meters that have advanced features and capabilities beyond traditional electricity meters. (*Id.*) Some of the advanced features include the capability for two-way communications, interval usage measurement, tamper detection, voltage and reactive power measurement, and net metering capability. (*Id.*) Witness Schneider stated, as of September 30, 2018, DE Carolinas installed approximately 590,000 smart meters in its South Carolina service territory and deployment is therefore essentially complete. (*Id.* at 989-7.) Witness Schneider explains that for customers who do not wish to have a smart meter, the Commission approved Rider MRM as an alternative solution made available to the customer. At the hearing, Company witness Schneider testified that the Company investigates any and all complaints associated with the

[48] In Docket No. 2016-240-E, the Company petitioned for approval to defer into a regulatory asset account incremental operating and maintenance expense and depreciation expense incurred once the AMI meters were installed, as well as the associated carrying costs on the investments and deferred costs at its weighted average cost of capital. The Commission approved the Company's petition on August 7, 2018 in Order No. 2018-552 (2018).

installation of the Company's smart meters and stands behind the accuracy of the Company's meters. (*Id.* at 1017-19.)

According to witness Schneider, benefits of AMI include allowing customers access to more detailed usage information (down to the hour) via the Duke Energy online customer portal. (*Id.* at 989-5.) Further, regular meter reads and off-cycle meter reads (for the purpose of transferring service) can be performed remotely for customers, eliminating the need for a technician to come to the customer's premise. (*Id.*) Additionally, service connections and disconnections can be performed remotely for the majority of customers who are starting and/or stopping service, again, eliminating the need for a technician to come to the customer's premise. (*Id.* at 989-10.) During storm outages, damage assessment and repair verification can be done much more quickly when customers have a smart meter by interrogating, or "pinging", the meter to determine if it is functioning. (*Id.* at 989-5, 1083.) Witness Schneider further stated that with the capability to record interval usage data, AMI meters are a foundational technology that can enable new rate designs and, combined with the new Customer Connect system, will lead to expanded options and flexibility in supporting enhanced customer services and programs. (*Id.* at 989-8 – 989-9.) He also testified that the Company has identified costs it otherwise would have incurred but for the deployment of AMI. (*Id.* at 989-10.) Specifically, deployment of AMI has enabled the Company to fulfill more customer orders for connection, disconnection and reconnection remotely rather than by conducting field visits as well as reduce manual and drive-by meter reading costs. (*Id.*)

Witness Schneider also explained that the Company's deployment of AMI has enabled new programs to become available to DE Carolinas customers with smart meters, including: (1) Pick

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Your Due Date, which allows eligible customers to select their desired billing due date from the 1st to the 31st of the month, better aligning with customers' needs; (2) Usage Alerts, which provides eligible customers with an alert at the midpoint of their billing cycle; and (3) the Prepaid Advantage program, which will allow customers greater payment flexibility, allowing frequent payments which may help customers better manage their finances.[49] (*Id.* at 989-11 – 989-12.)

No party contested the prudency of the Company's investment in AMI. However, ORS recommended the deferred cost of capital portion of the deferral balance be included in rate base but not the deferred depreciation and O&M expense portion of the deferral balance. (Tr. Vol. 7, p. 1613-10 – 1613-11.) The ORS also recommends recovery over a 15-year amortization period.

Upon consideration of the evidence in this proceeding, the Commission finds and concludes it appropriate to approve the Company's request to recover its deferred cost balance related to the deployment of AMI across its service territory, plus a net of tax return on the unamortized balance (through inclusion in rate base) for three years.[50] In arriving at its decision, the Commission is persuaded the value and benefits associated with AMI are appropriate and warrant recovery from South Carolina customers. Further, the Commission rejects the ORS' deferral accounting treatment recommendation for the reasons previously discussed and find the recommendation for a 15-year amortization period is unreasonably long and does not allow the Company to appropriately recover the cost of its prudent investment.

[49] The Company's Prepaid Advantage program is addressed in Findings and Conclusions No 47.
[50] The Commission's decision to approve recovery of the Company's deferred AMI costs correlates with the Commission's conclusions regarding whether the Company is entitled to earn a return on deferred capital and operating expenses as addressed earlier in this section in the discussion on deferrals.

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Adjustment #35 – Adjust deferred cost balance related to SC Grid

In Order No. 2018-751 in Docket No. 2018-206-E, the Commission approved the Company's request to defer in a regulatory asset account costs incurred in connection with grid reliability, resiliency, and modernization work until the time the costs are reflected in new rates from this proceeding. The Company has placed in service investments of approximately $44 million on a South Carolina retail basis. (*Id.* at 655-29 - 655-30.) The Company is seeking recovery of the deferred costs over a two-year period, including a net of tax return on the unamortized balance of the regulatory asset through inclusion in rate base for a revenue requirement impact of approximately $3 million for this adjustment. (Hearing Ex. 10, Smith Rebuttal Exhibit 1, p. 3.)

ORS recommends the deferred cost of capital portion of the deferral balance be included in rate base but not the deferred depreciation, O&M, and property tax expense portion of the deferral balance consistent with its overall recommendation for deferral accounting treatment in this case. (Tr. Vol. 7, p. 1613-14.) The ORS also recommends recovery over a five-year amortization period.

The Commission finds and concludes it is appropriate to approve the Company's request to recover its deferred cost balance related to grid improvements over a two-year amortization period and inclusion of the unamortized balance of the regulatory asset in rate base as presented in Hearing Ex. 10 (Smith Rebuttal Ex. 1) in light of the evidence presented. We reject the ORS' deferral accounting treatment recommendation for the reasons previously discussed and find the recommendation for a two-year amortization period is more appropriate to allow the Company to recover the cost of its prudent investment.

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C. Other Disputed Adjustments

Adjustment #15 – Adjust reserve for end of life nuclear costs

The evidence in support of the findings of fact are found in the verified Application, pleadings, testimony and exhibits in this Docket, and the entire record in this proceeding.

In her direct testimony, Company witness Smith outlined the Company's proposal to establish a reserve for EOL nuclear materials & supplies costs and unused last core nuclear fuel not already captured by the decommissioning study. (Tr. Vol. 4, p. 655-20 – 655-21.) This accrual will capture unique materials and supplies costs and unburned nuclear fuel costs remaining when the reactor(s) shut down. The expense to write off nuclear inventory materials and supplies, which typically have little or no salvage value when decommissioning occurs, represents one example of the type of expense the Company seeks to accrue for in this reserve. (*Id.*) The Company requests a $5 million annual accrual for EOL nuclear materials and supplies and a $2 million annual accrual for last core fuel. (*Id.*) The reserves, once created, will be included as an offset to rate base in the cost of service. (*Id.*)

Witness Smith highlighted that each reserve will create a better matching of costs and benefits for ratemaking purposes. (*Id.* at 655-20.) For EOL nuclear inventories, the Company will determine annual accrual amounts by dividing the projected inventory balances at the end of each unit's life by the number of years remaining in the unit's life and summing this result for DE Carolinas' three nuclear plants. For last core fuel, the Company will determine annual accrual amounts by dividing the projected remaining value of the last core fuel at the end of each unit's life by the number of years remaining in the unit's life and summing this result for or DE Carolinas'

three nuclear plants. Witness Smith noted that annual accrual amounts can be reviewed and adjusted, if needed, in each future general rate case before the end of the plant's life. (*Id.*)

ORS witness Morgan recommended that the Commission reject the Company's request to establish reserves for EOL nuclear costs and last core nuclear fuel. (Tr. Vol. 8, p. 2015-4 – 2015-5.) Witness Morgan contends that (1) the EOL fuel and parts inventory estimates included in the proposal are not known and measurable and (2) the retirement date for the three nuclear units is uncertain due to the potential for subsequent license renewals.

In his rebuttal testimony, Company witness Capps responded to witness Morgan's recommendation that the Commission reject the Company's reserve request. (Tr. Vol. 5, p. 911-1 – 911-7, 931.) Witness Capps explained that the proposed reserve fund is reasonable, appropriate, and beneficial to customers. (*Id.* at 907.) Regarding fuel, the Company used current forecasts to calculate the estimated value of the remaining underutilized fuel in the last core. (*Id.*) For inventory, the Company used the existing inventory balance at the end of the test period as the estimate of inventory remaining on the last day of operation. (*Id.* at 907, 911-4 – 911-5.) Importantly, witness Capps noted that nuclear plants must be fully maintained for safety purposes until removed from service, and inventory must be available to support that mission until the last day of operation. (*Id.*) Witness Capps also clarified that the proposed EOL accrual is based on operation of the Company's nuclear plants through the end of their presently licensed life. Under NRC regulations, the initial operating life for a nuclear power plant is limited to 40 years, with the possibility of renewals. 10 CFR 50.51(a). The NRC may approve license renewals for an additional 20 years at a time. 10 CFR 54.32(b). NRC approval of license renewal requests is not

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automatic and requires that the NRC make certain findings prior to approval. *See* 10 CFR 54.29. The NRC has approved one operating license renewal for the Company's nuclear units, which extended those licenses from 40 to 60 years. However, the Company has neither filed an application for nor received NRC approval for a subsequent license renewal ("SLR"), which could extend the units' licensed life up to 80 years. In fact, only three SLR applications have been filed across the United States and the NRC has issued no approval as of yet. (*Id.* at 967.) Accordingly, DE Carolinas based the proposed accrual on the current approved license for each unit. The Company will consider adjusting accrual periods to reflect shutdown dates based on a renewed license if the Company applies and receives extensions for each plant.

The evidence presented by the Company on this issue confirms that the proposed reserve funds are directly tied to unrecovered materials and supplies inventory and unrecovered fuel costs remaining at the time of unit shutdown. (Tr. Vol. 5, p. 911-4 - 911-6, 935.) Witness Capps correctly framed the fundamental question that this Commission must consider regarding the proposed reserves for EOL nuclear costs and last core fuel: from an economic standpoint, what is the most advantageous way to deal with these unrecovered costs that remain at the end of a nuclear unit's life? (*See id.* at 935.) As witness Capps stated in response to questions from the Commission:

> My concern is: if you don't start collecting ahead of time from folks who benefit now and you don't build that fund, then we would have a similar question [later] about what's prudent and what's fair – if we wait until the cost is certain, then it will be a huge cost spread over a very short period, over a finite population of people . . . .

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(*Id.* at 959.) Although not binding, precedent from other commissions provides persuasive guidance and valuable instruction to this Commission's determination. To that end, public service commissions in North Carolina, Florida, and Minnesota have approved similar reserves for EOL nuclear costs. *See Order Approving Accruals for Nuclear Decommissioning*, Florida Public Service Commission, Docket Nos. 991931-EI; 990324-EI; 001835-EI (January 7, 2002); *Order Approving Nuclear Decommissioning Study, Assumptions & Setting Filing Requirements*, Minnesota Public Utilities Commission, Docket No. E-002/M-14-761 (October 5, 2015). For example, the Florida Public Service Commission consistently finds that amortizing EOL inventory and last core costs over the remaining life span of each unit ratably allocates costs to those customers benefiting from nuclear generation and avoids burdensome costs at the time of shutdown. *See Order Approving Accruals for Nuclear Decommissioning*, Florida Public Service Commission, Docket Nos. 991931-EI; 990324-EI; 001835-EI (January 7, 2002); *Order Approving Accruals for Nuclear Decommissioning*, Florida Public Service Commission, Docket No. 100458-EI (September 12, 2011).

In light of the parties' testimony and all evidence presented, the Commission finds and concludes that the Company's proposed reserves for EOL nuclear costs and last core nuclear fuel are just and reasonable and should be approved in this case. Based on current retirement dates, the estimates proposed by the Company for EOL nuclear costs and last core fuel are reasonably calculated and are known and measurable. *See Hamm v. S.C. Pub. Serv. Comm'n*, 309 S.C. 282 (1992) ("Such adjustments are within the discretion of the Commission and, although they must be known and measurable within a degree of reasonable certainty, absolute precision is not required.").

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Further, the Commission considers it equitable for current South Carolina customers to contribute to the nuclear fuel and inventory costs that will eventually be needed to decommission the Company's nuclear units once their existing licenses have expired.

Further, the Commission is persuaded by witness Capps' testimony that until an SLR is requested and granted, the current license bounds the end of life for each nuclear unit and the Company has an obligation to operate its nuclear fleet within the parameters of its existing licenses, which includes planning for their decommissioning. The mere specter of a potential nuclear relicensing effort – which may or may not be approved by the NRC—strikes this Commission as an attempt by ORS to use a speculative reason to undercut a reasonably estimated and definite cost that will need to be paid based on the term of the nuclear licenses as they exist today. Any funds related to EOL will be collected and retained for the intended purpose, and will serve as a credit to rate base. However, if the Company ultimately applies for and receives a license extension for all or part of the existing DE Carolinas nuclear fleet, the Company must adjust the accrual period to reflect the renewed licenses in a subsequent rate case.

Adjustment #20 – Normalize for storm costs

The evidence in support of the findings of fact are found in the verified Application, pleadings, testimony and exhibits in this Docket, and the entire record in this proceeding.

The Company initially proposed to adjust other O&M expense by $1,261,000 and income taxes by ($315,000) for storm restoration costs[51] to normalize the costs to the average level of costs

[51] ORS witness Smith acknowledged that the storm costs the Company seeks to recover as part of this adjustment are different from the costs recovered in rates for the Company's storm reserve. (Tr. Vol. 7, p. 1657-58.)

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that the Company experienced over the past ten years. (Tr. Vol. 7, p. 1602-11.) ORS witness Morgan testified that he believed that it was more appropriate to eliminate the expenses in the highest and lowest cost years and use an 8-year average. (Tr. Vol. 8, p. 2015-9.) The Company does not oppose this adjustment, and updated its adjustment to other O&M expense to $1,389,000 and income taxes to ($346,000) for storm restoration costs. (Tr. Vol. 4, p. 659-13.)

At dispute is the historic inflation adjustment the Company included in its storm restoration cost normalization adjustment which the ORS opposed. (*Id.*) The Company's inflation adjustment to storm costs adjusted each storm cost year included in the ten-year average to be comparable to the test year on an inflation-adjusted basis. (*Id.*) The ORS asserted that the Commission should reject the inflation adjustment because it shifts all risk away from the Company and onto customers. (Tr. Vol. 8, p. 2017-5.) Company witness Smith testified that ORS' adjustment removing inflation is unreasonable and ignores the current costs to address storms, including expenses for contract labor, materials, staging, and logistics, which have all risen significantly over the past ten years. (Tr. Vol. 4, p. 659-13.) ORS maintained that the costs are speculative, not known and measurable, and based on generalized data for the economy. (Tr. Vol. 8, p. 2017-5.) The Company responded that the inflation adjustment is based on historical inflation over the past ten years, calculated at 14.22 percent over the ten-year period, and therefore is a known and measurable adjustment. (Tr. Vol. 4, p. 659-13.) The Company argued this adjustment is reasonable because contract labor costs alone have increased 45 percent from 2008 to 2017, and the Company simply cannot hire workers today for the same rate it paid them in 2008. (*Id.* at 659-13 – 659-14.) ORS witness Smith cited Commission Order Nos. 1984-108 and 1985-841 as precedent in which the Commission expressly

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rejected inflation adjustments. (Tr. Vol. 7, p. 1607-3.) However, on cross-examination, ORS witness Smith conceded that in Order No. 1985-841 the Commission had rejected an inflation adjustment beyond the end of the historical test period, which is different from this case where the Company's inflation adjustment is only applied to the end of the historic test year period. (Tr. Vol. 7, p. 1661-62.)

The Commission has the discretion to determine the need for an inflation adjustment on a case-by-case basis balancing the unique facts of each case. *See, e.g.*, Order No. 1984-108. The Commission finds that the cases cited by the ORS in support of their position that the inflation adjustment in this case should be rejected are inapposite. First, Order No. 1985-841 addressed an inflation adjustment on a prospective or go-forward basis. There, the Staff and Consumer Advocate argued that an inflation rate applied prospectively to all expenses (other than fuel) is generalized and speculative, and the Commission denied the Company's request for the prospective inflation adjustment. By contrast, in this case the Company's inflation adjustment is based on data from the last ten years, is applied to the historical test year, and is known and measurable. *See* PSCSC Order No. 2018-445 (citing *Porter v. S.C. Pub. Serv. Comm'n*, 328 S.C. 222, ("The test year is established to provide a basis for making *the most accurate forecast of the utility's rate base, revenues, and expenses in the near future when the prescribed rates are in effect*." (emphasis added). Thus, the same concerns expressed in Order No. 1985-841 do not apply in this case. Second, in Order No. 1984-108, cited by the ORS in support of its position that the inflation adjustment should not be accepted, the Commission denied an inflation adjustment where it found that the impact of another

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adjustment eliminated the need for the inflation adjustment proposed by the Company. That is not the case here.

ORS witness Smith agreed that it is incumbent on the Commission to consider the Company's request based on the facts of each case and whether each component of the Company's request is reasonable. (*Id.* at 1662-63.) To that end, we note that on cross-examination ORS witness Payne conceded that the Company could have used the higher test-year amount of storm costs for its proposed adjustment rather than the ten-year average it proposed instead. (*Id.* at 1673-74.) Mr. Payne also agreed that the cost structure in 2008 for contract labor is very different today and that there is a tight labor market today as opposed to the labor market ten years ago. (*Id.* at 1676.) Considering these factors, rising costs, and the change in economic conditions over the past ten years, the Commission agrees that the inflation adjustment, based on known historical inflation rates determined over a long-term period of ten-years, is a reasonable adjustment.

The Commission finds and concludes that it is appropriate to use the eight-year average method to normalize storm restoration costs as proposed by ORS witness Morgan. Given the annual average rate of inflation and the demonstrated increase in costs associated with storm restoration, the Commission also finds the Company's historic inflation adjustment to be just and reasonable as it results in a storm amount to be included in rates that is both more reflective of current costs as well as lower than what the Company could have otherwise legitimately requested. Thus, the Commission approves an adjustment to other O&M expense by $1,389,000 and income taxes by ($346,000) for storm restoration costs.

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Adjustment #21 – Annualize O&M non-labor expenses

In her rebuttal testimony, Company witness Smith explained that this adjustment annualizes test period O&M expenses excluding fuel, purchased power, and labor costs to reflect the change in unit costs that occurred during this period. The Company proposes to adjust other O&M expense by $1,889,000 and income taxes by ($471,000) to reflect the impact of inflation on test year expenses. (Hearing Ex. 10 (Smith Rebuttal Ex. 1, p. 3.) ORS witness Smith testified that the ORS opposes this adjustment because "it is based on projected and estimated data rather than known and measurable expenses." (Tr. Vol. 7, p. 1602-11.) In her rebuttal testimony, Company witness Smith states that this is not true, and the Company maintains that its adjustment is appropriate. (Tr. Vol. 4, p. 659-14.) First, she explained that the purpose of the Company's proposal is not to project O&M expenses, but instead to annualize the impacts of inflation to an end of test period level. (*Id*.) The adjustment takes actual known and measurable inflation metrics (Consumer Price Index and Producer Price Index) and compares the average of the test period to the end of test period metrics. (*Id*.) She testified that these metrics for the 2017 test period are historic, known and measurable, and publicly available from the U.S. Bureau of Labor Statistics. (*Id*. at 659-14 – 659-15.) Company witness Smith added that this adjustment is very similar to the customer growth adjustment which the ORS has not rejected (ORS Adjustment #37). (*Id*. at 659-15.) She pointed out that both adjustments annualize impacts – one for customer growth and one for inflation – and both are appropriate to include. (*Id*.)

In her surrebuttal testimony, similar to her argument with respect to the Company's storm cost inflation adjustment, ORS witness Smith attempts to rely on Commission Order Nos. 1984-

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108 and 1985-841 as precedent to reject the Company's inflation adjustment. (Tr. Vol. 7, p. 1607-3.) As noted above, those cases are distinguishable, where, as here, the Company's inflation adjustment is not a projection or an estimate, but rather is based on publicly available data, is applied to the historical test year, and is known and measurable. Accordingly, the Company's adjustment to O&M Non-Labor Expenses to reflect the change in costs that occurred during the test period and to annualize the impacts of inflation to an end of test period level is known and measurable and just and reasonable in light of the evidence presented.

Adjustment #22 – Normalize O&M labor expenses

In her direct testimony, DE Carolinas witness Smith testified that the Company adjusted wages and salaries, and related employee benefit costs, to reflect annual levels of costs as of July 1, 2018. (Tr. Vol. 4, p. 655-25.) This adjustment also reflects changes in related payroll taxes. (*Id.*)

The ORS made two recommendations with respect to this adjustment, one controverted and one not controverted. The uncontested recommendation made by the ORS was to update the salary allocator for the Company's wages and salaries and related employee benefit costs to the same date as the O&M labor expense, July 1, 2018, to which the Company agreed. (Tr. Vol. 4, p. 659-15; Tr. Vol. 7, p. 1602-12, 1607-3.)

The contested component of this adjustment relates to compensation the Company pays to its employees, and, in particular, a portion of employee compensation represented by incentive pay. The ORS recommends removal of $15,428,000-worth of employee compensation, consisting of 50% of STI compensation and LTI compensation for all qualifying employees. For the reasons set

forth herein, the Commission disagrees with this recommended disallowance. No party takes issue with the Company's overall compensation levels. It follows, therefore, that incentive compensation, which is merely a portion of overall employee compensation expense, is a prudently incurred cost of service.

As ORS witness Payne testified, even ORS believes "that it's important for the Commission to set rates that would allow the Company [to] recover its operating costs plus earn a fair and reasonable return on its capital investment." (Tr. Vol. 7, p. 1672.) This is in fact the law. *See, e.g.*, *Southern Bell Tel. & Tel. Co. v. Pub. Serv. Comm'n*, 270 S.C. 590, 608-09 (1978) (Ness, J. concurring and dissenting). As explained in more detail below, no party, specifically ORS, has provided the Commission with any justification to disallow these prudently incurred costs. Further, were the Commission to disallow these prudently incurred costs then the disallowance will necessarily negatively impact the Company's opportunity to earn a fair and reasonable return on the investments made by the Company in providing utility service to its customers. Neither result is permitted by the law.

In her direct testimony, ORS witness Smith sought to justify her $15.4 million proposed incentive compensation adjustment with a scant handful of words. She states that the 50% disallowance is based solely on the incentives "being attributable to Company earnings." (Tr. Vol. 7, p. 1602-12.) Her surrebuttal testimony makes clear that this is mere supposition on the part of ORS, in that she says "***If*** employees are largely driven by stock performance rather than service to customers …" then the disallowance can be justified, premised on some notion of "sharing"

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between the Company and its customers.[52] (Tr. Vol. 7, p. 1607-4 (emphasis added).) However, ORS has presented no evidence supporting this "if." *See Utils. Servs. of S.C., Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 110 (2011) (Utility is entitled to a presumption that its expenses are reasonable and incurred in good faith; therefore, party challenging this presumption is required to produce evidence to overcome this presumption and any evidence the utility has proffered that further substantiates its position).

ORS witness Smith is an auditor. She admittedly has no experience whatsoever in setting compensation, or on designing compensation programs to drive customer-focused behavior. (Tr. Vol. 7, p. 1681.) Company witness Metzler, by contrast, is a human resource professional. She explained the Company's overall compensation philosophy is to target total compensation of base pay and incentives at the median of the market when compared to peer companies. (Tr. Vol. 6, p. 1135.) Witness Metzler explained that ORS witness Smith erroneously assumes a divergence of interests between shareholders and customers that has not been demonstrated to exist. (*Id.* at 1162.) According to witness Metzler, to the contrary, employee compensation and incentives tied to metrics such as Earnings Per Share ("EPS") and Total Shareholder Return ("TSR") benefit customers because those metrics reflect how employees' contributions translate into overall

[52] There is no legal basis that would allow the Commission to force the Company to "share" in the burden of reasonable and prudently incurred costs related to the provision of electric service to its customers. To the contrary, such "sharing," particularly in an arbitrary amount, serves only to make it impossible for the Company to earn the return required under *Hope* and *Bluefield*. *See Potomac Elec. Power Co. v. Pub. Serv. Comm'n*, 380 A.2d 126, 131 (D.C. 1977) (citing *Fed. Power Comm'n v. Natural Gas Pipeline Co.*, 315 U.S. 575, 585-86 (1942); *McCardle v. Indianapolis Water Co.*, 272 U.S. 400, 408 (1926); *Bluefield* 262 U.S. 679, 690 (1923) (The U.S. Supreme Court held that "rates which are not adequate to yield a reasonable return on the value of the property used by a utility company to furnish its service to the public are unjust, unreasonable, and confiscatory, and that their effectuation would deprive the utility of its property without due process or just compensation.").

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financial performance. (*Id.* at 1137.) EPS, for example, is a measure of the Company's performance, and that performance is reflective of how certain goals – safety, individual performance, team performance, and customer satisfaction (all of which are components of incentive pay) – are met in a cost-effective way. (*Id.*) Divorcing employee performance from such an important measure of a rate regulated company's overall health is unreasonable and counterproductive. (*Id.*) Additionally, witness Metzler explained that in order to attract a well-qualified and well-led workforce, the Company must compete in the marketplace to obtain the services of these employees. (*Id.* at 1136.) The recommended adjustments would render the Company's compensation uncompetitive with the market which would result in the inability to attract and retain the talent the Company needs to run a safe and reliable electric system. (*Id.*) Finally, witness Metzler pointed out that no witness in this proceeding challenges the reasonableness of the level of compensation expenses reflected in the ratemaking test period for the Company. (*Id.*) Nor has anyone challenged that the compensation and benefit programs are necessary and critical in their entirety for attracting, engaging, retaining, and directing the efforts of employees with the skills and experience necessary to safely, efficiently, and effectively provide electric services to DE Carolinas customers. (*Id.*)

ORS witness Smith's testimony is highly problematic in three other respects. First, she states, citing this Commission's Order No. 2012-951, that allowing recovery of that portion of incentive compensation that is based upon EPS measures would be a "***vast departure*** from the Commission's prior decisions." (Tr. Vol. 7 p. 1607-5 (emphasis added).) But Order No. 2012-951 reflected the Commission's approval of a settlement between the utility and most of the other

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parties to a rate proceeding that resulted, *inter alia*, in the utility agreeing to reduce its cost of service by an amount equal to 50% of incentive compensation tied to EPS measures. Nowhere in that Order does the Commission make any finding that it would be appropriate in a non-settlement context to disallow this expense, assuming that it was a prudently incurred expense (as is the case here). ORS' reliance upon Order No 2012-951 is therefore wholly misplaced, and ORS witness Smith's invocation of that Order in this non-settlement context is completely inapposite. The Commission rejects the notion that Order 2012-951 may be used by ORS in this fashion. Finally, even in calculating its proposed disallowance, the ORS gets it wrong. The ORS attempts to disallow 50 percent of incentive compensation based on their assumption that 50 percent is the EPS metric for non-executives. (Tr. Vol. 7, p. 1602-12.) As shown by Ms. Metzler, it is not—it is 30 percent, a vastly different result when spread across approximately 29,000 employees. (Tr. Vol. 6, p. 1139-11.) While we decline to adopt ORS recommendation, we also note that even the very recommendation we reject is flawed.

Second, particularly in light of the fact that Order 2012-951 is simply irrelevant to the question of disallowance in this contested case, ORS' selection of a 50% disallowance in surrebuttal is completely arbitrary. (Tr. Vol. 7, p. 1607-5.) There is no evidence – none – that supports a disallowance at that level. ORS could have requested discovery related to the Company's incentive compensation plans and how those plans are designed to drive employee behavior. (Tr. Vol. 7 p. 1681, 1682.) It chose not to do so and thus its case fails on this point. It is especially telling that the ORS apparently conducted no discovery or inquiry as the reasonableness of the incentives aside from merely flagging the word "incentives." It is worth

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noting here that again, the S.C. Supreme Court has concluded that the utility is entitled to a presumption that its expenses are reasonable and were incurred in good faith. *Hamm v. S.C. Pub. Serv. Comm'n*, 309 S.C. 282, 422 S.E.2d 110 (1992) (internal citations omitted). In order to prevail, the ORS must produce evidence that overcomes both this presumption and any evidence the utility has proffered that further substantiates its position. *See Utils. Servs. of S.C., Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 110, 708 S.E.2d 755, 762–63 (2011) ("Utility is correct that it was entitled to a presumption that its expenditures were reasonable and incurred in good faith . . . . [I]f an investigation initiated by ORS or by the PSC yields evidence that overcomes the presumption of reasonableness, a utility must further substantiate its claimed expenditures."). The ORS did not even attempt to do this, as made clear by their lack of discovery on the issue. The ORS at no point argues that the Company's employees are paid higher than their peers, or that their overall compensation is not reasonable. Ultimately, therefore, in the absence of sufficient countervailing evidence, the Commission must conclude that the utility's compensation plans are market-based and incurred in good faith. Moreover, such compensation plans paid to employees have yielded strong customer satisfaction scores,[53] a strong economic development record,[54] and excellent generation operations[55] and rates which continue to be competitive. There is no evidence that the incentive plans do not, in their entirety, yield benefit for South Carolina. Instead, ORS simply made an assumption that there was a divergence between the Company's shareholders and its customers

[53] *See* Tr. Vol. 4, p. 645-33 (J.D. Power Electric Utility Customer Satisfaction Study ranked DE Carolinas in the top quartile for performance in all categories.)
[54] *Id.* at 645-35 – 645-38.
[55] Tr. Vol. 4, p. 645-28; Tr. Vol. 5, p. 909-20 – 909-24; p. 915-11 – 915-13).

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somehow related to the Company's choice to put some portion of its employees' compensation at risk, with some part of the at-risk portion tied to the Company's financial performance through measures such as EPS.

This is a false premise – there is no such divergence, and certainly no evidence proffered by ORS showing the existence of any such divergence. The evidence is in fact to the contrary. Even ORS witness Smith conceded, when asked about a hypothetical lineman who came up with a better way to detect line faults leading to lower costs and higher earnings per share, that "[l]ower costs benefit customers, yes." (*Id.* at 1684.) And as witness Meltzer testified,

> [A] financial metric, such as EPS, in … an incentive plan for employees encourages employees to reduce expenses, to operate efficiently, and to conserve financial resources. So, on a daily basis, employees in the field, you know, have that line of sight to that financial goal, so it does encourage them to operate efficiently… and to conserve resources and … save the Company money.

(Tr. Vol. 6, p. 1159.) Saving the Company money benefits customers by reducing the cost of service. Having a financially strong utility – and the financial measures in the Company's incentive compensation program are designed to "help us build a strong, healthy company" (*id*. at 1160) – benefits customers by reducing costs, including the cost of capital. (*Id.* at 1142.)

Witness Metzler concluded:

> Q The ORS position, Ms. Metzler, seems to be that there's sort of a zero-sum game: Anything that's good for shareholders and the earnings of the Company is necessarily bad for customers/ratepayers. Do you agree with that proposition?
>
> A No. I don't. … I don't think that the shareholder interests and … customer interests are mutually exclusive. I believe they do overlap, and I … think that financial performance does

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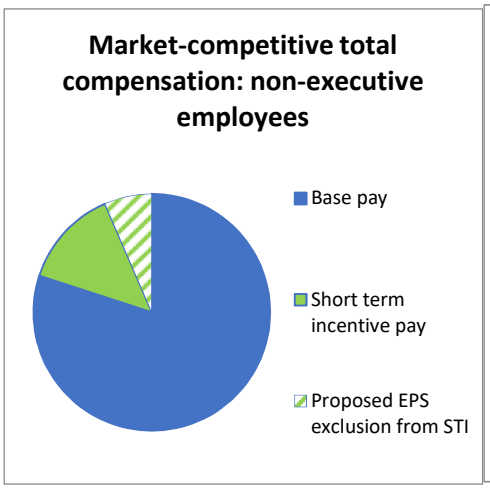
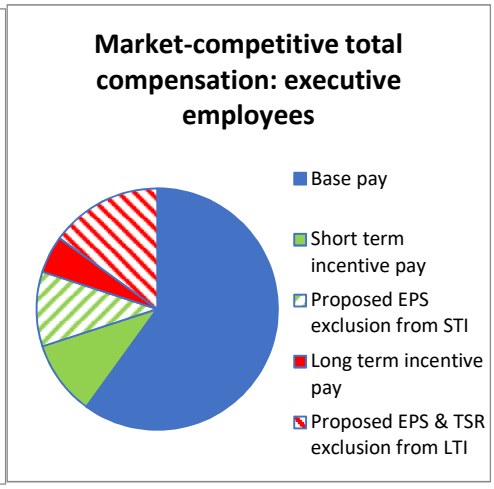
> benefit the customer. It … helps us keep the cost structure for customers as low as possible.

(*Id.* at 1162.) The Commission agrees.

The portion of employee compensation denominated as "incentive" compensation is not a bonus in the typical meaning of the term "bonus" – that is, something on top of market-competitive compensation. Rather, as witness Metzler demonstrates, incentive compensation is a part of overall compensation, the sum total of which is designed to be at the median of the market and, therefore, market-competitive. This is shown by Figures 3 and 4 from witness Metzler's testimony:





(*Id*. at 1139-9.) As she states, "[R]emoving either of the cross-hatched pie pieces, representing the portions of compensation that the ORS wishes to exclude from rates, would leave the compensation at a below-median level." (*Id*. at 1139-8.) Base pay of the Company's employees is likewise only a component of total market-based compensation. (*See, e.g.*, *id*. at 1159 ("[I]f we didn't offer those [incentive] plans, we would need to roll that amount of compensation into their base pay because

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we wouldn't be competitive.") For the Company's compensation levels to fall below competitive levels would be to the ultimate detriment of customers.

ORS concedes that the incentive compensation issue is not one of total compensation paid to the Company's employees, but rather the manner in which they are paid. (Tr. Vol. 7 p. 1686.) In other words, ORS concedes that the aggregate level of compensation paid to the Company's employees is reasonable and prudent. Indeed, under our law the Company's "expenses are presumed to be reasonable and incurred in good faith" unless challenged. *Hamm v. South Carolina Public Service Comm'n*, 309 S.C. 282, 286 (1992) (internal citations omitted). But if challenged, the challenge must be with facts, available to be gleaned through the "liberal discovery provisions" permitted to ORS. *Id.* Here, ORS has presented no facts, only a premise – that there is some sort of divergence between the customer interest and the shareholder interest embedded in the Company's incentive compensation program – that in truth is a false premise.

As the incentive plans result in market-competitive compensation that results in solid operations, there is no evidence that they are not working or that they disadvantage customers. No party has alleged that the Company's employees in general, particularly the "rank and file" employees, are overpaid, and how the Company decided to compensate its employees is a managerial decision, which is the sole responsibility of the Company. How to pay employees is a managerial decision, and as long as the costs and results are reasonable this Commission has no

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basis to reject the compensation at issue.[56] As such, there is no factual or evidentiary basis for the disallowance recommendation made by ORS.

The Commission notes the only questions raised in this proceeding have been about the total of executive compensation. No one in this case has raised any issue with the compensation of the "rank and file" employees. If there was a divergence of interests, it would be by the employees who interact or who have decision making authority more closely aligned with shareholders. The closest the evidence came in this case to supporting a disallowance related to incentives was for executive compensation, based actually on the testimony of Ms. Metzler herself. Ms. Metzler testified that if the Commission chose to draw a line and disallow the STI compensation component for executive leadership, that amount would be approximately $1 million, and if the Commission chose to disallow the LTI component, the amount would be about $1.7 million, for a total disallowance of approximately $3 million, compared to the $15 million recommended by the ORS. (Tr. Vol. 6, p. 1162-63.)

The Commission rejects ORS' false premise, and rejects ORS' proposed $15,428,000 employee compensation adjustment.

Adjustment #25 – Amortize rate case costs

The Company has proposed to amortize the incremental rate case expenses incurred for this docket over a five-year period. (Tr. Vol. 4, p. 655-26.) The ORS recommends that the Commission

[56] *In Re Dev. Serv., Inc.*, PSCSC Order No. 2005-42, Docket No. 2004-212-S at 31 (Feb. 2, 2005) ("While this Commission's decisions are often based on the prudence or imprudence of management decisions, those decisions involve a review of the management decisions, and this Commission has no authority to manage the utility.")

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disallow the Company's request to earn a return on its rate case costs both during the deferral period and during the amortization period because the costs are not capital in nature. (Tr. Vol. 7. p. 1602-13.) In addition, ORS witness Smith recommends that the Commission disallow certain rate case expenses due to alleged insufficient supporting documentation. (*Id.*, Tr. 1607-5 - 1607-6.) Specifically, the costs ORS has identified for disallowance are related to legal services provided by outside counsel and billed via an e-billing system. (Tr. Vol. 4, p. 659-16.)

Company witness Smith explained that DE Carolinas has used an e-billing system for several years, and e-billing systems are commonly used by large companies to increase administrative efficiency. (*Id.*) Ms. Smith explained that instead of submitting paper invoices, outside vendors are provided credentials to access the e-billing system and input relevant billing information (date, matter, rate, hours, description of work performed, etc.) directly into the system. (*Id.*) Once the information is submitted, the Company attorney responsible for approving the expense reviews the submission and approves or denies the invoice. (*Id.*) When the Company receives a data request for billing data, the Company exports the data from the e-billing system into a Microsoft Excel spreadsheet which is supplied in response to the request. (*Id.*) In the case of legal invoices, the Company also must review the descriptions of work performed for privileged information prior to providing. (*Id.*)

In response to ORS concerns regarding the e-billing submissions, Company witness Smith testified that the Company offered to provide the ORS additional information such as vendor affidavits to verify that the expenses are true and accurate, screenshots of the data in the system, or to redact the privileged information by hand, but the ORS failed to respond to the Company's offer.

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(Tr. Vol. 4, p. 652, 659-16 - 659-17.) Company witness Smith testified that the ORS informed her that only a paper invoice would suffice. (Tr. Vol. 4, p. 459-16.) Company witness Smith testified that in the past, if the ORS required additional support or more detail for a Company's data request response, the ORS would follow-up with the Company. Moreover, Company witness Smith testified that if the ORS is concerned about the veracity of the Company's legal expenses, based on her prior experience as an auditor, paper invoices are not a superior alternative to the Company's e-billing reports because paper invoices are easily capable of being forged. Tr. Vol. 8, p. 1948-49.) In addition, paper invoices impose more administrative burden and cost to the Company than the efficiency afforded by e-billing. (*Id.* at 1949.) In conclusion, Company witness Smith testified that the expenses are reasonable and prudent and no justifiable reason for disallowance was given.

We have already addressed ORS witness Payne's recommendations regarding allowance of a return on deferred costs during the deferral period and amortization period and reject his recommendation for the reasons previously discussed. In regard to ORS witness Smith's proposed disallowance for legal expenses she maintains were not properly supported, we disagree and find the Company's submissions to be appropriate. We do not believe that paper invoices are a more reliable medium to verify the Company's expenses and that if ORS questioned the validity of the expenses, the Company's offer to submit vendor affidavits concerning the costs in question was fair and appropriate. Instead, the ORS ignored the Company's offer and departed from its past practice to work constructively with the Company to obtain additional details and supporting information when needed. We find that the ORS failed to submit evidence sufficient to overcome the presumption that the utilities expenses were reasonable and incurred in good faith. *See Hamm*

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v. S.C. Pub. Serv. Comm'n, 309 S.C. 282 (1992) (Although the burden of proof in showing the reasonableness of a utility's costs that underlie its request to adjust rates ultimately rests with the utility, the S.C. Supreme Court has concluded that the utility is entitled to a presumption that its expenses are reasonable and were incurred in good faith). We find that the Company was responsive to the data requests of the ORS as drafted and that the Company's request to recover its rate case expenses and include the unamortized balance of the regulatory asset in rate base is approved.

Adjustment #28 – Adjust for credit card fees

The evidence in support of the findings of fact are found in the verified Application, pleadings, testimony and exhibits in this Docket, and the entire record in this proceeding.

