

2018 Municipal
Attorneys Winter
Conference
E-Materials

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Municipal Attorneys Winter Conference

March 22 – 23, 2018

Chapel Hill, NC

Thursday, March 22

- 1:00** Legal and Law Enforcement Perspectives on Public Demonstrations
Chief Christopher C. Blue, Chapel Hill
Mark Newbold, City of Charlotte
- 2:00** Break
- 2:15** Legislative Update, Updates on the Duke Rate Cases, and Aid for Municipal Cases at the Appellate Level
Rose Williams, NC League of Municipalities
Erin Wynia, NC League, of Municipalities
Gregg Schwitzgebel, NC League of Municipalities
Sarah Collins, NC League of Municipalities
Deborah Ross, Smith Moore Leathwood, LLP
Karen Kemerait, Smith Moore Leathwood, LLP
- 3:15** Break
- 3:30** Sexual Harassment: Legal and Ethical Issues (includes one hour of ethics)
Diane Juffras, UNC School of Government
Chris McLaughlin, UNC School of Government
Ann Smith, Jackson Lewis Law Firm
Robin Davis, Jackson Lewis Law Firm
- 5:00** Cocktail Reception

Friday, March 23

- 8:00** Breakfast
- 9:00** Elections Update
Bob Joyce, UNC School of Government
- 10:00** Break
- 10:15** Tools for Blighted Areas; Code Enforcement
Tyler Mulligan, UNC School of Government
T.C. Morphis, Jr., The Brough Law Firm
Nicolette Fulton, City of Raleigh
- 11:45** Business Meeting
- 12:00** Adjourn

**Legal and Law Enforcement
Perspectives on
Public Demonstrations
Materials**

Lessons Learned from Charlottesville, Virginia.

Mark H. Newbold, Deputy City Attorney – Police

Charlotte-Mecklenburg Police Department

Police are heavily schooled in the Fourth Amendment’s reasonableness standard. They live and breathe with suspicious behavior. Most are quite adept at either building or dispelling suspicious behavior relying on the reasonableness standard found within the Fourth Amendment.

The First Amendment, unlike the Fourth Amendment’s reasonableness standard, does not fit neatly into a behavioral tiered model. Instead, the government has limited power to restrict the content of someone’s speech. ⁱ “Any restriction on expressive activity based on its content would completely undercut the ‘profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.’” Police Dep’t. of Chicago v. Mosley, 408 U.S. 92, 95-96, 92 S. Ct. 2286, 2290, 33 L. Ed. 2d 212, 216-217, (1972). Since the First Amendment prohibits governmental restrictions on the content of the message, it necessarily restricts the government under the Equal Protection Clause from granting one group access to public space because its message is acceptable but then denies another group access where it finds its message objectionable.

Most cities and towns have some process in place for reviewing requests by various groups to use city property. No doubt its employees have received the rudimentary training concerning “time, place and manner” restrictions along with then general admonishment that the government cannot regulate the content of speech. Unlike government employees tasked with reviewing the applications to use of public property, the police are shouldered with the chore of maintaining the public peace. In many circumstances maintaining public order is easily achieved by shutting down some streets and providing demonstrators sufficient space to air their concerns without regard to content. But the task shifts from resource management to one of crime prevention when the group presents a message that preaches hate and bigotry. There

is no better example of how quickly a situation can shift from resource management to crime prevention than the White Supremacist march held in Charlottesville last year. Initially the White Supremacists sought a permit to protest the removal of a statute of Robert E. Lee in Emancipation Park (formerly “Lee Park”). However concerns raised by the public to the city resulted in the city revoking their permit at Emancipation Park and moving the rally to another park. The leader of the rally, Jason Kessler, filed for injunctive relief asserting that revoking his permit and moving his rally to another location was based on the content of his message and therefore in violation of the First Amendment to the U. S. Constitution. ⁱⁱ

The facts that lead up to the filing of the TRO are as follows:

- On May 30, 2017, Kessler applied for a permit to conduct a protest (Unite the Right) against the city’s decision to re-name Lee Park to Emancipation Park and to remove a statute of Robert E. Lee from Lee Park.
- On June 13, 2017, the City granted Kessler a permit to conduct a demonstration at the park on August 12, 2017.
- Several other groups who opposed Kessler’s white supremacist message filed for and received from the city permits to conduct counter protests in other public areas close to Emancipation Park.
- On August 7, 2017, citing “safety concerns”, the city notified the Plaintiff they were revoking his permit and were requiring the demonstration be held at McIntire Park which is a mile away from Emancipation Park.
- City took no action to modify permits of the counter-protestors.
- On August 11, 2017, plaintiff filed a Motion for a Temporary Restraining Order and Preliminary Injunctive Relief to block the city’s decision to revoke his permit and move his rally to another location.
- On August 11, 2017, the Court granted the Motion for Injunctive Relief.
- On August 12, 2017, the plaintiff held his Unite the Right rally at Emancipation Park. ⁱⁱⁱ

The Plaintiff posited three questions to the court in its Motion for Temporary Restraining Order and Permanent Injunction. First, was the City Council’s decision to revoke the permit based on the content of the perceived message of the applicant and his followers? Second, did the government fail to meet its burden when seeking to regulate the “place” of speech which in this case was intricately related to the content of the speech? Third, can the government move

a group of protestors to another area because the government as a body opposes that group's message?

In support of its TRO, the plaintiff represented by the ACLU, noted that the government can place reasonable time place and manner restrictions on expression so long as the restrictions are: made without reference to the message; narrowly tailored to serve a significant government interest; and the restrictions leave open ample alternative channels for the group to channel their message.

“Expression, whether oral or written or symbolized by conduct, is subject to reasonable time, place, or manner restrictions. We have often noted that restrictions of this kind are valid provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information. “

Clark v. Community for Creative Non-Violence, 468 U.S. 288, 293-294, 104 S. Ct. 3065, 3069, 82 L. Ed. 2d 221, 227. (1984).

However, according to the plaintiff the decision by the city to revoke the initial permit and move the demonstration to another park was nothing more than viewpoint discrimination due to the unpopular message exposed by a group of white supremacists. According to the plaintiff, the city only revoked the permit after numerous constituents went to city officials asking them to revoke their permit due to the group's hateful and racist rhetoric. The city's response that it had a compelling public safety concern was simply a subterfuge to avoid unpleasant political consequences for failing to deny the group a public forum for its unpopular and hateful message.^{iv}

Moreover, the Plaintiff argued that the City's decision to move the protestors to another park was not “narrowly tailored” to serve a significant governmental interest. Here the message that the protestors wanted to express was inextricably linked to the park itself: They opposed the City's decision to change the name of the park from “Lee Park” to “Emancipation Park;” and they opposed the removal of the confederate statute from the park. The significant governmental interest proffered by the city was “holding a large rally at Emancipation Park poses an unacceptable danger to public order and safety.”^v Plaintiff asserted that the City's

decision to move the protest to another park was based only on a generalized, unspecified concern for public safety. As such, it could not, according to the plaintiff, objectively establish that there was indeed a concern for public safety if the march was allowed to proceed at Emancipation Park. Plaintiff noted that an unsupported hunch does not rise to a level of a significant governmental interest sufficient to move the protest a mile away. Without a significant governmental interest in place, the decision to move the protest cannot be considered to be narrowly tailored to support a significant governmental interest.^{vi} “Unfounded speculation about potential violence cannot justify an insufficiently tailored restriction on expression.” Black Tea Soc’y v City of Boston, 378 F.3d 8,17 (1st Cir.2004).

The City noted that its concern for maintaining public safety and order was based in part upon the potential of numerous angry counterdemonstrators. The plaintiff disagreed and asserted that the counterdemonstrators were nothing more than hecklers. According to the plaintiff freedom of expression and speech may not be restricted simply because demonstrators will be met with opposition to their highly controversial and racially charged message.^{vii} Plaintiff recognized that the government can restrict expressive activity if there is a reasonable belief that violence is imminent. However, Plaintiff asserted that there was no specific evidence that his group would be violent and stated that he “absolutely intends to have a peaceful rally.”^{viii} Finally, the Plaintiff argued that the revocation of his permit was a prior restraint on plaintiff’s speech and violated his right to due process. Relying on Carrol v Princess Anne, 393 U. S. 175,181 (1968), the Plaintiff noted that it was denied any opportunity to challenge the revocation of the permit because of a general concern for public safety.^{ix}

The Court started and ended its analysis by finding that the Plaintiff’s had a likelihood of success on the merits of its case because the City’s decision to revoke the permit of white supremacists was based on the content of their speech. The Court noted that “[c]ontent based restrictions - those that target speech based on its content- ‘are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.’” The court further noted:

Government regulation of speech is content based if a [restriction] applies to particular speech because of the topic discussed or the idea or message expressed." Content-based restrictions are not limited to those that "'on [their] face' draw[] distinctions based on the message a speaker conveys." Instead, they include those that "cannot be 'justified without reference to the content of the regulated speech,' or that were adopted by the government 'because of disagreement with the message [the speech] conveys.'" quoting Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989))."^x

Here the Court noted the disparity in treatment between the white supremacists and the counter protestors. By revoking the white supremacists permit but keeping the counter protestors' permits in place suggested to the court that the City's decision to revoke was firmly rooted in the content of the white supremacist's speech. The Court also took judicial notice of social media posts by city leaders wherein they opposed Kessler's view point. As such, the court found a likelihood of success on the plaintiff's claim that the City relied on the content of his message in deciding to revoke his permit.^{xi}

The Court then looked at the City's purported compelling interest for the revocation. It noted that the City's claim that counter protestors numbering in the thousands would be attending the rally was merely speculative. Consequently, without objective evidence of a mass counter demonstration the city could not establish that moving the rally was essential to maintaining public safety. Moreover, the court reasoned that moving the rally was counter intuitive to public safety: the City must now provide additional security at two locations rather than just one thereby further straining emergency resources. Similarly, there was a reasonable likelihood that the counter protestors would simply march to the new location which again could further deplete emergency services as the city would have to secure a route to the new location.^{xii} The court concluded:

"In sum, the City's eleventh-hour decision forecloses the City from demonstrating that its decision to revoke Kessler's permit and move his demonstration to another park was narrowly tailored to serve compelling state interests. Stated differently, the court finds that the scant record and the undisputed circumstantial evidence weigh substantially against a finding that the relocation of the event furthers a compelling interest and is narrowly tailored to achieve that interest. Accordingly, the court

concludes that Kessler has demonstrated a likelihood of success on the merits of his First Amendment claim.”

Unfortunately, the court’s finding that the city’s compelling interest of public safety was merely speculative proved to be wrong. By noon August 17, 2018, Governor Terry McAuliffe declared a state of emergency due to civil disorder between the rally members and counter protestors. Shortly thereafter a car plowed into a crowd of counter- protestors killing one person and injuring numerous others.^{xiii}

Could the court have followed a different precedential path? Could the city have offered a different security plan? Hindsight being 20-20 the answer is the typical legal response of “maybe”. Perhaps the court could have followed a different precedential path that may have allowed the city to place some restrictions on the rally. First, security based time, place and manner restrictions are not prior restraints on expression.

The Supreme Court has explicitly rejected attempts to analyze security-based time-place-manner restrictions as prior restraints, see, e.g., Hill v. Colorado, 530 U.S. 703, 733-34, 147 L. Ed. 2d 597, 120 S. Ct. 2480 (2000); Schenck v. Pro-Choice Network, 519 U.S. 357, 374 n.6, 117 S. Ct. 855, 137 L. Ed. 2d 1 (1997); Madsen v. Women's Health Ctr., Inc., 512 U.S. 753, 763 n.2, 129 L. Ed. 2d 593, 114 S. Ct. 2516 (1994), and those cases are controlling here. If content-neutral prohibitions on speech at certain places were deemed prior restraints, the intermediate standard of review prescribed in the time-place-manner jurisprudence would be eviscerated.

Bl(a)ck Tea Soc'y v. City of Boston, 378 F.3d 8, 12, (2004)

[T]he governmental interests ... ensuring public safety and order, promoting the free flow of traffic on streets and sidewalks, protecting property rights, ... also underlie the injunction here, and in combination are certainly significant enough to justify an appropriately tailored injunction to secure unimpeded physical access to the clinics.

Schenck v. Pro-Choice Network of W. N.Y., 519 U.S. 357, 376, 117 S. Ct. 855, 866, 137 L. Ed. 2d 1, 21, (1997).

Second, restrictions on pedestrian demonstrators have been upheld based on past behavior associated with specific group. Consequently, a court need not require that the

government have specific intelligence that harm will occur. Instead, it can look at the “track record” of a particular group as a reliable predictor of future behavior.

Although restrictions on pedestrian demonstrators have been held to meet the "no broader than necessary" standard in other cases, those cases involved specific evidence of past problems caused by pedestrian demonstrators, such as violence, the disruption of medical services or severe impediments to pedestrian traffic. See Schenck v. Pro-Choice Network of W.N.Y., 519 U.S. 357, 362-64, 117 S. Ct. 855, 137 L. Ed. 2d 1 (1997); Madsen, 512 U.S. at 758-59; Frantz v. Gress, 359 F. App'x 301, 302-04 (3d Cir. 2009).

Ross v. Early, 899 F. Supp. 2d 415, 423-424, (2012).