In its Application, DE Carolinas requests approval of a fee-free payment program for credit, debit and ACH payment methods used by the Company's residential customers to pay their electric bills. (Application at 19.) Currently, customers are required to pay a $1.50 convenience fee, collected by a third-party vendor, for payments made by a credit card. To offer this program, the Company proposes to pay these costs on behalf of its residential customers and recover these costs as part of its cost of service. Company witness Smith describes in direct testimony the Company's proposal to adjust its O&M expense by $3 million to adjust for credit card fee expenses. (Tr. Vol. 4, p. 655-26.) Company witnesses Ghartey-Tagoe and Quick testified to the value and need for the customer-driven program.

Witness Ghartey-Tagoe testified that the requirement to pay a convenience fee when making a payment is one of the largest frustrations customers experience. (*Id.* at 645-24.) The Company's Customer Service department routinely receives inquiries about no-cost electronic

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payment options as evidenced by the Company's monthly residential transaction surveys. (*Id.*) As such, Duke Energy believes it is reasonable for customers to no longer have to pay a convenience fee for payments made through any of its payment channels. (*Id.*) According to witness Ghartey-Tagoe, customers have grown accustomed to paying for other products and services with a credit card or debit card without a separate, additional fee. (*Id.*) As customer expectations change and more payments are done electronically, utility companies are now offering fee-free payment programs for their residential customers for all methods of payment. (*Id.*) Accordingly, witness Ghartey-Tagoe believes the DE Carolinas' residential customers will appreciate being able to use these payment methods with the Company the same way they can with other companies. (*Id.* at 645-25.) As stated by witness Ghartey-Tagoe, Duke Energy has seen 10 percent average year over year growth in credit/debit transactions over the past several years, and with this change the Company expects the growth rate to double – so 20 percent more transactions in 2019 than in 2018. (*Id.* at 645-24 – 645-25.) While no party contested the value or benefits of the fee-free credit card program for residential customers, ORS witness Gaby Smith proposes to remove the amount representing the Company's growth projections, approximately $645,000, from the Company's proposed adjustment for credit card fees because, she argues, they are not known and measurable. (Tr. Vol. 7, p. 1602-14.)

In her rebuttal testimony, Company witness Quick testified that based on historical data, the Company has been experiencing an average of 10 percent year over year growth in the number of credit card transactions for bill payment. (Tr. Vol. 5, p. 984-7.) Further, according to her, based on industry research and benchmarking, the Company is projecting the annual percentage increase

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in the number of credit card transactions once the fee-free program is deployed to double to 20 percent in the first year of the program. (*Id.*) Therefore, according to witness Quick, the Company's growth projection is reasonable, appropriate and should be reflected in the Company's adjustment. Otherwise, as witness Quick testified, the Company will be penalized for offering a program designed to improve customer satisfaction with their payment experience by not having an appropriate amount reflected in rates to match the expected cost to administer the program. (*Id.*) As witness Quick testified, the Company's industry research supports higher growth in this channel once customers are no longer being charged transaction fees. (*Id.* at 984-6.) For example, Fiserv, an industry leader in payment card processing, conducted transactional research comparing free bill payment methods to fee-based bill payment methods. (*Id.*) According to their analysis, companies that offered free bill payment methods experienced at least double the year over year increase in the number of credit card transactions than those who offered fee-based bill payment methods. (*Id.*) The Company also reviewed recent fee-free credit card proposals filed by utilities around the country and found that the projected increase in credit card transactions cited by utilities ranged anywhere from 5 to 30 percent as compared to our 10 percent growth. (*Id.* at 984-7.) Further, the Company benchmarked against a similarly-situated electric utility that offers fee-free credit card usage. (*Id.*) The results of the benchmarking showed that the increase in annual credit card payments doubled in the channel in the first year and have shown steady growth, year over year. (*Id.*) Finally, witness Quick testified that while the Company believes incorporating the growth projection in the credit card fee adjustment is the best method to ensure the Company is collecting an amount reflective of the increase in credit card usage, an alternative option is to allow

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the Company to establish a deferral for the credit card fee expenses the Company will incur that are incremental to the amount reflected in rates. (*Id.* at 984-8.) In her surrebuttal testimony, ORS witness Smith again recommends the Commission reject recovery of the growth projection because, according to her, the projections reflect uncertainty. (Tr. Vol. 7, p. 1607-7.) Additionally, ORS witness Smith recommends the Commission reject witness Quick's request to establish a deferral for the credit card fee expenses should the Commission not include the growth projections as the credit card fees are not extraordinary in circumstance or magnitude. (*Id.* at 1607-8.)

At the hearing, Company witness Quick reiterated how the Company calculated its growth projection and why DE Carolinas believes the growth projection calculation is reasonable and appropriate. (Tr. Vol. 5, p. 982.) In addition, according to witness Quick, the Company's analysis is further supported by the percentage growth in credit card transactions the Company experienced in calendar year 2018. (Tr. Vol. 5, p. 1085.) As witness Quick testified, the Company experienced an increase in credit card transactions in 2018 of 22 percent, which is higher than the growth projection the Company is actually proposing to be reflected in the Company's adjustment. (*Id.*) She believes this is indicative of what the Company will see once the program is implemented and supports the Company's need to embed an element of growth in the Company's adjustment.

Upon consideration of all of the evidence in this proceeding, the Commission finds and concludes that the Company's fee-free payment program for credit cards, debit cards and ACH payment methods for residential customers. In arriving at its decision, the Commission is persuaded by the Company's evidence that customers are frustrated with the Company's inability to provide fee-free card payment options, and applauds the Company in proposing programs

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designed to provide its customers with more options for a better payment experience. Further, the Commission believes the option of fee-free payment methods may lead to greater customer satisfaction, which benefits all.

The Commission finds and concludes that the inclusion of the Company's growth projection in its adjustment is appropriate. The Commission is persuaded by the Company's expected increase in credit card transactions once the program is implemented and recognizes that if the Company's cost of service is not adjusted to reflect a reasonable level of growth associated with the increase in usage, the amount reflected in rates will be significantly less than the Company's cost to administer the service for its residential customers, thereby negatively impacting the Company. In arriving at its decision, the Commission gave considerable weight to Company witness Quick's testimony that the Company's projected growth is a conservative estimate, and is in fact less than the actual growth in credit card transactions the Company experienced in 2018. Thus, the Commission concludes the projected growth is just and reasonable, and therefore approves the Company's proposed credit card fee adjustment as calculated. The Commission also requires that the Company report to the Commission the actual credit card convenience fees incurred on an annual basis.

Adjustment #29 – Adjust O&M for executive compensation

In her direct testimony, Company witness Smith testified that the Company has made an adjustment to remove 50 percent of the compensation of the four Duke Energy executives with the highest level of compensation allocated to DE Carolinas in the test period. (Tr. Vol. 4, p. 655-27.) This adjustment amounts to a reduction in O&M expense by ($948,000) and income taxes by

($237,000). (Hearing Ex. 10 (Smith Rebuttal Ex. 1, p. 3.) She explained that while the Company believes these costs are reasonable, prudent, and appropriate to recover from customers, DE Carolinas, for purposes of this case, agrees to make an adjustment to this item. (Tr. Vol. 4, p. 655-27.) The ORS agrees with the Company's exclusion of 50 percent of the compensation for the top four executives; however, because ORS witness Smith has proposed to remove 50 percent of incentives for *all* employees via Adjustment #22, she added back the 50 percent of incentives for the top four executives in Adjustment #29 so as not to double count. (*See* Tr. Vol. 7, p. 1602-14.) Because, as discussed above, the Commission agrees with the Company that it is inappropriate to disallow a portion of STI and LTI program costs as recommended by the ORS, the Commission finds that the Company's original adjustment to exclude 50 percent of compensation, including incentives, for its top four executives (Adjustment #29) is appropriate and that there is no need to change this adjustment to reflect the ORS' recommendation with respect to Adjustment #22. The Commission finds this adjustment reasonable and appropriate to address the concerns raised about executive compensation at the public hearings.

Adjustment #30 – Adjust for Customer Connect Project

In its Application, the Company requested recovery of its deferred costs[57] and approval to include approximately $4.7 million annually for ongoing O&M expenses associated with replacing the Company's current CIS with Customer Connect. (Application at 10.) Company witness Hunsicker testified about Customer Connect and the costs and revenue requirement the Company

[57] In Docket No. 2018-207-E, the Company petitioned for approval to defer into a regulatory asset account the incremental O&M expense associated with the deployment of Customer Connect. The Commission approved the Company's petition on August 7, 2018 in Order No. 2018-552 (2018).

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is seeking in this case to support this project. (Tr. Vol. 5, p. 974-980.) Witness Hunsicker explained the Company's current CIS was developed over twenty years ago, and was not designed to efficiently support new capabilities. (Tr. Vol. 5, p. 978-4 – 978-5.) She stated that the Company and its customers' needs are very different than they were when the original CIS was constructed, and the system is past the point where modular "bolt on" systems or modular upgrades are effective. (Tr. Vol. 5, 978-5 – 978-6.) Additionally, the Company's current CIS has many deficiencies. For example, the Company's existing CIS is not equipped to handle complex billing arrangements, such as net metering for self-generating customers, and these bills must be manually calculated. (Tr. Vol. 5, p. 978-5.) The current CIS also does not enable access to account histories nor does it allow customers to employ preferred communication methods. (Tr. Vol. 5, 978-6.) Witness Hunsicker explained that the new CIS will provide a universal and simplified process for customers, improve billing, enable a new billing format, allow the Company to easily identify and implement new rate structures for customers, and interface with the Company's new AMI technology. (Tr. Vol. 5, 978-10.) Witness Hunsicker explained that Customer Connect began analysis and design in January 2018, and is currently planned to be in-service for DE Carolinas in 2021. (Tr. Vol. 5, p. 975, 978-10.) She further explained that the implementation will be tiered and that new capabilities will be available to customers each year leading up to full deployment. (Tr. Vol. 5, p. 978-10 – 978-11.) In fact, Ms. Hunsicker testified that the Company started delivering benefits to customers in June 2018, by leveraging data behind the scenes to serve its customers in different ways. (Tr. Vol. 5, p. 1014.) The estimated costs for Customer Connect for DE Carolinas, South Carolina, is between $60 and $70 million, which is based on executed fixed

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price contracts for the primary software (SAP), systems integration (Accenture) and change management professional services (Ernst and Young), following an extensive request for proposal process conducted in 2016. (*Id.* at 978-16.)

Witness Hunsicker states that due to the nature of the project costs, a significant amount of the spending between the test year and the in-service date will be O&M expenses. (*Id.* at 978-19.) Accordingly, witness Hunsicker explains that Company witness Smith includes a pro-forma adjustment in her testimony that increases the test year O&M expense associated with the project from approximately $0.7 million to $4.7 million. (*Id.*) This increased amount is the average expected annual O&M expense associated with the project, from 2019 through 2020. (*Id.*) Witness Hunsicker also explains that witness Smith seeks to amortize the deferred balance of O&M expenses incurred by the Company since January 1, 2018, approved by the Commission in Order No. 2018-552. (*Id.*)

While no party contested the value or benefits to customers associated with the Customer Connect program, ORS witness Payne testified in response to the Company's request for approval to increase the test year O&M expense for Customer Connect deployment. In his direct testimony, Witness Payne recommends an adjustment removing the projected two year average O&M expense of $4,025,000 for the Customer Connect program from the Company's pro forma because, he argues, the expenses are not known and measurable. (Tr. Vol. 7. p. 1613-13.) According to witness Payne, the Company recorded $640,000 in actual O&M expense during the test year attributed to the Customer Connect project and ORS recommends approval of only these expenses. (*Id.*)

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In her rebuttal testimony, Company witness Hunsicker states the Company does not agree with the ORS' recommendation because the expenses correlate to the underlying fixed contracts with its vendors, and are therefore "known," because the Company has entered into fixed contracts with multiple vendors to develop the program, and the contracts contain provisions requiring the Company to provide specified levels of internal labor to support execution of the work; and "measurable," because the fixed contracts contain specified price terms, which serve as the basis for the Company's forecasted expenses. (Tr. Vol. 5, p. 980-2 – 980-3.) Further, witness Hunsicker states the Company is in the process of completing the hiring of the aforementioned internal labor to support execution of the work under the contracts. (*Id.* at 980-3.) Witness Hunsicker explained the Company used a disciplined process to forecast the expenses using the fixed fee contracts for software, system integrator professional services, and change management and training professional services as the foundation. (*Id.*) According to witness Hunsicker, these executed contracts account for a significant portion of the overall cost of the program and the contracts specify the amount of labor the Company must provide to execute the contracts. (*Id.*) Finally, witness Hunsicker explains the Company is fully committed to Customer Connect and that no one in this case criticized the necessity of the system or the benefits it will enable for customers. (*Id.* at 980-6.) In fact, according to her, Customer Connect is already providing benefits to customers. (*Id.*) For example, in June 2018, Customer Connect deployed its first release which is foundational to building a holistic customer profile – gathering all relevant touchpoints customers are having with Duke Energy in real-time, such as web visits, phone calls, power outages, outbound communications and product and service participation. (*Id.* at 980-6 – 980-7.) Also, in February

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2019, leveraging insights from the holistic customer profile, the Company began using the new platform to predict the intent of customers when they call. (Tr. Vol. 5, p. 980-7, 1026-27, 1041-42.) This and other information has been made more readily available to customer care specialists, who are leveraging it for context into why a customer may be calling to have more informed and productive conversation with customers. (Tr. Vol. 5, p. 980-6, 1026-27.)

In surrebuttal testimony, ORS witness Smith stated that upon review of Company witnesses Hunsicker and Smith's rebuttal testimony, the ORS proposed an additional adjustment to O&M expenses for the Customer Connect project to reflect the actual incurred level of expenses in 2018 of $3,189,000. (Tr. Vol. 7, 1607-8.) According to ORS witness Smith, this results in an adjustment to O&M expense of $2,549,600 (as $640,000 of costs associated with Customer Connect were included in the test year expenses). (*Id.*) ORS witness Smith recommends the Commission still reject the remaining approximately $1.8 million of the Company's proposed adjustment, which still represents forecasted O&M expense. According to ORS witness Smith, this amount includes forecasted costs for inflation and contingency, which are not known and measurable. (*Id*. at 1607-9.)

At the hearing, Company witness Hunsicker responded by stating the forecasted costs for inflation and contingency was based on a Class Four estimate originally completed in 2016 before the Company completed the design phase of Customer Connect. (Tr. Vol. 5, 1010-12.) According to her, the Company is now beyond the Design phase of Customer Connect and, as a result, now considers approximately $1.4 million of the original $1.8 million forecast as costs correlated with the fixed fee contracts. (*Id.*) Additionally, she identified approximately $68,000 of the $1.8 million

as costs associated with inflation. (*Id.*) Finally, according to witness Hunsicker, the remaining approximately $400,000 of the original estimate for contingency was reviewed by the Company's project management center of excellence, who commissioned an independent estimate review committee to review and approve these costs. (*Id.*) If there were to be any amount disallowed from rate recovery in this case related to Customer Connect, it would be the inflation costs of $68,000 and remaining contingency amount of $400,000 not the $1.8 million that ORS recommends.

54. However, upon consideration of all of the evidence in this proceeding, including the improvements to customer service that Customer Connect is delivering and will continue to deliver, the Commission finds and concludes that the Company's requested recovery of its deferred costs[58] and approval to include approximately $4.7 million annually for ongoing O&M expenses associated with Customer Connect. The Commission finds the Customer Connect project will provide value to DE Carolinas' customers and is necessary for the Company to continue to provide quality service to its customers, which no party contests. Regarding the proposed adjustment for O&M expense, the Commission recognizes these O&M costs are not being capitalized to the program, and in order to be captured, they either need to be included in rates as the Company has requested, or set aside and capitalized to a regulatory asset to be recovered when the project is complete. Further, the Commission agrees with the Company that the forecasted O&M expenses are known and measurable. The known and measurable standard is a standard for recognizing out of period adjustments to historical test-period data. (*See e.g. Southern Bell*, 270 S.C. at 602–03

[58] The Commission's decision to approve recovery of the Company's deferred Customer Connect costs correlates with the Commission's conclusions regarding whether the Company is entitled to earn a return on deferred capital and operating expenses as addressed in Section B.

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("Indeed, the Commission must make adjustments for known and measurable changes in expenses, revenues, and investments so that the resulting rates will accurately and truly reflect the actual rate base, net operating income, and cost of capital.") In such cases, changes occurring after the close of the test period may be recognized if they are known (there is a high degree of certainty that change will in fact occur) and measurable (the effect of the change can be accurately quantified in advance). Given the close nexus between the Company's forecasted expenses and the underlying fixed fee contracts, the Commission concludes that the Company's calculation of incremental O&M expenses associated with Customer Connect satisfies this standard. For these reasons, the Commission concludes the Company's adjustment for O&M expense is just and reasonable, and is approved. The Commission also requires the Company is to report to the Commission the actual Customer Connect O&M costs incurred on an annual basis.

Adjustment #33 – Adjust 1/8 O&M for accounting and pro forma adjustments

This adjustment adjusts the DE Carolinas' rate base to include the additional working capital required as a result of the additional O&M expenses the Company is proposing in this proceeding. In her supplemental testimony and exhibits, Company witness Smith updated this adjustment to reflect additional changes to cash working capital. In contrast to the Company's ($1,018,000) adjustment to reflect 1/8 of O&M expenses after accounting and pro forma adjustments (*see* Hearing Ex. 10 (Smith Rebuttal Ex. 1, p. 4d)), the ORS proposes an adjustment of (3,805,000) to working capital which reflects ORS' adjustments to O&M expenses ((Hearing Exhibit No. 44 (Surrebuttal Audit Exhibit GS-2).) In her rebuttal testimony, Company witness Smith explained that while the amounts calculated by DE Carolinas and the ORS for this

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adjustment are different based on other areas of disagreement, the Company and the ORS agree on the concept of and the method used to calculate this adjustment. (Tr. Vol. 4, p. 659-19 – 659-20.) In her surrebuttal testimony, ORS witness Smith agreed with this characterization, stating that the ORS and Company amounts differ only due to the underlying adjustments of ORS and the Company and the recommended ROE. (Tr. Vol. 7, p. 1607-13.) Because the Commission has found in favor of DE Carolinas on the underlying adjustments and ROE, the Commissions finds and concludes that the Company's O&M adjustment is just and reasonable in light of the evidence presented in this proceeding.

Adjustment #36 – Remove certain expenses

ORS proposed to eliminate certain expenses it deemed non-allowable found during ORS' audit of the Company books and records. Specifically, these costs were included in ORS witness Smith's proposed adjustment #36 and include sponsorships, lobbying expenses, advertising, and other miscellaneous expenses such as coffee for employees, expenses related to the Lineman's Rodeo, employee recognition awards such as service awards, spot awards, and safety awards, as well as 50 percent of dues paid to state and local chambers of commerce, 100% of social and athletic club membership dues, costs that are not 100% related to South Carolina, timing differences due to accrual accounting, and litigation expenses. (Tr. Vol. 7, p. 1607-11.) ORS proposed to adjust O&M expenses by ($2,399,000) and income taxes by $599,000. (*Id.* at 1602-16.) ORS considers these items non-allowable and not necessary to provide electric service to ratepayers. (*Id.*) Subsequent to filing the application, the Company proposed an adjustment to other O&M expense of ($227,000) and income taxes of $57,000 to remove lobbying costs and image building

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advertising. (Tr. Vol. 7, p. 1607-9.) In the supplemental testimony of ORS witness Smith, the ORS updated its adjustment to also include ($575,000) related to coal ash litigation expenses and argued that those costs were inappropriate because customers should not bear the burden of legal costs related to the Company's failure to operate its coal ash basins in accordance with state and local laws. (*Id.* at 1604-2.) The Company maintains that the remainder of the non-allowable expenses identified by the ORS are properly included in rates as reasonable expenses attributed to prudent utility operations, community engagement, and maintenance of an engaged workforce. (*Id.* at 1607-10.)

Employee-Related Expenses

Company witness Metzler testified that employee incentives, safety and service awards, and any costs to recognize and reward the Company's employees who serve the Company's customers are appropriate and necessary to retain and attract quality employees. (Tr. Vol. 6, p. 1139-13 – 1139-15.) Witness Metzler explained that these expenses are reasonable and prudent costs that enhance employee engagement, and in turn lead to higher levels of customer service, safety, and employee retention. (*Id.* at 1139-15.) During the hearing, parties also questioned other minor grocery items such as coffee provided for Company employees. (Tr. Vol. 4, p. 706; Tr. Vol. 8, p. 1880, 1962.) As previously determined by this Commission, coffee is "not unusual or extravagant and can be considered a necessary part of a decent working environment."[59] Expenses related to employee recognition such as spot bonuses, lump sum merit payments, service awards

[59] *Order Approving Rates and Charges, In Re: Application of Carolina Water Service, Inc., for Approval of New Schedules of Rates and Charges for Water and Sewer Service Provided to its Customers in its Service Area in South Carolina,* Order No. 90-694, PSCSC Docket No. 89-610-W/S (August 1, 1990) at 27.

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and safety awards incent employees to provide exceptional performance to the benefit of customers and grocery items such as coffee are part of a decent working environment and are properly included in allowable expenses.

Lineman's Rodeo

ORS removed costs associated with the Lineman's Rodeo arguing these costs are competitions between linemen from various utilities and not necessary to provide quality electric utility service to customers. ORS further argued that its treatment of rodeo-related expenses is consistent with ORS' treatment of rodeo-related expenses in other South Carolina gas and electric utility rate cases and Rate Stabilization Act filings. (Tr. Vol. 7, p. 1607-11.) Company witness Smith explained that the Lineman's Rodeo is an industry event where line workers share best practices and compete in events where they have an opportunity to display and hone their skills as lineman to provide reliable service to the benefit of customers. (Tr. Vol. 4, p. 659-20 – 659-21.) Company witness Smith explained that she views line worker's participation in the Lineman's Rodeo as similar to continuing professional education she obtains annually as an accountant to hone her skills and learn from her peers. (Tr. Vol. 8, p. 1964.) As conceded by ORS witness Smith, no other Company employee, save possibly customer service representatives at the Company's call centers, more directly serve customers than line workers. (Tr. Vol. 7, p. 1679.) Thus, there is direct value to customers in ensuring that the Company's line workers continue to learn and hone their skills. Company witness Metzler further explained that the Lineman's Rodeo is an important tool for recruitment because the Company partners with local colleges and lineman schools, where students attend rodeos and volunteer to gain exposure to the field. (Tr. Vol. 6, p. 1139-14 – 1139-

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15.) In fact, when pressed on cross examination regarding whether he thought it was appropriate for the Company to promote involvement in the Lineman's Rodeo to help train and engage line workers, a class of employees that are hard to retain and expensive to train, ORS witness Payne essentially admitted that ORS took issue with the Lineman's Rodeo costs to stay consistent with past practice where the ORS had opposed the costs. (Tr. Vol. 7, p. 1679.) The Commission finds that because these costs are directly related to ensuring the Company has highly trained line workers and promotes improving skills necessary to provide reliable electric service and attracting a continued pipeline of skilled labor, that these costs directly benefit customers and are properly included in rates. The Commission is cognizant of the excellent work this group of employees has done in numerous ice storms and hurricanes which have plagued South Carolina. As these workers are scarce, and often in harm's way, the State of South Carolina is better off when novel vehicles such as Lineman's Rodeo are employed as a positive way to hone skills and learn best practices.

Community Organizations

The Company further argued that membership dues for local and state South Carolina Chamber of Commerce and other local South Carolina organizations that promote economic development in South Carolina such as Visit Greenville SC and the Spartanburg Development Association, should be included in rates because these organizations "promote policies, initiatives and principles that benefit all citizens through economic investments, job creation and retention, strong schools, and attracting and retaining business development." (Tr. Vol. 4, p. 659-21.) The ORS maintained that the Company should be permitted to include 50 percent of the state and local chamber dues in rates consistent with past Commission precedent in Commission Order Nos. 94-

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1229, 01-887, and 02-285. However, ORS maintained that costs related to what the Company identified as "social or athletic" membership club dues such as membership dues related to Visit Greenville SC and the Spartanburg Development Association should be disallowed 100% based on prior Commission precedent in Commission Order Nos. 91-595 and 94-1229. (Tr. Vol. 7, p. 1607-11.) The Commission finds these costs are generally related to promoting business, economic development and supporting the communities served by the Company and therefore are appropriately included in rates. Without local offices (and their associated expense), the Commission finds it important and necessary to customers in this State for the Company to be actively involved with the communities it serves. It is logical that community engagement can yield higher customer satisfaction and conflict resolution than if the Company did not participate at the local level in the community. The Commission cautions the Company this is not a carte blanche approval of all community activities, and in the future the Company should—and will be expected—to continue to provide information as to how it serves and responds to the needs of customers through such channels.

Allocation of Transmission Vehicle Costs

ORS also proposed disallowing certain costs that it argued are not 100 percent attributable to South Carolina such as North Carolina Department of Motor Vehicle registration fees paid for transmission vehicles which are allocated between North Carolina and South Carolina customers. (Tr. Vol. 7, p. 1607-12.) The Company testified that it is appropriate to allocate both South Carolina and other jurisdictional costs between South and North Carolina customers and noted that ORS did not make an adjustment to accept the full cost of South Carolina-specific costs the

Company allocated between North Carolina and South Carolina. (Tr. Vol. 4, p. 659-22 - 659-23.) Regardless, the Commission finds that it is appropriate to allocate system-wide costs for shared assets and these expenses are properly included in rates.

Accruals

The ORS also proposed disallowing certain transactions based on timing differences. (Tr. Vol. 7, p. 1607-12.) ORS removed various transactions based on the invoice date and the date the invoice was paid being in different calendar years. (*Id.*) The Company explained that its test year was representative of the Company's expenses in a 12-month period and that it may incur certain costs in one year, but those costs may not be paid until the following year due to accrual accounting. (Tr. Vol. 4, p. 659-23.) ORS maintained that the Company had not provided explanations for the transactions ORS proposed to disallow and therefore it was not able to review support provided by the Company necessary for ORS to modify its adjustment and should reject the Company's position. (Tr. Vol. 7, p. 1607-12 – 1607-13.) The Commission finds that the test year is representative of the costs the Company incurs in a 12-month period and as a result of accrual accounting, these costs are properly included in rates and are approved.

Coal Ash Legal Costs

The ORS also made adjustments to remove certain costs associated with coal ash litigation legal expenses where it determined that appropriate support was not provided by the Company necessary to verify the costs and meet its burden of proof. (Tr. Vol. 7, p. 1623.) ORS advocated for disallowance of $575,000 in legal costs incurred to support the Company's ongoing coal ash litigation efforts—specifically, (1) the insurance recovery litigation DE Carolinas initiated to

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recuperate costs of coal ash remediation, and (2) the defense of state enforcement actions brought by non-governmental advocacy groups. (Tr. Vol. 6, p. 1247-26.) ORS witness Hamm argued that the policy has changed over the past few decades and that there is now more focus on appropriate cost sharing between stockholders and customers which requires an inquiry into why the costs were incurred. (Tr. Vol. 7, p. 1630-2 – 1630-4.) Witness Hamm argued that the coal ash expenses he proposes to disallow should be borne by the shareholders because the Company provided no substantive information for any coal ash litigation expenses to justify customers being responsible for the fees noting that the descriptions provided for the expenses were very limited. (*Id.* at 1630-5 – 1630-6.) Finally, ORS witness Hamm advises that the Commission should not approve costs which include adverse cost impacts resulting from poor management decisions and should not reward the Company for failure to comply with federal and state laws. (*Id.* at. 1630-8.)

The Company argued that it had fully responded to the discovery requests from the ORS and provided the information available from the e-billing system the Company utilizes to pay legal expenses. (Tr. Vol. 8, p. 1946.) The Company witnesses explained that the e-billing system is used for administrative efficiency purposes and that the Company considers the output that would be provided on "paper invoices" and the output provided for "e-billing invoices" to be the same. (Tr. Vol. 4, p. 652; Tr. Vol. 8, p. 1976.) The Company further explained that it would have produced additional support if the ORS had followed up and requested additional detail consistent with prior past data request practice; however, the Company argued it was fully responsive to the ORS discovery requests entered as composite Hearing Exhibit #49. (Tr. Vol. 8, p. 1946, 1955; *see Utils. Servs. of S.C., Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 110, 708 S.E.2d 755, 762–

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63 (2011) ("Utility is correct that it was entitled to a presumption that its expenditures were reasonable and incurred in good faith…"). In terms of meeting its burden of proof, Company witness Smith testified that the Company supplied over 4 gigabytes of information, equal to approximately 121,000 pages of documentation, excluding the Company's pre-filed testimony. (*Id.* at 1990.) At the request of Commissioner Ervin, the Company provided additional detail to support certain coal ash litigation expenses as late-filed Hearing Exhibit #56. (Tr. Vol. 8, p. 2002-05.)

Citing to a decision of this Commission published in January of this year, ORS argued that litigation costs should be disallowed when incurred to unsuccessfully defend against "claims asserting failure of the utility to adhere to state or federal law[.]" *In re: Application of Carolina Water Service, Inc. for Approval of an Increase in Its Rates for Water and Sewer Services*, Docket No. 2017-292-WS, Order No. 2018-802 (Jan. 25, 2019).

Taking into consideration that recent guidance, the Commission finds that DE Carolinas' coal ash litigation expenses at issue here are distinguishable from those expended by Carolina Water Service, Inc. As witness Wright noted, the legal costs ORS seeks to disallow are not, as witnesses Smith and Hamm contend, the result of any failure to operate the Company's coal ash basins in accordance with the law. To the contrary, witness Wright explained that the insurance litigation in question was initiated by the Company for the benefit of its customers to enforce insurance policies and obtain indemnity from insurers for costs incurred associated with coal ash remediation and is unrelated to any environmental violations. (Tr. Vol. 6, p. 1247-26.) If the Company prevails in this insurance litigation, witness Wright noted that the costs it recovers from insurers will be credited to customers, and the Commission thus finds that DE Carolinas has

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reasonably pursued this type of recovery, which could pass along a substantial benefit to its customers.

As to the other legal fees with which ORS takes issue, DE Carolinas incurred those fees to defend claims that were filed against the Company in 2013, well before the passage of either CAMA or the CCR Rule, by non-governmental entities after the state declined to pursue the underlying claims. To date, there has been no finding by the Court in these actions that the Company violated any environmental statute or rule, nor has the Company admitted any fault or violation. In rebuttal testimony, witness Wright argued, and the Commission agrees, that the Company has a duty to customers to defend itself in litigation of this sort, and the fact that allegations of violations have been made against the Company do not mean that those allegations are true. (Tr. Vol. 6, p. 1247-27.)

Finally, as witness Wright noted, legal fees should be recoverable because they represent a legitimate, reasonable, and prudent business expenditure, and ORS has presented no argument under the applicable regulatory standard to suggest otherwise. ORS sought no and produced no evidence to support its position or to overcome the Company's presumption of reasonableness. It is notable that the ORS relied on discovery that asked for "invoices." and very limited data. (*See* Hearing Ex. 47.) Even in the most generous light to ORS, the types of information sought by ORS would not logically yield the information necessary to the inquiry it raised, such as matter descriptions, factual inquiries, case summaries, contracts or other documents. If the ORS doesn't trouble itself to ask for such information, the Commission cannot fault the Company for not providing it in discovery. Moreover, discovery between parties is not a submission to the

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Commission and the Commission should not judge the adequacy of a data response through the same lens as it would a Commission filing. Accordingly, because the legal fees incurred in both lawsuits are targeted to an end-goal that would benefit customers, the Commission finds that such legal fees are legitimate and recoverable. (*Id.* at 1247-25.) Based on our review of the information submitted by the Company as part of the late-filed hearing exhibits, we find the Company has sufficiently met its burden of proof to support recovery of its coal ash legal expenses and these costs are hereby approved.

Adjustment #37 – Customer Growth

The Company proposes an adjustment of $2,348,000 to reflect customer growth after accounting and pro forma adjustments by using net income for return and a customer growth factor of 0.9008%. (Hearing Ex. 10 (Smith Rebuttal Ex. 1, p. 1).) ORS witness Seaman-Huynh testified that ORS found an increase in the number of DE Carolinas customers in South Carolina when comparing the end of the test year and the average number of customers during the test year. (Tr. Vol. 8, p. 2028-14.) To capture the additional revenues and expenses generated by customers added to the Company's system, ORS included an adjustment for customer growth. (*Id.*) Witness Seaman-Huynh explained that the customer growth factor is calculated by taking the difference between the total number of customers at the end of the test year and the average number of customers during the year and dividing the result by the average number of customers during the test year. (*Id.*) This methodology yields a retail customer growth factor of 0.9008% for the Company. (*Id.*) In her rebuttal testimony, Company witness Smith explained that while the amounts calculated by DE Carolinas and the ORS for this adjustment are different based on other

areas of disagreement, the Company and the ORS agree on the concept of and the method used to calculate this adjustment. (Tr. Vol. 4, p. 659-24.) In her surrebuttal testimony, ORS witness Smith agreed with this characterization, stating that the ORS and Company amounts differ only due to the underlying adjustments of ORS and the Company and the recommended ROE. (Tr. Vol. 7, p. 1607-13.) Because the Commission has found in favor of DE Carolinas on the underlying adjustments and ROE, the Commissions finds and concludes that the Company's customer growth adjustment is just and reasonable in light of the evidence presented in this proceeding.

Adjustment #38 – Adjust revenue, taxes, and customer growth for proposed increase

The Company proposes to adjust electric operating revenue by $225,214,000, general taxes by $998,000, income taxes by $55,942,000, and customer growth by $1,516,000 for the proposed revenue increase. (Hearing Ex. 10 (Smith Rebuttal Ex. 1, p. 1).) ORS proposes to adjust electric operating revenue by $82,357,000, general taxes by $365,000, income taxes by $20,457,000, and customer growth by $554,000 for the ORS proposed revenue increase and to achieve an ROE of 9.3% as recommended by ORS witness Parcell. (Hearing Exhibit No. 44 (Surrebuttal Audit Exhibit GS-1).) In her rebuttal testimony, Company witness Smith explained that while the amounts calculated by DE Carolinas and the ORS for this adjustment are different based on other areas of disagreement, the Company and the ORS agree on the concept of and the method used to calculate this adjustment. (Tr. Vol. 4, p. 659-24.) In her surrebuttal testimony, ORS witness Smith agreed with this characterization, stating that the ORS and Company amounts differ only due to the underlying adjustments of ORS and the Company and the recommended ROE. (Tr. Vol. 7, p. 1607-13.) Because the Commission has found in favor of DE Carolinas on the underlying adjustments

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and ROE, the Commissions finds and concludes that the Company's adjustments outlined herein are just and reasonable in light of the evidence presented in this proceeding.

EVIDENCE FOR FINDINGS AND CONCLUSIONS NOS. 36-38

The evidence in support of the findings of fact are found in the verified Application, pleadings, testimony and exhibits in this Docket, and the entire record in this proceeding.

I. Background of the Lee Nuclear Project

A. Overview and DE Carolinas' Request

Witness Fallon explained that DE Carolinas' Annual Plans began to identify the Lee Nuclear Project in Cherokee County, South Carolina, as a cost-effective option for baseload generation in 2006. (Tr. Vol. 4, p. 805-11.) Witness Diaz elaborated that, in the mid-2000s, the licensing, environmental, and economic environment favored the development of new nuclear in the United States. (*See id.* at 811-8 – 811-9.) Nuclear power plants were operating with capacity factors near 90% and had low production costs. (*Id.* at 811-8.) The U.S. Nuclear Regulatory Commission ("NRC") established a more stable regulatory framework for the next generation of reactors, including the option of licensing new nuclear power plants under 10 CFR Part 52, and Generation III+ reactors, including Westinghouse's AP1000, were available for licensing. (*Id.* at 811-8 – 811-10.) Environmental factors favored new nuclear deployment due to its effective carbon abatement. (*Id.* at 811-9.) The volatile price of natural gas, projected load growth, a focus on reducing carbon emissions, fuel diversification, and economic incentives in the Energy Policy Act of 2005 all favored the development of new nuclear during this time period. (*See id.*)

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According to witness Fallon, DE Carolinas identified a need for significant capacity additions by 2016 in its 2005 and 2006 Annual Plans. (*Id.* at 805-9, 806.) In 2006, DE Carolinas announced the selection of the Lee Nuclear Project site for possible nuclear expansion. (*Id.* at 802.) Also, on June 1, 2006, the South Carolina General Assembly passed a joint resolution entitled "A Concurrent Resolution to Advance the Need for Electric Utilities to Build New Nuclear Power Plants in South Carolina and to Urge the Office of Regulatory Staff and the Public Service Commission to Encourage Such Consideration." H. 5236 (2006). This joint resolution expressed the South Carolina legislature's support for utilities to explore new nuclear development. *See id.*

The South Carolina General Assembly subsequently passed the Base Load Review Act ("BLRA"), which took effect in May 2007. S.B. No. 431 (2007). The BLRA provided a process by which utilities could file project development applications with ORS and the Commission pertaining to pre-construction costs for a nuclear-powered facility. S.C. Code Ann. § 58-33-225. In response to a utility's project development application, "[t]he commission shall issue a project development order affirming the prudency of the utility's decision to incur preconstruction costs for the nuclear plant specified in the application if the utility demonstrates by a preponderance of evidence that the decision to incur preconstruction costs for the plant is prudent." *Id.* The project development order ("PDO") provides approval for the utility's decision to incur preconstruction costs but does not rule on the recoverability of specific items. *Id.* As defined in the BLRA, *preconstruction costs* include the AFUDC associated with the other preconstruction costs incurred for a potential nuclear plant. (S.C. Code Ann. § 58-33-220(12).)

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In light of this legislative support, the Company filed two applications requesting authority to incur additional project development costs for the Lee Nuclear Project. *See Application of Duke Energy Carolinas, LLC for Approval of Decision to Incur Nuclear Generation Pre-construction Costs*, filed on December 7, 2007, in Docket No. 2007-440-E ("December 2007 Application"); Amended Project Development Application of Duke Energy Carolinas, LLC for Approval of Decision to Incur Nuclear Generation Pre-Construction Costs, filed on January 7, 2011, in Docket No. 2011-20-E ("January 2011 Application").

In the December 2007 Application, DE Carolinas sought approval for the South Carolina allocable share of $230 million of Lee Nuclear Project development costs to be incurred through December 31, 2009. December 2007 Application at 1. This amount included approximately $70 million incurred through December 31, 2007, and up to an additional $160 million for the period from January 1, 2008, through December 31, 2009. (*Id.*) The Commission issued an order on June 9, 2008, approving the Company's request and authorizing the Company to incur the South Carolina allocable share of $230 million through December 31, 2009. *Order Approving Application of Duke Energy Carolinas' Decision to Incur Nuclear Generation Pre-Construction Costs*, Order No. 2008-417, Docket No. 2007-440-E (June 9, 2008) ("2008 PDO") at 37.

In the January 2011 Application, the Company estimated that it would incur additional pre-construction costs of $229 million through December 31, 2013, for a total of $459 million, inclusive of AFUDC. (January 2011 Application at 2.) The Company requested additional determination from the Commission that it was prudent to incur additional costs necessary for development work.

(*Id.*) During the Commission's consideration of the 2011 Application, the Company, ORS, and other intervenors reached a settlement agreement ("2011 PDO Settlement Agreement") that provided that "the Commission should allow only the absolute minimum amount of dollars necessary to keep the nuclear option available." (*Order Approving Amended Project Development Application and Settlement Agreement*, Order No. 2011-454, Docket No. 2011-20-E (July 1, 2011) ("2011 PDO") Attachment A at 4.) The Parties also agreed that the Commission should allow expenditures from January 1, 2011 through June 30, 2012, to be no more than $75 million without AFUDC not to exceed $120 million including AFUDC. (*Id.*) Importantly, the 2011 PDO confirmed that the predetermination of prudency allowed under the BLRA in the 2011 proceeding was limited to the amounts agreed to in the 2011 PDO Settlement Agreement. (*Id.* at 17.) The 2011 PDO Settlement Agreement was not intended to restrict additional spending on the Lee Nuclear Project beyond the amounts described in the 2011 PDO Settlement Agreement, but only to limit the predetermination of prudence allowed under the BLRA to the amount indicated in the 2011 PDO Settlement Agreement. (*See id.*) The Company would have to show that its decision to incur preconstruction costs in excess of the pre-authorized amounts in the 2011 PDO was prudent. *See* S.C. Code Ann. § 58-33-225 (D) (specifying that the required prudence finding in a PDO applies to the Company's decision to incur costs, not specific costs). The 2011 PDO Settlement Agreement also provided that it was prudent for the Company to continue to incur development costs for Lee Nuclear Project only to the extent necessary to maintain the current schedule for obtaining a COL to support a commercial operation date for the Project in the 2021-2023 timeframe. (2011 PDO Attachment A at 4.) The Company further agreed to provide (a) a monthly

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report on the status of legislation to allow for recovery of financing costs outside a rate case in North Carolina, (b) a quarterly report on expenditures and AFUDC, and (c) a monthly report on the progress of the Company's negotiations to acquire an interest in V.C. Summer Units 2 and 3. *Id.* Attachment A at 4-5. The Commission issued an order approving the settlement agreement in its entirety on July 1, 2011. (*Id.* at 16.)

The Commission approved the 2011 PDO Settlement Agreement and ordered that "[t]he Company **must incur** only those cost absolutely necessary to keep the Lee Nuclear Project available **as an option** in the 2021 time frame." (*Id.* at 17 (emphasis added).) Both the 2011 PDO Settlement Agreement as well as the Commission's order approving it made it clear that keeping the nuclear option available for the benefit of DE Carolinas customers was critical. (*See id.* at 17 & Attachment A at 4.) The Company undertook this critical mission and incurred only the cost absolutely necessary to maintain the option for future nuclear for DE Carolinas customers during the time period it was shown to be needed by customers. (*See* Tr. Vol. 4, p. 824.)

On December 19, 2016, the Company received a COL from the NRC for the Lee Nuclear Project allowing DE Carolinas to construct and, upon meeting certain criteria, operate two AP1000 units. (Tr. Vol. 4, p. 805-7.) Witness Fallon testified that, since obtaining the Lee COL in December 2016, several external factors increased the risk and uncertainties of moving forward with the Lee Nuclear Project as originally envisioned. (*See id.* at 804.) These events include the bankruptcy of Westinghouse, the exit of Westinghouse from the construction business, and the cancellation of the V.C. Summer Project. (*Id.*) As witness Fallon further explained, "Westinghouse's exit from the construction business and bankruptcy in 2017 and the subsequent

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decision to cease construction of the V.C. Summer Project raises significant uncertainty around the cost, schedule, and execution of construction for future AP1000 nuclear projects." (*Id.* at 805-21 – 805-22.) In August 2017, the Company determined that these significant developments had created an unacceptable level of risk, and it was in the best interest of customers to abandon the Lee Nuclear Project. (*See id.* at 804, 805-22.)

On August 25, 2017, the Company filed a letter with this Commission in Docket No. 2011-20-E to notify the Commission that the Company was requesting approval from the NCUC to cancel the Lee Nuclear Project pursuant to N.C. Gen. Stat. § 62-110.7, as a predicate to cost recovery for the Lee Nuclear Project in North Carolina. (*Id.* at 805-22.) The NCUC approved the Company's request to cancel the Lee Nuclear Project and permitted cost recovery of the North Carolina allocable share of the Company's investment with some limited exceptions in the NCUC's Order Accepting Stipulation, Deciding Contested Issues, and Requiring Revenue Reduction, in Dockets No. E-7 Sub 819 and E-7 Sub 1146, dated June 22, 2018 ("NCUC Order"). (*Id.* at 805-23.) The NCUC did not grant a return on the unamortized balance during the recovery period. (*See* Tr. Vol. 8, p. 2015-7 – 2015-8.) However, as explained in more detail below, the Commission finds that several factors merit the granting of such a return in this case.

In this case, DE Carolinas has requested to recover its costs associated with the abandonment of the Lee Nuclear Project as of May 31, 2019. (*Id.* at 655-19.) Total system spending for the Lee Nuclear Project was $559 million, including non-depreciable land costs of $41 million. (*Id.*) Following transfer of the non-depreciable land costs to Plant Held for Future Use, the total amount of the Lee Nuclear Project development costs for which the Company is

requesting recovery from South Carolina retail customers is approximately $125 million. (*Id.* at 655-19 – 655-20.) The Company requests to amortize this amount over 12 years and to earn a net-of-tax return on the unamortized balance. (*Id.*)

B. Recovery of Nuclear Project Development Costs

Over the course of the Lee Nuclear Project, South Carolina law provided multiple avenues for a utility to seek recovery of its preconstruction costs. The BLRA provided two avenues under which the Company could seek recovery of its costs. First, if the utility decided to go forward with construction of the project, the utility could seek a base load review order. *See* S.C. Code Ann. § 58-33-270. A base load review order would allow the utility to recover its costs through either revised rate filings or general rate proceedings. *See* S.C. Code Ann. §§ 58-33-275(C), 58-33-280(B). The V.C. Summer project pursued this course. Second, a utility with a PDO under the BLRA could decline to move forward and abandon the project. In this case, the utility would collect its abandonment costs, including carrying costs. *See* S.C. Code Ann. § 58-33-225(G). The BLRA's provision for recovery of preconstruction costs that are the subject of a PDO were distinct from those provisions relating to the recovery of costs to construct a plant that is the subject of a base load review order.

Separate from the BLRA, this Commission's precedent provides for the recovery of abandonment costs through base rate cases. Particular to abandonment costs, such costs can be, and have been, sought for recovery through base rate cases. *See, e.g.*, *Order Approving Rates and Charges*, In re: Application of Duke Power Company for Authority to Adjust and Increase its Electric Rates and Charges, Order No 83-92, Docket No 82-50-E (March 15, 1983) at 22-23, 46-

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47. Neither the passage nor repeal of the BLRA has abrogated this independent avenue of recovery for a utility's abandonment costs.

1. **BLRA**

Although now repealed, the BLRA provided specific statutory direction regarding the treatment of abandoned plant costs following the issuance of a PDO. *See* S.C. Code Ann. § 58-33-225. Specifically, S.C. Code Ann. § 58-33-225(G) states:

> If the utility decides to abandon the project after issuance of a prudency determination under this section, then the preconstruction costs related to that project may be deferred, with AFUDC being calculated on the balance, and may be included in rates in the utility's next general rate proceeding or revised rates proceeding, provided that as to the decision to abandon the plant, the utility shall bear the burden of proving by a preponderance of the evidence that the decision was prudent. Without in any way limiting the effect of Section 58-33-225(D), recovery of capital costs and the utility's cost of capital associated with them may be disallowed only to the extent that the failure by the utility to anticipate or avoid the allegedly imprudent costs, or to minimize the magnitude of the costs, was imprudent considering the information available at the time that the utility could have acted to avoid or minimize the costs. Pending an order in the general rate proceeding or revised rates proceeding, the utility, at its discretion, may commence to amortize to cost of service the balance of the preconstruction costs related to the abandoned project over a period equal to the period during which the costs were incurred, or five years, whichever is greater.

S.C. Code Ann. § 58-33-225 (G). Under the BLRA, following the utility's decision to abandon the project, the utility would bear the burden of showing that the decision to abandon the Lee Nuclear Project was prudent and then would recover the project costs, including a return on the unamortized balance, subject to disallowances of imprudently incurred project costs. (*See id.*) As previously explained, prior to receipt of the COL and the subsequent events that followed the bankruptcy of

Westinghouse, the Company had no prudent justification to abandon the Lee Nuclear Project. (*See* Tr. Vol. 4., p. 805-17 – 805-18.) As witness Diaz explains, although the environment for licensing new nuclear experienced several challenges during the period following the 2011 PDO, several utilities continued to move forward with licensing and others continued with construction. (*See id.* at 811-12 – 811-14, 811-32.)

As described in more detail above, this Commission has previously issued two orders under the BLRA regarding the Lee Nuclear Project's pre-construction costs. *See* 2011 PDO; 2008 PDO. In the testimony of witness Fallon, the Company acknowledged that the South Carolina General Assembly has repealed the BLRA and that DE Carolinas may be unable to request recovery under the provisions of the BLRA addressing abandoned nuclear projects. (Tr. Vol. 4, p. 805-24 – 805-25.) Nonetheless, DE Carolinas has invested in the Lee Nuclear Project under the terms of the 2008 PDO and 2011 PDO and relied upon these Commission orders. (*Id.* at 805-26.) Pursuant to the BLRA, the Company would have recovered its prudently incurred preconstruction costs as well as a return upon that cost during the period of recovery. *See* S.C. Code Ann. § 58-33-225 (G); *see also* S.C. Code Ann. § 58-33-220(12). In that regard, the Company has relied upon the protections of the BLRA in making its investment in the Lee Nuclear Project. (*See id.* at 805-25 – 805-26.) In doing so, the Company has adhered to the bargain previously afforded by South Carolina law that the Company would receive recovery of, and on, its prudently incurred costs.

The plain language of the BLRA makes it clear that filing a project development application is permissive and is not a prerequisite to the recovery of project development costs. *See* S.C. Code

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Ann. § 58-33-225(B). The Company was not required to obtain approval prior to incurring project development costs. (*See id.*) The relevant provision of the BLRA states:

> At any time before the filing of an application or a combined application under this act related to a specific plant, a utility **may** file a project development application with the commission and the office of regulatory staff.

(*Id.* (emphasis added).) The BLRA's use of the term "may" implies that filing a project development application under the BLRA is permissive and not mandatory. (*See id.*) Furthermore, the BLRA indicates that the project development application may be filed "[a]t any time before the filing of an application or a combined application…" (*Id.*) While the plain language of the BLRA restricts the filing date of a project development application to precede a utility's base load review application or combined application, the statute contains no requirement that the project development application be filed prior to incurring project development costs. (*See id.*) Likewise, following the initial PDO, the BLRA states that "a utility **may** file an amended project development application seeking a determination of the prudency of the utility's decision to continue to incur preconstruction costs…" S.C. Code Ann. § 58-33-225(I) (emphasis added).

If the utility demonstrates that the decision to incur preconstruction costs is prudent, then the Commission "shall issue a project development order affirming the prudency of the utility's decision to incur preconstruction costs…" S.C. Code Ann. § 58-33-225(D). However, this order provides protection for the decision to incur costs, not for the recoverability of specific cost items. *Id.* The BLRA defines *project development order* as "an order establishing the prudence of a utility's decision to incur preconstruction costs associated with a nuclear plant or potential nuclear

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plant." S.C. Code Ann. § 58-33-220(15). In other words, this mechanism of the BLRA allows the utility to obtain a directional decision from the Commission regarding its decision to incur costs in pursuit of new nuclear. *See* S.C. Code Ann. § 58-33-225(D).

Although the Company has continued to comply with the terms of the BLRA and the 2011 PDO, the Company has recognized that it may be unable to request recovery for Lee Nuclear Project costs under the BLRA. (Tr. Vol. 4, p. 805-25.) This factor alone should not discount the Company's compliance with the BLRA, nor its reliance upon the provisions of that law to incur costs. Indeed, the requirements of the BLRA, although not expressly limiting the Commission's discretion in this case, should guide equitable considerations regarding the Company's request for a return on its unamortized balance for the Lee Nuclear Project. Denial of a return on the unamortized balance is equivalent to a disallowance of prudently incurred costs that were just months ago recoverable under the law. (*See id.* at 659-12.) Ironically, had the Company sought and received authority to construct the Lee Nuclear Project under the BLRA, as SCE&G did, there would be no question regarding the full recovery of all prudently incurred costs, including the return on the unamortized balance. The Commission finds that the Company's measured, risk-adjusted approach allowed DE Carolinas' customers to continue to preserve the option for new nuclear without prematurely taking on the full risk of construction. This approach should be applauded rather than penalized.

2. **Commission Precedent for Abandoned Plant Recovery**

The Commission's precedent and long-standing principles of utility rate regulation in South Carolina provide for the recovery of prudently incurred abandoned plant costs. (*See* Order No 83-

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92 at 22-23, 46-47.) This precedent supports the recovery of the prudently incurred abandonment costs for the Lee Nuclear Project. (Tr. Vol. 4, p. 805-25 – 805-26.) In the present case, no witness has presented evidence to support a conclusion that the cost incurred for the Lee Nuclear Project were imprudent. Indeed, the testimony of witnesses Fallon, Diaz, and Morgan, along with Exhibit No. 17, which is Global Energy & Water Consulting, LLC's ("Global")[60] *Final Report to the Public Staff – North Carolina Utilities Commission, Independent Investigation of the Prudence & Reasonableness of Costs Incurred by Duke Energy Carolinas, LLC to Develop the W.S. Lee III Nuclear Plant ("Project") and its Request to Cancel the Project* ("Global Report") demonstrate clearly that the Company acted prudently in its investments in the Lee Nuclear Project. (*See, e.g.*, Exh. 17.) The Commission's prior case precedent does not preclude the Commission from considering the specific facts in this case and allowing the Company a return on its investment, which would have been required under the BLRA and which recognizes that the cost for which the Company is seeking recovery have been prudently incurred.

As witness Fallon explains briefly, the Company is seeking recovery of its investment in the Lee Nuclear Project under this Commission's precedent regarding abandoned plant cost, which predates and survives the repeal of the BLRA. (*See id.*) This precedent provides a basis independent of the BLRA for DE Carolinas to request recovery of its costs for the Lee Nuclear

[60] The Global team consisted of Dr. William Jacobs, PE, Georgia Evans, and Mark Crisp, PE. The members of the Global team have been involved with reviews of COL applications, AP1000 budgets and schedules, technology selection, IRP filings, and construction progress monitoring, as well as contracting issues at V.C. Summer, Vogtle, Turkey Point, and Levy County, among other assignments in the nuclear industry.

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Project.[61] (*See id.*) ORS acknowledged in the testimony of witness Morgan that Commission precedent allows for DE Carolinas' recovery of abandoned plant costs. (Tr. Vol. 8, p. 2015-5 – 2015-8, 2062-63, 2067.) While the recommendations of the Company and ORS differ with regard to whether the Commission should permit a return on the unamortized balance for the Lee Nuclear Project, both ORS and the Company agree that the DE Carolinas is entitled to a recovery of its prudently-incurred abandonment costs. (*See id.* at 2015-5 – 2015-8; Tr. Vol. 4, p. 805-25 – 805-26.)

The Commission's precedent allows for recovery of the Company's prudently-incurred investment in the Lee Nuclear Project. *See, e.g.*, Order No. 83-92 at 22-23, 46-47. This precedent is independent of recovery under the BLRA. The repeal of the BLRA, therefore, does not preclude the Company's recovery of its investment in Lee Nuclear Project. However, in the view of this

[61] The established precedent of this Commission is to permit utilities to recover prudently incurred abandoned plant costs. *See* Order No 83-92 at 22-23, 46-47. With respect to abandonment costs associated with Cherokee Units 2 and 3 and Perkins Nuclear Station, the Commission allowed the utility to amortize these investments, including AFUDC, over a ten-year period with no return on the unamortized balance. *Id.* The Commission afforded the same or similar treatment to abandoned investments in the Brunswick Cooling Tower Project, the South River Project, and Harris Units 3 and 4. Order Approving Rates and Charges, In Re: Application of Carolina Power & Light Company for Approval of a General Increase in Rates and Charges, Order No. 83-583, Docket No. 82-328-E (September 28, 1983) at 28-32; Order Approving Rates and Charges, In Re: Application of Carolina Power & Light Company for Approval of a General Increase in Rates and Charges, Order No. 82-284, Docket No. 81-163-E (June 1, 1982) at 15-18. More recent precedent, although not related to abandoned nuclear project costs, can be found in the Commission's treatment of costs arising from the GridSouth Regional Transmission Organization ("RTO") initiative. Order Approving Increase in Electric Rates and Charges, In Re: Application of South Carolina Electric & Gas Company for Adjustments in the Company's Electric Rate Schedules and Tariffs, Order No. 2005-2, Docket No. 2004-178-E (January 6, 2005) at 18-35. When considering investment in the GridSouth RTO initiative, this Commission allowed both DE Carolinas and SCE&G to recover prudently incurred and prudently abandoned investment in GridSouth, with no return on the unamortized balance. *See id.* at 35; Order Approving Increase in Electric Rates and Charges, In Re: Application of Duke Energy Carolinas, LLC for Authority to Adjust and Increase its Electric Rates and Charges, Order No. 2010-79, Docket No. 2009-226-E, (January 27, 2010) at 15 ("The Commission finds the GridSouth investment was prudently incurred, prudently abandoned, and allows Duke Energy Carolinas to recover its investment over a five-year period excluding a return on the investment.").

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Commission, the preapprovals sought and received through the BLRA to incur project development costs as well as the Company's reliance on these Orders and the statute are important considerations when evaluating the issue of whether the Company should receive a return on its prudently incurred investment in the Lee Nuclear Project.

II. Lee Nuclear Project Cost Recovery

The total balance for which the Company has requested recovery from South Carolina retail customers is approximately $125 million (adjusted for the movement of non-depreciable land to Plant Held for Future Use). (Tr. Vol. 4, p. 805-26.) The costs incurred are specifically made up of COL Preparation; NRC Review and Hearing Fees; Land and Right-of-Way Purchases; Pre-Construction and Site Preparation; Supply Chain, Construction Planning, and Detailed Engineering; Operational Planning; Post-COL; Allocate; and AFUDC. (*Id.* at 805-27.)

A. Summary of Evidence

Company witnesses Fallon and Diaz presented testimony that explain the history of Lee Nuclear Project, the rationale behind DE Carolinas' decision to abandon the Lee Nuclear Project, and DE Carolinas' activities through receipt of the COL. (*See Id.* at 805, 811.) Consistent with the 2011 PDO, witness Fallon explained that DE Carolinas limited its spending to the amounts that were necessary to preserve the option of building the Lee Nuclear Project to have it available to meet the need dates identified in DE Carolinas' IRP. (*Id.* at 805-33.) At the time of the 2011 PDO, DE Carolinas projected receipt of the Lee COL in 2013. (*Id.* at 805-15.) Even though the actual receipt of the COL did not occur until December 2016, capital spending activity after 2013 declined substantially because DE Carolinas limited project development activities to those activities that

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were needed to keep the nuclear option available. (*Id.* at 803-04.) Importantly, DE Carolinas' IRPs supported continuation of the Lee Nuclear Project as a cost-effective base load generation option through 2016. (*See id.* at 805-17.)

Witness Fallon also presented the Global Report. (Exh. 17.) In addition to North Carolina Public Staff's internal investigation of the events and costs surrounding the Lee Nuclear Project, North Carolina Public Staff hired Global to conduct an independent review of the Lee Nuclear Project. (*Id.* at 3; Tr. Vol. 4., p. 805-3, 805-34.) Global conducted an extensive review of the costs and decisions associated with the Lee Nuclear Project. (*See* Exh. 17 at 3-5.) Global provided an expert opinion regarding the reasonableness and prudence of DE Carolinas' project development costs, DE Carolinas' decision to abandon the Lee Nuclear Project, and whether DE Carolinas' spending is commensurate with those of similarly situated utilities. (*Id.* at 6-8.) Ultimately, Global concluded that, "[t]herefore, it is our opinion that all costs associated with the application for the COL and subsequent costs should be deemed prudent and reasonable, subject to the recommendation of the Public Staff on the costs of the Visitors' Center and issues involving AFUDC."[62] (*Id.* at 6.)

The delay in receipt of the Lee COL was due in large part to events external to the Lee Nuclear Project that affected the nuclear industry and the work of the NRC. (*See* Tr. Vol. 4, p.

[62] North Carolina Public Staff recommended disallowance of the Visitors Center, and the Company subsequently agreed to this exclusion. NCUC Order at 20. The Company has not opposed the removal of the Visitors Center in this case. (Tr. Vol. 4, p. 659-12.) The issue involving AFUDC pertained to whether Lee Nuclear Project should accrue AFUDC in 2018. Subsequent to the publication of the Global Report, the Company agreed to discontinue accruing AFUDC after December 31, 2017. NCUC Order at 20. The Company's request in this case reflects the same date. (*See* Tr. Vol. 5 805-4.)

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811-17 – 811-32.) As witness Nils J. Diaz, former chairman of the NRC, explained, several factors beyond DE Carolinas' control contributed towards a longer licensing schedule than originally anticipated. (*See id.*) Witness Diaz reviewed the reasonableness and prudence of the strategy and efforts of DE Carolinas to obtain a COL. (*Id.* at 811-3.) Witness Diaz explained that the Company employed a licensing-first strategy. (*Id.* at 811-37.) Beginning the NRC licensing process early was crucial to obtaining the license in time for it to be exercised at the time that was most beneficial for customers. (*Id.* at 811-16 – 811-17.) Witness Diaz detailed the various issues that DE Carolinas faced during the licensing process, including delays related to the Yucca Mountain Review, the Waste Confidence Rule, the Fukushima Daiichi Accident, the Seismic Source Characterization for the Central and Eastern U.S., and the implementation of the new 10 CFR Part 52 licensing regime. (*See id.* at 811-17 – 811-32.) Ultimately, witness Diaz concluded that:

> Based on my experience, a review of DE Carolinas' decisions and actions leads me to conclude that the stepwise approach to licensing and managing the project for the Lee Nuclear Project, and its decision to extend their target operation dates, are reasonable and consistent with industry best practices. Decisions were made to conduct necessary activities and to defer others, in accordance with the primary decision to obtain a license.

(*Id.* at 811-41.) As reiterated by Witness Diaz: "[t]he Lee COL enables DE Carolinas to build two AP1000 units on the Lee Nuclear Project site if DE Carolinas chooses to do so." (*Id.* at 811-34.) As a result of DE Carolinas' efforts, the Lee site has been environmentally screened and determined by the NRC to support two AP1000 reactors, and DE Carolinas preserved the option to build the reactors when and if it is appropriate to do so. (*Id.* at 811-34 – 811-35.) Even with the abandonment

of the Lee Nuclear Project, these characteristics will enable DE Carolinas to build the Lee Nuclear Project more quickly should it become beneficial to do so. (*See id.* at 811-37.) Moreover, the finality of the COL under 10 CFR Part 52 limits the design changes that can be imposed on the Lee Nuclear Project. (*Id.* at 811-34 – 811-36.)

ORS witness Morgan presented testimony concerning ORS' investigation into DE Carolinas' project development costs and request for recovery. (Tr. Vol. 8, p. 2015-5 – 2015-8.) ORS reviewed DE Carolinas' testimony, previous correspondence and orders related to the Lee Nuclear Project, and documents considered by the NCUC regarding the Lee Nuclear Project. (*Id.* at 2015-5.) Following its review, ORS concluded that "DEC's decision to incur costs to obtain the Combined Operating License and support preconstruction activities were reasonable – based upon the information available to DEC at that time the costs were incurred." (*Id.*) ORS' sole exception to the costs presented by DE Carolinas was to recommend disallowance of $129,443 (South Carolina retail) for the costs incurred for the design of a Visitors Center at the Lee Nuclear Project site. (*Id.* at 2015-6.) Witness Morgan testified that these expenditures were not necessary to obtain the Lee COL. (*Id.*) ORS also recommended that the Commission remove the return on the unamortized balance of the Lee Nuclear Project. (*Id.* at 2015-6 – 2015-8.) Witness Morgan reasons that this approach will ensure that "the risks of the Lee Nuclear Project be equitably shared between the DEC shareholders and its customers through the disallowance of a return on debt and equity." (*Id.* at 2015-6.) Furthermore, this approach is consistent with ORS' interpretation of this Commission's precedent and the approach adopted by the NCUC for Lee Nuclear Project costs. (*Id.* at 2015-6 – 2015-8.) Other than the costs associated with the Visitors Center and his

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recommendation concerning the return on the unamortized balance, witness Morgan did not recommend any other disallowances for the Lee Nuclear Project. (*Id.* at 2015-6.) No other party to this proceeding presented testimony in opposition to the Company's recovery of its costs for the Lee Nuclear Project.

In rebuttal, DE Carolinas witness Smith stated that the Company does not oppose the removal of the Visitor's Center; however, the Company does oppose ORS witness Morgan's recommendation that the Company not earn a return on the unamortized balance for Lee Nuclear Project costs. (Tr. Vol. 4, p. 659-12.) It is appropriate and fair for the Company to recover financing costs for amounts that are collected over time. (*Id.*) Moreover, given that abandonment costs for V.C. Summer are being recovered with a return, it would be "punitive and arbitrary" not to allow a return. (*Id.*)

In surrebuttal, ORS witness Morgan continued to oppose a return on the unamortized balance for the Lee Nuclear Project. (Tr. Vol. 8, p. 2017-4 – 2017-5.) In ORS' view, Lee Nuclear Project pre-construction costs are not extraordinary and do not benefit customers. (*Id.* at 2017-4.) Allowing a return on the unamortized balance would "saddle its customers with all of the nuclear plant's risk." (*Id.*) Because DE Carolinas has requested recovery for the Lee Nuclear Project in a general rate case, a return on the unamortized balance is not supported, similar to the treatment the Commission afforded to Cherokee Units 2 and 3 in Order No. 1983-92, which ruled on "the exact same set of facts." (*Id.* at 2017-4 – 2017-5.)

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B. DE Carolinas' decision to abandon the Lee Nuclear Project was reasonable and prudent.

The Commission finds that the Company's decision to abandon the Lee Nuclear Project was reasonable and prudent under the circumstances. Subsequent to receipt of the COL for the Lee Nuclear Project in December 2016, significant events outside of DE Carolinas' control occurred, creating additional risk and uncertainty for the Lee Nuclear Project and making abandonment of the Project the best option for customers. (*See* Tr. Vol. 4, p. 804, 805-19 – 805-22.) Witness Fallon elaborated that in early 2017, Westinghouse announced it had suffered significant losses from its AP1000 projects in the U.S. and planned to exit the nuclear plant construction business. (*Id.* at 805-20.) On March 29, 2017, Westinghouse declared Chapter 11 bankruptcy and is currently in bankruptcy proceedings. (*Id.*) Furthermore, billions of dollars in additional costs and delays were announced for the two AP1000 projects in Georgia and South Carolina. (*Id.*) On July 31, 2017, the V.C. Summer owners announced their decision to cease construction of the V.C. Summer project. (*Id.* at 805-20 – 805-21.)

As DE Carolinas witness Diaz explained, the AP1000 design was and remains the best reactor technology available with the most advanced safety features and potential for economic deployment. (*Id.* at 811-37.) Unfortunately, Westinghouse and its partners were plagued by rising costs and construction delays caused in part by the 30-year hiatus in U.S. nuclear construction, the lack of extensive detailed design prior to construction startup, the introduction of modular construction, and the challenges with the nuclear supply chain. (*Id.* at 811-37 – 811-38.)

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The bankruptcy of Westinghouse and the subsequent decision to cease construction of the V.C. Summer Project resulted in significant uncertainties for future nuclear projects. (*Id.* at 811-38.) These uncertainties have a direct impact on the ability to initiate construction of the Lee Nuclear Project. (*Id.* at 805-22.) The Lee Nuclear Project as originally envisioned is no longer prudent to pursue. (*Id.* at 805-19.) The uncertainty around future construction arrangements and cost for one or more AP1000 unit as a result of the Westinghouse bankruptcy has created an unacceptable level of risk to continue the Lee Nuclear Project at this time. (*See id.* at 805-21 – 805-22.)

These critical factors, combined with projected low natural gas prices for the foreseeable future, and uncertain near- and long-term carbon emissions costs, render it no longer beneficial to customers to construct and commence operation of the Lee Nuclear Project before the end of the next decade. (*Id.* at 805-23 – 805-24.) As a result, the Commission concludes that it is in the Company's and customers' best interests to terminate work on the Lee Nuclear Project, and that it is prudent to abandon the Lee Nuclear Project as originally envisioned. The Company has adequately justified its decision to abandon Lee Nuclear Project. (*See id.* at 805-23 – 805-24.) No witness presented testimony questioning the Company's decision. Therefore, the Commission finds and concludes that the Company's decision to abandon Lee Nuclear Project as originally envisioned is reasonable and prudent.

C. Reasonableness and Prudence of Lee Nuclear Project Costs

The Commission finds and concludes, in light of all the evidence presented in this case, that DE Carolinas' investment in pre-construction costs towards the Lee Nuclear Project were

reasonable and prudent. Three witnesses presented testimony in this case concerning the prudence of Lee Nuclear Project costs. (*See id.* at 805, 811; Tr. Vol. 8, p. 2015.) On behalf of the Company, witnesses Fallon and Diaz testified that the Company's approach to the Lee Nuclear Project and the costs incurred for the Project were reasonable and prudent. (Tr. Vol. 4, p. 805-34, 811-42.) On behalf of the ORS, witness Morgan determined that the costs incurred on the Lee Nuclear Project were reasonable, subject to ORS' recommendation to disallow the costs associated with the design of the Visitors Center, which the Company has agreed to remove. (*Id.* at 659-12; Tr. Vol. 8, p. 2015-5 – 2015-6.) Witness Morgan recommended that the Commission not allow a return on the unamortized balance. (Tr. Vol. 8, p. 2015-5 – 2015-8.) The matter of a return on the unamortized balance is discussed later in this Order.

With the exception of the cost removed for the Visitors Center, the Company and ORS are in broad agreement regarding the prudency of DE Carolinas' overall decision-making concerning the Lee Nuclear Project. (*See id.*; Tr. Vol. 4, p. 805, 811.) ORS witness Morgan testified, "ORS finds that DEC's decision to incur costs to obtain the Combined Operating License and support preconstruction activities were reasonable – based upon the information available to DEC at that time the costs were incurred." (Tr. Vol. 8, p. 2015-5.) Furthermore, Global, the independent consultants hired to review Lee Nuclear Project for North Carolina Public Staff, concluded:

> After careful consideration and thorough review of all public and confidential data made available to us, documents filed with the NCUC, filed testimony, review of data responses that covered the 2006-2016 time period, and our professional experience with other utilities in the Southeast concerning the development of the Westinghouse AP 1000 nuclear units, we have concluded that DEC's decision were appropriate at the time they were made. We

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> found the expenditures to obtain the COL to be reasonable and prudent within the limits of the definitions of reasonableness and prudence. We also found the costs incurred for pre-construction and site development, land and right-of-way purchases, supply chain, construction planning and detailed engineering, operational planning and post-COL to be reasonable and prudent, as well, subject to an issue raised by the Public Staff concerning the Visitors' Center.

(Exh. 17 at 6.)

Both Company and ORS witnesses received several questions regarding the Company's compliance with and the coverage of the 2008 PDO and 2011 PDO for the costs that the Company incurred for Lee Nuclear. (Tr. Vol. 4, p. 823-26; Tr. Vol 8, p. 2062-66.) As explained by Company witness Fallon, the 2008 PDO and 2011 PDO do not provide full coverage for the costs incurred for Lee Nuclear Project. (Tr. Vol. 4, p. 805-16.) The Company exceeded the pre-authorized spending level under the PDOs after June 30, 2012. (*Id.*) Counsel for SCEUC, through cross examination questions, attempted to imply that the Company had not complied with the 2011 PDO. (*Id.* at 823-26.) Notably, no witness to this case has advanced this position. The Record shows, and this Commission finds, that the Company was in full compliance with both orders. (*See id.* at 824.) As witness Fallon explained, the pre-authorization amount in the 2011 PDO "doesn't represent a cap, nor is it a requirement that we get that preauthorization." (*Id.*) The Company was not required to seek an additional PDO for the period following June 30, 2012, which was the limit of the 2011 PDO. (*See id.* at 826.) As discussed in more detail above, the BLRA's provision for PDO is permissive. *See* S.C. Code Ann. § 58-33-225(B) & (I). The Company had the option to file an additional project development application; however, the filing of such an application was

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not mandatory, as shown by the BLRA's plain language that a utility "may" file a project development application. *See id.*

Furthermore, the time limitation in the 2011 PDO does not order the Company to discontinue spending on the Lee Nuclear Project following June 30, 2012. *See* 2011 PDO at 17. Ordering paragraph 3 states:

> The Company must incur only those costs absolutely necessary to keep the Lee Nuclear project available as an option in the 2021 time frame. The prudency determination made in this proceeding applies only to the South Carolina allocable share of the additional pre-construction costs of $75 million without AFUDC, not to exceed $120 million with AFUDC for the period of January 1, 2011 through June 30, 2012.

(*Id.*) This language makes it clear that the 2011 PDO does not impose a cost cap on the Company's spending on Lee Nuclear Project. (*See id.*) The time and money limitations of the 2011 PDO are for the purposes of the Commission's required finding of prudence under the BLRA and do not impose a spending limit. *See id.*; *see also* S.C. Code Ann. § 58-33-225(D). Moreover, it is notable that receipt of the COL was not expected until 2013 at the time of the 2011 PDO, which was after the time period covered by the 2011 PDO. (Tr. Vol. 4, p. 805-15.) The Commission's guidance in the 2011 PDO was that spending should be limited to "those costs absolutely necessary to keep the Lee Nuclear project available as an option in the 2021 time frame." 2011 PDO at 17. The 2011 PDO contains no requirement that the Company seek an additional PDO prior to incurring additional costs or restricting the Company's recovery of those additional costs. (*See* 2011 PDO at 16-18.) It is illogical to interpret the language of the 2011 PDO as requiring the Company to seek an additional authorization or discontinue spending. (*See id.*) As the language of the order

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explicitly states, the time and amount restrictions in the PDO applied to the prudence determination that the Commission was required to make during the proceeding. (*See id.*) Consequently, the Commission finds and concludes that the Company complied fully with the provisions of both the 2008 PDO and the 2011 PDO.

Counsel for SCEUC also suggested through cross examination a position that the Company should have sought recovery of the Lee Nuclear Project prior to the present proceeding. (Tr. Vol. 8, p. 2067.) No witness to this case has advanced this position, and this position is without merit. Under the BLRA, which was in effect over the course of the Lee Nuclear Project, the avenues available to the Company to recover its preconstruction costs were abandonment of the Project or proceeding to build the Project. Abandoning the Project in 2013 would not have been reasonable because the Company had completed most of the work necessary to obtain the COL, which provides the Company the option to build the Lee Nuclear Project in the future, if and when it is beneficial to do so. (Tr. Vol. 4, p. 805-17 – 805-18.) Furthermore, as witness Fallon explained, the Company's IRP process continued to show a need for new nuclear during the relevant time period. (*Id.* at 805-17.) If the Company had not continued to pursue the COL during this time, the Company would have eliminated the benefit of the Company's efforts to ensure that new nuclear was an option for DE Carolinas' customers when it was needed. (*See id.* at 805-19, 811-33 – 811-34.) Finally, as discussed above, the Commission's direction to the Company in the 2011 PDO was to "incur only those costs absolutely necessary to keep the Lee Nuclear project available as an option in the 2021 time frame." 2011 PDO at 17. Given that the IRP still showed a need for new nuclear, discontinuing this work and not obtaining the lasting benefit of the COL would not have

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been the best or wisest course of action. (*See* Tr. Vol. 4, p. 805-17 – 805-18.) The Commission therefore finds that there is no merit to the position that DE Carolinas should have sought recovery of its costs for the Lee Nuclear Project prior to the present proceeding.

Subject to the removal of the Visitors Center as proposed by ORS and as agreed to by the Company, the Commission finds, and concludes, in light of all the evidence presented in this case, that DE Carolinas' investment in pre-construction costs toward the Lee Nuclear Project were reasonable and prudent.

D. Request for a Return on the Unamortized Balance

The Commission finds and concludes that it is just and reasonable for the Company to recover its costs and a return on them based on the circumstances as they existed when the Company incurred its costs. While ORS correctly states that the Commission has not historically allowed a return on the unamortized balance for abandoned nuclear project under its precedent, the Commission has considered the equities of the case before reaching this conclusion. (*See* Order No. 82-284 at 16-17.) Commission decisions not to grant a return on the unamortized balance considered the circumstances of the individual costs under consideration and are not the result of a wholesale prohibition of rate base treatment for abandoned plant costs. (*See id.*) As a general matter, a utility is entitled to ask for a fair return on its property that is employed for the public convenience. *See Bluefield*, 262 U.S. 679, 690. As a general matter, utilities are entitled to earn sufficient revenue not only for operating expenses but also for the capital costs of the business, including "service on the debt and dividends on the stock." *Hope*, 320 U.S. 591, 603. Consequently, it is incumbent upon the Commission to consider the specific circumstances of the

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Lee Nuclear Project in order to make a decision regarding whether a return on the unamortized balance should be allowed in this case.

The Commission's precedent regarding a return on the unamortized balance for abandoned nuclear projects looks to several factors, including whether the investment is used and useful, a balancing of interests between customers and shareholders, and the benefit of the investment to customers. (*See id.*; Order No. 83-583 at 30-32.) Regarding it decision not to allow a return on the unamortized balance over a ten-year period for abandoned Harris Units 3 and 4, the Commission reasoned:

> Rather, the Commission views its treatment of the unamortized balance as a cost sharing among the ratepayers, and the shareholders. Since the abandoned project is not 'used and useful' to the ratepayer, the Staff's and Consumer Advocate's proposal balances the respective interests of the Company, the shareholders, and the ratepayers, and is consistent with the treatment of Brunswick Cooling Towers and South River Project.

(Order No. 83-583 at 32.)

Another instructive example involves the Commission's consideration of the Brunswick Cooling Tower Project. Order No. 82-284 at 16. This project involved the construction of a cooling tower due to federal licensing and permitting requirements; however the requirement for the project was subsequently eliminated, and the Company abandoned the project. *Id.* at 15. The utility requested a five-year amortization period with a return on the unamortized balance. *Id.* With regard to the Brunswick Cooling Tower Project, "Staff conceded that the Company may be entitled to carrying costs on the abandoned project but **further asserts that a concomitant consideration of the benefits accruing to the ratepayers is necessary**." (*Id.* at 16 (emphasis added).) The Staff

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proposed a "balancing of the respective interests of the Company and its ratepayers" and proposed a shorter recovery period with no return on the unamortized balance, which "prevents the ratepayers from paying a return on plant from which no benefit will be derived." (*Id.*) The Commission ultimately adopted a ten-year amortization period with no return on the unamortized balance. (*Id.* at 17.) Moreover, with regard to the working capital adjustments proposed relative to the Brunswick Cooling Tower Project and another abandoned project under consideration in the case, the Commission determined "that it is patently improper for the ratepayers of the Company to be required to pay a return on plant which is not 'used and useful' in providing electricity **and which will never be of benefit** to the customers of the Company." (*Id.* at 34 (emphasis added).)

In its consideration of abandonment costs associated with Cherokee Units 2 and 3 and Perkins Nuclear Station, the Commission similarly did not allow a return on the unamortized balance. (Order No. 83-92 at 22-23.) In considering whether rate base treatment for these projects was appropriate, the Commission reasoned that a return on the unamortized balance was unreasonable and inconsistent with the ratemaking principle that the utility can earn a return "on the investment used and useful in providing service to the ratepayers. (*Id.* at 23.) The Commission further reasoned that "The Perkins Plant nor Cherokee Units 2 and 3 have been **or will be** used and useful in providing electric service to the Company's customers." (*Id.* (emphasis added).)

ORS witness Morgan recommended recovery of $124,601,000 of pre-construction costs for the Lee Nuclear Project but recommended against recovery of a return on the unamortized balance for DE Carolinas' investment. (Tr. Vol. 8, p. 2015-6.) Witness Morgan reasons that "It is not fair or reasonable for shareholders to earn a return on a cancelled nuclear project when the customers

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receive no benefit yet are required to pay for this cancelled project." (*Id.*) Witness Morgan's position ignores several distinctions between the Lee Nuclear Project and earlier abandoned projects and the benefits that customers have received as a result of DE Carolinas' cautious and methodical approach to the Lee Nuclear Project. (*See* Tr. Vol. 4, p. 803.) Furthermore, witness Morgan's pre-filed testimony does not address the implications of the two PDOs under which DE Carolinas incurred portions of its preconstruction spending. (*See* Tr. Vol. 8, p. 2015, 2017.)