Here, the City could have opted to place limitations in the permit or have an ordinance in place that limits items that any demonstrator or counterdemonstrator could bring into the park or carry on the street that could easily be converted into a weapon. Similarly, restrictions on the exact location in the park where groups could protest and interact reinforced with traditional physical barriers would allow expression between the groups but limit physical contact. Clearly, an unruly group of protestors may opt to ignore barriers, but that allows police to shift their focus to the unruly group and away from the lawful protestors. Finally, in North Carolina police can rely on the imminent threat of violence as opposed to waiting until violence actually occurs to initiate a lawful dispersal order. In North Carolina “any law-enforcement officer or public official responsible for keeping the peace may issue a command to disperse ... if [s]he believes that a riot or disorderly conduct by an assemblage of three or more persons is occurring.” N. C. Gen. Stat. §14-288.5. Disorderly conduct is a public disturbance intentionally caused by “any person who ... (1) engages in fighting or other violent conduct creating the threat of imminent fighting or other violence. N.C. Gen. Stat. §14-288.4. (Emphasis supplied). Although it is unlikely that a dispersal order will be followed by everyone it is an excellent intelligence tool to separate the troublemakers from the innocent bystanders as the troublemakers will in some instances refuse to move.

If there are lessons to be learned from the Charlottesville incident it would be the following: 1.) Whenever a group like Kessler and Company comes to your town you should already have in place mutual aid agreements with surrounding law enforcement agencies; 2.)

There should be a direct line of communication between city management and the governor in case a state of emergency needs to be declared; 3.) Consider adopting an ordinance that allows the mayor or manager to declare a local declaration of emergency as provided by N.C. Gen. Stat. § 166A-19.22; and 4.) maintain a civil emergency unit fully equipped and staged close by in the event of an emergency.

In today's world any town or city no matter its size can find itself the focus of a large and highly charged demonstration that has the potential to flash over to a civil disturbance. Overcoming the "it can't happen here" mindset is the first step in protecting freedom of expression while ensuring that public safety and order is maintained.

ⁱ "[T]he First Amendment protects a significant amount of verbal criticism and challenge directed at police officers. "Speech is often provocative and challenging. . . . [But it] is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." Houston v. Hill, 482 U.S. 451, 461, 107 S. Ct. 2502, 2509, 96 L. Ed. 2d 398, 412, (1987)

ⁱⁱ See Memorandum in Support of TRO, 3:17-cv-00056-GEC Document 6 Filed 08/11/17 Page 1 of 13 Page id#: 51

ⁱⁱⁱ See Washington Post Article: Charlottesville Timeline:

https://www.washingtonpost.com/graphics/2017/local/charlottesville-timeline/?utm_term=.8a7c8c04062f

^{iv} Ibid., Memorandum Opinion in Support of TRO

^v Ibid

^{vi} See Memorandum Opinion Kessler v City of Charlottesville, 3:17-cv-00056-GEC Document 21 Filed 08/11/17 Page 1 of 6 Page id#: 172

^{vii} Memorandum Opinion in Support of TRO

^{viii} Ibid

^{ix} Ibid

^x See Memorandum Opinion Kessler v City of Charlottesville, 3:17-cv-00056-GEC Document 21 Filed 08/11/17 Page 1 of 6 Page id#: 172

^{xi} Ibid.

^{xii} Ibid

^{xiii} Ibid.

**Legislative Update, Updates on
the Duke Rate Cases, and Aid
for Municipal Cases at the
Appellate Level
Materials**



**Rose Vaughn Williams, Associate
Executive Director of Government and
Public Affairs**

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Rose oversees and manages the development and execution of the League’s legislative affairs, advocacy strategies, and communication campaigns and outreach, as well as serves a member of the senior leadership team. Prior to joining the League in January 2015, Rose served as Legislative Counsel to the N.C. Department of Insurance, where her work was selected in the top 50 of “Most Influential Lobbyists in the N.C. General Assembly” by the N.C. Center for Public Policy Research survey of legislators, lobbyists and state capitol press corps. She formerly served as a District Court Judge, practiced law in private practice for eleven years as a partner with Dees Smith, Powell, Dees & Jones in Goldsboro, and she served as clerk to Justice John Webb on the N.C. Supreme Court. Rose earned both her B.S. and J.D. from The University of North Carolina – Chapel Hill.



Sarah Collins, Legislative Counsel

scollins@nclm.org | (919) 715-2919

Sarah provides legal counsel, interpretation and lobbying and regulatory advocacy associated with legislation and regulatory proposals that impacts the League and its members. In this role, Sarah has focused on advocating for issues related to water resources, water quality, investor-owned electrical utility service, public safety, and local government retirement. Sarah joined the League in January of 2014. She also serves as lead staff to the Regulatory Action Committee and is the League liaison to the Stormwater Association of North Carolina (SWANC). Sarah is a member of the North Carolina Bar and earned a J.D. from Campbell University School of Law and a B.A. in Political Science from Meredith College. In addition, Sarah is a member of the N.C. Bar Association’s Environment, Energy and Natural Resources Law Section Council.



Erin Wynia, Legislative Counsel

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Erin provides legal counsel, interpretation and lobbying efforts associated with legislation that impacts the League and its members. In this role, she advocates for members’ interests and has gained extensive knowledge in issues related to municipal governments, including environment, land use, planning, development approvals, and code enforcement issues. She also serves as the liaison to the Resort Towns and Convention Cities affiliate member group. Prior to joining the League in January 2009, Erin worked on waterfront access policies for the N.C. Coastal Resources Law, Planning, and Policy Center. Erin also conducted research on land use topics for Clarion Associates in Chapel Hill, and served as a legislative assistant at the N.C. General Assembly for two years. Erin earned a B.A. in music from The University of North Carolina – Chapel Hill, M.A. in music from the Cincinnati College-Conservatory of Music, and a J.D. from The University of North Carolina – Chapel Hill.

Gregg F. Schwitzgebel III, MA, JD, MPA

During his nearly 25 years at the N.C. League of Municipalities, NCLM Associate General Counsel Gregg Schwitzgebel has led the *amicus curiae* Legal Advocacy program, in cases spanning over that time from *Maready v. City of Winston Salem* to *City of Asheville v. State of North Carolina*, and he has also coordinated CLE programming for the NCAMA Summer Conference sessions. For the past seven years, he has served on the North Carolina Appellate Rules Committee, which drafts proposed amendments to the Rules of Appellate Procedure for consideration by the North Carolina Supreme Court. He will be the incoming Chair for the NCBA's Appellate Practice Section for the 2018-19 Bar Year, having served on the Section Council since its formation. He is a co-founder of the Moot Court Program for Practitioners at the UNC School of Law. He has recently been appointed to the position of Secretary of the North Carolina Supreme Court Historical Society, after a term on its Board of Trustees, and he was instrumental in coordinating events commemorating the 50th Anniversary of the Court of Appeals during the course of 2017. An Order of the Coif graduate of the UNC School of Law, Gregg served a two-year clerkship for the honorable (ret.) Chief Judge Sidney S. Eagles of the North Carolina Court of Appeals.

January 23, 2018

Ms. M. Lynn Jarvis
Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27603

**Re: *In the Matter of: Application of Duke Energy Carolinas, LLC
For Adjustment of Rates and Charges Applicable to
Electric Service in North Carolina
NCUC DOCKET NO. E-7, SUB 1146***

Dear Ms. Jarvis:

Attached please find the **Direct Testimony of Maria S. Hunnicutt on behalf of NC League of Municipalities** for filing with North Carolina Utilities Commission in the above-referenced docket.

If you have any questions or comments regarding this filing, please do not hesitate to contact me.

Sincerely,

Smith Moore Leatherwood LLP

/s/ Karen M. Kemerait

CC: All Parties of Record
Enclosure

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-7, SUB 1146

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:

Application of Duke Energy Carolinas, LLC
For Adjustment of Rates and Charges Applicable
to Electric Service in North Carolina

DIRECT TESTIMONY

OF

MARIA S. HUNNICUTT

ON BEHALF OF NORTH CAROLINA LEAGUE OF MUNICIPALITIES

January 23, 2018

1 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND**
2 **CURRENT POSITION.**

3 A. My name is Maria S. Hunnicutt, and my business address is 138 Duke
4 Street, Spindale, North Carolina 28160. I am the General Manager for the
5 Broad River Water Authority (the "Authority").

6

7 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND**
8 **AND WORK EXPERIENCE.**

9 A. I have a Bachelors of Science degree in Textile Engineering with a minor in
10 Textile Chemistry, and a Master of Science in Textile Engineering from NC
11 State University. I worked in the biomedical plastics field and in injection
12 molding manufacturing for six years prior to joining a civil engineering firm
13 in 2004. I have been the General Manager of the Broad River Water
14 Authority for eleven years.

15

16 **Q. PLEASE PROVIDE INFORMATION ABOUT THE BROAD RIVER**
17 **WATER AUTHORITY.**

18 A. The Broad River Water Authority provides water service to parts of
19 Rutherford County, including the townships of Rutherfordton, Spindale, and
20 Cliffside, with 6,700 active accounts. The Authority does not provide sewer
21 service. However, it provides billing services for sewer and sanitation for
22 the Towns of Spindale and Rutherfordton, and sewer service for the
23 Cliffsdale Sanitary District.

1 The Broad River Water Authority's water system was previously owned by
2 Duke Energy Corporation, and Duke Energy Corporation made it available
3 for purchase in 1999. Three local towns joined together with Rutherford
4 County to form the Authority, which was organized as a water and sewer
5 authority under N.C. Gen. Stat. § 162A. The Authority borrowed \$30.4
6 million to purchase the system from Duke Energy Corporation, and it
7 assumed full operations of the water system in December 2000. The water
8 system includes a water treatment plant, a distribution system, and several
9 elevated and ground storage tanks. The water treatment plant is an 8 million
10 gallon per day ("MGD") plant, and there is a project underway to expand the
11 plant to a 12 MGD plant. The distribution system consists of approximately
12 250 miles of waterlines.

13
14 The Broad River Water Authority is a part of a three-party agreement
15 between Polk County and the Inman-Campobello Water District ("ICWD").
16 The Authority sells directly to Polk County (that has approximately 150
17 active customers), and Polk County then sells to the ICWD. The ICWD
18 serves part of Spartanburg County, South Carolina, and has approximately
19 12,150 active accounts.

20
21 The Authority also sells bulk water to the Grassy Pond Water Company
22 ("GPWC"). The GPWC serves parts of Cherokee County, South Carolina,
23 and has approximately 3,850 active customers.

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Therefore, in total the Authority serves approximately 22,850 accounts. By estimating 2.5 people per connection, it serves over 57,000 people.

Q. ON WHOSE BEHALF ARE YOU PROVIDING TESTIMONY?

A. I am testifying on behalf of the North Carolina League of Municipalities.

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

A. My testimony in this proceeding will (1) discuss the impact of Duke Energy Carolinas, LLC's ("DEC") proposed rate increase on the Authority and its ratepayers; (2) request increased time-of-use based options for customers to encourage conservation; and (3) request improvement to information that DEC provides regarding energy usage for its time-of-use rate designs.

Q. IS THE AUTHORITY CONCERNED ABOUT DEC'S PROPOSED RATE INCREASE?

A. Yes. As a provider of water services and a bulk water supplier, I want to make it clear that the Authority understands the challenges that DEC faces in operating its utility. For example, similar to the operation of an investor-owned utility, the Authority provides water services to ratepayers, and in that role is concerned with peak flow, capital-intensive infrastructure, and

1 the challenge of encouraging conservation to limit long-term capital
2 expenditures.

3

4 That being said, the Authority has concerns about DEC's proposed rate
5 increase, as the requested rate increase will adversely affect the Authority
6 and its customers. For fiscal year 2018, the Authority has budgeted the
7 amount of \$9.9 million for its operations. Of the \$9.9 million overall
8 budget, the operations and maintenance portion is \$3.1 million, out of which
9 \$450,000 is allocated for utilities. It is important to note that the budgeted
10 costs do not include the amount of any rate increase, and thus, the actual
11 amount paid for electricity will be higher than the \$450,000 amount. With
12 DEC's proposed rate increase of 11.15%, the amount that the Authority's
13 must pay for utilities will increase by \$50,175.

14

15 **Q. HOW WILL THE RATE INCREASE PROPOSED BY DEC IMPACT**
16 **THE AMOUNT PAID BY THE AUTHORITY FOR ELECTRICITY**
17 **USAGE?**

18 A. As mentioned above, with DEC's proposed rate increase of 11.15%, the
19 amount that the Authority's must pay for utilities will increase by \$50,175.
20 Electricity charges are of course non-discretionary costs. When a non-
21 discretionary cost—like the cost for electricity--increases, the Authority will
22 have no choice but to pass the costs onto its customers in the form of higher
23 rates. If DEC's rates are increased and the increased costs are passed onto

1 the customers, the individual customers will have to pay for the increased
2 rates not once, but twice. The individual customers will have to pay for
3 higher bills for their own electricity usage that are billed directly to them,
4 and also for the increased costs of the Authority's usage that is passed on
5 indirectly to them through the Authority's bills.
6

7 **Q. ARE YOU AWARE THAT DEC CURRENTLY HAS TIME-OF-USE**
8 **RATES IN PLACE?**

9 A. Yes. DEC currently offers the OPT-V time-of-use rate--that is an
10 appropriate time-of-use rate design for customers with a load factor of
11 greater than 51% and significant off-peak use—to the Authority. The
12 Authority appreciates the OPT-V rate structure being available to the
13 Authority so that it has the ability to most effectively manage its energy
14 usage and is incentivized for doing so.
15

16 **Q. IS THE AUTHORITY COMMITTED TO MANAGING ITS ENERGY**
17 **USAGE IN WAYS THAT WILL ALLOW IT TO CONSERVE**
18 **ENERGY AND REDUCE ITS BILLS?**

19 A. The Authority is absolutely committed to managing its energy usage so that
20 it may conserve energy and reduce its bills. The Authority has an obligation
21 to its ratepayers to operate its facilities in the most efficient manner--24
22 hours and day and seven days a week, and not just during peak load periods.
23 Therefore, the Authority strives to reduce its peak demands and energy

1 consumption during peak periods. Such efforts will benefit the Authority's
2 ratepayers due to lower costs, and will also provide the greater societal
3 benefit of energy conservation.