As witness Fallon explained, the Company, with Commission approval, "has taken a methodical, deliberate, and measured approach to evaluate and pursue new nuclear, which has allowed the company to maintain nuclear as a future option while also avoiding some of the significant challenges that have been encountered by early adopting utilities who have undertaken full construction." (Tr. Vol. 4, p. 803.) The experience of utilities with licensing under 10 CFR Part 52 has shown that licensing new reactors continues to have a long lead time when compared to other generation technologies. (*See id.* at 805-6.) As witness Diaz explained, "Nuclear is not a short-term business." (*Id.* at 832.) By obtaining the COL, but not pursuing construction, the Company was able to defer major capital investment in the Lee Nuclear Project and limit the financial risk of pursuing new nuclear generation. (*See id.* at 811-14.) After the Company was unable to conclude an EPC agreement, the Company's strategy with regard to the Lee Nuclear Project was to make a decision following receipt of the COL, which would give the Company the ability to observe the experience of the first AP1000s in China as well as V.C. Summer and Vogtle. (*Id.* at 831.) Moreover, the Commission, through its 2008 PDO and 2011 PDO expressed the Commission's intention as to what path forward was most beneficial for customers. (*See* 2011

PDO; 2008 PDO.) The Company followed that path and maintained the nuclear option for DE Carolinas' customers, which was itself a primary **benefit** of the Lee Nuclear Project that was recognized in the 2008 PDO and 2011 PDO. (*See id.;* Tr. Vol. 4, p. 824.)

That development work produced two substantive assets: (1) the Lee COL issued by the NRC, and (2) ownership of an environmentally-screened construction-ready site. (Tr. Vol. 4, p. 811-34.) North Carolina Public Staff's consultant, Global, reached a similar conclusion as outlined in the Global Report. (*See* Exh. 17 at 19 ("DEC has a viable COL for the W.S. Lee project and has the site under its ownership.").) These assets provide considerable value to customers and the Company. (Tr. Vol. 4, p. 811-36 – 811-37.) The Lee COL issued by the NRC is a readily available asset that DE Carolinas could deploy when it is most beneficial to do so. (*Id.* at 811-34.) The Lee COL provides for 40 years of operation, with the possibility of renewals in 20-year increments. (*Id.*) The Lee COL "does not expire and has value for DE Carolinas customers because it eliminates the long-lead time required for nuclear construction projects and preserves the nuclear option for DE Carolinas customers." (*Id.* at 805-8.) Witness Diaz explained that, with the COL:

> You have the investment that was made into not only obtaining the permit but into developing the site suitable for large power production is preserved and usable. And that is a value itself. It is not only valuable, it is tangible and can be traded. It continues to exist. It doesn't disappear.
>
> And the value could be, you know, really extraordinary if it comes to the point in which nuclear occupies, you know, a rightful place in the commercial production of electricity, which presently we all know, due to the gas, it is not.

(*Id.* at 833.)

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Furthermore, the Lee COL will continue to be available to the Company when and if it is appropriate to build Lee Nuclear Project in the future. (*Id.* at 804.) As witness Fallon explained:

> And if the Carolinas still want to have a clean, reliable portfolio, then I think nuclear could be a solution to that in the future, and it provides us an option, depending upon what happens with relicensing and government regulations and customer demand growth, electric vehicles, any of those things that could drive it.

(*Id.* at 830-31.) Witness Fallon further explained:

> Duke Energy Carolinas has an obligation to plan for the long term, you know, plan for safe, reliable, clean, and cost-effective energy. And it's not just for next week, next year, but it's for the next 50 to 100 years. So with that as my background, I believe that Lee may be built someday. Right? It's going to be — and we wouldn't pursue it unless it was in the best interest of customers.

(*Id.* at 830.) In this sense, the Lee COL can operate like an option instrument to hedge against a future change in the energy environment (both gas prices and carbon costs) and eliminate several years of lead time in the event nuclear generation is the best resource alternative to meet customer needs. (*See id.* at 771, 811-37, 830-31.)

Likewise, ownership of an environmentally-screened construction-ready site is also beneficial for South Carolina customers. (*See id.* at 811-34.) Witness Diaz explained that the Lee Nuclear Project site has (1) undergone rigorous examination, (2) received various regulatory approvals, and (3) received a determination from the NRC that it is suitable to sustain a nuclear power plant. (*Id.* at 811-36.) Witness Diaz highlighted that the NRC determination includes findings regarding the site's geology, hydrology, seismology, meteorology characteristics, population density and nearby man-made infrastructures, access roads and land improvements, and

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the valuable cooling water in compliance with national and regional use requirements. (*Id.* at 811-36.) Witness Diaz explained further that "Having completed the significant technical effort that was required to characterize the site and obtain many of the regulatory approvals that are required to build and operate a nuclear power plant on the site, DE Carolinas now has the option to execute the Lee Nuclear Project if and when the time is right." (*Id.* at 811-36 – 811-37.) The Lee COL provides a valuable planning tool that is an integral part of DE Carolinas' planning process to meet its obligation to provide clean, safe, reliable, and cost-effective energy to customers for the next century. (*See id.* at 805-8, 830.) The Company's licensing-first approach allows the Company to maintain an environmentally-screened, construction-ready site with a COL in hand while the Company benefits from lessons learned from the other utilities that have pursued new nuclear. (*See id.* at 811-36 – 811-37.) Consequently, DE Carolinas will be able to deploy new nuclear on an expedited schedule with significantly less risk, should it be beneficial to do so. (*Id.*) The benefits provided by the Lee COL in the planning process, including the reduction of the long-lead time required for nuclear construction projects and preservation of the nuclear option, accrue to customers and provide a public convenience with both near-term and long-term value. (*See id.* at 805-8.)

Furthermore, the Company sought and obtained pre-authorization from this Commission on two occasions. *See* 2011 PDO; 2008 PDO. Prior to the BLRA repeal, the Company would have been entitled to a return on the unamortized balance for its investments pursuant to the PDOs by statute. *See* S.C. Code Ann. § 58-33-225 (G). While the BLRA has since been repealed, the Company made its investments in Lee Nuclear Project in reliance on the cost recovery assurance

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that the PDOs provided. (Tr. Vol. 4, p. 805-26.) The 2011 PDO stated explicitly that DE Carolinas had not made a final determination to construct the Lee Nuclear Project while at the same time finding it prudent to continue to pursue the Lee COL to be able to construct the project to meet the need dates in the IRP. (2011 PDO at 15.) Not allowing a return on the unamortized balance and setting a longer amortization period that the Commission has ordered in the majority of its abandonment cases unfairly penalizes utility shareholders. (*See* Tr. Vol. 4, p. 659-12.) Moreover, it contradicts the clear signal to continue development of the Lee Nuclear Project that this Commission provided in the 2008 PDO and the 2011 PDO. *See* 2011 PDO; 2008 PDO. The financing cost on the deferred balance of the Lee Nuclear Project represents a real cost to the Company, and it is appropriate to for the Company to recover its financing costs, as the amounts will be collected over time. (*See* Tr. Vol. 4, p. 659-12.) Make no mistake that by not allowing a return, the Commission would be effectuating a disallowance of reasonably and prudently incurred cost. Fairness demands that the Commission consider the pre-authorizations in its PDOs in considering whether a return on the unamortized balance is appropriate in this case. (*See* 2011 PDO; 2008 PDO.)

The circumstances of the Lee Nuclear Project differ markedly from those of the Commission's prior abandoned plant cases, contrary to witness Morgan's comparison to prior abandoned plant cases. (*See* Tr. Vol. 8, p. 2017-4 – 2017-5 (reasoning that the Company's abandonment of Cherokee Units 2 and 3 presented "the exact same set of facts"). Unlike the prior abandoned plant cases where the utility was not left with a resource that could be used for decades to come, the Lee Nuclear Project has resulted in a valuable resource that may be used for future

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planning. (*See* Tr. Vol. 4, p. 811-34, 811-35 – 811-36.) The availability of this resource for potential future use and system planning is a public convenience. In contrast to the earlier cases, it remains possible that the Lee Nuclear Project will ultimately be built. (*Id.* at 830.) The Company has taken a measured, deliberate approach to the Lee Nuclear Project that limited expenditures, preserved the option of building new nuclear when the time is right, and kept this Commission informed through its quarterly filings. (*Id.* at 802-03.) In taking these actions, the Company managed the risk of new nuclear construction appropriately. (*See id.* at 803.)

Unlike prior abandoned plant cases, the Lee Nuclear Project was the subject of two PDOs, which encouraged DE Carolinas to continue development of the Lee Nuclear Project and to pursue the Lee COL. (*See* 2011 PDO; 2008 PDO.) The 2011 PDO expressly recognized that DE Carolinas had not made a decision to construct the Lee Nuclear Project but nonetheless found that it was prudent for DE Carolinas to incur additional preconstruction costs. (2011 PDO at 15.) DE Carolinas has also been consistent that the Company would make a decision regarding the construction of the Lee Nuclear Project following receipt of the Lee COL. (Tr. Vol. 4, p. 803.) Therefore, in this Commission's view, the Lee Nuclear Project is more analogous to a completed project to obtain the Lee COL to preserve the option of new nuclear for DE Carolinas' customers than to the other abandoned projects. Consequently, when contrasted with the earlier abandonment cases and when considered in conjunction with the Company's reliance on the preauthorization and guidance that the Commission provided in the 2008 PDO and the 2011 PDO, the Commission finds that it is appropriate that the Company recover a return on the unamortized balance for the Lee Nuclear Project.

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Finally, as a result of the repeal of the BLRA, the Company no longer has the option to make an application under the BLRA. (H. 4375 § 2.A (2018).) Consequently, a general rate case is the only avenue of recovery available to the Company for its abandonment costs associated with the Lee Nuclear Project. However, the repeal of the BLRA does not alter the fact that the Company incurred the costs for the Lee Nuclear Project appropriately, publicly, and lawfully. At the time the Company incurred the costs, the BLRA afforded a return on DE Carolinas' prudently incurred abandonment costs. These costs were incurred as a public convenience to "keep the nuclear option available." *See* 2011 PDO at 16. The repeal of the BLRA does nothing to upend the 2008 PDO and the 2011 PDO, the basic principles of utility regulation, or the reliance placed on these orders when DE Carolinas obtained pre-authorization to incur these costs. Regardless of the availability of the BLRA as a procedural vehicle for cost recovery, the Commission holds that it is just and reasonable for the Company to recover its costs and a return on them based on the circumstances as they existed when the Company incurred its costs.

III. Conclusion

In light of all of the evidence presented, the Commission finds and concludes that DE Carolinas' has acted reasonably and prudently in pursuing the Lee Nuclear Project. The Company took a measured and deliberate approach to project development that allowed for the option of future nuclear to be preserved by pursuing and receiving the COL. (*See id.* at 803.) The Company achieved this outcome while avoiding the significant struggles faced by other early movers in new nuclear construction. (*Id.*) The Company obtained pre-authorization from this Commission in 2008 and 2011 and pursued the Project in compliance with the direction provided by the

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Commission's orders. Ultimately, the work performed resulted in a COL and an environmentally-screened construction-ready site that provides the Company an option to build a low-carbon power source. (*See* Tr. Vol. 4, p. 811-34.) The availability of this option benefits both present and future customers.

For all of the reasons stated herein, DE Carolinas' request to recover all of its reasonable and prudently incurred costs is granted. This approval reflects the removal of the Visitors Center as recommended by ORS and agreed to by the Company. This approval includes the net of tax return on the unamortized balance through inclusion in rate base as requested by DE Carolinas. This rate treatment is fair to all parties based on the Company's reliance on the Commission's PDOs, measured approach to new nuclear, and recognizes the potential future value of the Lee Nuclear Project's COL and environmentally-screened site, and the fundamental fairness of recognizing the parameters and conditions upon which the Company lawfully incurred such costs. Moreover, not allowing recovery of the costs would produce the absurd result of penalizing the Company for not pursuing a project that could have cost ratepayers billions, such as occurred with V.C. Summer. Not allowing recovery of the carrying costs produces an absurd result by penalizing DE Carolinas' deliberate and methodical approach to new nuclear and appropriate abandonment of Lee Nuclear Project when it was prudent to do so, while allowing a return on the unamortized balance for V.C. Summer's abandonment costs.

EVIDENCE FOR FINDINGS AND CONCLUSIONS NO. 39

The evidence in support of the findings of fact are found in the verified Application, pleadings, testimony and exhibits in this Docket, and the entire record in this proceeding.

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In her direct testimony, Company witness McGee supports the fuel component of proposed base rates for all customer classes and the fuel pro forma adjustments to the test year operating expenses contained in Smith Exhibit 1. (Tr. Vol. 4, p. 792-3.) The proposed base fuel factors are comprised of the total of fuel, environmental, DERP avoided costs, and the Capacity Related Cost, including the Public Utility Regulatory Policies Act ("PURPA") purchased power capacity cost factors, by customer class. (*Id.* at 792-4.) While Witness McGee originally proposed to use the total prospective factors effective October 1, 2017 and approved in Docket No. 2017-3-E, the Company subsequently updated its fuel-related cost factors to reflect the change in the fuel rates effective October 1, 2018 and approved in Docket No. 2018-3-E. (*Id.* at 657-3 – 657-4.) Accordingly, the Company proposes to use the following base fuel factors by customer class (excluding gross receipts tax and regulatory fees):

- Residential 2.1094 cents per kWh
- General Service/Lighting 2.1004 cents per kWh
- Industrial 2.0721 cents per kWh

Witness McGee states the Company will continue to bill customers the fuel rates authorized by the Commission in its annual fuel proceedings. (*Id.* at 792-6.) As such, since the Company's requested increase in revenues in this case is related to non-fuel revenues, there will be no change in customers' bills as a result of including these fuel cost factors in the proposed base rates. (*Id.*)

No intervenor contested the testimony of Company witnesses McGee and Smith that support the base fuel and fuel-related cost factors therein. Accordingly, the Commission finds and

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concludes that the base fuel and fuel-related cost factors are just and reasonable to all Parties in light of all the evidence presented, and are approved

EVIDENCE FOR FINDINGS AND CONCLUSIONS NO. 40

The evidence in support of the findings of fact are found in the verified Application, pleadings, testimony and exhibits in this Docket, and the entire record in this proceeding.

Company witness Hager explained in her testimony that the purpose of the Company's Cost of Service Study ("COSS") is to align the total costs incurred by DE Carolinas in the test period with the jurisdictions and customer classes responsible for the costs. (Tr. Vol 8, p. 1903-3.) The COSS is based on the official accounting books and records of DE Carolinas, supported in this proceeding by Company witness Doss. The cost components are comprised of the Company's electric operating expenses and original cost rate base and are based on the historical 12-month period covering January 1, 2017 through December 31, 2017 (the "Test Period").

The COSS directly assigns or allocates the Company's revenues, expenses, and rate base among the regulatory jurisdictions and customer classes served by the Company based upon the service requirements of those respective jurisdictions and customer classes. These service requirements are based on a number of factors, including differences in usage patterns and size.

Witness Hager said that cost causation is a key component in determining the appropriate assignment of revenues, expenses, and rate base among jurisdictions and customer classes. (*Id.* at 1903-4.) Under the principle of cost causation, costs are assigned to the specific jurisdictions and customer classes that "caused" such costs to be incurred.

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After all costs and revenues are assigned, the COSS identified the return on investment the Company has earned for each customer class during the test period. These returns can then be used as a guide in designing rates to provide the Company an opportunity to recover its costs and earn its allowed rate of return.

Once the costs of service are identified, witness Hager explained that they are grouped according to their "function." (*Id.* at 1903-5.) Functions include production (generation), transmission, distribution, and customer service, billing and sales. The functionalized costs are then grouped or classified based on the utility "operation" or service being provided and the related causation of the costs. Typical classifications include demand, energy, and customer-related costs. Finally, the costs, which have been functionalized and classified, are allocated or directly assigned to the proper jurisdiction and customer class based on the manner in which the costs are incurred (*i.e.,* based on cost causation principles).

Witness Hager testified that demand-related costs are costs incurred that vary in direct relationship to the kilowatts ("kW") of demand that customers place on the various segments of the system. (*Id.* at 1903-7.) Costs that are classified as demand-related include major portions of the Company's investment and related expenses in its production and transmission facilities and a significant portion of the investment and related expenses of its distribution system. These costs tend to remain constant over the short run and do not change based on the amount of energy consumed. These costs are often referred to as fixed costs. Energy-related costs are costs incurred that vary in direct relationship to the amount of energy or kilowatt hours ("kWh") generated and delivered. These costs are often referred to as variable costs. Finally, customer-related costs are

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costs incurred as a result of the number of customers being served. Customer costs do not vary with the customers' volume of usage but are related to the number of customers.

Witness Hager explained that cost components identified as having a direct relationship to a jurisdiction or customer class are directly assigned to that jurisdiction or class before any allocations occur. (*Id.*) The remaining costs are allocated based on specific allocation factors related to (1) demand, (2) energy, and (3) customer-related classifications.

According to witness Hager there are two categories of demand-related costs used in the COSS: 1) production and transmission demand related costs; and 2) distribution plant investments. Production and transmission demand costs are allocated using the SCP method. (*Id.* at 1903-8.) Distribution plant investments are directly assigned to the jurisdictions. At the customer class level, substations, and a part of poles, lines and transformers that have been designated as demand-related are allocated based on the Non-Coincident Peak Demand ("NCP").

Witness Hager explained that a coincident peak ("CP") allocator assigns the fixed demand-related costs (for example, a portion of production and all transmission-related costs) to the jurisdictions and customer classes in proportion to their respective contribution to the system's peak hourly demand during the test period. (*Id.* at 1903-8 – 1903-9.) Each jurisdiction and customer class' cost responsibility (*i.e.*, the percentage of the fixed portion of production and transmission demand costs assigned to each jurisdiction and customer class) is equal to the ratio of their respective demand in relation to the total demand placed on the system. The Company's COSS proposed rate design in this proceeding allocates the fixed portion of production and transmission demand-related costs based upon a jurisdiction's and customer class' coincident peak

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responsibility occurring during the summer of the test year (SCP) which was also the system test year peak, which occurred on August 17, 2017, at the hour ending 3:00 PM and was 17,442 MWs. (*Id.* at 1903-9.) The Company adjusted the SCP to include a decrease in demand-related sales for three wholesale customers whose contracts expired in 2018.

Regarding the allocation of distribution investments, witness Hager testified that they are first identified and directly assigned to the state in which they are located. (*Id.* at 1903-10.) Then those distribution costs that are identified as customer-related are allocated based on customer allocation factors. The remainder of the distribution costs are designated as demand-related and allocated to the customer classes based on NCP demand allocators.

Witness Hager explained that DE Carolinas allocated the costs of the service drop and meter, meter reading, billing and collection, and customer information and services, which are included in FERC accounts 901-917 in the customer class category of costs. (*Id.* at 1903-12.) In addition, DE Carolinas included in this category a portion of distribution costs that the Company identified as customer-related.

In DE Carolinas' last rate case, the Company did not include in the customer-related class a portion of its distribution costs. Rather, these costs were allocated based on demand factors. In this case, witness Hager testified that the Company identified a portion of the costs for distribution lines, poles, and transformers (FERC Accounts 364-368) to be allocated based on customer factors. (*Id.*)

The Company relied upon The National Association of Regulatory Utility Commissioners ("NARUC") Electric Utility Cost Allocation Manual ("CAM") to support its change in the

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allocation of its distribution costs. Witness Hager testified that the CAM states that a portion of distribution costs related to FERC Accounts 364-368 are customer-related. (*Id.* at 1903-13.) These FERC accounts include the costs of poles, towers, fixtures, overhead and underground conductors, and transformers. The two-methods the CAM discusses for allocating these customer-related distribution costs are:

1) Minimum System Method (called Minimum-Size Method in the NARUC Manual); and
2) Zero-Intercept Method (called Minimum-Intercept Method in the NARUC Manual).

Both methods recognize that some portion of the distribution system is necessary to serve customers, regardless of whether the customers take any energy from the system. The Minimum System Method seeks to determine the minimum size distribution system that can be built to serve the minimum loading requirements of customers. The Minimum System Method develops the cost of the minimum set of distribution assets that would be needed to serve customers and allocates those costs based on the number of customers.

Similar to the Minimum System Method, the Zero-Intercept Method allocates a portion of the same distribution accounts on the basis of the number of customers. The Zero-Intercept method seeks to identify the portion of distribution plant that is associated with no load using regression techniques.

DE Carolinas chose to use the Minimum System approach in its COSS Study for allocating costs to its customers, which the Company asserts is appropriate for allocation of customer-related distribution costs. (*Id.* at 1903-14.) Witness Hager explained that the Zero-Intercept method is generally considered to be a more complex and time-consuming methodology that often can

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produce results that are not materially different from the Minimum System method. (*Id.* at 1903-14.) She opined that the theory behind use of a minimum system study is sound and consistent with cost causation, which is the foundation of the COSS. (*Id.* at 1905.) DE Carolinas' Minimum System Study allowed DE Carolinas to classify the distribution system into the portion that is customer-related (driven by number of customers) and the portion that is demand-related (driven by customer peak demand levels).

Witness Hager testified that every customer requires some minimum amount of wires, poles, transformers, etc. to receive service; therefore, every customer "caused" DE Carolinas to install some amount of such distribution assets. (*Id.* at 1903-14.) The concept DE Carolinas used to develop its Minimum System Study was to consider what distribution assets would be required if every customer had only some minimum level of usage (e.g., one light bulb). This methodology allowed the Company to assess how much of its distribution system is installed simply to ensure that electricity can be delivered to each customer, if and when the customer chooses to use electricity. Once minimum system costs were identified, all distribution costs over the minimum system costs and direct assignments were determined to be demand-related.

The use of the Minimum System approach resulted in the Company allocating additional costs to the customer class cost category and a corresponding reduction in the costs allocated to the energy and demand related cost categories. All costs are allocated, the issue is which are designated demand-related, energy-related, or customer-related. By re-assigning certain distribution costs from the demand related cost category to the customer class cost category, the minimum system methodology results in a higher fixed BFC and a lower demand charge for customers whose electric

rate includes demand charges and lower energy charges for those without demand charges than would otherwise be the case. According to the Company, without the use of the minimum system allocation methodology, low-use customers on rate schedules without demand charges avoid paying for the infrastructure necessary to provide service to them which is counter to cost causation principles. (*Id.* at 1903-15.) Witness Hager stated that witness Pirro relied upon costs allocated as being customer-related in the COSS in developing his recommendation regarding the BFCs. (*Id.*) Witness Hager concluded that the minimum system methodology is consistent with long-standing history for DE Carolinas and DE Progress in setting its North Carolina retail rates and is used by utilities in other states as well. (*Id.* at 1925.)

Turning to the allocation of the Company's remaining distribution costs not assigned to the customer class, the Company used NCP allocators developed by taking the ratio of the non-simultaneous peak demands of the customers in each class whenever that peak occurred during the test period and comparing that to the sum of all customers' non-simultaneous peak demand. A number of different NCP allocators were developed to account for the different levels of the distribution system where customers may take service (substation and below, primary and below, secondary, etc.).

Witness Hager justified the Company's allocation of these costs in this manner by explaining that distribution facilities serve individual neighborhoods, rural areas, and commercial districts. (*Id.* at 1903-11.) They do not function as a single integrated system in meeting system peak demand. (*Id.*) Instead, the distribution system serving each neighborhood, rural area, or commercial district must be able to meet the peak demand in the area it serves whenever the peak

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occurs. (*Id.*) Accordingly, contribution to NCP is the appropriate measure of determining customers' responsibility for these costs because it best measures the factors that drive investment to support that part of the system. (*Id.*)

With regard to the allocation of energy related costs, witness Hager testified that these are costs that vary directly with the cost of producing, transmitting, and delivering electricity. (*Id.*) Examples of costs allocated on this basis are fuel costs and variable production costs incurred at generating stations. (*Id.*) DE Carolinas' kWhs of generation and deliveries during the Test Period were used to allocate these variable costs. The kWh sales information was collected, and then adjusted for the level of losses attributable to each class and jurisdiction, in order to derive the level of kWhs at the generator attributable to that class or jurisdiction.

Witness Hager also addressed the Company's allocation of revenues associated with the EDIT rider to the customer classes based on the ADIT allocator. (*Id.* at 1903-16.) She testified that this allocation methodology is reasonable and based on cost causation principles and because the EDIT amounts were previously part of ADIT as explained by Company witnesses Smith and Panizza, this is consistent with how the amounts were allocated prior to the federal tax rate change and reasonably reflect how the benefits were created. (*Id.* at 1903-16 – 1903-17.)

Witness Hager testified that the Company's methodologies used to allocate its demand-related, energy-related and customer-related costs are reasonable and appropriate and that its COSS is a proper foundation for distributing costs among the jurisdictions and customer classes because it recognizes cost causation and distributes costs accordingly. (*Id.* at 1903-17.) In addition, she

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verified that the COSS provides a proper basis for determining cost-based rates and is a major component of fair and equitable rate design. (*Id.*)

Vote Solar, Mr. Dharmawardena, and SC NAACP et al., challenged the Company's proposal to rely upon the Minimum System Method to allocate costs to the customer class and establish the BFC. (Tr. Vol. 8, p. 1907-7.) Witnesses Barnes and Wallach contend that the costs of the service drop and meter, meter reading, billing and collection and customer information and services are the only costs that should be allocated to the customer class and recovered via the BFC. (Tr. Vol. 7, p. 1405.) Witness Wallach relies upon the *Principles of Public Utility Rates* written by Dr. James Bonbright to support his argument asserting that the text says that metering and billing expenses are "the most obvious examples" of customer costs.[63] However, Company witness Hager explained that witness Wallach failed to mention that the quoted text does not say these are the only costs. (Tr. Vol. 8, p. 1907-7.)

Witness Barnes, also relying on *Principles of Public Utility Rates*, claims that the Minimum System Method is not generally accepted as an appropriate method for classifying system costs.[64] Again, witness Hager refutes the attempt to rely upon Dr. Bonbright by noting that while he recognizes the difficulty of determining the proper allocation for the minimum system costs, he concludes that the exclusion of minimum system costs from demand-related costs is on "much firmer ground" than its exclusion from customer costs.[65] Dr. Bonbright recognizes that utilities

[63] James C. Bonbright, *Principles of Public Utility Rates.* Columbia University Press (1961 edition), p. 311.
[64] Bonbright, p. 348-349
[65] Bonbright, p. 348; Tr. Vol. 8, p. 1907-8.

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must allocate all costs among the classes of customers in a fully-distributed cost analysis.[66] Witness Hager argues that more importantly, the NARUC CAM,[67] that was developed after Dr. Bonbright's work, transitioned from the theoretical world of Dr. Bonbright to the reality of utilities' need to move from development of revenue requirements to rate structures and finds that and concludes that a portion of the distribution costs are customer-related. (Tr. Vol. 8, p. 1907-8.) Witness Hager further called the Commission's attention to the fact witness Barnes acknowledges that the CAM refers to the Minimum System Method as one method of classifying distribution costs. (Tr. Vol. 7, p. 1408-35 – 1408-36.)

Witness Barnes refers to a statement on page 136 of the CAM that mentions an "unresolved argument" about distribution costs. (Tr. Vol. 8, p. 1907-9.) As noted by witness Hager, it appears that the "unresolved argument" is between the two methods discussed in the CAM for allocating the distribution costs at issue both of which recognize that some portion of the distribution system is necessary to serve customers, regardless of whether the customers take any energy from the system. (*Id.*) The quote acknowledges there are distribution costs "usually identified as customer related." (*Id.*)

Witness Barnes acknowledged that the Minimum System Method is used in other states and during cross examination he admitted that notwithstanding his reliance on a Connecticut law that prohibits the inclusion of the distribution costs at issue in this proceeding in utilities' BFCs, the Connecticut Public Utility Regulatory Authority ("PURA") in an order issued December 17, 2014,

[66] Bonbright, p. 348-349.
[67] *Electric Utility Cost Allocation Manual*, National Association of Regulatory Utility Commissioners, January 1992.

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stated that it had routinely allowed the use of the minimum system approach to establish Connecticut Power & Light Company's BFC. (Tr. Vol. 7, p. 1428 – 1431.) He further admitted that even after the Connecticut legislature passed the law in 2015 which the PURA issued an order on April 18, 2018, the PURA continued using the minimum system methodology to allocate costs to the customer class.[68] (The Public Service Commission takes judicial notice of these two Connecticut PURA orders.) (*Id.*)

Witness Barnes claims that "the minimum system method is based on the dubious premise that customers will pay to connect to the grid even if they do not intend to use any electricity." (Tr. Vol. 7, p. 1408-32.) Company witness Hager challenged this argument asserting that the premise of the minimum system methodology is not that a customer would connect to an electric utility's system with no intention of ever using any of the utility's service; rather, the premise is that a customer connects to a utility's system because he intends to use the utility's service and that the utility' system will be able to deliver electricity to the customer's premise. (Tr. Vol. 8, p. 1907-10 – 1907-11.)

Mr. Barnes states that "a customer who has no demand for electricity would have no need to be connected to the distribution system" (Tr. Vol. 7, p. 1408-32.) and witness Wallach states that one of the Minimum System Method's flaws is that it "implausibly assumes that a utility would incur costs to build a distribution grid to serve customers that have no load." (Tr. Vol. 6, p. 1130-

[68] *See Order,* Application of the Connecticut Light and Power Company d/b/a Eversource Energy to Amend its Rate Schedules, Docket No. 17-10-46, (April 18, 2018); Order, *Application of the Connecticut Light and Power Company to Amend its Rate Schedules,* Docket No. 14-05-06 (December 17, 2014).

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11.) The Company does not dispute that it would not build any facilities to serve a premise that has no load. (*Id.* at 1907-11.) Rather, witness Hager explains that when the owner of a premise asks the Company to connect the premise to the Company's electric grid the owner expects the premise to have load and that the electricity needed to serve the load will be delivered when the switch is flipped. (*Id.*) Witness Hager testified that in order for that to happen, the Company had to install some "minimum" amount of distribution facilities in addition to the service drop and meter. (*Id.*) Without that minimum system, there is no flow of electricity. (*Id.*) Each customer "caused" some portion of the distribution system to be built. That is what the minimum system method seeks to identify. (*Id.*)

Witness Barnes argues that the Minimum System Method results in an unwarranted increase in the fixed BFC and a lower kwh rate than would otherwise be the case which results in the customer receiving an incorrect price signal. (Tr. Vol. 7, p. 1408-22.) He argues that the distribution costs identified by the minimum system methodology are demand-related not customer-related. (*Id.*)

Company witness Hager disputed this assertion explaining that the current rate structure is sending an incorrect price signal. (Tr. Vol. 8, p. 1907-12). The current rate structure with no distribution costs included in setting the BFC sends an erroneous price signal that implies that reducing energy and demand usage allows the Company to avoid a portion of the distribution system that in fact is not avoidable, i.e., the minimum system. (*Id.*) She argues that the minimum system method eliminates an erroneous price signal that is otherwise present. (*Id.*)

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Witness Hager explained in detail that the current rate structure was established based on a cost of service that did not include minimum system. She testified that the Company is proposing the use of the minimum system concept at this time because of its increasing concern with the subsidization allowed in the existing rate structure and the importance of improving the price signal sent to customers through its rates.

Over the past several years, the Company has been increasingly concerned with the issue of cross-subsidization between customers. (Tr. Vol. 8, p. 1907-5.) Witness Hager offered the example of the impact of net metering on recovery of the Company's revenue requirement to demonstrate its concern and interest in this issue. (*Id.* at 1907-6.) The Company asserts that net metering exacerbates the problem of customer cross-subsidization. (*Id.*)

Similar to and related to the Company's concern with increasing customer cross-subsidization, the Company is concerned with ensuring that the price signals sent by its rate structure properly aligns with cost causation. Witness Hager explained that when a rate structure varies from cost causation, customers make decisions with inaccurate price signals and cause costs to be shifted for recovery from other customers within the rate class. (*Id.* at 1907-5.) A rate with an inappropriately low BFC necessarily results in an inappropriately higher demand or energy rate. When rates reflect cost causation, subsidization and shifting of cost responsibility are minimized and customers make prudent, economic decisions, including decisions with regards to investments in solar generation and energy efficiency. (*Id.* at 1907-5 – 1907-6.)

Company witness Hager testified that a net-metering customer with roof top solar can significantly reduce his purchase of kWhs from DE Carolinas. (*Id.* at 1907-6.) However, the

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customer still relies on the Company to provide electricity to his heat pump or air conditioner on cloudy days and hot summer nights and to his heat pump or electric furnace on cold winter mornings to keep the house warm. (*Id.*) If DE Carolinas is dependent upon its kWh rate revenues to recover all of its distribution costs that customer is not paying a fair share of the cost of the distribution facilities needed to serve the customer. (*Id.*) The costs are borne, once again, by all other customers. That is not fair to other customers. (*Id.*)

Witness Barnes was cross examined by opposing counsel and questioned by Commissioner Williams on the issue of recovering fixed distribution costs through a kWh rate and the result when customers through DSM or EE or behind-the-meter solar generation reduce their purchases of kWhs from the Company. (Tr. Vol. 7, p. 1435.) Witness Barnes admitted that the distribution costs in question consist of poles, conductors, transformers and conduit. He agreed these are long-lived assets that last for decades. (*Id.* at 1421-1423.) He further agreed that these assets are not consumed when used the way fuel is consumed. (*Id.* at 1422). Witness Barnes agreed that in the absence of growth in kWh sales by DE Carolinas to other customers to offset the sales lost to DSM, EE or behind-the-meter solar generation, the Company must further increase its kWh rate to recover its distribution fixed costs. The Company asserted that this results in the remaining customer body subsidizing the DSM, EE and solar customers. (Tr. Vol. 7, p. 1434 – 1439, 1444 – 445.)

Witness Barnes observed that the Company used the minimum system methodology in its COSS to determine the existing rates of return by customer class and rate schedule. He asserts that the variance from the average rate of return for the residential class under a no minimum system assumption is smaller than with a minimum system assumption. He then concludes that the no

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minimum system assumption more accurately assigns class cost responsibility. Witness Hager disagreed arguing that there is no basis for such a conclusion. She explained that just because the class rate of return is higher when the minimum system approach is not used that does not indicate using the minimum system is incorrect, rather it simply shows that changing the input numbers changes the result.

Witness Barnes further criticizes the minimum system approach asserting that the Company used the smallest equipment customarily installed instead of the smallest equipment that could be installed. Company witness Hager disagreed and explained that the methodology used by the Company is consistent with the CAM for the minimum size method, what is typically called the Minimum System Method. For each FERC account included in the minimum system study, the CAM manual instructs the utility to "determine the average installed book cost of the minimum [equipment] currently being installed."[69]

Witness Barnes further argues the minimum system is flawed because it assumes a hypothetical minimum system which he claims would never be built today because of other available alternatives such as a combination solar panel and battery. Witness Hager testified that regardless of whether witness Barnes is correct, the task before the Commission is to allocate the existing, embedded costs the Company has incurred to provide a minimum system to serve customers. (Tr. Vol. 8, p. 1907-13 – 1907-14.) She claims that the costs of a solar panel and a battery are not relevant. (*Id.* at 1907-14.)

[69] NARUC CAM, p. 91-92.

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Witness Wallach states that one of the "fundamental flaws" in the minimum system method is that it "erroneously assumes that the minimum system would consist of the same number of units (e.g., number of poles, feet of conductors) as the actual system." (Tr. Vol. 6, p. 1130-11 – 1130-12.) Witness Hager challenged this assertion. (Tr. Vol. 8, p. 1907-14.) Instead, she said the cost for a "skeleton" mile of system with the minimum number of poles and feet of conductor was developed and multiplied by the miles of line. This assumption results in a lower minimum system cost than assuming the same number of poles and lines. (*Id.*)

Witness Dharmawardena testified that the minimum system costs should not be included in the BFC. (Tr. Vol. 5, p. 881.) Similar to witnesses Wallach and Barnes he relies on Dr. Bonbright's *Principles of Public Utility Rates* and its reference to "unallocable portions" of costs, apparently asserting that certain of the Company's costs should simply not be allocated and therefore not recovered.[70] (Tr. Vol. 5, p. 890-3.) Witness Hager argued that this allegation is flawed and that the Company cannot ignore the revenue requirements associated with prudently incurred costs and simply not allocate or recover them. (Tr. Vol. 8, p. 1907-10.) She testified that Dr. Bonbright ultimately concludes that not allocating costs is not an option.[71] (*Id.*) She observed that the reality is that all costs must be allocated; the only question is where. (*Id.*)

Witness Dharmawardena, as well as witness Barnes, discussed the need to consider the marginal cost of connecting customers to the grid and how that affects the validity of the minimum system approach. (*Id.*) Witness Hager testified that marginal costs are not relevant to the creation

[70] Bonbright, p. 348.
[71] Bonbright, pp. 348 - 349.

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of a COSS and the allocation of costs because the issue in cost of service is allocating existing embedded costs. (*Id.*) She explained that the Company's distribution system is constructed to connect generation sources to individual customers. (*Id.*) All customers benefit from the existence of the system. It would be unfair to existing customers if DE Carolinas only considered the marginal cost of serving the next customer and did not charge new customers for a pro rata share of the existing system. (*Id.*)

Witnesses Wallach and Barnes take issue with the Company including AMI meters costs in the customer-related class. (*Id.* at 1907-15.) They argue that only the cost of a basic meter should be included in the customer-related class. (*Id.*) Witness Hager addressed this assertion by explaining that AMI meters are now the standard installation configuration for most all customers and, as such, are appropriately classified as customer-related costs. (*Id.*)

Finally, witness Wallach argues that uncollectible costs should not be allocated to the customer-related class because they allegedly vary with revenues and therefore with usage. (*Id.*) Witness Wallach offered no support for this assertion. (*Id.*) Witness Hager explained that these costs are properly accounted for and charged to the FERC Customer Accounting accounts. (*Id.*) She concluded that this continues to be a reasonable assumption. (*Id.*)

The ORS did not challenge the Company's COSS, allocation methodology or the minimum system approach for allocation purposes. (*Id.* at 1907-16.)

The Commission finds that the testimony of the Company and the ORS is persuasive on this issue and concludes that the Company's methodologies used to allocate its demand-related, energy-related and customer-related costs are reasonable and appropriate and that its COSS is a

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proper foundation for distributing costs among the jurisdictions and customer classes because it recognizes cost causation and distributes costs accordingly. The Commission also notes that nothing in this finding regarding overall class allocation requires the Commission to follow Minimum System for rate design, particularly for the BFC, a separate issue addressed in its Evidence for Findings and Conclusions Nos. 41-44 of this Order.

EVIDENCE FOR FINDINGS AND CONCLUSIONS NOS. 41-44

The evidence in support of the findings of fact are found in the verified Application, pleadings, testimony and exhibits in this Docket, and the entire record in this proceeding.

Company witness Pirro testified that the rates DE Carolinas proposes in its Application reflect appropriate rate making principles and result in an equitable basis for recovery of the Company's revenue requirements across and within its various customer classes and rate schedules. (Tr. Vol. 7, p. 1529.) Witness Pirro explained that in designing the Company's proposed rates, he used the cost of service information prepared by the Company and supported by witness Hager as a major component for the rate design. (*Id.*) He also reviewed and considered the rates of return across the customer classes derived from the COSS and reviewed and considered the Company's load research data to examine customers' usage characteristics and determine relationships between energy and demand, both on a coincident peak and non-coincident peak basis that might prove pertinent to the design of the Company's rates. (*Id.* at 1530.)

Witness Pirro testified that the objective of the Company's proposed rate design is to achieve the necessary increase in rates to collect the total revenue requirement. (*Id.* at 1532-7.) Each rate class's target total proposed change in revenue requirement was determined and the rate

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schedules within each rate class were designed to sum to the total proposed change in revenue target for that respective rate class. The Company asserted that its proposed rate design is intended to align the cost to serve customers within the residential, general, industrial and lighting rate schedules and reflect the costs a customer causes the Company to incur. (*Id.*)

The Company's proposed base rate increase was allocated to the rate classes on the basis of rate base. Witness Pirro explained that this allocation methodology distributes the increase equitably to the classes while maintaining each class' deficiency or surplus contribution to return. (*Id.* at 1532-10.) According to witness Pirro the Company considered current rates and their structure, equitable pricing structures, simplicity of the rate design, administrative complexity, along with rate and revenue stability when establishing DE Carolinas' proposed rates. (*Id.* at 1532-9.) The Company alleges that its proposed rate adjustments proposed are intended to move all rate schedules closer to a more equitable pricing structure. (*Id.* at 1532-10.) Equitable pricing structures, or rate parity, involves adjusting rate schedules and riders to achieve a uniform return. The Company is seeking to achieve an equitable pricing structure in steps in recognition that the imbalance in class and rate schedule returns did not occur overnight and should not be corrected overnight. (*Id.* at 1532-10 – 15-11.) In most cases, the proposed percent change in rates for all schedules within the rate class were increased by the same percentage.

Because the unit cost study indicates the BFC is not recovering all customer-related costs the Company proposes the BFC be increased for all rate classes to recover the full difference between the current rate and the customer-related cost incurred to serve these customer groups. Witness Pirro opined that this approach eliminates customer cross-subsidization. (*Id.* at 1532-10.)

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The Company is proposing to increase the residential BFC from $8.29 to $28.00 to reflect the customer-related cost identified in the unit cost study for the residential rate class. Customer-related costs are the costs the Company incurs to serve customers regardless of the customer's level of energy use. DE Carolinas requests to increase the monthly BFC to recover these customer-related costs. Pirro Exhibit 3, page 1 of 3, contained in Hearing Exhibit No. 42 illustrates the impact on residential customers of the proposed increase, including changes to the BFC.

Regarding the Company's non-residential rates, witness Pirro explained that other than revisions to the rates to collect the revised revenue requirement, the Company has not altered the overall structure of Rate LGS, Rate SGS, and Rate I, service to large general service, small general service, and industrial customers, respectively. (*Id.* at 1532-4.) The Company proposes to increase the incremental demand charge in Rate HP to compensate the Company for increased usage on its distribution system and increased costs at the local distribution level. (*Id.*)

The Company has generally designed its commercial and industrial rates utilizing a uniform percentage increase method, which seeks to allocate the additional cost recovery across the various components of each schedule, taking into account any changes to the BFCs. The Company asserts that this maintains the overall structure of the rate without distortion relative to historical design. (*Id.* at 1532-14.) For Schedule OPT, the Company took into account the change to the BFC by allocating the full customer-related charges and then adjusted the energy and demand prices to achieve the required revenue requirement. This method maintains the overall structure of the rate without distortion relative to historical design. Pirro Exhibit 3, pages 3-6, illustrates how the proposed changes to the general and industrial rate designs will affect nonresidential customers.

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Turning to the Company's lighting rate schedules addressed below in Evidence for Findings and Conclusions No. 46, witness Pirro testified that the rates within the lighting schedules were adjusted utilizing a uniform percentage increase method applied to all charges in order to achieve the resultant revenue requirement for each lighting schedule. (*Id.* at 1532-15.) Witness Pirro testified that this method maintains the overall structure of the rate without distortion relative to historical design. (*Id.*)

Company witness Cowling explained that the Company is recommending changes to its lighting schedules to modernize and improve their administration. (Tr. Vol. 4, p. 790-5 – 790-6.) These recommendations include updates to the HID transition charges, a proactive replacement plan, mercury vapor fixtures, modification to Schedule SL, closing of Schedule NL for new participants, Schedule GL merging into Schedule PL, merging of Schedule FL into Schedules OL and PL and updates to contract term provisions.

Regarding rate schedule SL, which serves Greenwood County, Company witness Cowling testified that two new LED products (50 watt and 150 watt) are being added to replace technology that has reached obsolescence. These new products will replace failed mercury vapor and/or incandescent outdoor lights. The proposed rates are $10.03 and $14.59, respectively. The LED rates are based on the fixture and maintenance costs, plus the energy consumption of the fixtures. The proposed energy charges are $.01999 per kWh.[72] Cowling Direct Exhibit 4 in Hearing Exhibit 14 shows the proposed rates for the LED fixtures.[73]

[72] The $0.01999/kWh is the 3rd tier Greenwood rate on the Farm & Home schedule.
[73] During the hearing in this proceeding a question was raised from the Commission as to whether a customer who currently is on the "old Greenwood Rate" would be disqualified from that rate if that customer chose to replace mercury

Witness Pirro explained that the Company is proposing administrative changes to its Renewable Net Metering Schedule, Summary of Rider Adjustments, and Prepaid Advantage program. (*Id.* at 1532-21.) The Renewable Net Metering schedule is being revised to delete the reference to Schedule WC because by Order No. 2018-728 issued in Docket No. 1984-423-E the Commission approved the Company's request to close Schedule WC. The Summary of Riders Schedule incorporates the addition of the proposed new EDIT-1 rider along with classification of rate schedules to rate classes. Company witness Schneider explained that the Company proposes to commercialize its Prepaid Advantage program, remove it from pilot status, remove the customer cap and make the program available to residential customers (with limited exceptions). (Tr. Vol. 5, p. 987.)

The new Rider EDIT-1 is a result of the Tax Act which lowered corporate income tax rates. Company witness Smith testified that through the Rider EDIT-1 rider the Company will credit customers over a 20-year period for reductions in cost realized from the lower corporate income tax rates. (Tr. Vol. 4, p. 655-33.) The Year 1 revenue impact has been included in the revenue increase target used to establish proposed rates in this proceeding. The Rider EDIT-1 Year 1 rates will expire after 12 months and, upon Commission approval, will be replaced at that time by the Year 2 rate credit following the approach outlined in Company witness Smith's testimony. (*Id.* at 655-31 – 655-37.) The Year 1 revenue requirement was provided by Company witness Smith as

vapor or incandescent outdoor lights with the newer LED lights. Counsel for DE Carolinas stated that a customer making that choice would pay the new tariffed rate for the LED lights but that change would not affect any other rates charged to the customer. (Tr. Vol. 5 p. 896-898). DE Carolinas witness Pirro also confirmed that a change in lighting service would not affect a customer's service under the old Greenwood rate. (Tr. Vol. 7, p. 1583-1585.)

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shown in Hearing Exhibit 10 (Smith Exhibit No. 2). The rate class revenue requirement was then divided by test year billed sales for each rate class to establish class rates. The derivation of the credit rate applicable to each rate class is provided on Hearing Exhibit 42 (Pirro Direct Exhibit No. 8).

Regarding DE Carolinas' Service Regulations Company witness Pirro testified that the Company is proposing several changes. First, it seeks to reduce the monthly facilities charge associated with extra facilities from 1.7 percent to 1.0 percent. Secondly, in Section V, of the Service Regulations, the Company proposes to specify the types of activities which will be undertaken on rights-of-way. Thirdly, in the first paragraph of Section VI, the phrase "and the Company's Service Regulations" was added to indicate not all provisions for providing service are contained in the Line Extension Plan. The Service Regulations also contain conditions under which the Company provides service. Fourthly, in paragraph 3a, the Company changed the term "Connection Point" to "Point of Delivery" and the location of the "Point of Delivery" to be consistent with the Line Extension Plan. Finally, In Section XVI, of the Company's proposed service regulations, the revisions include language to thoroughly explain the types of service and requirements for temporary or permanent service. Service facilities that are established for a predefined length of time and/or are established to provide service for a specific temporary project are not eligible for permanent service as defined in the Company's Line Extension Plan.

DE Carolinas proposes to implement its proposed tariff and service regulations changes by filing with the Commission revised tariffs and service regulations consistent with the rates and charges approved in the Commission's final order in this case. These compliance filings would

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become effective on the implementation date set by the Commission unless the Commission suspends the rates or takes other action to prevent implementation of the rates.

In support of his testimony witness Pirro filed the following exhibits (as part of composite Hearing Exhibit 42):

- Pirro Direct Exhibit No. 1 provides the South Carolina Retail Electric Rate Schedules and Service Regulations DE Carolinas proposes to be effective for service rendered on and after June 1, 2019, as required by 26 S.C. Code Ann. Reg. 103-823(e) (Supp. 2010). This exhibit is the same as Exhibit B to the Company's Application in this docket.
- Pirro Direct Exhibit No.2 is a rate comparison that sets forth the South Carolina retail rate design revenues under the Company's present and proposed rate schedules, including the effects of riders.
- Pirro Direct Exhibit No. 3 shows bill comparisons between the Company's present and proposed rates.
- Pirro Direct Exhibit No. 4 provides a comparison of rate of return by rate class and illustrates the total revenue requirement by class for which rates have been designed.
- Pirro Direct Exhibit No. 5 illustrates the consolidated class impacts from the proposed increase, and reflects the revenue class impacts contained in the Company's Application.
- Pirro Direct Exhibit No. 6 illustrates the BFCs for the major customer classes.
- Pirro Direct Exhibit No. 8 provides the derivation of Rider EDIT-1 that describes rate credits associated with changes in federal and North Carolina corporate income tax rates.

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ORS witness Seaman-Huynh; Vote Solar witness. Barnes; SC NAACP, et al, witnesses Wallach and Howat oppose the Company's proposed reliance upon the minimum system methodology to identify customer class costs and the resulting increase in the residential BFC for a variety of reasons. While the ORS does not oppose the use of the minimum system approach for allocating costs to the customer class, ORS witness Seaman-Huynh recommends that the residential BFC should recover no more than 25% of the approved revenue increase assigned to that customer class in order to mitigate the magnitude of the increase in the residential BFC. (Tr. Vol. 8, p. 2028-10.) SC NAACP et al., witness Howat argued that the proposed BFC is higher than other utilities and is therefore inappropriate. (Tr. Vol. 6, p. 1126-8.) Vote Solar witness Barnes and SC NAACP et al., witness Wallach assert that an increase in the BFC discourages distributed generation and energy efficiency. (*Id.* at 1130-26.) Witnesses Barnes, Howat and Wallach also argued that the increase in the BFC should be limited to the percent increase approved by the Commission for each specific rate class. Witness Howat asserts that the proposed BFC disproportionately harms the low-income customers alleging that they are in general, low-usage customers whose monthly bills will rise more than customers with average or above average usage. (*Id.* at 1126-7 – 1126-8.) Witnesses Wallach and Barnes allege that the costs identified by the minimum system methodology are not customer costs and should not be included in the BFC. (*Id.* at 1130-5.)

Company witness Pirro rebutted all these intervenors' challenges to the Company's BFC. He explained that rates should reflect cost causation in order to minimize subsidization of customers within the rate class. (Tr. Vol. 7, p. 1534-4.) He argued that customer-related costs are

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unaffected by changes in customer consumption and therefore should be paid by all customers, regardless of their consumption. (*Id.*)

Witness Pirro testified that residential customer-related costs not recovered in the BFC are shifted to energy rates causing high-usage customers to subsidize lower-usage customers. (*Id.*) Failing to properly recover customer-related costs via a fixed monthly charge provides an inappropriate price signal to customers and fails to adequately reflect cost causation. He explained that shifting customer-related costs to the kWh energy rate further exacerbates this concern and over-compensates energy efficiency and distributed generation for the costs avoided by their actions. (*Id.*)

Witness Pirro explained that while witness Seaman-Huynh's recommendation moves to reduce cross-subsidization, failing to adopt the Company's proposed BFC merely shifts the need to increase the BFC to a future rate case proceeding. (*Id.* at 1534-4 – 1534-5.) We also note that Witness Pirro is a rate design witness, and that his actions are governed by management policy. Company Witness Ghartey-Tagoe explained that the Company proposed the full amount of the BFC to send the appropriate price signal, but upon consideration of feedback from stakeholders, recognized that a gradual approach to increasing the BFC was more appropriate in this case. (Tr. Vol. 4. p. 763-64.)

In response to the allegations that other states have lower BFCs, witness Pirro observed that the Company's rates should be set based upon its cost of service and an allocation of those costs to the jurisdictions and customer classes based upon methodologies found appropriate by this

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Commission. (*Id.* at 1534-5.) Other utilities' costs and rates are not relevant to a determination of DE Carolinas' rates.

The Company agreed that increasing the BFC may discourage behind-the-meter customer generation and some energy efficiency initiatives. (*Id.*) However, witness Pirro argued that overstating the BFC encourages economically imprudent investment in distributed generation and energy efficiency. (*Id.*) Witness Pirro testified that the purpose of rate design is to fairly recover the Company's costs from its customers based upon principles of cost causation, not to encourage energy efficiency and distributed generation simply for their own sake. (*Id.*) He said the proposed increase to the BFC eliminates a false savings that exists when customers make imprudent investments based on inaccurate price signals. (*Id.* at 1534-5 – 1534-6.)

Regarding witnesses Barnes, Howat and Wallach's proposal to limit the increase in the BFC to the percent increase approved by the Commission for each specific rate class, witness Pirro explained that this approach does not follow the principles of cost causation. (*Id.* at 1534-6.) He emphasized that recovering fixed costs such as the costs of poles, wires, transformers and conduit via a kWh charge has the following detrimental consequences: 1) high-usage customers subsidize low-usage customers; 2) low-use customers do not pay the full cost of the utility plant installed to serve them; 3) it does not provide an accurate price signal regarding the Company's costs upon which customers can make economic decisions to make investments that reduce kWh consumption; and 4) it will forever delay appropriate recovery of the Company's customer-related costs through the BFC. (*Id.*)

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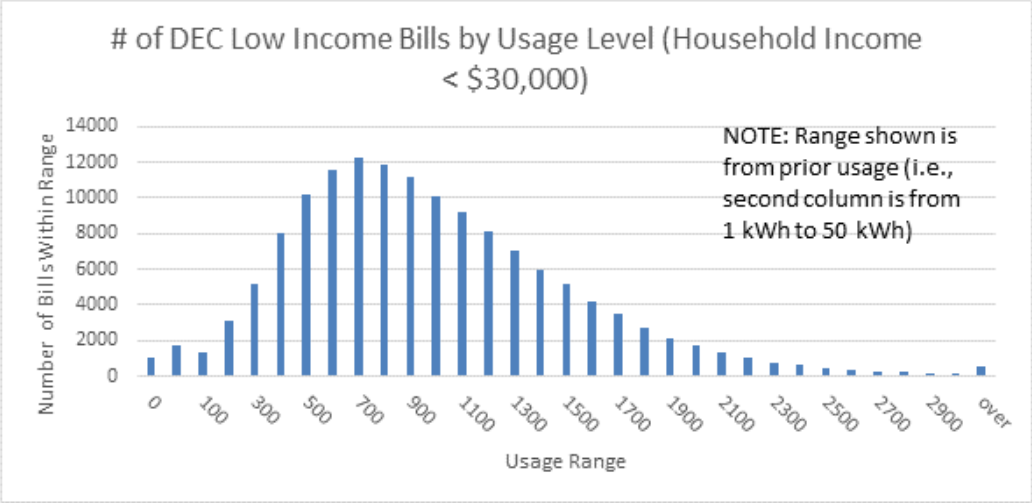
Regarding the impact of the proposed BFC on low-income customers, witness Pirro testified that DE Carolinas has many low-income customers with average or above average usage. Witness Pirro offered a chart set forth below, to support his position. (Tr. Vol. 7, p. 1534-7.) The chart illustrates the number of South Carolina DE Carolinas customer bills by usage levels for customers with household income below $30,000. The chart demonstrates that low-income customers' electricity usage is quite diverse with many customers having usage above the South Carolina residential monthly average of 1,100 kWh. In addition, a significant number of low-income customers are clustered around the 600-1000 monthly average kWh.



Witness Pirro also noted that since the total number of low-usage customers greatly exceeds the number of low-income customers, there are reasons other than income for low usage such as customers with second homes, vacant homes that are for sale, and customers with solar panels. (*Id.* at 1534-7.)

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Witness Pirro explained that while the Company is mindful of the impact of any rate increase on its customers, particularly low-income customers, the Company does not design rates based upon customer incomes, but rather applies cost causation principles to the extent practical. (*Id.*)

He noted that there are other means of addressing the financial needs of low-income customers which are more effective than biasing the rate design, such as Company, state and local programs. (*Id.*) For example, energy efficiency programs, such as the Company's Residential Income Qualified Energy Efficiency and Weatherization Assistance Program, aid low-income customers in reducing their consumption of energy at no cost to the consumer. Other Company programs, such as budget billing and payment arrangements, are available to assist all customers in managing their cost for electricity. The Energy Neighborhood Fund is promoted by the Company and raises funds for local aid agencies to assist low-income customers. Witness Pirro said that these initiatives are more effective than biasing the rate design to aid low-usage customers. (*Id.*) Finally, he argued that pricing the BFC below cost over-addresses the alleged problem, because all low-usage customers benefit, not just low-income customers. (*Id.* at 1534-8.)

In response to allegations that the costs identified by the minimum system methodology are not customer class costs and should not be recovered via the BFC, witness Pirro rebutted these allegations by explaining that the costs in controversy are fixed distribution facilities costs consisting of poles, wires, transformers and conduit. (*Id.* at 1534-9.) Witness Pirro noted that witnesses Barnes and Wallach agreed in their direct testimony that the distribution facilities costs in question represent poles, conductors, conduit, and transformers. (*Id.*) He observed that these

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costs are fixed in nature similar to the metering, service drop and billing costs that witnesses Barnes and Wallach support being recovered through the BFC, and that they do not vary with customer consumption. (*Id.*) Witness Pirro further emphasized that these costs are unlike variable O&M costs and fuel costs which vary directly with energy consumption which are properly recovered via the volumetric kWh rate. (*Id.*) He concluded that recovering these fixed distribution costs via a kWh charge provides an incorrect pricing signal. (*Id.*)

The Commission notes that on cross examination witness Barnes agreed that they are long-lived assets, with lives measured in decades. He further acknowledged during questioning by Commissioner Williams that recovering these fixed costs through a kWh charge can result in the Company not recovering all of its fixed costs if sales decrease due to energy efficiency or behind-the-meter customer generation. (Tr. Vol. 7, p. 1421-1423, 1434 -1445.)

The ORS and other intervenors recommended the Company employ the principle of gradualism in raising the BFC arguing that the increase should be phased-in over several rate cases. Witnesses Pirro and Ghartey-Tagoe explained that the Company understands these concerns and believes there is merit in their position. (*Id.* at 1534-10.) In witness Pirro's rebuttal testimony he suggests that if the Commission determines that it is appropriate to slowly phase-in addressing this issue, the Commission should increase the BFC by an amount equal to 50% of the difference between the current rate and the cost basis. (*Id.*) He said this gradualism approach was recently

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followed by the North Carolina Utilities Commission.[74] Adopting this approach would reduce the proposed BFC to $18.15. (*Id.*)

By letter dated March 20, 2019 the Company notified the Commission and the parties that it will agree to the BFCs recommended by ORS witness Seaman Huynh in his surrebuttal testimony for residential non-TOU, residential TOU and SGS customers of $11.96, $13.09 and $11.70 respectively.

The Commission finds that based upon the comprehensive testimony presented by the parties on the issue of the appropriate amount to increase the BFCs and the fact that the only BFCs proposed by the Company that are in controversy are residential non-TOU, residential TOU and SGS BFCs, that with regard to all BFCs proposed by the Company other than the BFCs for the residential non-TOU, residential TOU and SGS rate schedules, the Company's proposed BFCs for those rate schedules are approved. With regard to the BFCs for the residential non-TOU, residential TOU and SGS rate schedules, the Commission approves the BFCs proposed by the ORS and agreed to by the Company in its March 20, 2019 letter. The Commission finds that the minimum system approach for overall class allocation has merit and integrity for the reasons explained in the testimony of Company witness Hager and that all customers cause the Company to incur the costs

[74] Pirro Direct Ex. 8 (The North Carolina Utilities Commission permitted an increase of approximately 18.4 percent of the difference between the current rate and the actual cost basis, finding, "in response to parties resisting any increase in the BFC, that the modified increase in the residential BFC is appropriate." N.C.U.C. Docket No. E-7, Sub 1146, 15-16, 66-67 (June 22, 2018). The Commission further found that "[t]he increase in these schedules minimizes subsidization and provides more appropriate price signals to customers in the rate class, while also moderating the impact of such increase on low-income customers to the extent that they are high-usage customers such as those residing in poorly insulated manufactured homes.")

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of not just a meter, billing services and service drop but also a portion of the distribution system. All customers should pay for their fair share of the costs they cause the Company to incur. However, the Commission agrees with the ORS and the intervenors that the Commission should be mindful of the impact to customers and a concept of gradualism is appropriate to consider in ratemaking. The Company's acceptance of the BFC numeric amounts set forth in the Company's March 20, 2019 letter regarding the BFC's in rate schedules RS, RT and SGS, appropriately reflect gradualism, and as such, adequately address the concerns about the Company's original proposal.

Witness Howat proposed changes to the Company's energy efficiency programs targeting low-income customers and that the Commission consider energy efficiency programs that have not been approved. (Tr. Vol. 7, p. 1534-11). Company witness Pirro opposed witness Howat's proposals. He explained that revenues associated with energy efficiency programs are intentionally excluded from rate case revenues because they are considered annually in a demand-side management and energy efficiency ("DSM/EE") cost recovery proceeding. (*Id.*) Therefore, any changes to such programs should be considered in those proceedings. Witness Pirro further testified that rate design involves allocating a utility's actual generation, transmission, distribution and customer costs determined by a cost of service study to the utility's customer classes and developing rates to recover those costs. (*Id.*) The issue of whether DE Carolinas should propose additional energy efficiency programs as proposed by witness Howat should, again, be addressed in DE Carolinas' DSM/EE proceedings.

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The Commission agrees with the Company. By statute, demand side management and energy efficiency revenues and programs are annually addressed in a separate proceeding. Those proceedings are the appropriate forum to address the issues raised by witness Howat.

Vote Solar witness Barnes contended that the Company lacks a clear plan for deploying innovative dynamic pricing rate designs. (*Id.* at 1534-12.) at Witness Pirro disputed this assertion. (*Id.*) He explained that the Company is actively evaluating potential rate designs that can better incent staggering and shifting of usage but that it must first develop the infrastructure required to provide such designs. (*Id.*)

Witness Pirro testified that to the extent practical, tariffs should be designed to provide cost-based price signals that incent economically-efficient electric use. (*Id.*) Current designs using a single volumetric charge do not communicate to the customer changes in the Company's cost of service based upon real time circumstances. He explained that while the introduction of both energy and demand rates is an improvement in reflecting cost causation, it still doesn't adequately discourage usage during system peak times. (*Id.*) Time-of-use ("TOU") designs were introduced over 30 years ago and improve price signals by recognizing cost differentials that occur throughout each day, but they provide the same price signals during days with both mild and extreme weather. (*Id.* at 1534-12 – 1534-13.) Witness Pirro said the next generation of rate designs can improve these price signals and reward customers that reduce their loads during the peak periods and thereby reduce the Company's cost of service. (*Id.* at 1534-13.) These new designs will more accurately communicate the higher cost incurred to serve load during critical peak periods and offer customer savings if they reduce their usage to help mitigate these costs.

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In order to offer such innovative rate designs witness Pirro explained that three elements are needed. (*Id.*) They are:

(1) Granular meter data that supports pricing that more closely aligns with cost causation – this data will be provided through the Company's deployment of smart meters.

(2) A robust billing system that supports billing more sophisticated designs – this service will be provided by the Company's Customer Connect Deployment.

(3) Education and tools to aid customers in understanding tariff price signals and effectively shifting usage.

Regarding the deployment of and benefits of smart meters, witness Pirro testified that regular watt-hour meters and meters with pre-defined TOU periods lacked the sophistication necessary to offer rates for the majority of customers that varied on a real-time basis. (*Id.* at 1534-14.) In the past, sophisticated metering that identified usage for each interval of the month was only cost effective for large customers and customers served under hourly pricing or curtailable rate options because of the expense of such meters. Smart meter deployment now allows interval level data to be available for all customers; thereby opening the opportunity to provide better price signals to all customers in Company rate designs.

Witness Pirro explained that the Company has not yet developed innovative time-of-use rate schedules because its smart meter deployment was only recently completed for DE Carolinas. (*Id.* at 1534-14.) The Company needs a full year of usage history data to properly evaluate a new rate design. The first stage of the Company's investigation is to utilize data analytics to assess whether the current rate classes are appropriate from a cost causation perspective. Such analytics

will allow the Company to determine whether a single residential rate class continues to be appropriate or if there are distinct differences within the class, from a cost causation perspective, meriting further differentiation. Witness Pirro said that this level of analysis was constrained in the past when interval data was only available for a load research sample of the class population. (*Id.*)

Regarding the billing system capabilities needed to provide interval rates, witness Pirro testified that the current customer information billing system doesn't support billing at an interval basis because it lacks the capability for different rates to apply to usage during specific hours which are identified on a real-time basis to reflect changes in the Company's costs. (*Id.* at 1534-15.) Witness Pirro said that Customer Connect will offer increased flexibility to bill innovative rate designs and has been used by other utilities to support critical peak pricing designs. (*Id.*) Witness Pirro also observed that effective customer communications is essential to a successful dynamic rate program and will be thoroughly investigated prior to the Company seeking approval of future dynamic designs. (*Id*. at 1534-16.)

Witness Pirro emphasized that offering new interval rate design tariffs at this time would be premature before the infrastructure to support the design is available. (*Id*. at 1534-17.) He said the Company is actively pursuing several dynamic pricing pilots in its North Carolina jurisdiction and will use this experience to develop dynamic pricing tariffs in South Carolina. (*Id*.)

The Commission agrees with the Company and witness Pirro that developing new interval rate designs must wait until the needed infrastructure is in place and the Company can assess the capabilities of its new smart meters, its Customer Connect billing system, and customer

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communication strategy. In addition, all three elements must be coordinated and integrated before viable tariffs can and should be offered.

Witness Barnes contended that revenues associated with the EDIT rider should not be refunded using an energy rate, but rather on a percent of bill basis. (*Id*. at 1534-18.) Witness Pirro rebutted this proposal. (*Id*.) He explained that the Company prefers a uniform approach to implementing riders. The proposed rider is consistent with all other adjustment clauses which use energy rates. (*Id*.) Energy sales are non-controversial and are a better choice. Witness Pirro testified that most revenues associated with the EDIT Rider are demand-related; however, refunding them through a demand rate is impractical since many of the Company's tariffs do not bill customers on a demand basis. (*Id*.) He said updating and refunding EDIT costs as a percentage of the bill adds unnecessary complication and is inconsistent with all other annual clause adjustments and should therefore be denied. (*Id*. at 1534-18 – 1534-19.)

The Commission notes that no other party opposes the Company's proposed EDIT rider mechanism. The Commission agrees with the Company and witness Pirro refunding these monies via a kWh credit is simpler to administer than a percentage of bill methodology and easier for the average customer to understand.

SCEUC witness O'Donnell recommended that the hourly rate in the Company's rate schedule HP be set at the lower of the Company's marginal cost or a wholesale market rate available at the time of the sale. (*Id*. at 1534-20.) Witness Pirro disagreed with witness O'Donnell's proposal arguing that is inconsistent with how schedule HP was designed and intended and unfair to the Company's other customers. (*Id*.)

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He explained that schedule HP is a voluntary rate option that offers customers the opportunity to purchase incremental energy differing from a baseline load at rates that closely match the Company's incremental cost of providing the next kWh in the given hour. (*Id*. at 1534-19.) Participants are therefore given the opportunity to change their consumption of electricity on a real time basis and benefit from the variable pricing. Hourly rates are provided to customers on a day-ahead basis and are calculated based upon the Company's marginal cost of the generator that is expected to serve the next kWh of system load based upon all available generating plants. It reflects the change in the Company's fuel cost that is anticipated if the customer decides to exceed or reduce load from their baseline load. The determination of the marginal cost is consistent with the methodology used by the Company to price opportunity sales into the wholesale market. Schedule HP is only available to nonresidential customers with a contract demand requirement of 1,000 kW or greater.

Witness Pirro explained that schedule HP hourly rates are based on DE Carolinas' system production costs; and are not designed or intended to represent or be a proxy for wholesale market-based pricing. (*Id*. at 1534-20.) Witness Pirro testified that the Company actively participates in the wholesale energy market and all customers benefit in the aggregate from those market purchases not just a select few. (*Id*.) He said schedule HP is not a market product and was never intended to provide some customers with optionality beyond the ability of the Company to provide appropriately priced service. (*Id*. at 1534-20 – 1534-21.) He further argued that applying hourly rates that are lower than the Company's marginal system production costs would result in other customers subsidizing Hourly Pricing customers. (*Id*.) He concluded that the current methodology

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best reflects the Company's expected fuel cost and is therefore the appropriate basis under which to set hourly rates. (*Id.*)

The Commission agrees with the Company and witness Pirro. SCEUC witness O'Donnell's proposal would effectively result in the Company shopping the wholesale market for those customers on schedule HP and allowing them to pay the lower of the current wholesale market price or the marginal cost of DE Carolinas producing the next kWh from its system. As witness Pirro explained, the Company constantly shops the wholesale market for electricity cheaper than the cost of the Company using its system to generate the next kWh. When such lower priced power is found the Company buys it rather than using its system to generate the same amount of electricity and all customers enjoy the savings benefit, not just a select few on schedule HP.

Thus, the Commission approves the Company's proposed rate schedules, tariffs, and service regulations as set forth in Exhibit B to the Company's Application and Hearing Exhibit 42 (Pirro Exhibit No. 1) as revised by the Company's letter to the Commission dated March 20, 2019 regarding the BFCs in rate schedules RS, RT and SGS, noting the exclusion of the GIP tariff, and finds the remaining rate schedules and service regulations are reasonable and approved once changes to rates are made for the BFC and volumetric components of rates.

EVIDENCE FOR FINDINGS AND CONCLUSIONS NO. 45

The evidence in support of the findings of fact are found in the verified Application, pleadings, testimony and exhibits in this Docket, and the entire record in this proceeding.

As discussed above, the Company accepted the numeric values of the BFCs proposed by ORS witness Michael Seaman-Huynh. (Hearing Ex. 31.) In response to the Company giving notice

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to the Commission that it accepted the ORS proposed BFCs, the ORS wrote the Commission suggesting that any increase in the volumetric component of customer rates to make up for the decrease in revenues from the BFC reduction might violate the provisions of Article I, Section 22 of the South Carolina Constitution. (Hearing Ex. 31.) The ORS theory was that any order allowing the volumetric component of the rates in excess of the volumetric component set out in the application and exhibits would conflict with the notice provided to customers of the DE Carolinas application. The Commission rejects the suggestion by the ORS that Article I, Section 22 is violated in these circumstances.

Article I, Section 22 of the South Carolina Constitution imposes due process requirements on actions of South Carolina administrative agencies: "[n]o person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard…" The South Carolina Supreme Court has held that this provision guarantees persons the right to notice and an opportunity to be heard by administrative agencies. *Ross v. Medical University of South Carolina*, 328 S.C. 51, 492 S.E.2d 62 (1997).

The leading case on what notice is required to afford due process is *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) which approved of notice by publication in certain circumstances. The court in *Mullane* described the notice requirement of the due process clause as follows:

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

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Mullane, *supra*, p. 314. The South Carolina Supreme Court has held that substantial prejudice must be shown to establish a due process claim. *Tall Tower, Inc. v. South Carolina Procurement Panel*, 294 S.C. 225, 363 S.E.2d 683 (1987).

These authorities show that the notice provided of the DE Carolinas application in this proceeding easily meets the due process requirements of S.C. Const., Art. 1, §22. A copy of the notice this Commission required DE Carolinas to provide was submitted as part of Hearing Exhibit 31. The notice informed customers that the Company was asking for an overall 10% rate increase amounting to an additional $168 million in annual revenues. The notice also provided an illustration showing that a residential customer, using 1,000 kWh would see an increase of approximately $15.57 per month. The notice described in detail the proposed increase in the BFC from $8.29 to $28.00.

The effectiveness of the notice required by the Commission in this proceeding is best illustrated by the response it generated from the customers who received it. The Commission's Document Management System ("DMS") shows that 13 parties intervened in this proceeding, including influential advocacy groups like the S.C. NAACP, Upstate Forever, the Sierra Club and the South Carolina Coastal Conservation League. The DMS also shows that no fewer than 783 people have submitted letters of protest responding to the notice. Further proof that DE Carolinas customers have had ample notice of the Company's proposal, and an opportunity to be heard on it, was shown by the very well attended night hearings held in Spartanburg, Greenville and Anderson attended by hundreds of customers, and where the Commission heard directly from such customers, primarily residential customers.

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The large response to the notice in this proceeding shows that the notice meets the constitutional due process requirements cited in the ORS letter. It stands in stark contrast to the notice provision considered by the South Carolina Supreme Court in *Porter v. South Carolina Public Service Commission*, 338 S.C. 164, 525 S.E.2d 866 (2000).[75] In that case, the court considered a notice given for "rate adjustments" that failed to disclose that the adjustments included increases in certain rates of as much as 104%. The court found the notice lacking:

> Taken as a whole, this notice is not informative and in fact is somewhat misleading since one could conclude the "proposed rate adjustments" merely refers to the reduction in toll switched access rates.

Porter, 338 S.C. at 169-170. The notice of the DE Carolinas rate adjustment required by the Commission in this proceeding cannot possibly be criticized for failing to inform customers of the potential increase in rates being proposed by the Company and it is clear that customers received notice "reasonably calculated" to provide them the opportunity to be heard as required by *Mullane* and related cases.

This Commission is aware that the primary concern of many of the customers who responded to their opportunity to be heard, by writing letters of protest or showing up to speak at night hearings, was the Company's proposed increase in the BFC. The Company's letter of March 20, 2019 accepting BFC rates set out in ORS testimony was, in part, a response to the views of customers who exercised their right to be heard. The concern expressed by the ORS letter – that

[75] In the *Porter* case, the court considered whether the notice had complied with the provisions of S.C. Code Ann. §58-9-530, a provision that applies to telephone utilities but not electrical utilities.

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due process notice requirements somehow limit the Commission's ability to respond to customer concerns by adjusting component elements of the DE Carolinas proposed charges – turns the relevant constitutional jurisprudence on its head and would lead to an absurd result. The *Tall Tower* case held that "substantial prejudice" must be shown to establish a due process claim. Contrary to the concern expressed by the ORS, substantial prejudice in this case would result from a ruling that the Commission could not respond to customer concerns and exercise its ratemaking jurisdiction about the BFC by adjusting other components of their charges.[76]

EVIDENCE FOR FINDINGS AND CONCLUSIONS NO. 46

The evidence in support of the findings of fact are found in the verified Application, pleadings, testimony and exhibits in this Docket, and the entire record in this proceeding.

In its Application, to facilitate the transition to light emitting diode ("LED") outdoor lighting products, the Company proposed the following: (i) to lower the outdoor lighting transition fees charged to customers who move from metal halide ("MH") and high pressure sodium ("HPS") to LED; (ii) close mercury vapor ("MV") and incandescent outdoor lighting products on Schedule SL, which serves Greenwood customers, due to technology obsolescence; (iii) re-open Schedule PL and merge Schedule GL, which also serves governmental lighting customers, into Schedule PL to improve tariff administration; (iv) close HPS fixtures to new installations to lessen the impact on net book value; (v) close Schedule NL, which is a pilot tariff designed primarily to introduce

[76] The Commission has a constitutional responsibility to set rates in this proceeding that provide DEC with an opportunity to earn a fair reasonable rate of return on its property devoted to serving the public. *Southern Bell Tel. & Tel. Co., v. Public Service Commission*, 270 S.C. 590, 244 S.E.2d 278 (1978), citing *Bluefield Water Works v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923) and *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

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LED technology; and (vi) discontinue Schedule FL and merge it into Schedules OL and PL. (Application at 23.) Company witnesses Michael J. Pirro and James H. Cowling testified to the rate design for the Company's outdoor lighting products and services tariffs and the Company's outdoor lighting business to the extent that it impacts proposed rates, respectively.[77]

According to Company witness Cowling, over the past five years, the outdoor lighting industry has experienced tremendous change resulting from the advancement of LED technology. (Tr. Vol. 4, p. 790-4.) Generally, LED outdoor lighting products are preferred by customers as they offer significantly reduced energy use, exhibit longer lifetimes, do not contain mercury, and provide a high color quality, which provides better illumination. (*Id.*) Thus, according to witness Cowling, the industry is moving away from high intensity discharge ("HID") outdoor lighting products such as MV, HPS and MH, and moving towards LED technology. (*Id.* at 790-4 – 790-5.) As witness Cowling testified, in 2013, DE Carolinas began to formulate its Outdoor Lighting Modernization Plan (the "Plan"). (*Id.* at 790-5.) The purpose of the Plan was to begin to adopt LED technology to offer newer, more efficient outdoor lighting systems to customers. In 2014, the Company began offering LED outdoor lights as a standard offering. (*Id.*) Witness Cowling stated that over the past few years, the Company has worked to address concerns regarding the net book value of the HPS and MH fixtures. (*Id.*)

According to witness Cowling, to aid in the continued transition away from HID lighting products, the Company is recommending several changes to the Company's outdoor lighting

[77] The Company's rate design of the lighting tariffs is also discussed in Evidence for Findings and Conclusions Nos. 41-44.

products. (*Id.*) First, the Company re-evaluated its outdoor lighting transition fees charged to customers who move from MH and HPS to LED and now proposes to lower the standard transition fees to balance the actual take-rates while protecting the rate class from pre-mature retirement of assets. (*Id.*) Specifically, DE Carolinas proposes to reduce the fee to transition from a standard MH or HPS fixture to an LED fixture from $50 to $16 on Schedules GL and PL, and from $64 to $50 on Schedule OL. (*Id.* at 790-8.) The Company also proposes to reduce the fee to transition from a standard MH floodlight or HPS floodlight fixture to an LED and/or LED floodlight fixture on Schedule FL from $127 to $109. (*Id.* at 790-8 - 790-9.) Due to the price variability of decorative or non-standard MH and HPS fixtures, witness Cowling testified that DE Carolinas proposes to continue to calculate a loss due to early retirement fee on a per luminaire basis as approved in PSCSC Docket No. 2015-422-E. (*Id.* at 790-9.) For HPS fixtures that fail, the Company is proposing to waive the transition fee and replace the failed HPS fixture with a comparable LED fixture under the applicable monthly rate for the new fixture. (*Id.*) Additionally, DE Carolinas proposes a transition fee of $40 per luminaire for LED to LED conversions. (*Id.* at 790-10.) This proposed transition fee would apply to LED facilities replaced at the same location after the initial contract term has ended, provided the LED facilities have been in service for less than 20 years. (*Id.*)

The Company also proposes to proactively replace MV lights with LED lights on Schedules PL (governmental lighting customers) and OL (private lighting customers). (*Id.* at 790-11.) As witness Cowling testified, lumen output for MV fixtures begins to fade after six years. (*Id.* at 790-12.) According to him, the Company's experienced-based data suggests the Company's MV

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fixtures are not being replaced when the light output begins to diminish, therefore replacement at failure will take a long time. (*Id.*) The Company therefore proposes to begin proactive replacement in 2020 and complete by the end of 2023. (*Id.* at 790-13.) This gives customers adequate time to budget for the conversions. (*Id.*)

The Company also proposes to close MV and incandescent outdoor lighting products on Schedule SL due to technology obsolescence. (*Id.* at 790-14.) According to witness Cowling, Schedule SL was created on March 4, 1966 under an agreement between Duke Power Company and Greenwood County Electric Power Commission Rural Electric System ("Greenwood"), and only serves Greenwood customers. (*Id.*) As stated by witness Cowling, due to technological advancements and/or the inability of the Company to source replacement fixtures and parts, incandescent and MV outdoor lights have reached obsolescence. (*Id.* at 15.) According to him, upon failure and if requested by the Customer, the Company will replace the failed incandescent and/or MV fixture with a comparable LED fixture upon entering into an agreement with the Company on Schedule SL, as applicable, at the Greenwood county rate for the energy consumption (kwh) plus the proposed fixture rate as summarized in Hearing Exhibit 14 (Cowling Direct Exhibit 4). (*Id.* at 790-16.) Upon notice of the fixture failure, and if the Customer no longer wants lighting service from DE Carolinas under Schedule SL, the Company will terminate billing of the existing fixture and remove the light fixture and the pole if it is a light-only pole. (*Id.*) According to witness Cowling, there are other outdoor lighting service providers to choose from in addition to DE Carolinas, so a Greenwood customer who chooses not to convert to LED will have other options. (*Id.* at 790-18.) The Company also proposes to re-open Schedule PL and merge Schedule GL,

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which also serves governmental lighting customers, into Schedule PL. (*Id.*) Schedule GL was created in 2010 prior to the wide-spread commercialization of LED outdoor lights. (*Id.*) As described by witness Cowling, now that there are a growing number of customers who likely want to upgrade to LED technology, Schedule GL may create confusion and become a barrier to customers voluntarily upgrading. (*Id.* at 790-19.) The Company also proposes to close HPS fixtures to new installations to lessen the impact on net book value, but will provide an option for customers who want HPS fixtures for appearance matching. (*Id.* at 790-21.) Next, the Company proposes to close Schedule NL, which is a pilot tariff designed primarily to introduce LED technology, and to discontinue Schedule FL and merge it into Schedules OL and PL. (*Id.* at 790-22.) Finally, the Company proposes to implement minor revisions to the outdoor lighting tariffs to improve tariff administration. (*Id.* at 790-6.)