4

5 **Q. PLEASE DESCRIBE THE EFFORTS TAKEN BY THE AUTHORITY**
6 **TO MANAGE ITS ELECTRICITY CONSUMPTION?**

7 A. The Authority has implemented a number of measures to promote energy
8 efficiency and conservation. The Authority schedules operations at the
9 water treatment plant around the peak and off-peak periods. For example,
10 the Authority reduces its load intake by shutting off high service pumps and
11 motors and raw water pumps during peak times, and it uses a generator to
12 offset peak usage if consumption is close to the threshold. Electricity usage
13 at the Poors Ford pump station generally correlates to usage at the water
14 treatment plant in terms of pumps and motor usage. However, it is my
15 difficult to initiate generator use at that pump station, and therefore, the
16 Authority bases the pump station's operation on water needs in the system.

17

18 **Q. DOES THE AUTHORITY RECEIVE INFORMATION FROM DEC**
19 **THAT ENABLES IT TO BEST MANAGE ITS ENERGY**
20 **CONSUMPTION?**

21 A. From the Authority's on-line account with DEC, the Authority has six
22 accounts that provide hourly and daily data of energy usage. However, the
23 Authority's account for its water treatment plant, which accounts for a

1 substantial amount of the Authority's electricity usage, is not available for
2 on-line viewing of hourly and daily energy usage. For those six accounts
3 other than the water treatment plant account, DEC provides graphs of "Daily
4 Energy & Average", "Hourly Energy Usage", and "Average Energy by Day-
5 of-Week". From the accounts, the Authority is able to export hourly data for
6 varying timeframes during the day/week. The information provided in the
7 graphs is helpful to understanding and managing the Authority's energy
8 usage.

9
10 **Q. DO YOU HAVE ANY CONCERNS ABOUT THE INFORMATION**
11 **THAT DEC PROVIDES REGARDING ENERGY USAGE?**

12 A. Yes. While the Authority appreciates the data that DEC makes available
13 regarding its energy usage, the Authority believes that additional information
14 about energy usage would be helpful. For example, in the "Daily Energy
15 and Average" graph, DEC provides information about the maximum on-
16 peak demand and maximum off-peak demand during the billing cycle.
17 However, this maximum on-peak and off-peak demand information does not
18 identify an event(s) that occurred outside normal operations. If DEC
19 provided that information, the Authority would be better able to manage its
20 energy usage in a manner that would limit usage in on-peak periods to the
21 greatest extent possible, as the Authority would have information about the
22 circumstances that resulted in greater use of electricity during an on-peak
23 period.

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Q. WHAT ACTIONS DOES THE AUTHORITY REQUEST THAT THE COMMISSION TAKE IN THIS RATE CASE PROCEEDING WITH RESPECT TO THE ISSUES RAISED IN YOUR TESTIMONY?

A. The Authority respectfully requests that the Commission modify DEC's rate schedules, and in particular the OPT-V rate schedule that directly impacts the Authority, to address the issues raised in my testimony. In particular, we request that the Commission not grant the substantial rate increase for the OPT-V rate schedule as it will have a significant adverse impact on the Authority and its ratepayers. The Authority requests that the Commission consider the burden that DEC's requested increase in rates for the time-of-use rate schedules will have on public authorities and municipalities.

Also, as energy conservation is, and will continue to be, an important policy goal, DEC should find additional ways through its time-of-use rate designs to encourage and incentivize conservation. The Authority requests that DEC find solutions that will further incentivize customers to alter their energy usage so that they may more efficiently use electricity and save money on their bills.

Finally, the Authority believes that DEC should provide additional data regarding energy usage to the Authority and other customers on time-of-use rate schedules. That additional information would assist customers in

1 managing their energy usage to limit usage in on-peak periods and save
2 money on bills. The Authority would also like for DEC to hold a meeting or
3 training session on how best to manage energy usage and interpret data that
4 DEC provides of energy usage.

5

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

7 **A.** Yes, at this time.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the **Direct Testimony of Maria S. Hunicutt on behalf of NC League of Municipalities** have been duly served upon counsel of record for all parties to this docket by either depositing a true and exact copy of same in a depository of the United States Postal Service, first-class postage prepaid, and/or by electronic delivery as follows:

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The Kroger Co.
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This the 23rd day of January, 2018.

SMITH MOORE LEATHERWOOD LLP

BY: /s/ Karen M. Kemerait

Karen M. Kemerait
Attorneys for: NC League of Municipalities

January 23, 2018

Ms. M. Lynn Jarvis
Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27603

**Re: *In the Matter of: Application of Duke Energy Carolinas, LLC
For Adjustment of Rates and Charges Applicable to
Electric Service in North Carolina
NCUC DOCKET NO. E-7, SUB 1146***

Dear Ms. Jarvis:

Attached please find the **Direct Testimony of Brian W. Coughlan on behalf of NC League of Municipalities** for filing with North Carolina Utilities Commission in the above-referenced docket.

If you have any questions or comments regarding this filing, please do not hesitate to contact me.

Sincerely,

Smith Moore Leatherwood LLP



/s/ Karen M. Kemerait

CC: All Parties of Record
Enclosure

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-7, SUB 1146

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:

Application of Duke Energy Carolinas, LLC
For Adjustment of Rates and Charges Applicable
to Electric Service in North Carolina

DIRECT TESTIMONY

OF

BRIAN W. COUGHLAN

ON BEHALF OF NORTH CAROLINA LEAGUE OF MUNICIPALITIES

January 23, 2018

1 **Q. Please state your name, business address, and current position.**

2 A. My name is Brian W. Coughlan. I am the President, founder and owner of Utility
3 Management Services, Inc. (“UMS”). My address and contact information is:

4 Utility Management Services, Inc.

5 6317 Oleander Drive, STE C

6 Wilmington, NC 28403

7 Email: BCoughlan@UtilManagement.com

8 Phone: (910) 793-6232 x 102

9 Cell: (910) 471-1512

10 FAX: (910) 793-2946

11

12 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

13 A. I received a Bachelor of Science in Electrical Engineering from Virginia Tech in
14 1982, a Master of Science in Electrical and Computer Engineering from North
15 Carolina State University in 1990 and an Executive Master of Business
16 Administration from the University of North Carolina – Chapel Hill in 2000.

17

18 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL BACKGROUND PRIOR**
19 **TO FOUNDING UMS.**

20 A. From June of 1982 through December of 1997, I worked in a variety of customer
21 service, engineering and management roles at Carolina Power & Light Company
22 (“CP&L”). In my first position at CP&L, I was responsible for providing
23 customer service, rate analysis, rate consulting and contract administration

1 services to industrial, governmental and larger commercial customers in several
2 counties in northern North Carolina.

3

4 By the end of my career at CP&L, I managed a workforce of 240 employees and
5 240 contractors. These individuals were responsible for providing customer
6 service to 330,000 customers in 19 counties in eastern North Carolina as well as
7 designing, building, operating and maintaining the distribution system throughout
8 that territory. These individuals were also engaged in providing rate consulting
9 services to our customers.

10

11 **Q. DO YOU HAVE ANY PROFESSIONAL DESIGNATIONS?**

12 A. Yes. I am a registered Professional Engineer in South Carolina, North Carolina
13 and Virginia. I am also certified as a Certified Energy Manager, a Certified
14 Energy Auditor, a Certified Demand Side Management Professional and a
15 Certified Energy Procurement Professional by the Association of Energy
16 Engineers.

17

18 **Q. WHAT SERVICES DOES UMS PROVIDE?**

19 A. UMS is an electric bill auditing and rate consulting company. We enter into
20 agreements with our clients which establish UMS as the customer's agent. As
21 their agent, we work to reduce our clients' electric expenses by identifying billing
22 errors, overcharges and rate savings opportunities.

1 We also advocate on behalf of our customers to increase the fairness of electric
2 rates and/or service regulations. We have been in business for almost 20 years.
3 We are the largest business of our type in the southeastern U.S. We have worked
4 with approximately 8,500 business customers with approximately 300,000 electric
5 service accounts. We work within the Duke Energy Carolinas service territory as
6 well as the service territories for many other states.
7

8 **Q. HAVE YOU TESTIFIED BEFORE THE COMMISSION IN THE PAST?**

9 A. Yes. I have testified before the NCUC and in front of other state regulatory
10 commissions on numerous occasions.
11

12 **Q. WHO ARE YOU REPRESENTING IN THIS RATE CASE?**

13 A. The North Carolina League of Municipalities (“NCLM”).
14

15 **Q. WHAT IS THE NCLM?**

16 A. The NCLM is a nonprofit, nonpartisan association of more than 540
17 municipalities in North Carolina. The NCLM promotes good government by
18 providing advocacy, insurance and other services to its members. More than 100
19 NCLM members are located within the Duke Energy Carolinas, LLC (“DEC”) service
20 territory and purchase electricity from DEC.

1 Q. PLEASE DESCRIBE THE ELECTRICAL LOADS USED BY NCLM
2 MEMBERS.

3 A. Major electrical loads for municipalities typically include the following:

- 4 1. Water and sewer treatment and pumping facilities.
- 5 2. Street lighting.
- 6 3. Miscellaneous electric loads for city halls, administrative buildings, parks and
7 recreation, police departments, jails, etc.

8
9 Q. WHAT RELIEF IS THE NCLM REQUESTING IN THIS RATE CASE
10 PROCEEDING?

11 A. Account For Tax Changes. We are requesting that all rates be adjusted
12 downward to account for the significantly lower corporate income tax rates in the
13 newly enacted Tax Cuts and Jobs Act of 2017. We are aware that the
14 Commission has opened Docket No. M-100, Sub 148 to address these issues as
15 well.

16 Schedule GL Changes. We are requesting the following changes to the proposed
17 Schedule GL – Governmental Lighting Service.

- 18 1. Eliminate the proposed Transition Fees for Change out of High Pressure
19 Sodium (“HPS”) and Metal Halide Luminaires (“MH”) to LED
20 Luminaires.
- 21 2. Adjust the proposed costs for lighting under the rate such that on a
22 cost/kWh consumed basis, the rates for LED lighting are equal to or lower
23 than the costs of high pressure sodium luminaires.

1 Increased Time-of-Use and Critical Peak Pricing/Dynamic Pricing (CPP) Rate

2 Options. We are requesting increased time-of-use based and critical peak
3 pricing/dynamic pricing options for customers.

4

5 **Q. WILL THE NEW CORPORATE TAX RATES INCLUDED IN THE TAX**
6 **CUTS AND JOBS ACT OF 2017 MATERIALLY IMPACT AFTER TAX**
7 **PROFITS FOR DEC?**

8 A. Yes. Corporate tax rates are being reduced from the current level of 35% to a
9 new level of 21%. This is reduction of 14% from a base of 35% which results in
10 an overall effective 40% reduction $((35\% - 21\%)/35\%)$ in the overall rate for
11 corporations. This is a very material and dramatic reduction in corporate taxes
12 that will significantly benefit DEC and their shareholders.

13

14 **Q. APPROXIMATELY HOW MUCH MONEY WILL DEC SAVE PER YEAR**
15 **AS A RESULT OF THE NEW TAX RATES?**

16 A. According to DEC's Application to Adjust Retail Rates and Changes, Exhibit C,
17 Page 1, Line 8, Column 6, DEC projects to pay total annual income taxes of \$
18 447,944,000 on their North Carolina Retail Operations after the new rates are
19 approved. This appears to be a federal and state combined effective tax rate of
20 37.1902% (Exhibit C, Page 3, Column 7, Column Heading).