No party contested the Company's proposed modifications to its lighting tariffs.

In fact, in his direct testimony, ORS witness Michael L. Seaman-Huynh stated the ORS reviewed the Company's proposed modifications to DE Carolinas' lighting tariffs and found them to be reasonable. (Tr. Vol. 8, p. 2028-13.)

As stated in the Evidence for Findings and Conclusions Nos. 41-44, the Commission approves the Company's proposed outdoor lighting rate schedules and tariffs as set forth in Exhibit B to the Company's Application, and finds those rate schedules and tariffs are reasonable and approved.

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EVIDENCE FOR FINDINGS AND CONCLUSIONS NO. 47

The evidence in support of the findings of fact are found in the verified Application, pleadings, testimony and exhibits in this Docket, and the entire record in this proceeding.

In its Application, the Company proposed to commercialize its current Prepaid Advantage program, remove it from pilot status, remove the customer cap and make the program available to residential customers across its entire DE Carolinas jurisdiction. (Application at 17-18.) Company witness Don Schneider, Jr. testified about the commercialization of the Prepaid Advantage program.

According to witness Schneider, once Prepaid Advantage has been commercialized, the Company will market it to eligible customers through direct mail, other direct channels, as well as through Customer Care operations. (Tr. Vol. 5, p. 989-13.) Witness Schneider stated that eligible residential customers must make an initial payment of at least $40 and may not have a past due balance in excess of $500. (*Id.*) No deposit is required while a customer is a program participant, and there are no minimum payment requirements once the initial deposit amount is met. (*Id.*) However, should the customer exit the program and return to a traditional billing schedule, a deposit may again be required. (*Id.*) The Company will allow customers with outstanding balances below the maximum to participate and will apportion 25 percent of a given payment amount to outstanding balances, and 75 percent to fund ongoing usage. (*Id.* at 989-13 – 989-14.) As a result of the commercialization of the Prepaid Advantage program, witness Schneider further testified the Company anticipates certain cost savings for customers around deposit fees, usage reduction and reconnect fees. (*Id.* at 989-16.)

No party contested the Company's proposal to commercialize the Prepaid Advantage program.

The Commission approves the Company's request to commercialize the Prepaid Advantage program. The Commission agrees with the Company that the pilot was successful and believes that all customers with a smart meter should have the option to participate.

EVIDENCE FOR FINDINGS AND CONCLUSIONS NO. 48

The evidence in support of the findings of fact are found in the verified Application, pleadings, testimony and exhibits in this Docket, and the entire record in this proceeding.

SC NAACP, et al., witness Howat recommended that the Commission direct the Company to, within six months of the final order in this proceeding, prepare, file with the Commission, and make publicly available monthly, in readily accessible spreadsheet format, the data points listed below by zip code:

General Residential Customers

- Number of Residential Accounts
- Total Usage
- Total Billed
- Total Receipts
- Number of Unpaid Accounts 60-90 Days after issuance of a bill
- Dollar Value of Unpaid Accounts 60-90 Days after issuance of a bill
- Number of Unpaid Accounts 90+ Days after issuance of a bill
- Dollar Value of Unpaid Accounts 90+ Days after issuance of a bill
- Total Number of Unpaid Accounts
- Total Dollar Value of Unpaid Accounts
- Number of Accounts Referred to Collection Agencies
- Number of New Payment Agreements
- Number of New Budget Billing Plans
- Number of Accounts Sent Notice of Disconnection for Non-payment

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- Number of Service Disconnections for Non-payment
- Number of Service Restorations after Disconnection for Non-payment
- Average Duration of Service Disconnection for Restored Accounts
- Number of Accounts Written Off as Uncollectible
- Dollar Value of Accounts Written Off as Uncollectible
- Dollar Value of Recovered Bad Debt

Low-Income Customers

- Number of Accounts
- Total Usage
- Total Billed
- Total Receipts
- Total Receipts Paid by LIHEAP
- Total Number of Customers Receiving LIHEAP
- Number of Unpaid Accounts 60-90 Days after issuance of a bill
- Dollar Value of Unpaid Accounts 60-90 Days after issuance of a bill
- Number of Unpaid Accounts 90+ Days after issuance of a bill
- Dollar Value of Unpaid Accounts 90+ Days after issuance of a bill
- Total Number of Unpaid Accounts
- Total Dollar Value of Unpaid Accounts
- Number of Accounts Referred to Collection Agencies
- Number of New Payment Agreements
- Number of New Budget Billing Plans
- Number of Accounts Sent Notice of Disconnection for Non-payment
- Number of Service Disconnections for Non-payment
- Number of Service Restorations after Disconnection for Non-payment
- Average Duration of Service Disconnection for Restored Accounts
- Number of Accounts Written Off as Uncollectible
- Dollar Value of Accounts Written Off as Uncollectible
- Dollar Value of Recovered Bad Debt

In addition, Mr. Howat recommended that the Company be required to conduct a public technical session with the Company and interested stakeholders during the design phase of the data collection

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and reporting protocol to ensure that resulting reports are of benefit to all parties. (Tr. Vol. 7, p. 1126-36.)

Witness Howat explained that utility decision-makers are faced with difficult questions regarding the effectiveness of programs and policies designed to ensure regular payment for utility service. (*Id.* at 1126-29.) He suggests that the effectiveness of existing regulatory consumer protections and credit and collection practices can only be assessed through data-driven analysis of trends in customer arrearages, service disconnections and related indicators of the magnitude of utility payment troubles. (*Id.*) Witness Howat stated that implementing a regular data collection and reporting protocol, especially given the advances underway in energy and utility industry technology and economics is particularly relevant and timely to gauge the state of low-income and general residential home energy security in the Company's service territory. (*Id.* at 1126-30 – 1126-31.) Witness Howat testified that both NARUC and the National Association of State Utility Consumer Advocates ("NASUCA") have adopted resolutions calling for the collection and reporting of this information and many states such as Ohio, Illinois, Pennsylvania and Iowa report this critical information regularly. (*Id.*)

Company witness Quick testified that the Company does not agree with Mr. Howat's recommendation to provide the requested data by zip code. First, she explained that the Company already provides a significant level of detail pertaining to non-pay service disconnects pursuant to Docket No. 2006-193-EG which requires all investor-owned utilities ("IOUs") in South Carolina,

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to file quarterly reports on voluntary and involuntary disconnections of service.[78] (Tr. Vol. 5, p. 989-9.) Witness Quick explained that the quarterly reports include the following data and information: (1) total number of accounts whose services have been voluntarily or involuntarily disconnected; (2) the reason for the disconnection; (3) the average duration of service interruption; and (4) the Company procedures in effect governing delinquent account disconnections. (*Id.*) She explained that the Company believes the data contained in these reports provides the Commission with sufficient information about the Company's disconnection policies, procedures and number of accounts affected and any change in reporting obligations for DE Carolinas would likely cause a ripple effect across all IOUs in South Carolina who must uniformly report on non-pay service disconnects per Docket No. 2006-193-EG. (*Id.*) Thus, witness Quick testified this proceeding is not the appropriate forum to fully evaluate the impact of witness Howat's recommendations. Moreover, she explained that the Company does not currently track the information requested by witness Howat by zip code in the normal course of its business. (*Id.*) Therefore, the Company would have to perform a series of ad hoc queries on the Company's system to extract the data without a clear way to verify its accuracy. (*Id.* at 984-9 – 984-10.) She also explained that the Company cannot readily distinguish customers by income or any socio-economic indicators in the normal course of its business because that information is not readily available to the Company. (*Id.* at 984-10.) Witness Howat defined "low-income customers" as a customer identified as a participant receiving assistance from the Low Income Home Energy Assistance Program

[78] *Quarterly Reports on Involuntary Termination of Electric and/or Gas Service*, Docket. No. 2006-193-EG (July 2006).

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("LIHEAP"). (*Id.*) However, witness Quick explained that the South Carolina LIHEAP is not required to provide this information to the Company as a prerequisite for a customer to participate in the program; therefore, the Company does not receive or track data in such a way that it can readily provide the requested data points by LIHEAP account. (*Id.*)

Further, the Company has concerns that having this level of detail readily available to third parties may cause some customers to have privacy concerns with how the data could be used. (*Id.*) Witness Howat asserted that this information is needed to assess: (1) the effectiveness of existing regulatory consumer protections and credit and collection practices; (2) the state of home energy security among DE Carolinas' residential customers, and to evaluate the effectiveness of programs and policies intended to protect that security; and (3) the effectiveness of the credit and collection policies and practices of the Company. (*Id.* at 984-11.) However, Ms. Quick testified that the Company remains unclear on whether and how the requested data points would be used in such an assessment, or how "effectiveness" would be defined as a metric. (*Id.*) In response to Mr. Howat's reference that Ohio reports these metrics regularly, Ms. Quick testified that Duke Energy Ohio participates in the State of Ohio's Percentage of Income Payment Plan ("PIPP") program that Howat referenced in his testimony and in Ohio the community action agent is responsible for collecting income-level data and handling reporting obligations to the state associated with the program, not the utility. (*Id.* at 984-11 – 984-12.)

Witness Howat responded that Ms. Quick's concerns are misplaced because the Company receives LIHEAP payments on behalf of specific customers and credits those customers' accounts accordingly. (Tr. Vol. 6, p. 1128-8.) Witness Howat also does not believe that reporting at the zip

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code level should raise any privacy concerns for customers and that locational data is important for making decisions where about where to make investments in cost-saving energy efficiency.

Based on the evidence presented, we agree with the Company that this is not the appropriate proceeding to address witness Howat's recommendation. As noted by the Company, all IOUs in South Carolina must uniformly report on non-pay service disconnects per Docket No. 2006-193-EG. We do not believe it is appropriate to unilaterally require DE Carolinas to provide a different level of detailed customer and billing data at this time. In addition, as previously discussed, the Company is implementing a new CIS, Customer Connect. Company witness Hunsicker testified that she believes the Company will have more information on the same type of data the Company currently has access to and will be able to more easily navigate through that data. (Tr. Vol. 5, p. 1007.) Thus, we believe this recommendation is premature and the Commission needs to better understand the type and reasons for tracking and reporting this type of data in a more appropriate proceeding in which to address this recommendation.

EVIDENCE FOR FINDINGS AND CONCLUSIONS NOS. 49-50

The evidence in support of the findings of fact are found in the verified Application, pleadings, testimony and exhibits in this Docket, and the entire record in this proceeding.

The Company requested approval of revised depreciation rates in this proceeding based on the results of its most recent Depreciation Study commissioned as part of a normal periodic review for compliance with Generally Accepted Accounting Principles ("GAAP"). (Tr. Vol. 5, p. 1102-3.) Company witness Doss introduced Doss Exhibit 2 (part of composite Hearing Ex. No. 22), the Depreciation Study, prepared by Gannett Fleming Valuation Rate Consultants, LLC, and Doss

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Exhibit 3 (part of composite Hearing Ex. No. 22), which reflects the revised depreciation rates and supports the depreciation rates shown on Page 4b of Smith Exhibit 1. (*Id.* at 1102-4.) Notable updates in the Depreciation Study include updates to estimates of final plant decommissioning costs for steam, hydraulic, and other production plants, as well as adjustments for updated probable generation plant retirement dates. (*Id.* at 1102-9 – 1102-10.) The Company is requesting approval of the depreciation rates in the revised Depreciation Study subject to three adjustments approved by the North Carolina Utilities Commission in Docket No. E-7, Sub 1146. These three adjustments include 1) use of a 10 percent contingency for future "unknowns" in the estimate of future terminal net salvage costs instead of the 20 percent proposed in the Depreciation Study, 2) use of a 15-year remaining life for meters that are being retired pursuant to the Company's Advanced Metering Infrastructure program instead of the 3-year amortization period proposed in the Depreciation Study and 3) use of an interim net salvage percentage of zero, instead of the negative four percent interim net salvage percentage proposed in the Depreciation Study for Account 342 [Fuel Holders, Producers and Accessories], 343 [Prime Movers], 344 [Generators], 345 [Accessory Electric Equipment] and 346 [Miscellaneous Power Plant Equipment]. Witness Doss explained that the depreciation rates proposed by the Company are reasonable for use in this proceeding and the Company requests Commission approval of the revised depreciation rates, subject to the three adjustments discussed above.[79] ORS witness Seaman-Huynh examined the Depreciation Study and revised depreciation rates proposed by the Company. (Tr. Vol. 8, p. 2028-6- 2028-7.) ORS

[79] These depreciation rates also form the basis of the Company's deferral request for incremental depreciation expense addressed in Evidence for Findings and Conclusions Nos. 13-35.

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determined that the study results and methodologies were reasonable and consistent with other South Carolina electric utilities' depreciation rates previously approved by the Commission. (*Id.* at 2028-7.)

No intervenor contested the testimony of Company witness Doss regarding the Depreciation Study results or the revised depreciation rates, as adjusted, proposed by the Company. Accordingly, the Commission finds and concludes that the Depreciation Study, as reflected in Doss Exhibit 2 in Hearing Exhibit 22, and the depreciation rates proposed by DE Carolinas in this case, as reflected in Doss Exhibit 3 in Hearing Exhibit 22, are just and reasonable and are therefore approved.

EVIDENCE FOR FINDINGS AND CONCLUSIONS NOS. 51-52

The evidence in support of the findings of fact are found in the verified Application, pleadings, testimony and exhibits in this Docket, and the entire record in this proceeding.

The Tax Act became law on December 22, 2017. Its headline change was to reduce the corporate tax rate from 35 to 21 percent, and the Company has incorporated this reduction into its base rate revenue requirement, as indicated in the testimony of Company witness Smith. (Tr. Vol. 4, p. 655-29, 655-31.)

The Tax Act also created a regulatory liability resulting from timing differences between when taxes were collected in the past (based upon the pre-Tax Act 35% corporate rate) and when those taxes will actually be paid in the future at the reduced tax rate of 21%. (*See id*. at 794-7.) DE Carolinas witness Smith explained that at the end of 2017, the Company had a certain amount of ADIT on its balance sheet. (*Id*. at 655-32.) These are income taxes which the Company has

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expensed for accounting purposes, but for which the Company will not need to pay the IRS until some point in the future. (*Id.*) Because the Company has use of the cash until it has to pay the IRS, the ADIT is included as a reduction to rate base and is basically used as a source of financing for investments used to benefit customers – poles, lines, generation plant investments, etc. (*Id.*) With the change in the federal tax rate, the amount that the Company must pay to the IRS in the future for these ADIT obligations has been reduced. (*Id.*) At the end of 2017, the Company calculated this reduction and the difference was carved out and stayed on the balance sheet, and in rate base, as excess deferred income taxes ("EDIT"). (*Id.*) Instead of having an obligation to pay this money to the IRS in the future, the Company now has an obligation to pay it to customers. (*Id.*) However, since the money is currently being used to finance investments benefitting customers, as the Company pays the money to customers, it must find other sources of financing for these investments. (*Id.*) Company witness Smith pointed out that if the money is returned to customers too quickly, it can put pressure on the Company's credit metrics and create rate volatility for customers. (*Id.* at 655-32 – 655-33.)

The Company proposes that these funds be flowed back to customers through an EDIT Rider, which contains the following five categories of benefits for customers:

1. Federal EDIT – Protected
2. Federal EDIT – Unprotected, Property, Plant, and Equipment related
3. Federal EDIT – Unprotected, not Property, Plant, and Equipment related
4. Deferred Revenue
5. North Carolina EDIT

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(*Id*. at 655-31 – 655-32.)

Smith Rebuttal Exhibit 2 shows the Year 1 calculation of this rider, and then shows for illustrative purposes how the rider would be calculated in future years. (*See* Hearing Ex. 10 (Smith Rebuttal Ex. 2, p. 1-2).) For future years, the Company proposes to file the rider amounts, along with the spread to the classes and derivation of the rate, for each subsequent year with the Commission in this docket by March 31, for rider rates effective June 1. (*Id*. at 655-36.)

Federal EDIT

The Company had, as of December 31, 2017, $737.3 million of federal EDIT. (*Id*. at 794-11.) There are three different buckets of federal EDIT. (*Id*.) In one is approximately $409.9 million of what is called "protected EDIT" – that is, EDIT related to the Company's investment in property, plant and equipment, whose flow back treatment is expressly made subject to IRS normalization rules by the Tax Act. (*Id*.) The normalization rules – specifically, Section 13001(d)(3)(B) of the Tax Act – require protected EDIT to be flowed back over the remaining lives of the property giving rise to the deferred tax balance. (*Id*.)

The remaining EDIT, totaling approximately $327.4 million, is "unprotected" under IRS rules, and, therefore, subject to flow back in a timeframe open to discretionary action by the Commission. (*Id*. at 794-11 – 794-12.) But the lion's share of unprotected EDIT, totaling more than $269.5 million, still relates to the Company's investment in property, plant, and equipment, and is the second bucket of EDIT. (*See id*. at 794-12.) This portion of unprotected EDIT is not required to be normalized under the Tax Act. (*Id*.) Although both buckets are property-related, the Internal Revenue Code protects one but not the other. (*Id*.) However, the rationale for

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normalization applies to this portion of EDIT as much as it applies to protected EDIT, and so normalization at some level is appropriate. (*Id.*) The assets represented in this bucket have an average life of approximately 24 years for DE Carolinas, although the Company's proposal uses a shorter 20-year period over which to accomplish this flowback. (*Id.*) The testimony of Company witness Panizza establishes that this flowback period is appropriate because it is tied directly to the underlying assets that created the deferred tax balances which became EDIT when the Tax Act dropped the corporate tax rate to 21 percent. (*See id.* at 794-13.) Protected and unprotected property related deferred taxes are no different except for the fact that they come from two places in the Internal Revenue Code and the statute protects one and it does not the other. (*Id.* at 794-13 – 794-14.) The flowback of excess deferred taxes over the life of the underlying assets makes sense, as does normalization concept underlying the 20-year flowback proposal. (*Id.* at 794-14.) Normalization, or the gradual return of EDIT over the life of the capital asset being depreciated, balances the customer's and the Company's interests; it protects the Company's cash flow and also protects the customer against rate volatility, because the deferred balance acts as an offset to rate base, and, therefore, a reduction in rates. (*Id.*)

In addition, as further indicated by witness Panizza, matching the flowback period to the timeframe over which flowback would have occurred absent the Tax Act is important in other ways. (*Id.*) Deferred taxes represent an interest-free loan from the government. The Company then used these funds, at no cost to customers, to invest in its business. (*Id.*) By doing so, the Company avoided having to go to the capital markets to raise this portion of the funds that it invested, and customers saved the capital cost of its being able to use the interest-free loan from

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the government instead of investor-supplied capital. (*Id.*) But having invested in the business, there is not a readily available reserve pool from which the cash needed to flowback EDIT can be drawn. (*Id.*) Flowback over the 20-year period that more closely matches the asset lives, smooths out the cash flow hit that the Company must take as it returns EDIT to customers and lessens the need for the Company to raise those funds from investors and third-parties. (*Id.*)

The third and final bucket, totaling approximately $57.9 million, is unprotected EDIT that is not related to the Company's investment in property, plant, and equipment. (*Id.* at 794-12.) For DE Carolinas, the assets in this bucket are a variety of things, including certain regulatory assets with a two-year life and pension-related excess deferred taxes with 12- to 20-year lives. (*Id.*) Their average life is 7½ years, although the Company's proposal uses a shorter 5-year period over which to accomplish this flowback. (*Id.*)

The Commission addressed the appropriate flowback period in its *SCE&G Order*. There, the Commission agreed with the return of unprotected EDIT over the remaining book life of the property in question, that is, generally matching the flowback period for protected EDIT. The Commission reasoned that opting for a shorter flowback period "would create a significant mismatch between the amortization of the unprotected EDIT and the actual depreciation of the related assets." *Id.* at 54. The Commission also noted that using a shorter period would increase rate volatility, while using the longer period "results in uniformity, ease of administration, and sound regulatory economics including providing intergenerational equity and rate stability to current and future customers." *Id.*

<u>Deferred Revenue</u>

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Company witness Smith testified that, as directed in Docket 2017-381-A, the Company began deferring effective January 1, 2018, the impact on customer rates of the reduction in the federal corporate income tax rate. (*Id*. at 655-34.) She explained that the Company will continue to defer the impact from January 1, 2019 through the new rates effective date in this case. (*Id*.) Those additional amounts are not known at this time, and will be included in the Year 2 EDIT rider calculation. *Id*. The Company has also netted against the projected balance the deferred balances related to DERP. (*Id*.) Company witness Ghartey-Tagoe explained that, given the benefits from the Tax Act, DE Carolinas thought it was reasonable to go ahead and eliminate those DERP balances as the State explores additional options for rooftop solar. (*Id*. at 645-16 – 645-17.) Otherwise, it could be 15 years by the time the Company resolves those balances through existing channels. (*Id*. at 645-17.)

North Carolina EDIT

DE Carolinas witness Smith indicated that, similar to the EDIT that results from the reduction in the federal corporate income tax rate, there are EDIT balances that resulted from the reduction in the North Carolina state corporate tax rate. (*Id*.) The Company is proposing to return these amounts to customers over a 5-year period. (*Id*.)

As described by Company witness Smith, the Company's EDIT Rider proposal both provides immediate benefit from the Tax Act and continues benefitting customers through the return of deferred taxes over time. The Company's proposal further complies with accounting requirements while preserving the Company's credit rating by not creating undue pressure on cash flows.

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ORS witness Schellinger testified that the ORS has reviewed the specific components of the Company's proposed EDIT Rider and agrees that the use of a rider to return the benefits to DE Carolinas customers is reasonable. (Tr. Vol. 6, p. 1326-3). He noted that the amortization period associated with the five components is reasonable, and the ORS recommends the approval of the amortization periods as suggested by the Company. (*Id.*) He testified further that the ORS has reviewed the specific components of the EDIT Rider and does not recommend any adjustments. (*Id.*)

No party has objected to the flowback periods embedded in the EDIT Rider proposal, and the Commission approves them for the reasons outlined above. The Company's proposed EDIT Rider is just and reasonable, and will result in rates that are just and reasonable, and should be implemented. As shown in Hearing Ex. 10 (Smith Rebuttal Ex. 2), the appropriate annual revenue requirement for the EDIT Rider is a decrement of ($61,888,000) in Year 1. (*See* Hearing Ex. 10 (Smith Rebuttal Ex. 2, p. 2).) The Company shall file the rider amounts, along with the spread to the classes and derivation of the rate, for each subsequent year with the Commission in this docket by March 31, for rider rates effective June 1.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS NOS. 53-55

The evidence supporting these findings and conclusions is contained in DE Carolinas' verified Application, the testimony and exhibits of the witnesses, and the entire record in this proceeding.

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Coal Ash – Summary of the Evidence

As the evidence introduced in connection with the Company's proposals for recovery of its environmental compliance spend is voluminous, it is not recounted in total in this Order. Rather, the Commission will provide a summary of the evidence and will refer to pertinent specific evidence in its discussion of this issue.

1. Company Direct Case: Overview and Costs Sought for Recovery

In her direct testimony, Company witness Smith testified that DE Carolinas is requesting recovery of ash basin closure compliance costs incurred in the period from January 1, 2015 through September 30, 2018, as of the time of filing, and updated through December 31, 2018. On a South Carolina retail jurisdiction basis, these costs amount to $241 million. Witness Smith stated that the Company is seeking recovery of these costs over a five-year period with the unamortized balance of the regulatory asset included in rate base in order to mitigate the associated customer rate impacts. (Tr. Vol. 4, p. 655-21 – 655-24.) She explained that the Company has isolated costs related to any fines or penalties it was assessed and/or agreed to pay and is not requesting their recovery in this proceeding, nor will it ever seek to recover these costs from customers. She also explained that while the costs to comply with the Coal Combustion Residuals rule ("CCR Rule") and North Carolina's CAMA are largely duplicative, there are a small portion of the costs that the Company has determined are specific to CAMA, unique to North Carolina customers, and appropriate for direct assignment to North Carolina. The Company is likewise not requesting recovery of those costs. (*Id.* at 655-22.)

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Witness Smith also testified that the Company expects to continue to invest significant amounts related to coal ash compliance after the December 2018 cut-off in this case. Instead of requesting recovery of an ongoing level of these costs, the Company is requesting that the Commission approve a continuation of the deferral, similar to what was approved in Docket 2016-196-E, for costs not included in this case. Specifically, the Company proposes deferral of CCR compliance spend related to ash basin closure beginning January 1, 2019, the depreciation and return on CCR compliance investments related to continued plant operations placed in service on or after January 1, 2019, and a return on both deferred balances at the overall rate of return approved in this case. (*Id.* at 655-23 – 655-24.)

2. Company Direct Case: Coal Ash Overview

In his direct testimony, Company witness Kerin provided a detailed discussion of DE Carolinas coal ash management history and practices and the new obligations imposed on the Company by the CCR Rule, South Carolina regulatory requirements and preferences, and CAMA. He explained that coal waste, including fly ash, bottom ash, boiler slag, and flue gas desulfurization ("FGD") material, are by-products produced from burning coal at coal-fired generation plants, which has allowed the Company to produce reliable and inexpensive electricity for over a century. He stated that environmental regulations related to ash management have evolved significantly over time, affecting how the Company has operated its coal-fired plants in compliance with those obligations. He testified that at each step in the environmental regulatory evolution process, DE Carolinas was in line with industry standards and that DE Carolinas reasonably and prudently managed coal combustion residuals and its coal ash basins. He explained that since its last rate

case, DE Carolinas has become subject to both federal and state regulations that require it to take significant action to close its ash basins. (Tr. Vol. 6, p. 1232-6 – 1236-9.)

Witness Kerin provided a detailed history of coal ash regulation, and he testified that since the early 1900s DE Carolinas has disposed of ash in compliance with then current regulations and industry practices. Witness Kerin stated that, in many cases, ash basins, of which DE Carolinas has 17 in the Carolinas, were actually created or relied upon to effectuate prior environmental regulations. In the mid-1970s, the enactment of the Clean Air Act and its subsequent amendment in the 1990s required electric utilities to capture more ash through the use of electrostatic precipitators ("ESP") or bag houses and FGD blowdown. (Tr. Vol. 6, p. 1232-6 – 1232-7.) The Clean Water Act of 1972, and the subsequent creation of the National Pollutant Discharge Elimination System ("NPDES") permitting system, made wet ash handling and ash basins the primary lawful and effective way to meet ash needs and environmental requirements from 1974 until 2015. (Tr. Vol. 6, p. 1232-7.)

Witness Kerin testified that the federal CCR Rule, which the Environmental Protection Agency ("EPA") proposed in June 2010 and published in final form in April 2015, established national minimum criteria for ash landfills and surface impoundments, which result in different impacts at each unit depending on site-specific factors. He stated that the CCR Rule also contains requirements for how and when ash basins must be closed and that it provides for closure either by cap-in-place or removal of the ash. He noted that as stated in the CCR Rule, the EPA considers coal ash to be a non-hazardous solid waste. (Tr. Vol. 6, p. 1232-7; p. 1232-16 – 1232-17.)

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Witness Kerin testified further that in 2014, DE Carolinas entered into a consent agreement with the South Carolina Department of Health and Environmental Control ("SCDHEC") relating to the closure of ash basins at the Company's W.S. Lee Plant in Anderson County, South Carolina ("W.S. Lee Consent Agreement"). The W.S. Lee Consent Agreement requires DE Carolinas to excavate ash from two inactive ash storage areas onsite and dispose the ash in a lined landfill. He testified that other South Carolina utilities are closing their ash basins in a similar fashion. (Tr. Vol. 6, p. 1232-7 – 1232-8.)

Witness Kerin noted that all of DE Carolinas' ash basins must be closed under the CCR Rule, South Carolina regulatory oversight, and/or CAMA. He explained that the Company has begun the process of developing and submitting closure plans at its ash basins and that ultimately, all closure plans, whether submitted pursuant to the CCR Rule or state requirements, must be approved by SCDHEC or NCDEQ. (Tr. Vol. 6, p. 1232-8.) He noted that coal-powered electric generation has ceased at four of the eight coal-fired DE Carolinas generating facilities with ash basins, including the Dan River Steam Station ("Dan River"), Buck Steam Station ("Buck"), Riverbend Steam Station ("Riverbend"), and W.S. Lee Steam Station ("W.S. Lee"). (Tr. Vol. 6, p. 1232-11.)

Witness Kerin testified that the environmental compliance obligations—the CCR Rule, South Carolina regulatory oversight, and CAMA—represent new regulatory requirements that have significantly changed the operation and life cycle of the onsite ash basins and landfills. He noted that there is a great deal of duplication and interaction between federal rule, state law and agency action and that many of the actions Duke Energy will take will serve multiple compliance purposes.

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He explained that many actions and draft rules applicable to many utilities, not just Duke Energy, were already being developed prior to 2014 and that the Company is now in another wave of evolution in environmental regulation pertaining to ash. He stated that in response to these new requirements addressing ash disposal activities, the Company is adding dry fly ash, bottom ash, and FGD blowdown handling systems to operating coal-fired plants that are not already so equipped. He also stated that the Company is modifying all active and decommissioned plants to divert storm water and low-volume wastewater away from the basins. He testified that, accordingly, the Company is requesting recovery of the compliance costs related to coal ash pond closures incurred starting January 1, 2015 through December 31, 2018. He testified that these incurred compliance costs are reasonable, prudent, and cost-effective given the individual facts and circumstances at each power plant and ash basin site at issue. (Tr. Vol. 6, p. 1232-8 – 1232-9.)

In Exhibit 10 to Company Witness Kerin's testimony, he presented the ash pond closure costs incurred from January 1, 2015 through September 30, 2018. Witness Kerin explained why these costs were incurred and why the compliance actions which led to those costs were the most reasonable and cost-effective options given the applicable facts and circumstances. (Tr. Vol. 6, p. 1232-37 – 1232-38.)

Company Witness Kerin maintained that DE Carolinas' historical handling of ash was reasonable, prudent, and consistent with industry standards over time, and that this demonstrates that nothing that DE Carolinas has done historically is causing the Company to incur any unjustified costs today to comply with post-2015 ash regulations. (Tr. Vol. 6, p. 1232-37.) Witness Kerin explained that, in 1988, the EPA submitted its Report to Congress on Wastes from the Combustion

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of Coal by Electric Utility Power Plants ("1988 Report"). The 1988 Report is a comprehensive assessment of the electric utility industry's use of coal and management of CCR up to that point in time. The 1988 Report found that 80% of CCR in the industry was being treated and stored in surface impoundments or disposed of in landfills. Of those units, only 40% were lined with either a synthetic, clay, or composite liner. Historically, surface impoundments were the single most widely used treatment and storage method for ash. At the time of the 1988 Report, landfilling of ash was becoming increasingly common. As of 1988, Duke Energy was employing both surface impoundments and landfills, which the 1988 Report noted were the most commonly used types of treatment, storage, and disposal units used by the industry. (Tr. Vol. 6, p. 1232-21.)

Witness Kerin explained further that the EPA provided another snapshot of the industry in the preamble to the CCR Rule, in which EPA details that in 2012 alone, over 470 coal-fired electric generating facilities burned over 800 million tons of coal, generating approximately 110 million tons of ash in 47 states and Puerto Rico. In 2012, approximately 40% of the ash generated was beneficially used, with the remaining 60% disposed in ash surface impoundments. Of that 60%, approximately 80% was stored in onsite basins and landfills. Witness Kerin also noted that across the United States, ash disposal currently occurs at over 310 active onsite landfills, averaging over 120 acres in size with an average depth of 40 feet, and at over 375 active onsite surface impoundments. Stated differently, according to Witness Kerin, the Company is re-using (selling) and storing ash in the same manner and at approximately the same percentages as the coal-fired utility industry's national averages, and Duke Energy's practices have been and continue to be consistent with those of the industry. Similar to the industry, DE Carolinas has onsite ash landfills

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that are actively receiving production fly ash, and some bottom ash, at specific coal-fired generating sites, including the Allen, Belews Creek, Cliffside, and Marshall plants in the Carolinas. Also similar to the industry, DE Carolinas has active ash basins that will receive bottom ash, and some fly ash through the first quarter of 2019 at specific coal-fired generating sites, including the Allen, Belews Creek, Cliffside, and Marshall plants in the Carolinas. Witness Kerin maintained that the ash handling practices for ash basins and ash landfills in the Carolinas are consistent with the applicable regulatory requirements that were in effect during the history of these units. (Tr. Vol. 6, p. 1232-22.)

Witness Kerin also testified that DE Carolinas' ash storage and handling practices are consistent with the practices of other Duke Energy affiliates and Duke Energy peer utilities. Duke Energy as it currently exists today has been formed over the years through the mergers of several utilities with independently operated coal-fired generation, including the Cinergy Corporation in 2006 and Progress Energy, Inc. in 2012. Indeed, going further back in time, Progress Energy, Inc. was created in 2000 from the merger of legacy utilities CP&L and Florida Power Corporation. Similarly, Cinergy Corporation was created in 1994 by the merger of legacy utilities Public Service Indiana and Cincinnati Gas & Electric Company. Yet, Witness Kerin concluded, the historical and current ash handling and use of ash basins has been and is consistent across all of the legacy companies that make up Duke Energy today. (Tr. Vol. 6, p. 1232-23.)

3. Company Direct Case: Cost Recovery Overview

Witness Wright also testified that, in part as a response to an accident at a surface impoundment at Tennessee Valley Authority's ("TVA") Kingston Fossil Plant in Harriman,

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Tennessee, the EPA proposed new coal ash disposal regulations for ash. The proposed regulations specifically referenced the TVA incident as a major reason for the proposed rule and discussed several other coal ash incidents that led to the promulgation of the rule. Witness Wright noted that because the EPA's proposed rule's publication date precedes the February 2, 2014 coal ash release incident at the Dan River plant, the Dan River accident was not mentioned in the EPA's proposed rule, nor could it have been, as a reason for establishing the rule. He also noted that while EPA's finalized CCR Rule did reference the Dan River accident, it did not indicate that the accident modified the proposed rule. (Tr. Vol. 6, p. 1242-14 – 1242-16.)

Witness Wright further explained that in August 2014, after the EPA's proposed coal ash regulations were published but prior to their finalization, North Carolina adopted CAMA. He noted that while the CCR Rule and CAMA are similar in many respects, DE Carolinas must ensure that its coal ash disposal methods meet the standards established in both the CCR Rule and CAMA as well as any other state agency requirements. (*Id.* at 1242-16 – 1242-18.)

Witness Wright explained that the Company must also follow guidance from SCDHEC with respect to disposal of coal ash. Specifically, the South Carolina legislature passed H.B. 4857 in 2016, which requires utilities to dispose of by-products resulting from the production of electricity in Class 3 landfills except under limited circumstances, and the Company entered into the W. S. Lee Consent Agreement. (*Id.* at 1242-18 – 1242-19.)

Witness Wright testified that recoverable costs, as they relate to electric utility expenditures in South Carolina, are costs that are reasonable and that are prudently incurred in the provision of safe, reliable electric service to a utility's customers. He stated that S.C. Code Ann. § 58-27-810

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embodies this principle, declaring that "rates shall be just and reasonable," and this standard is repeated in S.C. Code. Ann. § 58-27-850. He stated that because environmental compliance costs are a necessary cost of providing electric service, these types of costs – and a return on those costs if deferred over time – are recoverable in rates. He explained that the Company incurs costs in compliance with environmental laws and regulations, similar to other costs necessary for the generation of electric power, and that these coal ash disposal costs are like nuclear decommissioning costs or coal plant retirement costs which have long been deemed recoverable for utilities across the country, including DE Carolinas. (*Id.* at 1242-4 – 1242-6.)

Witness Wright noted that the Commission has a number of times allowed the recovery of costs related to environmental expenditures. He stated that, in his experience, these types of costs that the Company has made over time in compliance with historical coal ash and other environmental regulations, including the reasonable costs associated with operating, maintaining, and upgrading environmental equipment, plus a return, have been routinely recovered as a cost of service through general rate cases, whether as capital or ongoing operation and maintenance expense or some combination thereof. (*Id.* at 1242-9 – 1242-11.)

Witness Wright noted that coal ash use and disposal has been studied by the EPA since the mid-1980s. After several studies and some limited regulatory standards, on May 22, 2000, the EPA determined the need to regulate coal combustion wastes under Subtitle D of the Resource Conservation and Recovery Act. He testified that both the proposed rule and the final rule addressed the need for imposing corrective action at inactive facilities and stated that, in promulgating the CCR Rule, the EPA cited hundreds of potential risks or incidents with ash ponds

similar to Dan River that, in part, led to the adoption of the Rule. Based on this analysis along with the timing of the CCR Rule, he opined that the Dan River accident did not change the CCR regulations, although it probably added support for the EPA's proposals. (*Id.* at 1242-14 – 1242-16.)

Likewise, Witness Wright testified that, in terms of timing, the new North Carolina state CAMA coal ash standards did result from the Dan River spill, but in terms of the substance of the standards adopted there is not necessarily a connection. In his opinion, the Dan River spill helped prompt the North Carolina General Assembly to examine the State's and national coal ash disposal policies and regulations. He noted further that the proposed CCR regulation, promulgated four years before the Dan River incident, also strongly encouraged the states to adopt at least the federal minimum criteria in their solid waste management plans. He concluded that the North Carolina General Assembly and/or the NCDEQ would likely have taken steps to adopt coal ash regulations shortly after the CCR Rule was finalized in 2015. He noted that, regardless, the Company must comply with both the federal and state coal ash disposal standards. (*Id.* at 1242-17 – 1242-18.)

Finally, witness Wright noted that expenses of the type incurred to comply with the CCR Rule and CAMA have been routinely recovered as a cost of service and included in rate cases, including the reasonable costs associated with operating, maintaining and upgrading environmental equipment. He noted further that the cost recovery for these rate-based environmental costs include a return. (*Id.* at 1242-10, 1242-14.)