21

1 Reducing the federal rate by 14% should bring the combined effective tax rate
2 down to approximately 23%. At an effective income tax rate of 23%, DEC's
3 annual tax burden would be reduced to approximately \$ 277,000,000. This is a
4 net annual savings of about \$ 447,944,000 - \$ 277,000,000 = \$ 170,944,000.
5 Therefore, DEC stands to save about \$ 170,944,000 per year in income taxes in
6 just their North Carolina Retail Operations.
7

8 **Q. SHOULD THE NEW TAX RATES BE TAKEN INTO ACCOUNT IN THIS**
9 **RATE CASE PROCEEDING?**

10 A. The new tax rates should be taken into account now. The new tax rates take
11 effect before the new electric rates will take effect. If the new tax rates are not
12 accounted for at this time, DEC will have significantly higher than expected and
13 appropriate earnings, and DEC customers will pay unfairly high rates between
14 now and the next rate case.
15

16 **Q. WILL THERE BE OTHER TAX SAVINGS AS A RESULT OF THE TAX**
17 **CUTS AND JOBS ACT OF 2017?**

18 A. Yes. We understand that the new tax law allows for immediate expensing of
19 many assets that were previously depreciated over time and allows for more rapid
20 depreciation of assets that will still be depreciated over time. These changes will
21 serve to further reduce DEC's reported income for income tax purposes which
22 will further reduce their overall tax burden. To the extent possible, these

1 additional tax savings should also be addressed as a part of this rate case. If it is
2 not yet possible to determine with accuracy the taxes that will be saved as a result
3 of the depreciation changes, the tax savings could be tracked and refunded as part
4 of Docket No. M-100, Sub 148.

5
6 **Q. WHAT ARE THE TRANSITION FEES FOR CHANGE OUT OF HIGH**
7 **PRESSURE SODIUM AND METAL HALIDE LUMINAIRES TO LED**
8 **LUMINAIRES?**

9 A. Existing rates allow DEC to charge a \$54 transition fee to any customer who opts
10 to replace existing high pressure sodium OIC lighting or metal halide lighting
11 with LED lighting. DEC is proposing to set this fee at \$ 40/luminaire on
12 Schedule GL.

13
14 **Q. WHY DOES DEC BELIEVE A TRANSITION FEE IS APPROPRIATE?**

15 A. DEC has a significant investment in older lighting technologies that are obsolete
16 or are rapidly becoming obsolete. According to witness Cowling, “The purpose of
17 the transition fee was to appropriately reflect the remaining book value of the MH
18 and HPS lights being replaced and hence slow the early retirement of installed
19 assets to avoid adverse impacts on lighting rate base.”

20
21 **Q. DOES IT MAKE SENSE TO “SLOW THE EARLY RETIREMENT” OF**
22 **THE OBSOLETE LIGHTS?**

1 A. No. In fact, slowing the early retirement is the opposite of what should be done.
2 LED lighting is a dramatically better technology. LED lighting uses much less
3 energy and is much better for the environment. These lights also have a much
4 longer expected life, creating savings through lower maintenance over time for
5 DEC. Whenever possible, we should be actively promoting the transition to LED
6 lighting rather than discouraging it through fees that will help DEC and hurt
7 customers and the environment.

8

9 **Q. SHOULD DEC BE COMPENSATED FOR THE LOSS IN BOOK VALUE**
10 **THAT IT WILL INCUR IF EXISTING HIGH PRESSURE SODIUM AND**
11 **METAL HALIDE LIGHTING IS UPGRADED QUICKLY AND ON A**
12 **LARGE SCALE TO LED LIGHTING?**

13 A. No. LED technology is revolutionizing the lighting world. Obsolete lighting
14 technologies are rapidly being replaced with LED lighting in residential,
15 commercial and industrial applications throughout the country. Those who opt to
16 convert to LED lighting are not being reimbursed for the investment they already
17 made in older lighting technologies. They are just switching to a better lighting
18 technology that saves them energy and money as well as helps to improve the
19 environment. DEC should also not be compensated simply because one
20 technology is being replaced with another technology.

21

1 Q. IF THE COMMISSION DISAGREES WITH THE ABOVE ANSWER, IS
2 THERE A BETTER WAY TO COMPENSATE DEC FOR THE LOSS OF
3 BOOK VALUE THAT THEY WOULD INCUR DUE TO MASS
4 REPLACEMENT OF OLDER LIGHTING TECHNOLOGIES WITH LED?

5 A. Yes. Rather than penalize those who convert to a better and more efficient
6 technology that is better for the environment, the Commission could have the total
7 cost of the loss spread across all types and sizes of lights. This would mean that
8 all lighting customers would pay for a portion of the loss in book value rather than
9 just those customers who opt to conserve energy and help the environment by
10 upgrading to LED. This would encourage conversions to LED lighting and
11 eliminate losses to DEC while eliminating the penalty to those who decide to
12 convert to LED lighting.

13
14 Q. IS THE PROPOSED RATE OF RETURN (ROR) ON RATE GL
15 DRAMATICALLY HIGHER THAN THE PROPOSED ROR ON OTHER
16 RATES?

17 A. Yes. The table below provides key data from Exhibit 4 of DEC witness Michael
18 J. Pirro.

19

	Proposed Rate Of Return (ROR)
Rate GL	27.23% ¹
Total Retail Rates	7.98% ²

1 ¹ Pirro Exhibit 4, Line 18 ² Pirro Exhibit 4, Line 54

2 Clearly, the ROR that has been proposed for Rate GL is dramatically higher than
3 the ROR that has been proposed for all retail rates combined.

4

5 **Q. ARE NCLM MEMBERS BEING ASKED TO SUBSIDIZE OTHER**
6 **RETAIL CUSTOMERS DUE TO THE DISCREPANCY IN RORS FOR**
7 **RATE GL VS. THE ROR FOR TOTAL RETAIL RATES COMBINED?**

8 A. Yes. The proposed rates, if approved, would result in NCLM members
9 subsidizing other retail customers due to the much higher ROR that has been
10 proposed for Rate GL. Ultimately, this will lead to higher taxes on citizens to pay
11 for the higher electric rates or to providing reduced services by municipalities
12 throughout NC.

13

14 **Q. HOW DO YOU PROPOSE TO MAKE THE RATES FAIR FOR**
15 **MUNICIPALITIES RECEIVING SERVICE UNDER RATE GL?**

16 A. Eliminating the transition fee entirely and lowering the proposed rates for LED
17 lighting such that they accurately reflect the actual costs of providing LED
18 lighting is an excellent way to establish fairer rates. These changes could be
19 made in such a way that the ROR for Rate GL is equal to the ROR for all retail
20 rates combined. These changes would have the added benefit of helping to
21 promote high efficiency LED lighting in North Carolina, reduced energy
22 consumption and a cleaner overall environment.

1

2 **Q. IS THE PROPOSAL TO HAVE A TRANSITION FEE CONSISTENT**
3 **WITH THE APPROACH TO LED LIGHTING IN OTHER AREAS AT**
4 **DEC?**

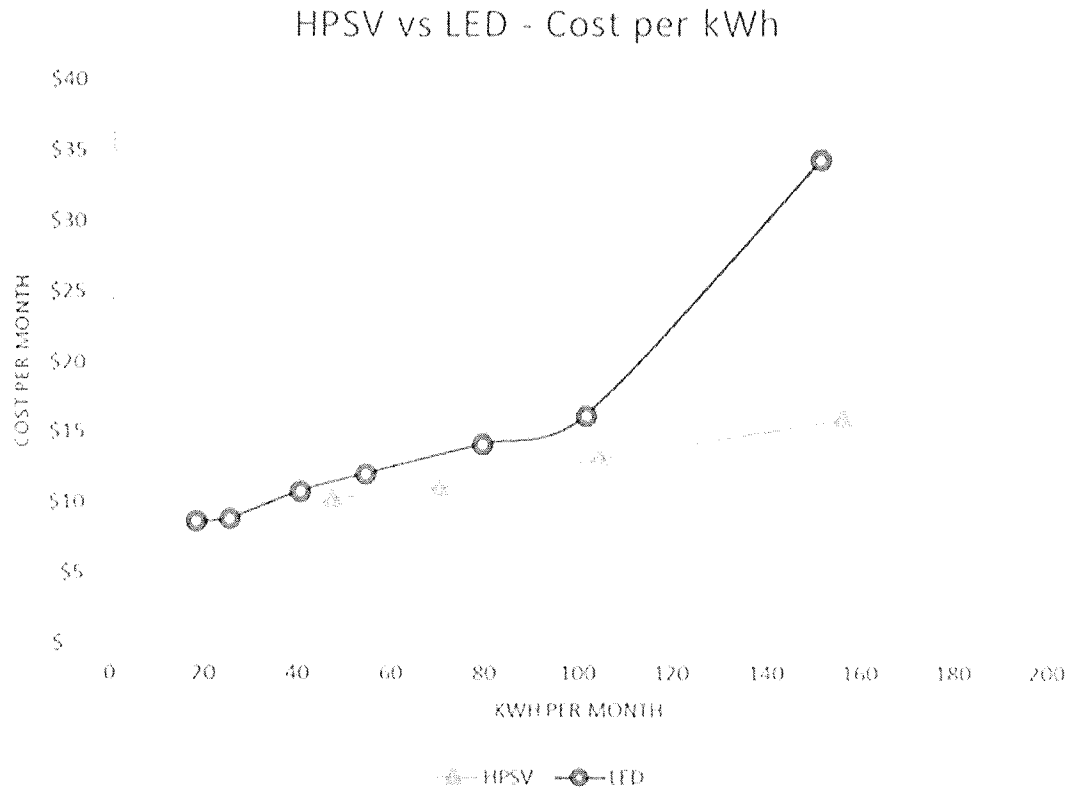
5 A. No. Hundreds of thousands of obsolete lights have been replaced by residential,
6 commercial, industrial and governmental customers throughout NC. The
7 Commission and DEC have actively promoted these transitions by heavily
8 subsidizing the conversions through approved Energy Efficiency riders and
9 programs. It is not consistent to actively promote and encourage conversions to
10 LED lighting on the customer's side of the meter while actively penalizing and
11 discouraging conversion to LED lighting on DEC's side of the meter.

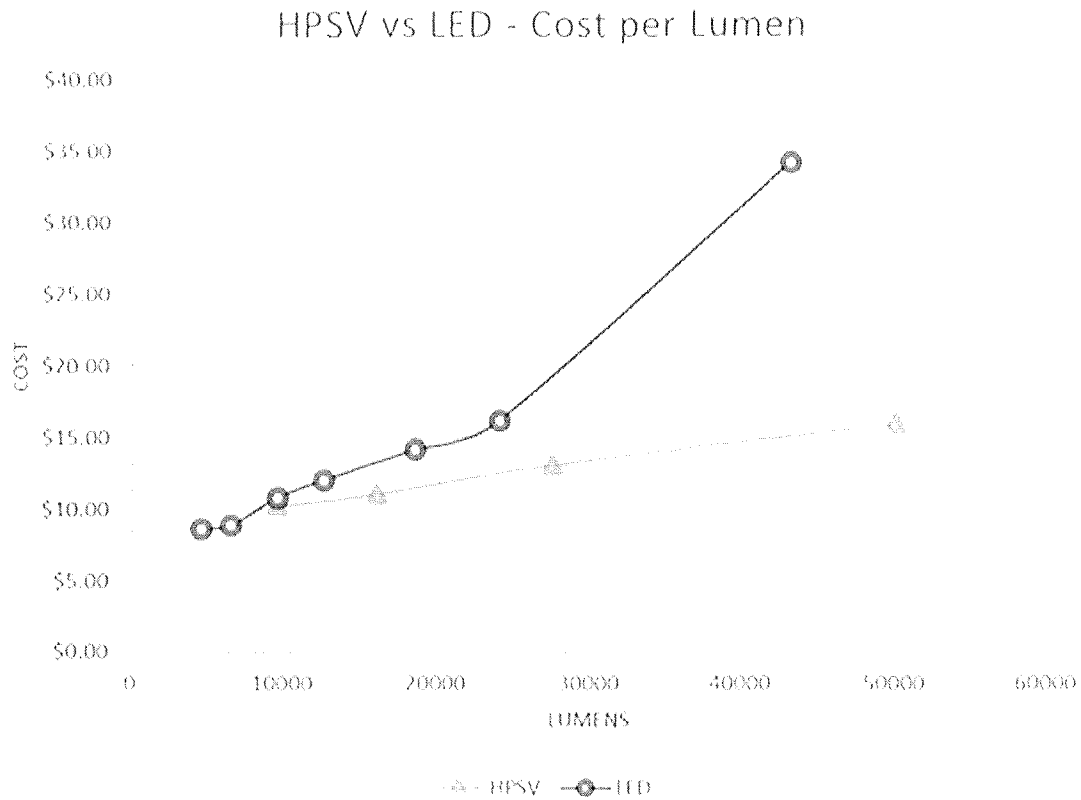
12

13 **Q. HOW DO THE PROPOSED MONTHLY RATES FOR HIGH PRESSURE**
14 **SODIUM VAPOR LIGHTING COMPARE TO THE PROPOSED**
15 **MONTHLY RATES FOR LED LIGHTS?**

16 A. On a cost/kWh basis, or a cost/lumen basis, the proposed costs of LED lighting
17 are significantly higher than the costs of high pressure sodium vapor lighting.

18 The below graphs illustrate this point.





1 **Q. WHAT ARE THE PRIMARY COSTS INVOLVED IN BUILDING,**
 2 **OPERATING AND MAINTAINING A STREET LIGHTING SYSTEM**
 3 **AND HOW DO THOSE COSTS COMPARE FOR LED LIGHTING VS.**
 4 **HIGH PRESSURE SODIUM VAPOR LIGHTING?**

5 **A.** The primary costs and comments about how these compare for LED lighting vs.
 6 high pressure sodium vapor (“HPS”) lighting are summarized below:

- 7 • Hardware cost. This includes the cost of the ballast, lamp, photocontrol,
 8 bracket and other equipment required to install a light. The cost of the
 9 photocontrol and bracket should be identical. The cost of the LED fixture

1 may be somewhat higher at this time. However, the costs of LED lighting
2 have dropped dramatically in recent years and are expected to continue to do
3 so.