Company witness Wright also testified that the coal ash disposal costs that DE Carolinas seeks to recover in this case are "used and useful" utility costs. (*Id.* at 1242-24.) He explained that

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DE Carolinas' coal ash disposal sites have always been used and useful as part of the coal-fired generation production process. He noted that South Carolina, like other states, has defined used and useful utility property as "property which it [the utility] necessarily devotes to rendering the regulated services," and has allowed recovery for such property in rates. *Hamm v. S.C. Publ. Serv. Comm'n*, 309 S.C. 282, 286 n.1, 422 S.E.2d 110, 112 n.1 (1992) (internal quotations omitted). Moreover, witness Wright noted that the Commission's Code of Regulations Section 103-301(2) states the purpose of the Code is to "define good practice . . . intended to insure adequate and reasonable service." All of these policies, witness Wright noted, are further embodied in Section 103-360 of the Code of Regulations, which states "[t]he electric plant of an electrical utility shall be constructed, installed, maintained and operated in accordance with good engineering practice to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service, and the safety of persons and property." He testified that, therefore, to be recoverable and/or included in rate base, the cost must be incurred for property that is used and useful in providing safe, reliable, and adequate service to customers. (*Id.* at 1242-5.)

Witness Wright stated that the Company has historically spent dollars in order to comply with the coal ash disposal regulations in effect at the time. The Company was, and continues to be, obligated to meet the needs of its customers, which obligation to serve requires the disposal of coal ash subject to the disposal standards at the time. The disposal sites for this coal ash, for which costs DE Carolinas seeks recovery in this case, are therefore "used and useful" in providing electric service. (*Id.* at 1242-24.)

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Witness Wright also noted that the Commission addressed recovery of coal ash expenses in Docket No. 2016-227-E when it allowed DE Progress to recover such expenses amortized over fifteen (15) years, plus the Order's approved return. In addition, he noted that South Carolina and North Carolina have shared environmental expenses on several previous occasions and that cost sharing is common where a utility's operations span multiple states and the utility property used to provide one particular state's electric service may be located in another state. (*Id.* at 1242-25.) Witness Wright noted further that the costs incurred pursuant to the W.S. Lee Consent Agreement are shared with North Carolina customers. (*Id.* at 1242-13.)

4. <u>The Positions of Intervenor Parties other than ORS</u>

Of the intervenors other than ORS, only the SCEUC and Sierra Club submitted testimony related to the recoverability of coal ash costs. SCEUC Witness O'Donnell opined that DE Carolinas should only recover costs to comply with the CCR Rule, and not any CAMA-only costs that exceed CCR Rule compliance costs, based on his contention that Duke Energy caused CAMA. (Tr. Vol 7, p. 1459-35 – 1459-39.) Witness O'Donnell purported to compare the DE Carolinas coal ash ARO to what he termed similar coal ash AROs of utilities across the United States. He concluded that the Company's ARO coal ash costs are among the highest in the nation and contended that the only discernable difference between the Duke utilities and the other utilities in his comparison was CAMA, which he asserted was prompted by the Dan River spill. He stated that DE Carolinas did not provide a similar financial analysis for this case. (*Id.* at 1459-43 – 1459-50.) He asserted that there is no evidence to suggest that Duke Energy's coal ash situation is significantly different from that of utilities across the country or from that of utilities in neighboring

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states. Accordingly, Witness O'Donnell recommended a 75% disallowance for the Company's coal ash request. (*Id.* at 1459-50.)

SCEUC Witness O'Donnell also testified that he was concerned with the Company's accounting for coal ash remediation costs, specifically in terms of when the Company began recording AROs for coal ash basin closure costs. (Tr. Vol. 7, p. 1459-43.) Witness O'Donnell explained that Statement of Financial Accounting Standards ("SFAS") 143 requires that companies establish the ARO liability "in the period in which the liability was incurred." (*Id.*) Mr. O'Donnell also testified that prior to the Company being subject to SFAS 143, it also did not include any closure costs for its coal ash ponds in depreciation rates; thus, the issue is: "whether it was prudent for the Company not to have sought recovery of the coal ash costs in prior rate cases." (*Id.*) Mr. O'Donnell further explains that as early as 1981, the Electric Power Research Institute ("EPRI") began publishing manuals for the industry dealing with existing coal ash storage and disposal facilities. (*Id.*) However, even with these publications dating back to 1981, the Company did not establish AROs until the promulgation of CAMA and the final CCR Rule in 2014. Therefore, Witness O'Donnell recommends this Commission disallow $46.7 million for South Carolina,[80] (*Id.* at 1459-11.)

[80] Witness O'Donnell calculates his proposed disallowance for South Carolina based on the dissenting opinion (which O'Donnell adopts as his own) of North Carolina Utilities Commissioner Dan Clodfelter in NCUC Docket No. E-7 Sub 1146 where Commissioner Clodfelter recommended that DE Carolinas be disallowed $133.6 million in coal ash closure costs for failing to request these expenses in earlier years.

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Sierra Club Witness Dr. Ezra Hausman contended that the Commission should require the Company to conduct a comprehensive retirement analysis and that the recovery of any coal ash compliance costs be conditioned upon the filing of this analysis. (*Id.* at 1522-3.)

5. The Position of ORS

ORS contends that costs incurred as a result of jurisdictional laws (i.e. CAMA) should not lead to increased costs to customers outside of that jurisdiction. (Tr. Vol. 6, p. 1340-29.) ORS Witness Wittliff then calculated a total disallowance of $406,311,822, which he contended reflects costs attributable to CAMA. Witness Wittliff suggested that CAMA-only costs disallowed in this proceeding could be recovered in a later rate case if DE Carolinas can show that those costs would have been incurred under the CCR Rule alone. However, Witness Wittliff did not indicate when or if those costs would ever be ripe for recovery. (Tr. Vol. 6, p. 1340-40.)

Mr. Wittliff admitted at the hearing that his recommended disallowance was not based on a reasonableness or prudency review of the Company's compliance costs. (Tr. Vol. 6, p. 1351.) Accordingly, throughout his testimony, witness Wittliff took no issue with how the Company was complying with CAMA, or any federal or state requirement. Mr. Wittliff also did not testify that the Company's closure approaches at each site would have been unreasonable or imprudent in the absence of CAMA. At the hearing, Witness Wittliff testified that his sole directive from ORS was to quantify the additional costs resulting from CAMA compared to what the Company costs would have been if the Company was solely required to comply with the CCR Rule. (*Id.*)

Witness Wittliff testified that the Company's proposed closure method for Allen, Belews Creek, Cliffside, and Marshall are consistent with the federal CCR Rule and recommended that the

Company be able to recover its requested costs for these sites. Additionally, Witness Wittliff recommended that the Company be allowed to recover its costs to excavate and remediate its impoundments at its W.S. Lee Plant in Anderson County, South Carolina. He acknowledged that work at W.S. Lee is being conducted under the South Carolina W.S. Lee Consent Agreement. (Tr. Vol. 6, p. 1340-38.)

For the Company's remaining sites - Riverbend, Buck, and Dan River - Witness Wittliff concluded that CAMA resulted in three categories of expenditures that were not attributable to the CCR Rule: 1) expenditures for plants not covered at all by the CCR Rule; 2) expenditures for closure and/or excavation options not required under the CCR Rule but required under North Carolina law; and 3) expenditures for actions that would not have been required at this time under the CCR Rule but are subject to accelerated schedules under CAMA. (Tr. Vol. 6, p. 1340-30).

Witness Wittliff testified that the Riverbend plant fell into the first category because its inactive basins are not explicitly covered by the CCR Rule. He testified that DE Carolinas is excavating ash and closing its basins at Riverbend solely because of CAMA. ORS' total recommended disallowance for Riverbend is $316,680,585, which accounts for all compliance costs incurred to-date. Witness Wittliff goes on to state that should the EPA later decide to regulate the basins at Riverbend, DE Carolinas could then seek to recover those costs in rates from South Carolina customers. (Tr. Vol. 6, p. 1340-30 – 1340-31.)

Under the second category, ORS recommends a disallowance of $36,544,788 at Buck for ash beneficiation costs, which witness Wittliff testified would not be required under the federal CCR Rule. Witness Wittliff asserted that DE Carolinas' beneficiation project at Buck falls under

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the "CAMA-only" category, and that the customers of South Carolina should not have to reimburse the Company for expenses related to that requirement. To calculate the disallowance amount, Mr. Wittliff first concluded that engineering and planning costs should be recoverable because those activities are needed to synchronize work between all of the coal ash sites being closed. To arrive at an estimate of engineering and planning costs associated with impoundment closures, he assumed that engineering and planning activities at all eight plants were accomplished at the same time between 2015 and 2017. Spending at Buck increased from $12.9 million between 2015 and 2017 to $72.4 million in 2018, and witness Wittliff testified that this led him to conclude that a significant portion of the 2018 costs were related to beneficiation, not engineering and planning. For that reason, he recommended disallowing the difference between the total 2018 spend ($72,417,654) and the average of the previous three (3) years ($12,895,654) for a total disallowance of $59,522,499. To adjust the disallowance for the requested recovery through September 30, 2018, the $22,977,711 reported by DE Carolinas as being spent from October 1, 2018 through December 31, 2018, was subtracted for a net proposed disallowance of $36,544,788. (Tr. Vol. 6, p. 1340-33 – 1340-36.)

Regarding the third category, witness Wittliff identified Dan River as a DE Carolinas site that has been affected by the accelerated closure timeline imposed by CAMA. He testified that under the CCR Rule, the Company would not have been required to commence closure activities until October 31, 2020, while closure under CAMA is required to be completed by August 1, 2019. Similar to Buck, witness Wittliff testified that DE Carolinas should be allowed to recover engineering and planning costs that would have been required for compliance with the CCR Rule,

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and DE Carolinas should be allowed to seek recovery after 2020 for prudently incurred construction and transportation expenditures related to CCR compliance. To calculate the disallowance, witness Wittliff testified that he used the same weighted average methodology that he used to calculate the Buck disallowance. He calculated the weighted average of engineering and planning costs as a percentage total of project costs for the four (4) proposed cap-in-place plants (i.e. Allen, Belews Creek, Cliffside, and Marshall) as 19.53% during the period from 2015 through the end of 2018. Applying that percentage to the total project costs, witness Wittliff concluded that recoverable engineering and planning costs are $50,757,430. ORS recommended that the remaining $167,426,449 of the Company's requested costs be disallowed. (Tr. Vol. 6, p. 1340-38.)

ORS witness Wittliff spent the majority of his testimony describing the Company's past ash management practices. ORS witness Wittliff testified that coal-fired electricity generation has been utilized for nearly a century at the Company, beginning in approximately 1926 at the Buck Plant. (Tr. Vol. 6, p. 1340-26.) DE Carolinas, like many utilities, used unlined earthen impoundments to deposit its CCRs. The first of these impoundments was constructed at Dan River in 1956. Mr. Wittliff stated that in the 1970s, the United States Department of Energy directed that research be done on coal ash residuals and that the research revealed that there was a "growing awareness that the discarded wastes from coal combustion are a serious potential source of surface and ground water contamination" and that the wastes "have the potential for causing great environmental damage if not properly handled." (Tr. Vol. 6, p. 1340-11.) Mr. Wittliff claimed that in 1988, the EPA, in its Report to Congress on the topic of "Wastes from the Combustion of Coal by Electric Utility Power Plants," voiced concerns over the "substantial quantities of wastes"

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produced by electric utility power plants and concurred with the Los Alamos Report that "[t]he primary concern regarding the disposal of wastes from coal-fired power plants is the potential for waste leachate to cause ground-water contamination" from the potentially toxic metals in the ash due to the fact that "[m]ost utility waste management facilities were not designed to provide a high level of protection against leaching." (Tr. Vol. 6, p. 1340-12 – 1340-13.) He claimed that, based on his experience, which according to his *curriculum vitae* does not include oversight of ash management in North Carolina or South Carolina, liners were placed in new ponds built since the mid-1980's and were placed in RCRA Subtitle D compliant landfills built since the mid-1990's. (Tr. Vol. 6, p. 1340-24.) Table 4.1 to Witness Wittliff's testimony summarizes the Company's disposal methods at each site over time and indicates that the Company's practices were consistent with his experience, as no unlined impoundments or landfills were constructed after 1982 and 1986, respectively. (Tr. Vol. 6, p. 1340-25 – 1340-26.)

Witness Wittliff maintained that the Dan River ash release was largely responsible for the development of CAMA in its present form, which he said accelerated remediation and closures and narrowed the field of removal and closure options. (Tr. Vol. 6, p. 1340-19.) He asserted that North Carolina was not considering any similar legislation prior to the Dan River spill. (Tr. Vol. 6, p. 1340-19 – 1340-20.) He claimed that the plea agreements into which the Company has entered evidence harm to the environment caused by DE Carolinas' criminal negligence. (Tr. Vol. 6, p. 1340-16.) Witness Wittliff stated that court cases and plea agreements involving DE Carolinas' ash facilities also demonstrate that DE Carolinas was criminally and civilly negligent in its operations and maintenance of the impoundments for years prior to the enactment of CAMA and

that this confirms that the Company failed to responsibly address and correct these issues adequately and in a less-costly manner than it is currently being required to do. (Tr. Vol. 6, p. 1340-15 – 1340-16.) He claimed that despite increasing concerns about potential water impacts from CCR impoundments, the Company did not vary from its established practice of building, expanding, and continuing to utilize unlined wet surface impoundments. (Tr. Vol. 6, p. 1340-27.)

In supplemental testimony, ORS witness Gaby Smith recommended that the Commission disallow $575,000 of the Company's litigation expenses related to coal ash. She testified that customers should not bear the burden of legal costs related to the Company's failure to operate its coal ash basins in accordance with state and federal rules and regulations. She stated that inclusion of the legal costs would force ratepayers to pay for DE Carolinas' failure to comply with the law. She asserted that legal expenses are not related to providing adequate electrical service, and the customers derived no benefit from the expenditures. She reasoned that legal costs should be shareholders' responsibility and claimed that this in turn incentivizes the regulated utilities to operate in compliance with federal, state, and local laws. (Tr. Vol. 7, p. 1599-2 – 1599-3.)

Deferring to the analysis of witness Wittliff, ORS witness Seaman-Huynh likewise recommended that the Commission disallow recovery of coal ash expenses incurred to comply with North Carolina laws and regulations, like CAMA, that impose requirements above and beyond those in effect in South Carolina. (Tr. Vol. 8, p. 2030-6.) In total, ORS witnesses recommended a disallowance of $469,894,472 for what it described as CAMA-only compliance costs, allocated to South Carolina on a jurisdictional basis. (*Id.*)

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6. The Company's Rebuttal

Kerin

On rebuttal, Company witness Kerin testified that the disallowance recommendations made by ORS witness Wittliff and SCEUC Witness O'Donnell were unprincipled and reflect poor policy and that no recommended disallowance by ORS or SCEUC was based on any alleged imprudence by the Company regarding its closure strategy or execution thereof. (Tr. Vol. 6, p. 1238-3; p.1238-5.)

Witness Kerin noted that ORS' recommended disallowance of $469,894,472 for Riverbend, Dan River, and Buck is based entirely on the fact that there is a state border running through the Company's service territory and on the fact that DE Carolinas is complying with a valid North Carolina law (i.e. CAMA) that Mr. Wittliff views as too expensive. He noted that ORS did not claim or attempt to show that CAMA was unreasonable, excessive, or punitive, that it reflects bad environmental policy, that it conflicts with the CCR Rule, or that the Company took any imprudent or unreasonable action to comply with CAMA or the CCR Rule. He concluded that witness Wittliff's discussion of the Company's CCR management history was therefore irrelevant to his recommended disallowances. (Tr. Vol. 6, p. 1238-7.)

Witness Kerin also discussed how, in addition to being bad policy, Mr. Wittliff's disallowance methodology and recommendations are based on incorrect and unrealistic assumptions. (Tr. Vol. 6, p. 1238-3.) He testified that the reasonableness and prudence of the Company's costs should be judged in light of actual circumstances and site conditions and that

witness Wittliff has failed to abide by his own standard of not considering speculation. (Tr. Vol. 6, p. 1238-8.)

Witness Kerin testified that ORS' recommended disallowance of Riverbend costs should be rejected because ORS witness Wittliff fails to consider real-world conditions. He testified that ORS witness Wittliff's suggestion that DE Carolinas could or would have taken a "do nothing" approach to Riverbend's ash basins, while at the same time closing all of its other ash basins in South Carolina and North Carolina, defies regulatory reality. He noted that Riverbend's inactive basins are similar to the inactive ash storage areas at W.S. Lee. (Tr. Vol. 6, p. 1238-9.) ORS took no issue with the Company's decision to close and excavate the inactive ash areas at W.S. Lee simply because they are located in South Carolina. He stated that considering the Company's approach at W.S. Lee, it would be reasonable to assume that the Company would have taken action at Riverbend, or been required to do so by regulators, even absent CAMA. He concluded that under Mr. Wittliff's logic, South Carolina customers should refund North Carolina customers all money spent for excavating ash from the inactive basins at the W.S. Lee site in South Carolina because they were otherwise exempt from the CCR Rule. (*Id.*)

Witness Kerin also explained why ORS' recommended disallowance for Dan River also does not reflect reality. He explained that in contrast to ORS witness Wittliff's incorrect assumptions while an accelerated closure schedule would theoretically condense expenditures in the short term, an extended closure schedule, as proposed by ORS witness Wittliff, would actually result in higher total project costs due to increased overhead and changing market conditions, like vendor and resource availability. Witness Kerin stated that, while the Company is ahead of most

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utilities in the region in terms of its progress in achieving ash basin closure, if it delayed its closure and extended the closure schedule as proposed by ORS Witness Wittliff in a world absent CAMA, it would be competing with other utilities for limited, experienced vendors and specialized resources. In addition, he noted that ORS ignored the fact of the Company's observance of these real-world price increases taking place. (Tr. Vol. 6, p. 1238-11 – 1238-12.) Finally, witness Kerin noted that witness Wittliff's assumption that DE Carolinas would not have had to begin closure until 2020 – an assumption that forms the basis of his disallowance calculation – is also incorrect, since the CCR Rule would have required the Company to commence closure in May 2018 after the last volume of CCR for beneficial use was removed from the Dan River Primary Ash Basin. (Tr. Vol. 6, p. 1238-12 – 1238-13.)

With regard to Buck, Company witness Kerin rebutted the characterization by ORS witness Wittliff's testimony of beneficiation as a novel concept unique to CAMA, and clarified that the beneficiation technologies that are planned for Buck, H.F. Lee, and Cape Fear were first deployed and approved in South Carolina at SCANA coal ash facilities. (Tr. Vol. 6, p. 1238-15.) Witness Kerin also pointed out that the method by which ORS witness Wittliff calculated the disallowance amount, solely based his observation that it "appeared" that most of the work he saw during a half-day visit looked like beneficiation work and, therefore, recent costs at the site must be for beneficiation, was not a valid method of determining costs. (Tr. Vol. 6, p. 1238-13.)

Finally, Company witness Kerin explained that CAMA's beneficiation requirement actually results in a net savings for South Carolina. He explained that Duke Energy selected three sites for beneficiation projects based on the quality and quantity of ash present at the site; logistical

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factors; and proximity to relevant markets where the beneficiated ash can be sold: Buck (DE Carolinas), Cape Fear (DE Progress), and H.F. Lee (DE Progress). He noted that, while estimated beneficiation costs at Buck are approximately $131 million more expensive than closure without beneficiation on a total system basis, beneficiation at Cape Fear and H.F. Lee under CAMA is providing an estimated net savings compared to closure without beneficiation of approximately $703 million on a total system basis. Witness Kerin asserted that ORS overlooked this fatal flaw to their policy argument, which would result in a situation where, if South Carolina customers will not pay the increased costs of CAMA beneficiation at the Buck site, then they fairly cannot enjoy the superior savings afforded by CAMA beneficiation at the Cape Fear and H.F. Lee sites and would owe North Carolina customers a net refund for those costs savings. (Tr. Vol. 6, p. 1238-14 – 1238-15.)

Witness Kerin also rebutted SCEUC witness O'Donnell's analysis and recommendation of a 75% disallowance of the Company's coal ash costs. Witness Kerin explained that witness O'Donnell relied on multiple analytical flaws that were fatal to his conclusion and made no effort to address those flaws in his conclusions that were soundly rejected in the Company's North Carolina rate case. Specifically, witness Kerin disagreed with witness O'Donnell's conclusion that his national comparison of CCR assets retirement obligation, or ARO, amounts shows that the Company's ARO is overstated by 75%. He stated that witness O'Donnell appears not to have considered 22 factors that must be accounted for in order to seriously attempt this type of analysis. He also stated that witness O'Donnell made no attempt to quantify DE Carolinas' coal ash AROs resulting from CAMA, as compared to its obligations under the CCR Rule, or to determine the

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impetus for coal ash AROs for the other utilities to which he compares the Company. Witness Kerin argued that witness O'Donnell cannot credibly testify that the Company's ARO coal ash costs are higher because of CAMA when he cannot attribute any specific ARO coal ash costs to CAMA or attribute ARO coal ash costs for other companies to any particular regulatory obligation. He explained that even if witness O'Donnell had conducted such an analysis, it would not provide an accurate comparison because other utilities are in very different stages of their coal ash management timeline than DE Carolinas. Witness Kerin also maintained that the SNL data relied upon by witness O'Donnell are rough estimates and that there is substantial uncertainty over the level of actual closure costs for many of those utilities he listed. For example, his analysis did not consider new legislation that will require Dominion Energy or VEPCO to excavate all of its basins located in the Chesapeake Bay Watershed, which will increase the Company's closure costs by an estimated 897% to 1,314%. Witness Kerin, therefore, recommended that the Commission consider the reasonableness of the Company's ARO amount on its own merits, based on the facts of this case, and without regard to witness O'Donnell's proposal. (Tr. Vol. 6, p. 1238-15 – 1238-20.)

Lastly, Company witness Kerin rebutted witness O'Donnell's recommended, but unspecific, disallowances for W.S. Lee and Dan River. Regarding W.S. Lee, witness Kerin noted that the Company excavated the inactive ash storage areas at W.S. Lee pursuant to the W.S. Lee Consent Agreement, and the terms of the agreement are consistent with South Carolina's closure expectations for all utilities with CCR units. Witness Kerin stated that North Carolina customers are paying for the work done under the terms and conditions of this consent agreement even though it was specific to South Carolina regulatory action and was not required, in totality, under the CCR

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Rule. Witness Kerin observed that witness O'Donnell's position demonstrates the real-world implications of his flawed and dangerous policy. (Tr. Vol. 6, p. 1238-20 – 1238-21.)

Regarding Dan River, witness Kerin testified that as the Company did utilize a brownfield closure strategy and build an onsite landfill at Dan River, just as witness O'Donnell suggested, Mr. O'Donnell's recommendations for this site were based on a lack of full understanding regarding how the onsite landfill was built. (Tr. Vol. 6, p. 1238-21 – 1238-22.)

Wright

On rebuttal, Company witness Wright testified that, overall, the theories underlying the disallowances of coal ash remediation expenses recommended by ORS witnesses Wittliff, Seaman-Huynh, and Smith, SCEUC witness O'Donnell, and Sierra Club witness Hausman are unfounded, do not provide a proper basis on which costs may be disallowed, and should be rejected by the Commission. (*Id.* at 1247-3 – 1247-4.)

Witness Wright first disagreed with ORS witnesses Wittliff's and Seaman-Huynh's recommendation to disallow coal ash costs incurred by the Company to comply with North Carolina environmental laws and regulations. Witness Wright noted that neither witness Wittliff nor Seaman-Huynh provided any policy justification for their recommendation that the Commission completely disregard costs incurred to comply with another state's laws. He testified that since the coal ash located at all of the Company's coal sites was indisputably produced as a result of providing electric energy to the Company's customers in both North Carolina and South Carolina, costs related to closure of the Company's CCR impoundments should be borne by customers in both states. He noted that South Carolina and North Carolina have historically

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allowed recovery of costs incurred due to a jurisdiction-specific law, such as differences in property taxes. In particular, witness Wright noted that the Company is currently proposing to return to South Carolina customers $87 million of excess deferred income taxes resulting from North Carolina legislation which decreased the income tax rate. Applying ORS' theory to these facts, witness Wright posited, would prevent South Carolina customers from receiving the significant benefits of the North Carolina legislation. Finally, witness Wright noted that because the Company is required to abide by the environmental laws of both South Carolina and North Carolina, it would be unreasonable to disallow costs the Company has incurred to follow the law. (*Id.* 1247-5 – 1247-6.)

Witness Wright reiterated his direct testimony that South Carolina and North Carolina have historically shared the Company's environmental compliance costs. Witness Wright also reiterated that this type of cost sharing is common where a utility's operations span multiple states, and the utility property used to provide one particular state's electric service may be located in another state. Additionally, he provided a number of examples of such cost sharing in other states. (*Id.* at 1247-7 – 1247-9.)

Legislation aside, witness Wright testified that South Carolina stakeholders have demonstrated a strong preference for excavation of coal ash ponds through settlements and negotiations with its electric suppliers which predate the adoption of the Federal CCR Rule and CAMA. Moreover, witness Wright noted that witness Wittliff does not contend that CAMA requirements are unreasonable or out of line with what other states are now requiring regarding ash basin closure, and he provided a number of examples of states that have adopted laws or regulations

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that impose closure requirements that are more stringent than those set forth in the CCR Rule. (*Id.* at 1247-9 – 1247-10.)

Witness Wright also testified that witness Wittliff failed to apply the appropriate regulatory standard in his disallowance recommendation, which is a finding that the costs (1) were not prudently incurred; (2) were unjust or unreasonable; or (3) were for facilities or expenses that are not used and useful in the provision of electric service. Because witness Wittliff did not engage in any of these required analyses, his recommendation should be disregarded. (*Id.* at 1247-15 – 1247-17.)

Witness Wright also disagreed with ORS witness Seaman-Huynh's related recommendation that the Commission disallow recovery of additional costs related to North Carolina laws and regulations. While witness Wright acknowledged that there are times when direct allocation of costs between jurisdictions is appropriate, he explained that such an arrangement is the exception, not the rule. He noted that it is undisputed that South Carolina customers benefitted from the low electric rates and reliable service DE Carolinas has provided for decades, in large part due to its coal-fired electric generation, and concluded that those customers should likewise pay the costs associated with that service, including new environmental compliance costs. (*Id.* at 1247-21 – 1247-22.) Witness Wright also explained that witness Seaman-Huynh's recommendation would likely cost South Carolina customers money in the long-run, as it could call into question the equities of sharing assets and economies of scale across a multi-state structure. Finally, witness Wright stated his belief that the Commission's acceptance of the proposed disallowance would negatively impact investors' perceptions of this Commission, which would

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likely increase the Company's cost of capital, resulting in increased rates. (*Id.* at 1247-22 – 1247-23.)

Witness Wright also rebutted ORS witness Smith's proposed adjustment to remove legal costs related to the Company's ongoing insurance recovery litigation and defense of state enforcement actions. Witness Wright noted that legal fees should be recoverable because they represent a legitimate, reasonable, and prudent business expenditure, and the Company is often considered a "target" for litigation and must be allowed to vigorously defend itself—particularly from lawsuits initiated by non-government related parties, like the ones witness Smith has placed at issue. (*Id.* at 1247-24 – 1247-26.) He explained that the legal costs witness Smith seeks to disallow are not, as she contends, the result of any failure to operate its coal ash basins in accordance with the law, but rather relate to insurance litigation initiated by the Company for the benefit of its customers. If the Company prevails, the costs recovered from insurers will be passed along to customers. With respect to the state enforcement action, witness Wright testified that the Company should defend itself and ratepayers in a legal proceeding when the potential result could require the Company to undertake coal ash remediation procedures that go beyond current regulatory requirements. He concluded that because the legal fees incurred in both lawsuits are targeted to an end-goal that would benefit customers, they are legitimate and recoverable. (*Id.* at 1247-26.)

Next, witness Wright reiterated his earlier testimony to reject SCEUC Witness O'Donnell's assertion that the DE Carolinas was responsible for the passage of CAMA and should be responsible for any coal ash costs above that required by the CCR Rule. Witness Wright also stated

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that the Commission should reject witness O'Donnell's recommendation that the Company's environmental compliance costs should be disallowed based on a comparison of the alleged national asset retirement obligations, or ARO, amounts relating to CCRs. He explained that witness O'Donnell's analysis neither considered the fact that most utilities are behind DE Carolinas from a timing perspective in both planning and addressing coal ash pond closure, nor reflected the most recent coal ash CCR costs being reported by various electric utilities. Witness Wright also disagreed with witness O'Donnell's statement that the EPA's reconsideration of aspects of its CCR Rule "direct[ly] conflict[s]" with witness Wright's statements about this country's ever-tightening environmental standards, stating that although it was possible that the EPA could modify its current rule, there is no way for DE Carolinas to know if, when, or how such modification might occur. (*Id.* at 1247-31 – 1247-37.)

Finally, witness Wright disagreed with the recommendation of Sierra Club witness Hausman that the Commission should require the Company to conduct a comprehensive retirement analysis and that recovery of the CCR costs be conditioned on the filing of such analysis. He noted that the expenditures for which the Company seeks recovery are not optional, and thus they should be allowed unless they are demonstrated to be imprudent, unreasonable, or not used and useful, which no witness has contended or provided evidence to support. According to witness Wright, witness Hausman's proposed conditional recovery would elicit a negative reaction from the investment community since ultimate recovery would be uncertain. (*Id.* at 1247-37 – 1247-38.)

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Doss

Company witness Doss responded to SCEUC witness O'Donnell's argument regarding the timing of the Company's decision to establish an ARO for eventual ash pond closure expenses. He stated that the Company appropriately followed applicable accounting guidance in establishing the ARO for coal ash closure costs. Mr. Doss explained that the Company was required to apply the accounting guidance under Generally Accepted Accounting Principles ("GAAP") and Federal Energy Regulatory Commission ("FERC") Code of Federal Regulations ("CFR") for coal ash ARO reporting. Specifically, Mr. Doss explained that SFAS 143 (now codified as ASC 410 and entered as Hearing Exhibit 23) applies and requires recognition of liabilities for the expected cost of retiring tangible long-lived assets for which a legal retirement obligation exists. (Tr. Vol. 4, p. 1106-4.) Witness Doss explained that ASC 410-20-20 defines a "legal obligation" as an "obligation that a party is required to settle as a result of an existing *or enacted* law, statute, ordinance or written or oral contract…" (*Id.* at 1106-4 – 1106-5.) The W.S. Lee Consent Agreement, CAMA and the CCR Rule each qualifies as an "enacted law or contract" under the accounting guidance and upon enactment, Mr. Doss explained that was the point at which the Company incurred a legal obligation related to the retirement of its coal ash basins. (*Id.* at 1106-5.) Further, he explained that ASC 410-25-4 requires that "an entity shall recognize the fair value of a liability for an asset retirement obligation in the period in which it is incurred if a reasonable estimate of fair value can be made." (*Id.*) As a result, Mr. Doss explained that the Company recorded AROs for the coal ash basin closure costs in the year in which the applicable law or contract was enacted, which was 2014 for the W.S. Lee Consent Agreement and CAMA, and 2015 for the CCR Rule. (*Id.*) Mr. Doss

concludes that to have established AROs prior to the existence of a legal retirement obligation, as Mr. O'Donnell seems to suggest, would have directly violated GAAP.

Witness Doss also explained the FERC accounting guidance. He noted that the Company is regulated by FERC and, therefore, required to use the FERC Uniform System of Accounts, which states in relevant part:

> An asset retirement obligation represents a liability for the legal obligation associated with the retirement of a tangible long-lived asset that a company is required to settle as a result of an existing or enacted law, statute, ordinance, or written or oral contract or by legal construction of a contract under the doctrine of promissory estoppel. An asset retirement cost represents the amount capitalized when the liability is recognized for the long-lived asset that gives rise to the legal obligation. The amount recognized for the liability and an associated asset retirement cost shall be stated at the fair value of the asset retirement obligation in the period in which the obligation is incurred.

(*Id.*) He explained that the FERC guidance is therefore consistent with the GAAP guidance that the Company followed. Finally, Mr. Doss concluded that the Company's auditors, Deloitte & Touche LLP, perform the annual audit of the Company's financials and FERC Form 1 and issued an opinion that the financial statements are presented fairly, in all material respects, in conformity with GAAP, and that the regulatory basis financial statements are in conformity with the FERC Uniform System of Accounts. (*Id.* at 1106-6.)

7. <u>The Surrebuttal of ORS and NCEUC</u>

<u>Wittliff</u>

ORS witness Wittliff testified generally on surrebuttal to his opinion that ORS' recommendations were not unfair because the Company could come back at a later date should the

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CCR Rule change in the future. (Tr. Vol. 6, p. 1342-4 – 1342-5.)

Regarding Riverbend, ORS witness Wittliff contended that it would be reasonable to believe that the Company would have taken a "do nothing" approach at Riverbend, despite the closure approach the Company was taking at W.S. Lee. In response to the Company's rebuttal, he attempted to draw a connection between the W.S. Lee consent order with SCDHEC and the Dan River accident in 2014. He then testified that had the Dan River spill not occurred, it would be reasonable to conclude that compliance at Riverbend would have been limited by the CCR Rule, which currently does not require any action at Riverbend. (Tr. Vol. 6, p. 1342-5.) ORS witness Wittliff took no issue with the Company's closure approach or costs for W.S. Lee. (*Id.*)

With regard to Dan River, witness Wittliff acknowledged that the last removal of CCR from the Primary Ash Basin would have triggered closure activities to begin in May 2018 as opposed to October 31, 2020, but argued that the Company only began beneficially using ash at Dan River as a result of CAMA's excavation requirements and closure timeline. Witness Wittliff testified that closure work could not commence until DE Carolinas had removed the final known volume of CCR for beneficial use. He concluded that the commencement of work required under the CCR Rule at Dan River was directly attributable to the accelerated timeline in the court order and CAMA. (Tr. Vol. 6, p. 1342-7 – 1342-8.)

Witness Wittliff suggested that Company witness Kerin's conclusion that CAMA's beneficiation requirement was a net benefit to South Carolina customers was unsubstantiated, and witness Kerin did not state whether the net savings were in comparison to CCR requirements or other additional CAMA requirements that might have been imposed on DE Progress' Cape Fear

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and H.F. Lee sites in place of beneficiation. (Tr. Vol. 6, p. 1342-8.) Witness Wittliff also stated, however, that he did not believe that CAMA's beneficiation requirement was unreasonable. (Tr. Vol. 6, p. 1342-8 – 1342-9.)

Seaman-Huynh

ORS witness Seaman-Huynh characterized the ORS position as a recommendation that South Carolina customers be held harmless for the incremental cost differences attributed to North Carolina state laws, rather than what he termed a mischaracterization of that position by witness Wright as a prohibition on sharing of costs between the states. He noted that the Company is not seeking recovery of the costs to comply with the North Carolina Clean Smokestacks Act, North Carolina Renewable Portfolio Standards, and the North Carolina Competitive Energy Solution for NC (HB 589) laws. (Tr. Vol. 8, p. 2032-5 – 2032-7.)

Hamm

Referencing a recent Carolina Water Service, Inc. case in which the Commission denied recovery of litigation expenses, Docket No. 2017-292-WS, Order 2018-802, ORS witness Hamm testified on surrebuttal to his belief that the Commission has adopted a regulatory policy of disallowing legal costs and expenses incurred as a result of legal disputes in which the Company was found at fault and was unable to demonstrate its achievement of an outcome that provided economic benefit to its customers. (Tr. Vol. 8, p. 1630-3 – 1630-6.) Witness Hamm asserted that the Company has provided no substantive information regarding any of its coal ash litigation expenses that could support a finding that customers should be responsible for such fees and costs. (*Id.* at 1630-5.) He concluded that because DE Carolinas has not provided the Commission with

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"clear and detailed information" supporting its claim for recovery of litigation expenses, those expenses should be borne by stockholders and disallowed in recovery from ratepayers. (*Id.* at 1630-7.)

O'Donnell

On surrebuttal, SCEUC witness O'Donnell disagreed with witness Kerin's contention that the Commission should not compare the Company's coal ash costs to those of utilities in other states. He claimed that comparison is a necessary tool to determine the accuracy of cost estimates, and he reiterated his previous claims that the comparison he performed in this case demonstrates that DE Carolinas' coal ash expenses are grossly out of line with similar expenses of other utilities across the county. (*Id.* at 1461-3 – 1461-5.)

Discussion

The Company has met its burden—both the prima facie burden of production and the ultimate burden of persuasion—of showing that the coal ash basin closure costs it actually incurred from January 1, 2015 through December 31, 2018 are recoverable and that a return on those costs is warranted.

First, Company witness Kerin demonstrated that the Company's coal ash management historical practices (*i.e.*, pre-CCR Rule and pre-CAMA) have comported with general industry practices and then-applicable regulations. (Tr. Vol. 6, p. 1232-6 – 1232-9; p. 1232-21 – 1232-22.) Witness Kerin's testimony on this point was not credibly controverted by any intervenor.

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Second, Witness Kerin's testimony established that the costs were reasonable, prudent, and used and useful. The Commission finds witness Kerin's testimony to be incisive, credible, and entitled to substantial weight in this case.

Third, Company witness Wright's testimony established that the costs for which the Company seeks recovery were expended to comply with environmental regulatory requirements, including the CCR Rule, W.S. Lee Settlement Agreements, and/or CAMA. (Tr. Vol. 6, at 1242-19.) As witness Wright explained, prudently incurred expenditures undertaken to enable compliance with the environmental regulations are routinely recoverable in rates. (*Id.* at 1242-20 – 1242-28.)

I. <u>Intervenor and ORS Challenges to Cost Recovery</u>

Several intervenors have mounted challenges to the Company's recovery (with a return) of its already-incurred coal ash basin costs on a number of grounds. First, in a manner that departs from the just and reasonable framework the Commission has historically followed, ORS, through witnesses Wittliff and Seaman-Huynh, advocated that the Commission disallow recovery of all coal ash costs incurred to comply with North Carolina laws and regulations that impose requirements above and beyond those required by the federal CCR Rule. Second, SCEUC, through witness O'Donnell, advocated that 75% of the Company's coal ash closure costs, which he attributed to the purported heightened requirements of CAMA, should be disallowed from the Company's recovery. Third, Sierra Club, through witness Hausman, proposed that recovery of coal ash costs be conditioned upon the Company's completion of a comprehensive retirement analysis for its coal ash impoundments, the results of which would be filed with the Commission.

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Finally, ORS, through witnesses Smith and Hamm, proposed to disallow $575,000 of the Company's litigation expenses related to coal ash on the grounds that South Carolina ratepayers should not be responsible for legal costs related to the Company's alleged failure to operate its coal ash basins in accordance with state and federal laws and regulations.

As discussed further herein, none of these recommendations are appropriate, and the Commission therefore rejects intervenors' and ORS' proposed disallowances.

A. <u>ORS Approach: Disallowance of Incremental Costs Incurred to Comply with North Carolina Environmental Law and Regulations</u>

ORS proposed that DE Carolinas should not be allowed to recover costs incurred to comply with any North Carolina environmental law or regulation that imposes duties above and beyond the requirements of federal law. Practically, with respect to coal ash, ORS sought to disallow costs incurred to comply with North Carolina's CAMA which, the ORS witnesses claimed, imposes additional, costly requirements on the Company to close its coal ash impoundments – requirements, it argued, that are absent from the CCR Rule. The Commission agrees with the testimony of Company Witnesses Wright and Kerin that this proposal cannot withstand scrutiny from either a regulatory standard or policy perspective.

1. <u>ORS Failed to Apply the Appropriate Regulatory Standard</u>

Utilities may recover rates that are just and reasonable and are entitled to a presumption that their expenses are both reasonable and incurred in good faith. S.C. Code. Ann. §58-27-810; *Hamm v. South Carolina Public Service Comm'n*, 422 S.E.2d 110, 309 S.C. 282 (1992) (internal citations omitted). Accordingly, the burden is on any contesting party to produce evidence that overcomes

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this presumption as well as any evidence the utility has proffered to substantiate its position. *Util. Servs. of South Carolina, Inc. v. South Carolina Off. of Reg. Staff*, 392 S.C. 96, 109-10, 708 S.E.2d 755, 762-63 (2011). When considering a contested expense, this Commission looks to a number of factors, including whether the expense was (1) not prudently incurred;[81] (2) not known and measurable;[82] or (3) incurred as a result of facilities or other expenses that are not used and useful in the provision of electric service.[83] Here, ORS has failed to present any argument or introduce any evidence that addresses any of these three regulatory cost disallowance factors, let alone that rebuts the presumption that the costs the Company incurred to comply with applicable CCR laws and regulations were reasonable and incurred in good faith.