- 4 • Installation labor cost. This includes the cost of traveling to the job site and
5 physically installing the fixture on the pole. These costs should be identical
6 for LED lighting and high pressure sodium vapor lighting.
- 7 • Maintenance labor cost. LED lights are projected to last up to five times as
8 long as HPS lights. Therefore, the labor required to maintain LED lights is
9 dramatically lower than the labor to maintain HPS lights.
- 10 • Maintenance equipment cost. Since LED lights are projected to last up to
11 five times as long as HPS lights, the cost of maintenance equipment for LED
12 lights over time is also much less than the cost of replacing HPS lights over
13 time.
- 14 • Energy cost. LED lights use significantly less energy than HPS lights for an
15 equivalent lumen output. Therefore, the energy cost to serve an LED light is
16 also significantly less than the energy cost to serve an HPS light.
- 17 • Billing cost. The cost to bill an LED light is identical to the cost to bill a HPS
18 light.

19

20 **Q. DO THE MONTHLY RATES PROPOSED BY DEC APPEAR TO**
21 **ACCURATELY REFLECT THE ACTUAL COSTS OF BUILDING,**

1 **OPERATING AND MAINTAINING LED STREET LIGHTS COMPARED**
2 **TO HPS STREET LIGHTS?**

3 A. No. The significantly lower maintenance labor costs, maintenance equipment
4 costs and energy costs should more than offset the higher initial equipment costs
5 associated with the LED light fixtures. It appears that DEC has accounted for the
6 higher initial equipment costs associated with LED lighting but has not accounted
7 for the lower maintenance labor costs, maintenance equipment costs and energy
8 costs associated with LED lights compared to HPS lights.

9
10 **Q. WILL DEC RECEIVE MATERIAL AND IMMEDIATE SAVINGS IN**
11 **MAINTENANCE COSTS AND ENERGY COSTS AFTER AN NCLM**
12 **MEMBER UPGRADES TO LED LIGHTING?**

13 A. Yes. The existing inventory of HPS lights is quite old. Many existing HPS lights
14 are already at failure mode. Typical failure mode for HPS lamps is the cycling off
15 and on of the luminaire throughout the night. In these cases, the repair involves
16 DEC sending a service bucket truck to the site to replace the lamp. DEC incurs
17 significant annual maintenance costs associated with replacing the lamps for HPS
18 lighting. The new LED lights will require very little maintenance for many years
19 to come. By converting many lights to LED, DEC will see an immediate and
20 significant reduction in the maintenance costs associated with their existing fleet
21 of HPS lights. DEC will also receive significant and immediate savings in the

1 form of reduced kWh consumption associated with the LED lights as compared to
2 the older HPS lights.

3

4 **Q. HOW SHOULD THE COSTS OF LED STREET LIGHTING COMPARE**
5 **TO THE COSTS OF HPS STREET LIGHTING?**

6 A. Once all costs are fully and accurately accounted for, the total monthly cost of an
7 LED light should be lower than the total monthly cost of an equivalent lumen
8 HPS light. If this were not the case, LED lighting would not be rapidly and
9 dramatically replacing HPS lighting in commercial, industrial and governmental
10 applications all over the country. The fact that the proposed pricing for LED
11 lighting under Rate GL is higher than the proposed pricing for HPS lighting
12 indicates that the total costs of the lighting have not been accurately accounted for
13 in the proposed rates.

14

15 **Q. IS THE PROPOSED TRANSITION FEE CONSISTENT WITH NCUC**
16 **RULE R8-47(A)?**

17 A. No. According to that rule “Utilities are urged to investigate new, more efficient
18 lighting systems as they are developed and, where such systems are efficient and
19 economical to the consumer, to request approval of newer systems as standard
20 tariff items.” While it is true that DEC is offering LED lighting under Rate GL,
21 the proposed transition fee serves as a very significant deterrent to customers to

1 convert to LED lighting. The proposed transition fee is not consistent with LED
2 lighting being considered a “standard tariff item”.

3

4 **Q. IF THE TRANSITION FEE IS ELIMINATED AND THE PROPOSED**
5 **PRICING FOR LED LIGHTING IS ADJUSTED DOWNWARD TO**
6 **ACCURATELY REFLECT THE COSTS OF LED LIGHTING, WILL**
7 **THERE BE A RUSH OF MUNICIPALITIES WORKING TO UPGRADE**
8 **THEIR STREET LIGHTS? MIGHT THIS RUSH CREATE UNDUE**
9 **DIFFICULTIES FOR DEC IN COMPLETING THE CONVERSION**
10 **WORK?**

11 A. Yes and no. Making the proposed adjustments will create a backlog of
12 conversion work for DEC. However, contract crews are readily available to
13 perform this kind of work on a cost-effective basis. In fact, for work of this type
14 contract crews are typically less costly than using in-house construction crews.
15 There may be a backlog of work to complete for a year or two. After that, the
16 workload should stabilize and DEC would have a reduction in lighting work due
17 to the reduced maintenance requirements described above.

18

19 **Q. IF THE COMMISSION IS STILL NOT COMFORTABLE WITH FULLY**
20 **ELIMINATING THE TRANSITION FEE, IS THERE AN ALTERNATIVE**
21 **APPROACH THAT WOULD ELIMINATE A MASS RUSH TO CONVERT**
22 **TO LED LIGHTING, ELIMINATE THE TRANSITION FEE FOR MANY**

1 **CONVERSIONS, EXPEDITE THE RATE OF TRANSITIONS IN A**
2 **CONTROLLED/MANAGED MANNER AND REDUCE COSTS FOR DEC**
3 **AND MUNICIPALITIES?**

4 A. Yes. A lower transition fee could be kept and applied only in cases where a
5 municipality wishes to convert all HPS lights to LED lights at one time.

6
7 The transition fee could be eliminated entirely in cases where an existing HPS
8 light has failed or needs maintenance. In these cases, the failed HPS light would
9 be replaced with an equivalent LED light rather than being maintained.

10
11 This approach would save DEC from having to travel to existing HPS lights to
12 perform maintenance work and then making another trip back to the same light a
13 year or two later to replace a recently maintained HPS light with an LED light as
14 part of a mass conversion. This approach would dramatically and immediately
15 reduce the number of replacement lamps, ballasts and HPS fixtures that DEC
16 would need to keep in inventory for maintenance purposes. Both DEC and the
17 municipalities that decided to use this approach would save money.

18
19 HPS street lights lamps generally last about six years. Given that the existing
20 inventory of HPS street lights in service varies widely in age, it is reasonable to
21 assume that this approach would result in the large majority of street lights being

1 gradually converted to LED over a six-year period for municipalities choosing
2 this option.

3
4 Some municipalities may opt to take this approach for four to five years and then
5 pay a transition fee to convert their remaining HPS lights in the interest of
6 finishing the project and improving overall lighting uniformity.

7
8 **Q. SHOULD DEC OFFER INCREASED TIME-OF-USE RATES AND**
9 **CRITICAL PEAK/DYNAMIC PRICING OPTIONS?**

10 A. Time-of-use rates (“TOU”) and critical peak/dynamic pricing rates, when
11 properly designed and applied, provide a societal benefit. They incent customers
12 to reduce their peak demands and energy consumption during peak periods. This
13 results in lower system peak demands and a reduction in the number of peaking
14 units that are needed. Eliminating the need for additional peaking units creates
15 significant savings for DEC and all customers. These rates also more fairly
16 charge customers who already use a large portion of their energy during off-peak
17 hours by sharing some of the savings received by the utility with the customer.
18 These rates also help improve the environment by reducing the run time of the
19 least efficient, and less environmentally beneficial peaking units.

20
21
22

1 **Q. DOES DEC ALREADY HAVE A TOU RATE?**

2 A. Yes. DEC offers the OPT-V rate. This rate is available to customers with any
3 peak demand. However, practically speaking it is only available to customers
4 with a peak demand of greater than 15 kW since that is the minimum billing
5 demand on the rate. Also, this rate is only a good option for customers with a
6 load factor of greater than about 51%. Customers with lower load factors are
7 typically better off on the LGS rate or some other rate without time differentiated
8 pricing. Most customers who do not run a three shift operation will have a load
9 factor of less than 51%. Given these limitations, only a relatively small number
10 of customers receive service under DEC's OPT-V rate. Therefore, relatively few
11 customers are incented or rewarded for shifting usage from peak hours to off-peak
12 hours.

13
14 **Q. DID DEC PREVIOUSLY HAVE THE SMALL GENERAL SERVICE –**
15 **TIME OF USE (SGST) RATE AVAILABLE FOR SMALLER**
16 **COMMERCIAL CUSTOMERS?**

17 A. Yes. In Docket No. E-7 Sub 1026 the Commission ordered DEC to offer the
18 Small General Service – Time of Use (SGST) rate on a pilot basis. The rate was
19 available to customers up to 75 kW. The rate was available to a maximum of 250
20 customers and was to remain available for a period of at least two years.

21

22

1 **Q. DID DEC PREVIOUSLY HAVE A CRITICAL PEAK PRICING RATE?**

2 A. Yes. This was also ordered as a pilot rate in Docket No. E-7 Sub 1026.

3

4 **Q. HAS THE COMMISSION ASKED DEC TO STUDY ADDITIONAL TIME-**
5 **OF-USE RATE OPTIONS AND CRITICAL PEAK PRICING/DYNAMIC**
6 **PRICING RATE OPTIONS IN THE PAST?**

7 A. Yes. The Order issued on September 24, 2013 in Docket No. E-7 Sub 1026
8 included the following history on TOU and dynamic pricing:

9 In DEC's 2011 rate case, the Company agreed to work with the Public
10 Staff to investigate TOU and dynamic pricing rate structures for
11 residential and nonresidential customers. Witness Bailey explained that as
12 a result of DEC's collaboration with the Public Staff, the Company
13 proposes two new residential TOU pilot programs. The Company will use
14 the information from these pilot programs to determine what factors
15 motivate which customers to participate in TOU rate offers and whether
16 the Company has the processes and systems in place to offer the rates on a
17 larger scale in North Carolina. The Company believes these pilot
18 programs will benefit customers and the Company by allowing customers
19 to make more informed decisions regarding the prices they pay for
20 electricity and by reducing the Company's long-term costs.

21

22 In that same Order, the Commission ordered:

1 12. That the Company shall implement its proposed residential and small
2 general service TOU pilots and shall seek to enroll participants as quickly
3 as possible and provide a quarterly report to the Public Staff indicating the
4 number of customers enrolled in each pilot, until the maximum enrollment
5 of 250 is reached. The TOU pilots shall have a limited duration of no more
6 than 24 months from the date of this Order, or September 30, 2015,
7 whichever is longer. Within 90 days of the conclusion of the pilot period,
8 Duke Energy Carolinas shall file either (1) a request with the Commission
9 to make the pilots a permanent rate offering, or (2) a notification of
10 termination of the pilots. Either filing shall be supported by a final report
11 demonstrating that the TOU rate schedules should or should not, as
12 appropriate, become a permanent rate offering for the Company's
13 customers;

14
15 The Commission also ordered:

16 13. That within 15 months of this Order, the Company shall propose a
17 pilot peak-time rebate ("PTR") or critical peak pricing ("CPP") dynamic
18 pricing rate structure.

19

20 **Q. WHAT HAPPENED TO THE PILOT TOU RATES?**

21 A. The rates were created, approved, available and promoted to customers. Many
22 customers signed up for the rates. Customers responded to the pricing signals

1 provided by the TOU rates. DEC created a summary report on the results of the
2 pilot and filed it with the Commission on December 18, 2015. A few of the key
3 points from the summary report are shown below:

4 b. Customers who enrolled stated a continued desire to participate in a
5 TOU rate schedule with over 80% of survey respondents stating they
6 would participate in the future.

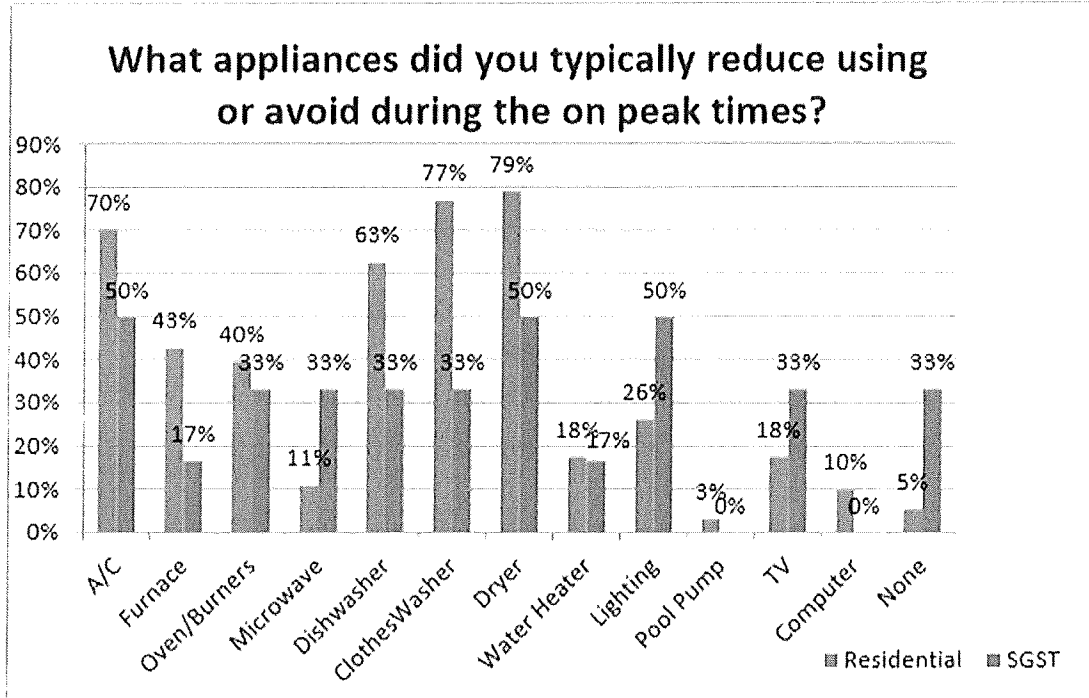
7 c. Upside potential could exist with a more comprehensive customer
8 engagement experience.

9

10 A graph from the report indicated the following:

- 11 • 95% of residential customers reduced usage during peak times.
12 • 66% of commercial customers reduced usage during peak times.

13 The graph is shown below:



1 Other findings included:

2 C. Pilot Rate Impacts on Customer Bills and on the Company

3 a. An annual bill comparison shows that 19% of RET, 28% of RST, and
4 10% of SGST participants saved financially on the Pilot Rates
5 compared to an estimated Standard Rate bill using the same
6 consumption amount.

7 b. The total annual bill amount (i.e., June 2014 – May 2015) collected on
8 the Pilot Rates in excess of what would have been collected on the
9 Standard Rates is \$53,075.76 of which \$41,501.73 is related to the
10 SGST rate schedule.

11

1 D. Other Findings

2 a. Customers would like enhanced information and feedback on their
3 performance.

4 b. Several operational issues were identified during the pilot period. i.
5 Using TOU meters for the pilot became problematic due to required meter
6 changes and meter route changes both when participants started on the
7 Pilot Rate and when they returned to their Standard Rate. Process
8 improvement is needed to more smoothly transition customers from a
9 Standard Rate to a TOU rate and vice versa. The most likely solution is
10 through the required use of a smart meter.

11

12 Specifically referring to the SGST rate, the summary report also found “Ten
13 percent (10%) of participants paid less on their bill compared to a bill on rate
14 schedule SGS with the same consumption amount.” In other words, 90% of the
15 customers who switched to the SGST rate paid more than they would have paid
16 on the SGS rate.

17

18 Other relevant graphs from the report are below:

Figure 9: Participant Desire for Savings Feedback

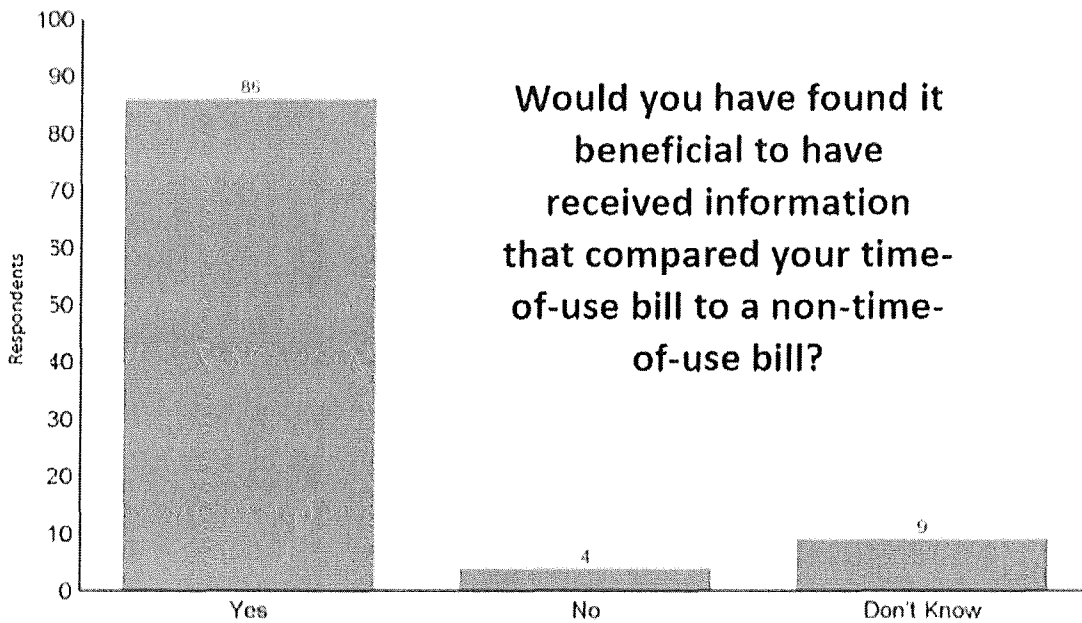


Figure 10: Would You Recommend Pilot Rate?

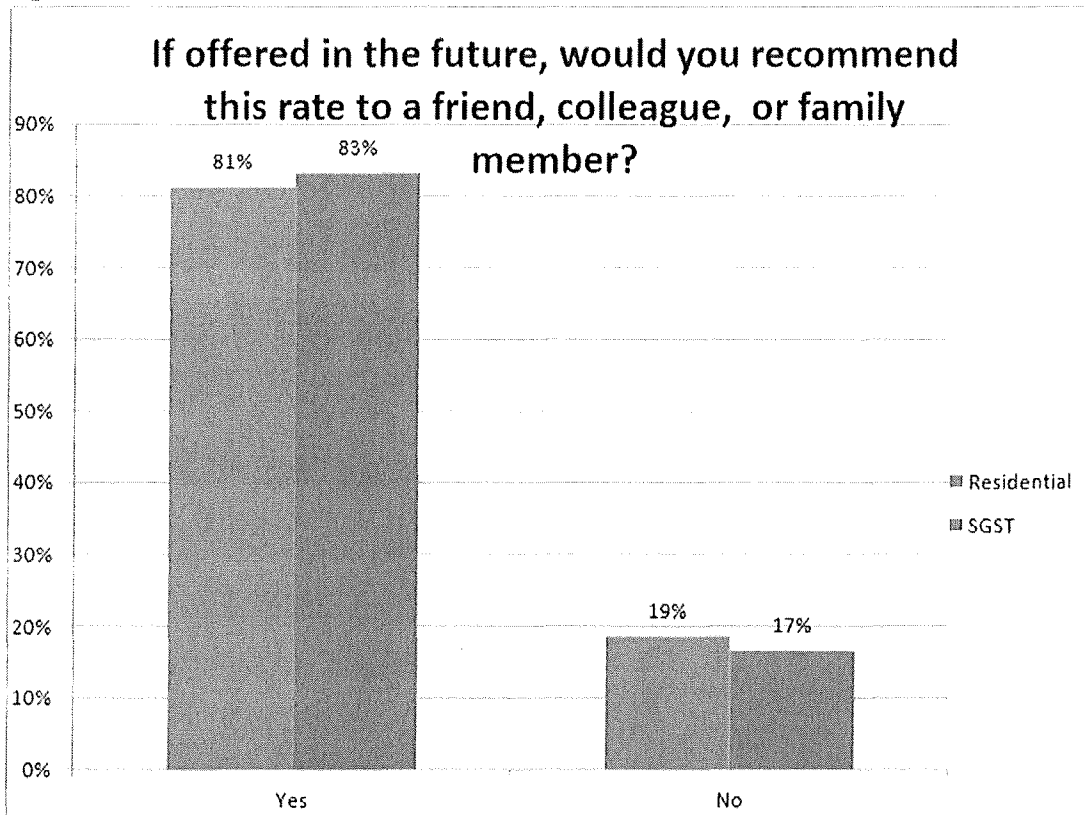
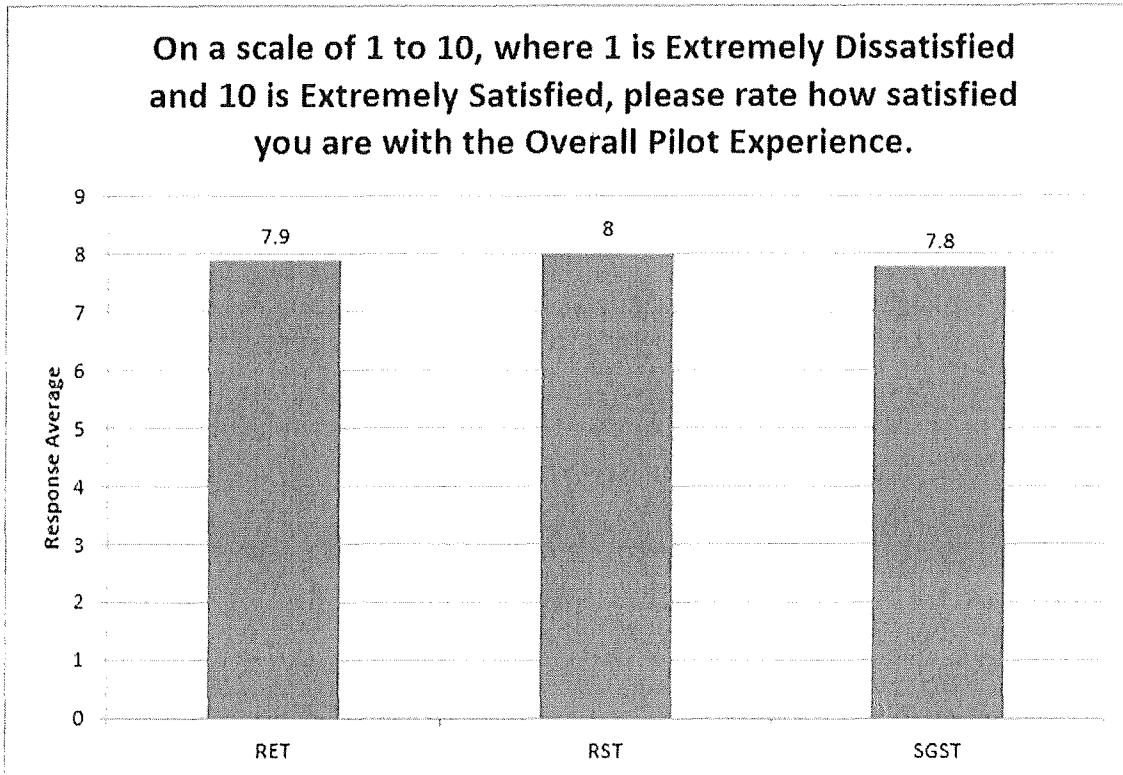


Figure 13: Overall Pilot Experience Satisfaction



1 In spite of the very favorable findings and customer feedback summarized in the
2 report, the report concluded with the following:

3 As required by the Commission's Order, DEC hereby notifies the
4 Commission that the Pilot Rates have been terminated. **Below average**
5 **acquisition rates and limited performance feedback available to**
6 **customers are primary reasons for terminating the Pilot Rates.**

7 (Emphasis added.) However, based on information provided in this
8 report, the Company remains optimistic regarding future implementation
9 of time-based rates for customers. By June 30, 2016, Company will file
10 additional information with the Commission on DEC's approach to new

1 TOU rate schedules for residential and small commercial customers in the
2 future.

3
4 **Q. WAS THE SGST RATE WELL DESIGNED?**

5 A. The overall design and structure of the rate were good. Based on the results of the
6 pilot, it is obvious that the rate incented customers to shift usage from on-peak
7 hours to off-peak hours.

8
9 However, the kW and kWh charges within the rate were too high. This explains
10 why the customers who switched to the rate, and shifted load, still ended up
11 paying a total of \$ 41,501.73 more than they would have paid on a standard rate.
12 Customers who sign up for a TOU rate, and use a substantial amount of their
13 energy during off-peak hours, should generally expect to see lower bills rather
14 than higher bills.

15
16 Furthermore, according to the summary report, fully 90% of the customers who
17 participated in the SGST pilot program lost money on the program compared to
18 being served on their previous rate. Clearly, the kW and kWh charges were too
19 high on the pilot rate.

20
21 My company, Utility Management Services, Inc., is in the business of analyzing
22 rates for customers and ensuring that they are on the best available rate. We

1 compared the projected billing amount for scores of businesses under the SGST
2 rate to the OPT rate and the other standard rates. The high kW and kWh charges
3 prevented us from switching any customers to the SGST rate.

4
5 If the rate were to be re-introduced, with lower kW and kWh charges, many
6 customers could and would take advantage of the rate. These customers would
7 shift load to off-peak hours, save money for themselves, and save money for
8 DEC. This is especially true for water treatment and pumping operations that can
9 relatively easily shift load from on-peak to off-peak hours.

10

11 **Q. WHY MIGHT DEC HAVE EXPERIENCED THE “BELOW AVERAGE**
12 **ACQUISITION RATES” AS STATED IN THEIR SUMMARY REPORT?**

13 A. The pilot was limited to 250 participants. In the 2013 rate case, I testified on
14 behalf of the NCLM that the pilot should be expanded to 1,000 customers. DEC
15 argued against that change and the cap was set at 250.