Instead, ORS put forward a theory that certain compliance costs should be disallowed temporarily or in perpetuity based on jurisdictional allocation principles (i.e. jurisdictional laws should not lead to increased costs to ratepayers outside of that jurisdiction). ORS offered no precedent to support adoption of its proposal, and the Commission believes that adoption of such a disallowance theory, which would not require any finding of imprudence, would be fundamentally unfair and inconsistent with prevailing law and regulatory practice.

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[81] This Commission has many times acknowledged that utilities must be allowed "to recover any costs that are 'prudently' incurred in order to earn a 'fair' return on its investment." Pub. Util. Comm'n Study, EPA Contract No. EP-W-07-064, at 5 (Mar. 31, 2011).

[82] Because rates must "reflect the *actual* rate base, net operating income, and cost of capital[,]" the South Carolina Supreme Court has found that recoverable costs "must be known and measurable within a degree of reasonable certainty." *Hamm*, 309 S.C. at 291, 422 S.E.2d at 115 (emphasis added).

[83] South Carolina, like other states, has found that recoverable rate base "represents the total investment in, or the fair value of, the used and useful property which it necessarily devotes to rendering the regulated services." *Southern Bell Tel. & Tel. Co. v. Pub. Serv. Comm'n of S.C.*, 270 S.C. 590, 600, 244 S.E.2d 278, 283 (1978).

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As Witness wright noted, no ORS witness has performed a prudency analysis of the costs DE Carolinas has incurred to retire its ash basins in compliance with CAMA, the CCR Rule, and other applicable laws and regulations. Nor has any ORS witness contended that such costs are not known and measurable or used and useful. Indeed, ORS does not appear to take issue with a single closure activity that the Company has undertaken to close its ash basins. In the absence of any such evidence, ORS has not met its "burden of production . . . to demonstrate a tenable basis for raising the specter of imprudence[,]" *Hamm*, 309 S.C. at 286, 422 S.E.2d at 112, and disallowance would thus be improper.

2. Commission Precedent and Historical Policy Favor Allowing the Company's Requested Recovery of CCR Costs

Even disregarding ORS' failure to assess the Company's coal ash-related costs under the appropriate regulatory standard, the Commission finds a host of precedential and policy reasons to reject a wholesale disallowance of these environmental compliance costs. While CAMA is a North Carolina law that only applies to DE Carolinas' North Carolina facilities, that finding is not and should not be the end of the inquiry. The Commission is not aware of any precedent or authority allowing or requiring it to disallow reasonable and prudent costs associated with a jurisdictional law or rule without a competent and compelling reason to do so. Whether the law is punitive, unreasonable, or excessive, whether it reflects bad environmental policy, and whether it conflicts with applicable federal law would be, at a minimum, factors and issues that this Commission would need to consider and resolve before disallowing costs on a purely jurisdictional basis as ORS recommends. As Company witness Kerin noted in his rebuttal testimony, consideration of those

factors is completely absent from the evidence presented by ORS. On the other hand, the Company offered ample evidence that demonstrates that CAMA's requirements are consistent with the CCR Rule as well as with the regulatory approaches taken by other states, including South Carolina, and that cost sharing between states is appropriate.

a. EPA Contemplated that States Would Pass Legislation Like CAMA to Implement and Enhance the CCR Rule at the State Level

In ORS' view, the federal CCR Rule, applied in a vacuum without state involvement, should be the baseline by which the Company's compliance costs should be measured. This Commission finds that ORS' position shows a lack of understanding regarding the interplay between the CCR Rule and state agencies. As explained by Company witness Kerin, EPA intended the CCR Rule to provide *minimum* federal standards. In this way, the CCR Rule leaves to the states to approve the method of ash basin closure, meaning that the EPA fully expected and "strongly encouraged" states to adopt at least the minimum standards, and explicitly did not preclude states from adopting additional requirements where it was deemed appropriate. In fact, when it was adopted, the EPA commented that it has no formal role in the implementation of the CCR Rule, noting that "EPA does not issue permits, nor can EPA enforce the requirements of the rule."[84] Those responsibilities were left to the states. For that reason, the EPA stated in the preamble of the CCR Rule that it "recognizes the critical role that our state partners play in the implementation and ensuring

[84] "Fact Sheet: Final Rule on Coal Combustion Residuals Generated by Electric Utilities," EPA (December 2014), https://www.epa.gov/sites/production/files/2014-12/documents/factsheet_ccrfinal_2.pdf.

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compliance with environmental regulations." 80 Fed. Reg. 21430 (Apr. 17, 2015). ORS' vision of a CCR Rule-only world directly conflicts with EPA's clear intent.

To recommend that costs associated with North Carolina regulation of coal ash be disallowed when state regulation was strongly encouraged by the CCR Rule is fundamentally unfair. ORS has singled out CAMA for the sole reason that, in its view, CAMA has resulted in incremental costs above-and-beyond what would have been required under the CCR Rule alone. By taking this position, ORS essentially argued that any cost incurred by the Company relating to its facilities that provided electricity to South Carolina customers to achieve more than minimum standards of environmental protection is not recoverable. Again, no party or intervenor has argued that CAMA is an unreasonable or otherwise improper law, and this Commission is aware of no authorizing standard or policy that would justify a disallowance based on increased cost alone.

b. CAMA's Requirements Are Consistent with the Company's Existing Obligations in South Carolina

While the South Carolina legislature, itself, has not yet addressed the issue of coal ash remediation, as witness Wright noted, South Carolina stakeholders have demonstrated a strong preference for excavation of coal ash ponds, which predates the adoption of both the CCR Rule and CAMA through settlements and negotiations with electric utilities. (Tr. Vol 6, p. 1247-9.) On September 23, 2014, for example, the Company entered into an agreement with SCDHEC, which required excavation of all coal ash units at the W.S. Lee facility, including inactive units that were not addressed by the CCR Rule. An April 23, 2015 settlement agreement between the Company and several environmental groups mandated similar excavation activity at that plant. Importantly,

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as witness Wright noted, excavation of the ash basins at W.S. Lee is not required by the CCR Rule, and it is the most prescriptive closure option that can be imposed under CAMA, which also contemplates less costly alternatives such as cap-in-place. Nevertheless, SCDHEC has approved excavation plans for these basins, and the North Carolina Utilities Commission recently approved the Company's request to recover the shared costs from North Carolina customers that were incurred to comply with the Company's excavation obligations in South Carolina. *See* Order, Docket No. E-7, Sub 1146, p. 266, 332 (June 22, 2018). The Commission thus finds that it would be inequitable to prohibit shared recovery of the costs incurred to comply with North Carolina law.

c. CAMA's Requirements Are Reasonable and Consistent with the Obligations Imposed by Other States

Moreover, ORS does not contend, nor could it, that the requirements of CAMA are unreasonable or out of line with what other states now require with respect to ash basin closure. Virginia, for example, has recently adopted state-specific ash legislation that imposes requirements that are consistent with the closure methods being executed at W.S. Lee, Riverbend, Dan River, and Buck. As witness Wright noted, Georgia, Tennessee, Florida, and Alabama have likewise adopted approaches to ash remediation in addition to the requirements of the CCR Rule. (Tr. Vol. 6, p. 1247-12 – 1247-13.)

Instead, ORS' lone justification for singling out CAMA is that it is "appropriately focused on protecting public health and safety as well as the environment in North Carolina…and these protections accrue only to the benefit of North Carolina residents and not to the benefit of South Carolina residents." (Tr. Vol. 6, p. 1342-9.) In other words, ORS is advocating that the

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Commission adopt a standard for cost recovery that makes recovery dependent on showing a local benefit. We decline to accept that standard.

d. Cost Sharing of Environmental Expenses is Appropriate and Supported by Precedent

As noted by witness Wright, were the Commission to adopt ORS' proposal, it would mark a departure from the generally accepted principle that costs may be recovered from customers who benefitted from the underlying service and fuel that led to such costs. ORS did not dispute witness Wright's contention that the coal ash located at DE Carolinas' various coal ash impoundments was produced as a result of providing electric energy by burning coal as a fuel to the Company's customers in *both* South Carolina and North Carolina. (*Id.* at 1247-6.) Accordingly, witness Wright posited, and the Commission agrees, the equities weigh in favor of shared responsibility for the costs incurred to close those impoundments between customers in both states. (*Id.*) Historically, the Company's costs of the fuel (i.e. coal) and the costs to operate and generate the electricity from coal have been shared between South Carolina and North Carolina customers. Furthermore, this Commission has historically allowed shared recovery of the Company's environmental compliance costs. As witness Wright noted in his direct and rebuttal testimony, we previously allowed the Company to recover from South Carolina customers costs associated with installing environmental compliance equipment for the Cliffside and Allen Steam Stations, both of which are located in North Carolina. *See* Docket Nos. 2011-271-E, 2009-226-E. This type of cost sharing is commonly allowed by commissions in other states where a utility's operations span multiple states and the utility property used to provide one particular state's electric service may

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be located in another state. *See, e.g.*, *Application of Southwestern Electric Power Company for Authority to Change Rates*, SOAH Docket No. 473-17-64, PUC Docket No. 46449 (Sept. 21, 2017); Order on Rehearing (Mar. 19, 2018) (allowing recovery of environmental costs associated with retro-fitting a facility located in Louisiana to be included in Texas-based utility's rate base); *In re Petition for Approval of 2016 Depreciation and Dismantlement Studies*, Approval of Proposed Depreciation Rates and Annual Dismantlement Accruals and Plant Smith Units 1 and 2 Regulatory Asset Amortization, Order No. PSC-17-0178-S-EI, FL PSC Docket No. 160170-EI (May 16, 2017) (allowing Florida utility to recover from Florida customers environmental costs associated with Georgia plant); *In re Environmental Cost Recovery Clause*, Docket No. 090007-EI (Mar. 31, 2009) (allowing Florida utility to recover from Florida customers environmental costs related to closure of ash pond at Mississippi plant).

As noted by witness Wright, were the Commission to adopt ORS' proposal, it would mark a departure from the generally accepted principle that costs may be recovered from customers who benefitted from the underlying service that led to such costs. In other words, when jurisdictions share joint assets and thus enjoy the mutual benefits that come from sharing those assets, the general rule is that cost sharing between such jurisdictions should be allowed.

Here, ORS did not dispute witness Wright's contention that the coal ash located at DE Carolinas' various coal ash impoundments was produced as a result of providing electric energy to the Company's customers in *both* South Carolina and North Carolina. (Tr. Vol 6, p. 1247-6.) Likewise, there can be no dispute that South Carolinians benefitted from the low electric rates and reliable service that DE Carolinas has provided for decades, in large part due to its coal-fired

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electric generation. Because South Carolina customers have benefitted from the Company's coal-fired electric service, they should likewise pay for the costs associated with that service, including environmental compliance costs.

The Commission also agrees with witness Wright that failure to allow cost-sharing of environmental compliance expenses between customers in South Carolina and North Carolina would have far-reaching implications for the future of electricity provision in this State. For example, if this Commission were to approve ORS' proposed sweeping disallowance, such decision could cast doubt upon the continued benefits of sharing assets and economies of scale across a multi-state structure, as North Carolina customers may be unwilling to shoulder the one-sided burden of environmental compliance for plants located in North Carolina while still contributing to the cost of environmental compliance in South Carolina. (*Id.* at 1457-22.) Adopting such a policy would likely result in jurisdictional allocation controversies between South Carolina and North Carolina if, as witness Wright posited, the North Carolina Utilities Commission took umbrage with the inequitable load carried by its citizens. (*Id.* at 1457-23.) Finally, a decision of this Commission disallowing recovery of costs on the sole basis that they were incurred to comply with another state's environmental compliance regime could negatively impact investor views on this Commission's regulatory policies, causing an increase in the Company's cost of capital and, ultimately, resulting in higher rates for customers.

For all of these reasons, the Commission finds that the equities weigh in favor of shared responsibility for the environmental compliance costs at issue here between customers in both states.

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3. ORS Witness Wittliff's Specific Proposed Disallowances Are Not Reliable or Based on Principled Analysis

Even if this Commission were to accept ORS' suggestion to disallow costs resulting from compliance with CAMA, which it does not, ORS' calculation of CAMA-only costs is not reliable or based on principled analysis. ORS Witness Wittliff, describing his disallowance calculation methodology, stated, "[i]t's not precise, but it is – it is my attempt to try to get to some sort of reasoned conclusion about what these additional costs would've been in terms of above – above the engineering and planning baseline[.]" (Tr. Vol. 6, p. 1366.) He went on to say that "[d]etermining with great precision the CCR cost increases above and beyond what the federal CCR rules require…is a bit like performing brain surgery with a pickax." (Tr. Vol. 6, p. 1336.) We find that the methodology used by witness Wittliff to derive the disallowance amounts is too speculative and too imprecise to support a disallowance of the Company's coal ash compliance costs. ORS has, therefore, not met its burden of overcoming the presumption that these costs were reasonable and incurred in good faith with regard to any of the sites for which it recommends disallowances.

ORS hired witness Wittliff, a licensed engineer with GDS Associates Inc. whose *curriculum vitae* reflects experience with coal ash management, to provide consulting services related to the coal ash issues raised by this case. The Company, through witness Kerin, provided credible testimony that the Company's closure strategies and activities are reasonable and prudent from engineering, environmental, and cost perspectives. However, according to Mr. Wittliff, his instruction was not to address the reasonableness and prudence of DE Carolinas' closure activities

and costs. In fact, witness Wittliff testified that he did not even have an opinion as to whether he agreed or disagreed with ORS' theory of disallowance. (Tr. Vol. 6, p. 1345.) His *sole* directive was to calculate a number – the incremental cost of compliance with CAMA as compared to the federal CCR Rule.[85] In light of the Company's evidence and the well-established cost recovery standards in this State, the Commission finds it fatal to ORS' proposal that Mr. Wittliff was not asked by ORS to render, at a minimum, an opinion regarding any one of the following issues: the Company's bidding process or selection of vendors for coal ash remediation; whether the Company's closure plans meet engineering and environmental protection standards; whether the Company's activities in furtherance of its closure plans have been executed properly; whether the Company has incurred unnecessary costs to accomplish closure activities; or whether less costly alternatives were available. ORS chose to avoid performing any comprehensive prudency or engineering analysis of real-world conditions in favor of proposing an unprecedented policy proposal for disallowance. The Company, therefore, presented unrebutted, compelling testimony that its requested costs were prudently and reasonably incurred to satisfy its regulatory obligations in South Carolina and North Carolina.

ORS recommended specific disallowances for costs incurred at DE Carolinas' Riverbend, Dan River, and Buck plants. We will discuss each disallowance and the Commission's further reasons for rejecting those disallowances below.

[85] "I'm not being asked to look at all the costs as to whether they're prudent and reasonable. I'm just teasing out for the Commission the differences between CAMA and CCR rules. That was – that's my sole purpose here." (Tr. Vol. 6, p. 1351.)

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Riverbend

ORS recommended a disallowance of all costs incurred by the Company to-date related to coal ash remediation at Riverbend, a total of $316,680,665. ORS' only basis for the disallowance is that Riverbend is not regulated by the CCR Rule. As discussed below, we cannot agree with that premise and, therefore, cannot conclude that a disallowance is justified on that basis alone. ORS' position requires a presumption that the Company operates in a vacuum. To the contrary, real-world conditions do not suggest that DE Carolinas would have taken a "do nothing" approach at Riverbend absent CAMA.

When the CCR Rule was initially published, it did not regulate the ash basins at Riverbend. However, ORS Witness Wittliff acknowledged that, after the CCR Rule was promulgated, its exclusion of inactive basins was challenged in federal court in 2015. (Tr. Vol. 6, p. 1340-30.) As Company witness Kerin explained, in August 2018, the United States Court of Appeals for the District of Columbia Circuit found "the Rule's legacy ponds exemption is unreasoned, arbitrary, and capricious" and vacated and remanded these provisions of the CCR Rule to EPA. As a result, EPA must affirmatively undertake regulatory changes to the CCR Rule to implement the court's judgment, including adding new provisions to the rule specifically regulating legacy impoundments.

Regardless of the application of the CCR Rule to Riverbend, ORS has not shown why DE Carolinas' Riverbend costs are not recoverable. No ORS witness presented evidence that CAMA's requirements, as applied to Riverbend, are unreasonable or that DE Carolinas' closure activities are unreasonable. Even absent CAMA, Company witness Kerin presented credible evidence that the

Company's closure of Riverbend would have been consistent with its overall ash management strategy. Witness Kerin testified that the Company is closing inactive ash storage areas at its W.S. Lee facility in Anderson County, South Carolina. Those areas, like the basins at Riverbend, were originally exempted from the CCR Rule. ORS agreed with the Company's closure activities at W.S. Lee, which DE Carolinas is undertaking pursuant to a consent agreement with SCDHEC and did not recommend a disallowance. Even though witness Wittliff testified at the hearing that he "can't account for what the – what the Company would have or would not have done" absent CAMA, (Tr. Vol. 6, p. 1355.), ORS now urges the Commission to apply different standards to the Company's ash basins, depending on whether they reside in South Carolina or North Carolina. ORS' recommended disallowance, based entirely on a double-standard, is facially arbitrary and we must reject it.

Dan River

ORS recommended that the Commission disallow $167,426,449 of costs related to Dan River, which is the amount of DE Carolinas' current request that ORS witness Wittliff identified as relating to CAMA. Specifically, Mr. Wittliff took the position that absent CAMA, the Company would have acted more slowly in closing the ash basins at that site, and thus would have saved money in doing so. The Commission finds that the evidence presented in this case does not support this conclusion.

ORS argued that Dan River is a DE Carolinas site that has been affected by the accelerated closure timeline imposed by CAMA. In his direct testimony, witness Wittliff testified that under the CCR Rule the Company would not have been required to commence closure activities until

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October 31, 2020, while closure under CAMA is required to be completed by August 1, 2019. ORS contended that DE Carolinas should be allowed to recover engineering and planning costs that would have been required for compliance with the CCR Rule, and DE Carolinas should be allowed to seek recovery after 2020 for prudently incurred construction and transportation expenditures related to CCR compliance

By his own admission, however, ORS witness Wittliff incorrectly interpreted the CCR Rule, which in turn invalidates his entire disallowance calculation. During cross examination, witness Wittliff acknowledged that the Company stopped beneficially reusing ash at Dan River in April 2018. (Tr. Vol. 6, p. 1360.) Upon stopping beneficial reuse, Mr. Wittliff admitted that the Company was required under the CCR Rule to begin closure within thirty days, or in May 2018, and not on October 31, 2020, as he originally suggested in his direct testimony.[86] Thus, witness Wittliff's proposed disallowance at Dan River is not supported by sufficient evidence in the record.

Furthermore, even if we were to accept that CAMA had a material effect on the timing of DE Carolinas' closure activities at Dan River, ORS has not provided any evidence that this accelerated timing has increased overall project costs. To the contrary, and as witness Kerin explained, the extended closure schedule proposed by ORS would actually result in higher total project costs due to increased overhead and changing market conditions, like vendor and resource availability. Witness Kerin stated that, while the Company is ahead of most utilities in the region

[86] "Q: So to the extent you based any of your calculations on a 10/31/2020 date for closure for the basins at Dan River, that would be wrong for the primary basin; and instead would be May 4, 2018, wouldn't it?

A: Yes." (Tr. Vol. 6, p. 1360.)

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in terms of its progress in achieving ash basin closure, if it delayed its closure and extended the closure schedule as proposed by ORS witness Wittliff in a world absent CAMA, it would be competing with other utilities for limited, experienced vendors and specialized resources. (Tr. Vol. 6, p. 1238-11 – 1238-12.) ORS provided no testimony or evidence to rebut witness Kerin's testimony in this regard. If we were to accept ORS' disallowance theory for Dan River, any short-term savings flowing to South Carolina customers would need to be offset in a later rate proceeding by the cost increases stemming from ORS' extended closure timeline. This approach is not in the best interest of South Carolina customers.

Buck

ORS recommended that the Commission disallow $36,544,788 at Buck for ash beneficiation, which ORS witness Wittliff testified would not be required under the CCR Rule. ORS makes this recommendation despite witness Wittliff's admission that CAMA's beneficiation requirement is not unreasonable. (Tr. Vol. 6, p. 1342-8 – 1342-9.) As with its recommended disallowance for Dan River, the recommended disallowance for Buck was calculated using witness Wittliff's admittedly-flawed weighted average cost methodology. His disallowance was not based on a single vendor contract, purchase order, or invoice and, therefore, is not related to any discrete cost that the Company is requesting to recover in this case.

The Commission agrees with Company witness Kerin that a disallowance based solely on ORS witness Wittliff's observation that it "appeared" that most of the work he saw during a half-day visit looked like beneficiation work, without reviewing a single contract, invoice, or purchase

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order, is not appropriate. Witness Wittliff's admission that his weighted average methodology is imprecise and unreliable also discredits his calculated disallowance for Buck. (Tr. Vol. 6, p. 1366.)

Furthermore, we reject ORS' contention that costs for beneficiation requirements under CAMA should not be recovered simply because they are required under a North Carolina law. As we have discussed previously, neither ORS, nor any other party, has suggested that the beneficiation requirements under CAMA are unreasonable, nor has any party alleged that any of the Company's costs to comply with those requirements are unreasonable or imprudent. Thus, the Company has presented unrebutted evidence that these environmental compliance costs are reasonable and prudent and that they are appropriate for recovery.

B. <u>SCEUC Approach: Disallowance of Costs Incurred to Comply with CAMA</u>

The approach proposed by SCEUC—that DE Carolinas should not recover any costs under CAMA that exceed CCR Rule compliance costs—is nearly identical to that of ORS in its impact on the Company's proposed cost recovery, even if SCEUC's rationale for the proposed disallowance differs from that of ORS. According to Witness O'Donnell, these CAMA-specific costs should be disallowed because, in Witness O'Donnell's opinion, the Company's actions precipitated the passage of CAMA, and its restrictive provisions have caused the Company to incur coal ash expenses far beyond that of utilities in other states. (Tr. Vol 7, p. 1459-38 – 1459-39.) More specifically, in Witness O'Donnell's view, CAMA sets a more aggressive coal ash basin closure schedule for certain of the Company's basins than would have been set under the CCR Rule alone, and the more aggressive schedule leads, again in its view, to higher cost. (*Id.*)

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Witness O'Donnell proposed a 75% disallowance of the Company's coal ash compliance costs, but he does so predicated on what he terms a "financial analysis" that compares the size of the Company's coal ash ARO with the AROs established by other utilities to capture their coal ash basin closure expense. However, Witness O'Donnell's analysis is fatally flawed, as demonstrated by the evidence in this case. In particular, Witness O'Donnell's analysis is devoid of any attempt to control for the differences utilities have in determining their closure cost estimates, the differences in the timing of their estimates, or even the physical differences in their coal ash ponds. For example, in response to cross-examination questions by the Company, Witness O'Donnell admitted that he did not research the amounts and types of coal ash in the basins of each company in his financial analysis. (Tr. Vol. 7, p. 1477-1478 ("Q: So, with regard to the utilities reflected on Table 8 of your direct testimony, did you do any research as to the amounts and types of CCRs in the basins for each company? A: No.").) Indeed, Witness O'Donnell admitted that he was not aware that DE Florida does not have *any* wet coal ash basins (Tr. Vol. 7, p. 1474-1475), yet he included DE Florida in the list of 20 companies included in Table 8 as grounds to support his position that DE Carolinas' coal ash spend is significantly higher than its peers. Likewise, Witness O'Donnell admitted that he did not research any of the following factors when preparing his Table 8:

- The type of environmental controls, if any, installed on the plants in the fleets of any company listed in Table 8; (*id.* at 1479.)
- Whether the plants of any company listed in Table 8 utilize dry ash handling; (*id.*)
- Whether the CCR generated from plants of any company listed in Table 8 are being sold for beneficial use; (*id.* at 1479-1480.)

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- Whether any company listed in Table 8 previously closed some of its basins prior to establishing an ARO; (*id.* at 1480.)

- The soil and geologic conditions in and around the ash basins of any company listed in Table 8; (*id.*)

- The state-specific laws, regulations, or rules applicable to the ash basins of any company listed in Table 8. (*Id.*)

Finally, as Witness Wright noted, the ARO numbers in Witness O'Donnell's analysis do not reflect recent legislation, such as a Virginia law that will significantly increase Dominion Energy's coal ash-related costs, and recent policy decisions of the utilities themselves, such as Georgia Power's decision to excavate an additional 29 million tons of ash at various of its coal ash impoundments. (Tr. Vol. 6, p. 1247-34 – 1247-35.) Witness Wright indicated, and the Commission agrees, that Witness O'Donnell's failure to take these factors into consideration renders his "analysis" irrelevant – it tells one nothing about the true apples-to-apples comparison of the utilities' AROs. In any event, Witness O'Donnell has failed to identify a specific level of costs that is imprudent, unreasonable, or not used and useful, and instead advocates for a blanket 75% cost reduction. As Witness Wright pointed out, this is an inappropriate mechanism for adopting a cost disallowance. (*Id.* at 1247-37.) The Commission agrees and rejects SCEUC's argument.

Further, the Commission does not accept Witness O'Donnell's opinion that the Company "caused" CAMA, nor does it accept that notion as a proper basis for denying reasonable and prudent costs. Witness O'Donnell presented no evidence of such causation, while Witness Wright pointed to the history of the CCR regulation, which strongly encouraged the states to adopt at least the federal minimum criteria in their solid waste management plans, as evidence that the North

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Carolina General Assembly and/or the NCDEQ would likely have taken steps to adopt coal ash regulations shortly after the CCR Rule was finalized in 2015. (*Id.* at 1247-17.) Finally, even if DE Carolinas or one of its sister companies did "cause CAMA" as these witnesses allege, a premise the Commission does not accept, any such causation is not a legal basis for disallowing otherwise recoverable costs.

C. <u>SCEUC Approach: Coal Ash Accounting Recommendation</u>

Witness O'Donnell also argued that the Commission should disallow recovery of the Company's coal ash expenses because, in his view, the Company should have established an ARO for ash pond closure expenses as early as the 1980s. (Tr. Vol. 7, p. 1459-43.) During the hearing, when pressed as to whether the Company should have been collecting money from customers when the first EPRI manual was released in 1981, Mr. O'Donnell testified that "at least you could've established the ARO at that point in time [around 1981]." (Tr. Vol. 7, p. 1464.) According to Witness O'Donnell, this position is consistent with the opinion North Carolina Utilities Commissioner Clodfelter adopted in his dissent from the majority in DE Carolinas' recent North Carolina rate case, Docket No. E-7, Sub 1146, and would equate to a $46.7 million disallowance in this case. (*Id.* at 1459-44.) The Commission declines to adopt this reasoning.

As Company Witness Doss explained, ARO accounting for coal ash closure expenses would not have been permissible prior to 2014 under GAAP and the FERC CFR. SFAS 143 requires establishment of an ARO for the expected cost of retiring tangible long-lived assets for which a legal retirement obligation exists. (Tr. Vol. 4, p. 1106-4.) Because, as Witness Doss explained, ASC 410-20-20 defines "legal obligation" as an "obligation that a party is required to

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settle as a result of an *existing or* enacted law, statute, ordinance or written or oral contract[,]" (*Id.* at 1106-4 – 1106-5.), the Commission agrees that it would have been improper for the Company to establish an ash pond retirement ARO before execution of the W.S. Lee Consent Agreement in 2014, or the passage of CAMA or the CCR Rule in 2014 and 2015, respectively.

Even setting aside the legal impropriety of establishing a closure ARO in the 1980s, Witness O'Donnell provided no calculations or evidence as to what amount the Company should have requested to begin recovering in 1981. Neither does he opine as to what type of remediation the Company should have planned for, nor could he, because the requirements that the Company must comply with today were entirely unknown in the 1980s. As a practical matter, as Witness Wright noted, it is impossible to identify a date certain on which the Company supposedly should have begun collecting ratepayer dollars in reserve for remediation and/or closure activities in the absence of any law or regulation requiring closure of ash ponds. (Tr. Vol. 6, p. 1247-33.) This Commission would not have allowed recovery of uncertain expenses because they were not "known and measurable" at that premature date. *See Hamm*, 309 S.C. at 291, 422 S.E.2d at 115 ("adjustments for known and measurable changes in expenses . . . must be known and measurable within a reasonable degree of certainty."). Given that the federal and state regulations were not promulgated until decades later, we agree that absent a "pretty advanced time machine" there was no way for the Company to calculate and submit a cost recovery request to this Commission almost four decades ago for costs that could not even remotely be known or measurable for decades to come. (Tr. Vol. 7, p. 1465.) Witness O'Donnell's live testimony recognized the impracticality of his proposed approach where potential costs are so speculative and uncertain. When asked whether

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the Company should establish an ARO to begin collecting funds for compliance with a potential carbon tax that may be passed by the legislature in the future, he responded "No." (Tr. Vol. 7, p. 1467.) While Witness O'Donnell attempted to distinguish between the potential for a carbon tax today, the Commission finds that both contexts presented a high degree of uncertainty and his proposal would have been inappropriate in 1981 just as it is now. Like the majority of the North Carolina Utilities Commission, we instead find that "[e]fforts to identify what [DE Carolinas] should have done prior to EPA CCR and CAMA, when it should have done so and what the costs should have been even with the benefit of 20/20 hindsight pose insurmountable obstacles. Without statutory or regulatory standards and guidelines to follow, no one can say what the prudent course would have been[.]" Order, Docket No. E-7, Sub 1146, p. 263 (June 22, 2018).

For all of these reasons, and based on the requirements of GAAP and the FERC CFR with which the Company complied, we find the Company's ARO accounting for coal ash costs to be appropriate.

D. <u>Sierra Club Approach: Conditional Recovery</u>

The Sierra Club argued that any recovery of coal ash expenses should be conditioned upon the Company's completion of a comprehensive retirement analysis to be filed with the Commission. (Tr. Vol. 7, p. 1522-5.) As a threshold matter, the Commission notes that Sierra Club has not offered any evidence to suggest that the Company's coal ash remediation costs are imprudent, unknown or unmeasurable, or not used and useful. Moreover, Sierra Club failed to identify any authority to support its proposed conditional recovery structure, and the Commission is likewise unaware of any such precedent. As Witness Wright noted, the conditional recovery

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proposed by Sierra Club would cast a "shadow of delay" on future requests for recovery that would likely elicit a negative response from the investment community. (Tr. Vol. 6, p. 1247-38.) Perhaps, most importantly, Sierra Club's proposal is not practical. It would require the Commission to defer recovery of coal ash expenses that are currently being incurred to comply with legal requirements until an uncertain date in the future, but it proposes no mechanism or date certain by which the Commission should approve such expenses. Such delay would violate a fundamental tenet of this State's regulatory policy: that prudently incurred costs to comply with laws and regulations are recoverable within a temporal proximity to the date they were incurred. In the absence of any legal support for its position, the Commission rejects Sierra Club's proposal.

EVIDENCE FOR FINDINGS AND CONCLUSIONS NOS. 56-57

The evidence supporting these findings and conclusions is contained in the verified Application, the testimony and exhibits of the witnesses, and the entire record in this proceeding.

Under South Carolina law, the Commission is vested with the authority to fix just and reasonable utility rates. S.C. Code Ann. §§ 58-3-140, 58-27-810. Under this statute, the Commission has traditionally adhered to the following principles:

> (a) the revenue-requirement or financial-need objective, which takes the form of a fair-return standard with respect to private utility companies; (b) the fair-cost-apportionment objective, which invokes the principle that the burden of meeting total revenue requirements must be distributed fairly among the beneficiaries of the service; and (c) the optimum-use or customer-rationing objective, under which the rates are designed to discourage the wasteful use of public utility services while promoting all use that is economically justified in view of the relationships between cost incurred and benefits received.

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Bonbright, *Principles of Public Utility Rates*, 292 (1961). These criteria have been used by the Commission in previous cases and are again utilized here. *See, e.g.* Order No. 2013-661, at 26-27; Order No. 2005-2, at 105; and Order No. 2003-38, at 76.

Once a utility's revenue requirement has been determined, a rate structure must be developed that yields that level of revenues. The basic objective of a rate structure is to enable a company to generate its revenue requirement without unduly burdening one class of customers to the benefit of another. Proper rate design results in revenues where each customer, and each customer class, pays, as close as practicable, the cost of providing service to them.

The Commission approves the Company's proposed revenue increase of approximately $225,214,000 annually, as set forth in Hearing Ex. 10 (Smith Rebuttal Exhibit 1).[87] The approved revenue increase is based on the following amounts of test year pro forma operating revenues, operating revenue deductions, and original cost rate base (under present rates), which are to be used as the basis for setting rates in this proceeding: $1,887,350,000 of operating revenues, $1,458,457,000 of operating revenue deductions, and $5,624,949,000 of original cost rate base.

DE Carolinas' continued operation as a safe, adequate, and reliable source of electric service for its customers is vitally important to the Company's individual customers, as well as to the communities and businesses served by the Company. DE Carolinas presented credible and substantial evidence of its need for increased capital investment to, among other things, maintain and increase the reliability of its system and comply with environmental requirements. Based on

[87] The base revenue increase does not include the impact of EDIT Rider year 1 reduction of ($61,888,000) as calculated in Smith Rebuttal Ex. 2, page 2. (*See* Hearing Ex. 10.)

all of the evidence, the Commission finds and concludes that the revenue requirement, rate design, and the rates that will result from this Order strike the appropriate balance between the interests of DE Carolinas' customers in receiving safe, reliable, and efficient electric service at the lowest possible rates, and the interests of DE Carolinas in maintaining the Company's financial strength at a level that enables the Company to attract sufficient capital. As a result, the Commission concludes that the revenue requirement and the rates that will result from that revenue requirement established as a result of this Order are just and reasonable.

IT IS THEREFORE ORDERED THAT:

1. DE Carolinas shall be allowed to increase its rates and charges effective for service rendered as of June 1, 2019 so as to produce an increase in annual revenues from base rates for its South Carolina retail operations of $225,214,000 based upon the adjusted test year level of operations;

2. The calculation of the base rates required to generate a $225,214,000 revenue increase shall be established based on a 10.50% ROE, 4.53% cost of debt, and capital structure of 53% equity and 47% debt;

3. The accounting and pro forma adjustments in Hearing Ex. 10 (Smith Rebuttal Ex. 1) are adopted;

4. The Company's proposed EDIT Rider is approved;

5. The appropriate annual revenue requirement for the first year shall be reduced by the EDIT Rider decrement of ($61,888,000);

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6. The Company shall file the EDIT Rider amounts, along with the spread to the classes and derivation of the rate, for each subsequent year with the Commission in this docket by March 31, for rider rates effective June 1;

7. The rate design, rate schedules, and revenue allocation proposed by the Company in its Application, and in its testimony and exhibits filed in this proceeding, as modified by the changes to the Basic Facilities Charges agreed upon in the Company's March 20, 2019 letter, are approved;

8. The modifications to DE Carolinas' Service Regulations, as set forth in the testimony of Company witness Pirro, are approved;

9. The Company shall modify its Basic Facilities Charges in accordance with its letter filed in this docket on March 20, 2019;

10. The modifications of DE Carolinas' outdoor lighting fees and schedules, as set forth in the testimony of Company witnesses Cowling and Pirro, are approved;

11. DE Carolinas shall recover the actual CCR compliance costs relating to coal ash basin closure it has incurred during the period from January 1, 2015 through December 31, 2018 in rates, amortized over a five-year period, and the Company shall earn a return on the unamortized balance at the overall rate of return approved in this case through inclusion in rate base;

12. DE Carolinas' request to defer CCR compliance spend related to coal ash basin closure beginning January 1, 2019, the depreciation and return on CCR compliance investments related to continued plant operations placed in service on or after January 1, 2019, and a return on both deferred balances at the overall rate of return approved in this case is approved;

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13. DE Carolinas shall recover its deferred costs relating to the Carolinas West Primary Distribution Control Center, amortized over three years, and the Company shall earn a return on the unamortized balance at the overall rate of return approved in this case through inclusion in rate base;

14. DE Carolinas shall recover its deferred costs relating to Lee CC, amortized over three years, and the Company shall earn a return on the unamortized balance at the overall rate of return approved in this case through inclusion in rate base;

15. DE Carolinas shall recover its deferred costs relating to the implementation of AMI meters, amortized over three years, and the Company shall earn a return on the unamortized balance at the overall rate of return approved in this case through inclusion in rate base;

16. DE Carolinas shall recover its deferred costs relating to grid reliability, resiliency, and modernization work, amortized over two years, and the Company shall earn a return on the unamortized balance at the overall rate of return approved in this case through inclusion in rate base;

17. In accordance with the Stipulation approved by the Commission in Order No. 2019-26H in this docket, the Company shall defer into a regulatory asset account all GIP-related costs until the underlying costs and proposed recovery may be considered for recovery in the Company's next general rate proceeding;

18. DE Carolinas shall recover the incremental rate case expenses incurred for this docket over a five-year period, and the Company shall earn a return on the unamortized balance at the overall rate of return approved in this case through inclusion in rate base;

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19. DE Carolinas shall recover its deferred costs relating to Customer Connect, amortized over three years, and the Company shall earn a return on the unamortized balance at the overall rate of return approved in this case through inclusion in rate base;

20. DE Carolinas shall recover its forecasted Customer Connect O&M costs and is required to report to the Commission the actual Customer Connect O&M costs incurred on an annual basis;

21. DE Carolinas' request to adjust depreciation and amortization expenses to establish a reserve for end-of-life nuclear expenses is approved;

22. DE Carolinas' request to recover its project development costs relating to the Lee Nuclear Project is approved, with the exception of costs relating to the Visitors Center, as described herein;

23. DE Carolinas shall recover the balance of Lee Nuclear Project development costs, adjusted to remove non-depreciable land costs, over a 12-year period, and the Company shall earn a return on the unamortized balance at the overall rate of return approved in this case through inclusion in rate base;

24. The approved base fuel and fuel-related cost factors (excluding gross receipts tax and regulatory fees), by customer class, are as follows: an increment of 2.1094 cents per kWh for the Residential class, an increment of 2.1004 cents per kWh for the General Service/Lighting class, and an increment of 2.0721 cents per kWh for the Industrial class;

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25. The depreciation study, filed by the Company as Doss Exhibit 2 (part of composite Hearing Ex. 22), and depreciation rates proposed by DE Carolinas in this case, filed by the Company as Doss Exhibit 3 (part of composite Hearing Ex. 22), are approved;

26. The Company's request to adopt the approved depreciation rates effective August 1, 2018, and defer into a regulatory asset account the incremental depreciation expense resulting from the new depreciation rates, to be amortized over three years with inclusion of the unamortized balance of the regulatory asset in rate base, is approved;

27. DE Carolinas' request to commercialize the Prepaid Advantage program, remove it from pilot status, remove the customer cap, and make the program available to customers across its entire jurisdiction is approved;

28. DE Carolinas' proposal to pay convenience fees collected by third-party vendors for payments made by credit card, debit cards, and ACH payments on behalf of its residential customers and to recover the costs of these convenience fees as part of the Company's cost of service is approved and the Commission requires the Company to report the actual convenience fees incurred on an annual basis;

29. SC NAACP, et al.'s proposal that DE Carolinas should be required to provide detailed monthly residential and low-income customer usage data by zip code in a format accessible to the public is denied;

30. Sierra Club's proposal that the Commission require the Company to undertake comprehensive economic and retirement analyses prior to making capital investments at its coal-fired plants is denied; and

31. This Order shall remain in full force and effect until further Order of the Commission.

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BY ORDER OF THE COMMISSION:

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Comer H. Randall, Chairman

ATTEST:

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Justin T. Williams, Vice Chairman

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