16

17 According to the summary report, DEC sent direct mail followed by a tri-fold
18 brochure to about 20,000 eligible customers. After receiving these two pieces of
19 mail, the customer participation rate from the test group was about 1%. These are
20 reasonable results. Also, given the fact that 90% of the customers participating in
21 the rate paid more, rather than less, than what they would have paid as a group on
22 a standard rate, the response rate is actually surprisingly high.

1 An email was also sent to about 4,700 customers. That email resulted in a
2 response rate of about 0.5%, which is also reasonable.

3
4 With more time and more marketing efforts, and lower kW and kWh charges, the
5 results would have certainly increased.

6

7 **Q. WOULD IT BE DIFFICULT FOR DEC TO PROVIDE THE RATE**
8 **COMPARISON DATA THAT THEY SAID CUSTOMERS WANTED?**

9 A. It should not be. I have been on a time-of-use based rate at each 5 of the homes I
10 have lived in since 1983. All of them were in the CP&L/Progress Energy/DEP
11 service territory. I have assisted thousands of customers interested in
12 transitioning to a TOU rate in the DEP territory over that same period. In all
13 cases, the customers have received a comparative analysis directly on their bill
14 each month that showed how much they saved or lost, on a monthly and 12 month
15 rolling basis, by being on the TOU rate.

16

17 If DEP (formerly CP&L and Progress Energy) has had the technology to provide
18 this simple comparison since 1983, DEC should be able to implement this rate
19 comparison within their billing system today.

20

21 **Q. DID DEC ALSO RAISE CONCERNS OVER METERING ISSUES**
22 **RELATED TO PROVIDING THE SGST RATE?**

1 A. Yes, an excerpt from their summary report is below:

2 Metering: a. Participants in the Pilot Rates were not required to have a
3 “smart” meter which provides 30 minute interval data on customer’s
4 consumption. If a customer did not have a “smart” meter already when
5 they enrolled, a meter change was required. In this situation, the standard
6 meter was replaced with a TOU meter. Unfortunately, TOU meters
7 require a walk-by meter read and these meters follow a separate meter
8 reading schedule than the standard residential or small commercial meter.
9 This change in meter reading schedules resulted in billing delays for
10 several participants. As the Company reviewed this situation, it was
11 concluded that requiring a “smart” meter would provide significant
12 benefits in terms of more granular data availability, 30-minute intervals, to
13 view consumption patterns and provide customer feedback, and the ability
14 of the meter to switch between rates remotely.

15 b. In a full scale deployment, the type and cost of the meter will need to be
16 carefully considered. These costs could potentially eliminate any savings
17 potential for participants if participants are required to pay for the cost of a
18 new meter directly. Alternatively, the allocation of the meter costs across
19 a broader group of customers would require discussion.
20

1 **Q. ARE THERE METERING ISSUES THAT SHOULD MAKE IT**
2 **DIFFICULT FOR DEC TO PROVIDE A TOU OPTION TO SMALLER**
3 **CUSTOMERS?**

4 A. No. As mentioned above, TOU rates have been used and accepted for 35 years.
5 At UMS, we have worked with many thousands of customers to TOU based rates
6 in many power provider territories in many states. The metering technology
7 required to allow TOU rates is inexpensive and widely available. The technology
8 is mature and is being used by investor owned municipalities, electric
9 membership cooperatives and municipal power providers throughout the country.

10

11 DEC already has more than 17,000 customers on their OPT rate. They clearly
12 have the ability to meter and bill customers on a TOU rate.

13

14 **Q. ARE YOU PROPOSING THAT THE SGST RATE BE REINTRODUCED?**

15 A. Yes. With lower kW and kWh charges. This could easily be done as a part of
16 this rate case.

17

18 **Q. ARE THERE OTHER WAYS TO DESIGN A TOU RATE FOR SMALLER**
19 **COMMERCIAL CUSTOMERS THAT WOULD BE EFFECTIVE?**

20 A. Yes. An all-energy TOU rate, of the type already offered in the DEP territory
21 (SGS-TOUE), is also an effective way to incent customers to shift usage from on-
22 peak hours to off-peak hours. It has the added benefit of simplicity since it does

1 not include a kW demand charge. The DEP SGS-TOUE rate could be relatively
2 easily modified to work effectively in the DEC territory. This approach would
3 have the added benefit of bringing the overall rate design in the DEP area and the
4 DEC area closer together.

5
6 DEC also has an all-energy TOU rate already. It is the Optional Power Service –
7 Time-of-Use – Energy Only (OPT-E) rate. This rate was only available to
8 customers with peak demands of 2,000 kW and above. In other words, it was
9 available to about .01% of DEC’s customers. Therefore, this rate has extremely
10 limited participation. The rate has been frozen to new customers for several
11 years. This rate could be redesigned to allow it to apply to smaller customers in
12 the DEC area.

13
14 Modifying the existing SGS-TOUE rate that is being used in the DEP territory, or
15 the OPT-E rate that is used in the DEC territory, could be done and implemented
16 as a part of this rate case.

17
18 **Q. WHAT HAPPENED TO THE CPP PILOT?**

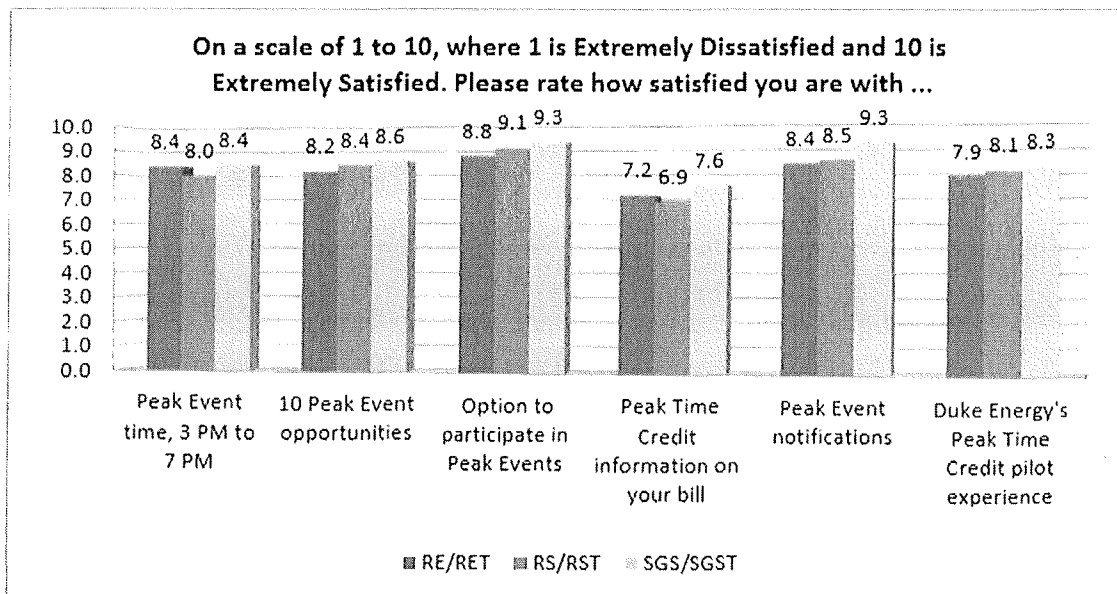
19 A. DEC introduced a CPP rate called Rider PTC - Peak Time Credit. Rider PTC
20 paid customers a premium to curtail their load when they were notified of a
21 Critical Peak Event (CPE) by DEC. Customers signed up for Rider PTC and

1 were surveyed at the end of the pilot. The survey responses were included in the
2 summary report described above that also covered the TOU pilot rates.

3

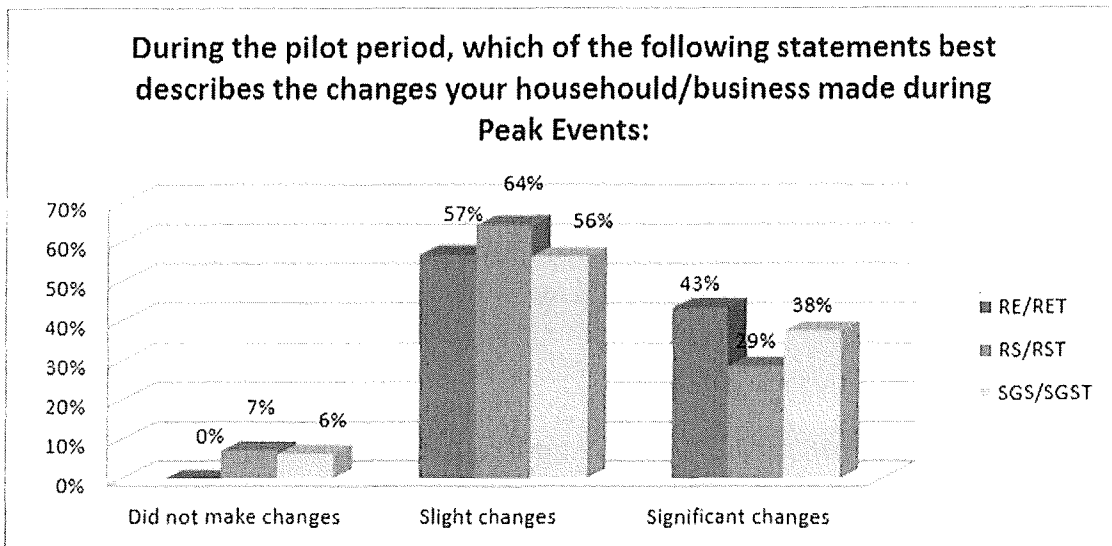
4 The results and feedback from the pilot were extremely positive, as can be seen in
5 the graphs below:

Figure 6: PTC Pilot Feature Satisfaction



6 Note that the overall satisfaction with the program, especially for commercial
7 customers (SGS/SGST) was very high.

Figure 7: PTC Pilot Stated Behavior Change During Events



- 1 Note that very few customers reported that they did not make changes in response
- 2 to CPEs.

Figure 11: Would You Recommend the PTC Pilot?

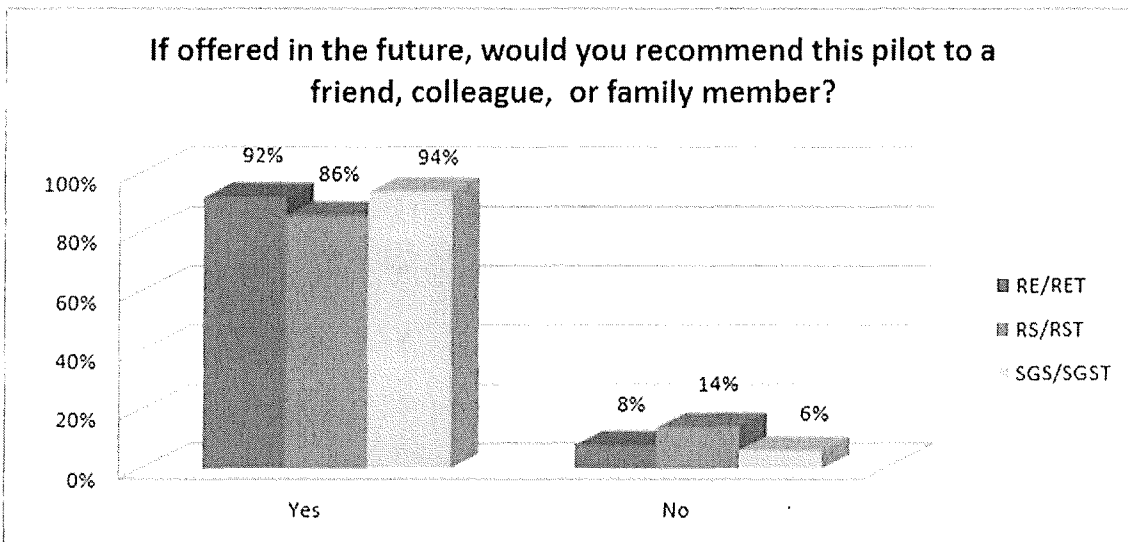


Figure 12: Would You Participate in the Future - Summer

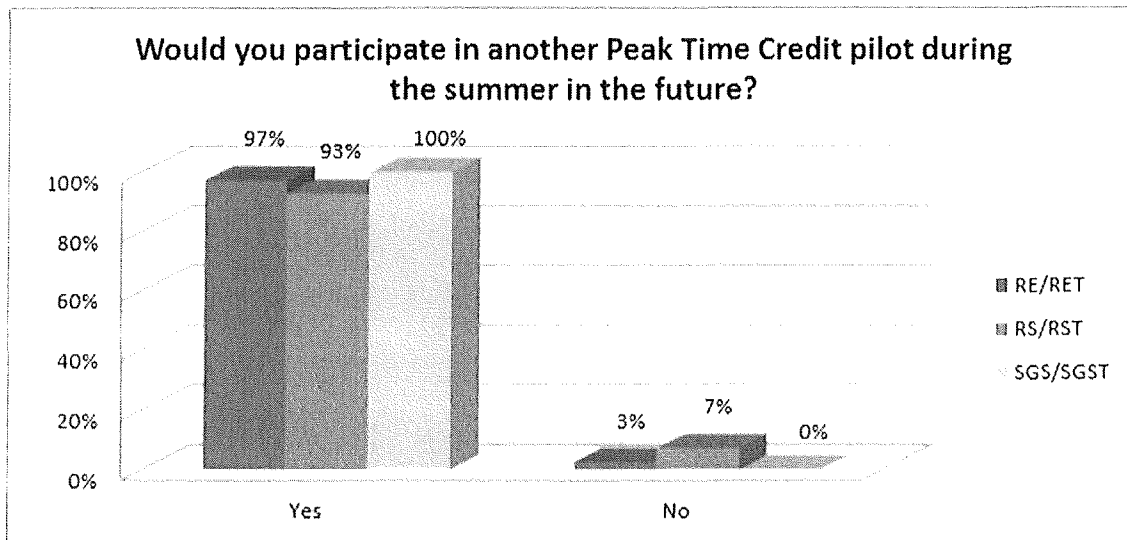
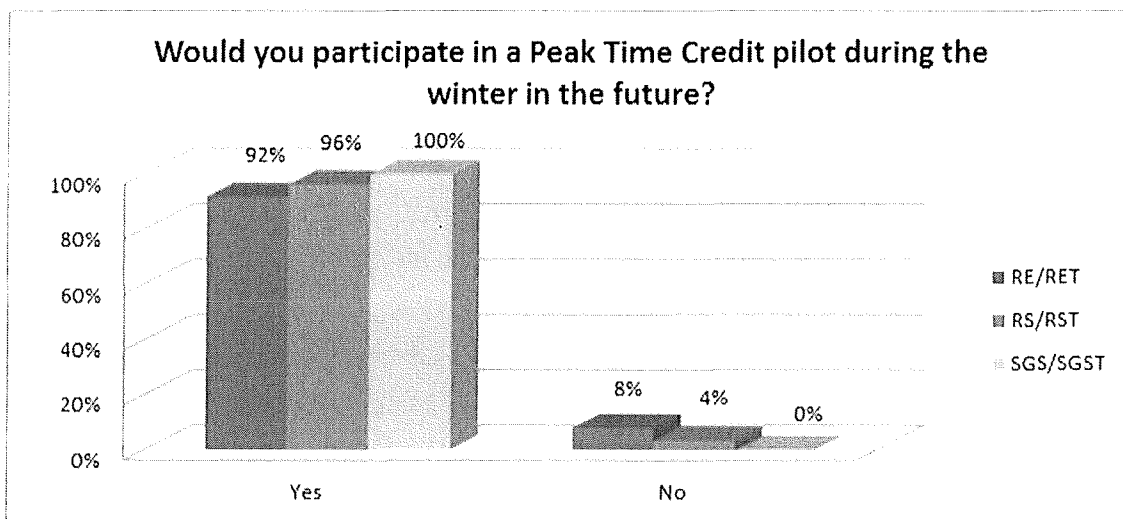


Figure 13: Would You Participate in the Future - Winter



- 1 Note that 100% of commercial customers (SGS/SGST) indicated that they would
- 2 participate in another Peak Time Credit program I, in both the summer and
- 3 winter, in the future.

1 In spite of the very strong customer feedback and response to the PTC pilot, DEC
2 terminated the pilot and, years later, is still not proposing a CPP or PTC rate at
3 this time even though the issue has been raised in rate cases since at least the 2011
4 rate case. Some of the conclusions reached by DEC about the PTC pilot are
5 shown below:

6

7 VII. Conclusion

8 The DEC-NC PTC pilot researched several topics including customer's
9 willingness to enroll, customer's experiences on the pilot, and load
10 reductions achieved. In addition, considerations were identified for a
11 future implementation. Based on the PTC pilot experience and
12 information in this report, the Company will continue to evaluate dynamic
13 pricing rate options in the future. DEC commits to discuss a dynamic
14 pricing pilot or a dynamic pricing program with the DEC Energy
15 Efficiency Collaborative in 2016.

16

17 **Q. DID DEC RAISE METERING ISSUES RELATED TO IMPLEMENTING**
18 **RIDER PTC?**

19 A. Yes. Their concerns are shown below:

20 B. Operations

1 The PTC pilot uncovered a few operational issues to consider alongside
2 several other issues previously identified. These issues related to
3 metering, billing, and Demand Side Management (DSM).

4 1. Metering:

5 a. Participants require interval metering and the supporting systems
6 necessary to use the interval information for billing purposes. While
7 DEC-NC has several hundred thousand smart meters installed, any
8 customer interested in participating that does not have a smart meter may
9 be required to pay the meter cost which most likely would considerably
10 reduce customer interest. Without addressing meter cost issues,
11 participation would be limited.

12 b. A second metering issue discussed above relates to the estimation of
13 interval data. Occasionally, smart meters miss reads. Therefore, when the
14 next actual meter read occurs, data is estimated for intervals between the
15 two actual reads. This estimation process is not conducive to PTC
16 participation. Solutions might include verifying meter functionality prior
17 to events or an administrative solution for providing a credit amount to
18 those participants who are impacted.

19

20 **Q. DID DEC RECEIVE \$ 200 MILLION IN 2009 FEDERAL STIMULUS**
21 **MONEY FOR THE DUKE ENERGY SMART GRID DEMONSTRATION**
22 **PROJECT?**

1 A. Yes. Some program details can be seen at:

2 https://www.smartgrid.gov/files/Duke_Energy_Smart_Grid_Demonstration_Proje
3 [ct_201007.pdf](https://www.smartgrid.gov/files/Duke_Energy_Smart_Grid_Demonstration_Proje)

4

5 According to the Electric Power Research Institute, there were six critical
6 elements to this five-year smart grid initiative. Three of them are shown below:

7

8 **Project Criteria: 6 Critical Elements**

9 Duke Energy's Smart Grid Project aligns with the six critical elements that
10 EPRI has identified as key criteria to achieve the goals of our five-year
11 Smart Grid initiative.

12 **Integration of multiple distributed resource types**

13 To further expose issues that need to be addressed and enable widespread
14 integration of DER. The project utilizes multiple distributed resources at
15 both the customer and distribution level. Storage using Lithium-ion
16 batteries will be utilized in multiple applications, several 2.5 kW photo-
17 voltaic units will be installed for residential generation, and 40,000
18 advanced meters will be installed in customer homes. Home Energy
19 Management Systems will be **used in conjunction with dynamic pricing**
20 **and intelligent end-use devices to test customer programs for energy**
21 **efficiency and demand response.**(Emphasis added.) Project Plug-IN, a

1 significant part of Duke Energy's project, focuses on PEV and the
2 accompanying Electric Vehicle Support Equipment (EVSE).

3

4 **Incorporation of Dynamic Rates or other approaches to link**
5 **wholesale conditions to customers**

6 To evaluate integration issues and incentives associated with customer
7 response and linking supply with demand. **The project uses time-of-use**
8 **(TOU) and critical peak pricing (CPP) for the customers with**
9 **advanced metering services.** (Emphasis added.)

10

11 **Integration into system planning and operations**

12 Demonstrate integration tools and techniques to achieve full integration
13 into system operations and planning. The project is integrated into system
14 planning and operations in **pricing with TOUs and CPPs**, (emphasis
15 added) in peak reduction with Volt/VAR management, in consumer
16 knowledge and participation with the HEM system and customer service
17 prototype lab, and in testing and managing the localized impacts of PEV
18 charging.

19

20 With 8 years of research time and \$ 200 million in federal stimulus money, it
21 would appear that DEC should be in a position to implement TOU rates and CPP
22 rates without metering and other technical difficulties.

1 **Q. How do DEC's TOU rate options compare to DEP's TOU options?**

2 A. A comparison of the TOU options offered by DEP and DEC is shown in the table
3 below:

4
5

Provider	Rate	kW Limits	Best For	Customers on Rate
DEP	SGS-TOU	30 kW to 1,000 kW	> 32% load factors with a lot of off-peak use.	22,000 ¹
DEP	SGS-TOU-E	< 30 kW	Low load factors with a lot of off-peak use. Energy only.	750 ¹
DEC	OPT-V	None	> 51% load factors with a lot of off-peak use.	17,082 ²
DEC	OPT-E	> 2,000 kW	Closed and was only available for very large customers.	Less than 10 ¹

6 ¹ Estimates based on available data ² DEC Cost of Service Study, E-1, Item 45A,

7 Row 21

1 Note that even though DEC has far more total customers than DEC, DEC has far
2 more customers on TOU rates than DEP. DEC is behind in the implementation
3 of TOU rates.

4

5 **Q. DO MUNICIPALITIES HAVE ACCOUNTS THAT COULD DO WELL**
6 **ON A TOU OR A CPP/PTC RATE?**

7 A. Yes. Water treatment and pumping operations, which are typically the largest
8 users operated by municipalities, have a great deal of potential to maximize water
9 treatment and pumping during off-peak hours and minimize these activities during
10 peak hours. This is a very common practice for municipalities that have an
11 attractive TOU option.

12

13 Most municipal water and sewer treatment facilities already have generators in
14 place. In many cases, these generators could be used to generate power during
15 the Critical Peak Pricing periods included in CPP rates. This is a cost-effective
16 solution for the municipalities that also reduces the peak system demand, and
17 associated need for peaking power plants, on the DEC system.

18

19 Municipalities also have jails and parks/recreation facilities that tend to use a lot
20 of energy during the off-peak hours. These types of facilities save money for
21 DEC but do not presently receive a share of those savings because they may be

1 too small to qualify for the OPT rate or they may not have a high enough load
2 factor to benefit by receiving service under the OPT rate.

3

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

5 **A.** Yes, at this time.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the **Direct Testimony of Brian W. Coughlan on behalf of NC League of Municipalities** have been duly served upon counsel of record for all parties to this docket by either depositing a true and exact copy of same in a depository of the United States Postal Service, first-class postage prepaid, and/or by electronic delivery as follows:

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The Kroger Co.
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This the 23rd day of January, 2018.

SMITH MOORE LEATHERWOOD LLP

BY: /s/ Karen M. Kemerait

Karen M. Kemerait
Attorneys for: NC League of Municipalities

January 23, 2018

Ms. M. Lynn Jarvis
Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27603

**Re: *In the Matter of: Application of Duke Energy Carolinas, LLC
For Adjustment of Rates and Charges Applicable to
Electric Service in North Carolina
NCUC DOCKET NO. E-7, SUB 1146***

Dear Ms. Jarvis:

Attached please find the **Direct Testimony of Adam Fischer on behalf of NC League of Municipalities** for filing with North Carolina Utilities Commission in the above-referenced docket.

If you have any questions or comments regarding this filing, please do not hesitate to contact me.

Sincerely,

Smith Moore Leatherwood LLP

/s/ Karen M. Kemerait

CC: All Parties of Record
Enclosure

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-7, SUB 1146

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:

Application of Duke Energy Carolinas, LLC
For Adjustment of Rates and Charges Applicable
to Electric Service in North Carolina

DIRECT TESTIMONY

OF

ADAM FISCHER, P.E.

ON BEHALF OF NORTH CAROLINA LEAGUE OF MUNICIPALITIES

January 23, 2018

1 **Q. WHAT IS YOUR NAME, ADDRESS, AND TITLE?**

2 A. My name is Adam Fischer, and my address is 300 West Washington Street, North
3 Carolina 27401. I am a Registered Professional Engineer in the State of North
4 Carolina, and am the Transportation Director for the City of Greensboro
5 (“Greensboro” of the “City”).
6

7 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**
8 **WORK EXPERIENCE.**

9 A. I received a Bachelor of Science in Civil Engineering with honors from the
10 University of Tennessee-Knoxville. I have been the Transportation Director for
11 the City of Greensboro for ten years. Before my job as Transportation Director
12 for the City of Greensboro, I was the Engineering Manager for the Transportation
13 Department of the City for nine years. Prior to that position, I was a
14 Transportation/Traffic Engineer for the City’s Transportation Department. I also
15 worked for the City’s Engineering and Inspections Department as a Civil
16 Engineer for three years. Therefore, the majority of my professional career has
17 been with the City of Greensboro.
18

19 **Q. WHAT ARE YOUR RESPONSIBILITIES AS THE TRANSPORTATION**
20 **DIRECTOR FOR THE CITY OF GREENSBORO?**

21 A. I manage the Greensboro Department of Transportation (“GDOT”), which has 73
22 full-time employees, and 200 full-time contracted public transportation

1 employees, and a total annual budget of \$30 million. The GDOT is responsible
2 for the following:

- 3 • Public Transportation Operations: The operations consist of 15 fixed
4 routes (for 4.4 million passenger trips and 2.2 million revenue miles); 43
5 fixed route buses; 38 paratransit vehicles (North Carolina's first electric
6 buses have been ordered for Greensboro); and construction of a new
7 66,000 square foot operations and maintenance facility in 2012, which is
8 the City's first LEED Gold facility.
- 9 • Transportation/Metropolitan Planning Organization ("MPO"): Develops
10 the City's Transportation Improvement Program.
- 11 • Traffic Engineering: Responsible for the Safety – Vision Zero Program
12 and the Congestion Management Program.
- 13 • Parking Operations is currently constructing two new parking decks.
- 14 • Traffic Signal Operations and Maintenance: Responsible for the
15 operations and maintenance of 500 traffic signals.
- 16 • Traffic Signs and Pavement Markers.
- 17 • Street Lighting: Responsible for the City's street lighting, along with plans
18 to modernize all street lights with LED lights.
- 19 • Implementing the \$49 million Transportation Bond for the downtown
20 streetscape, downtown greenway, A&Y greenway, sidewalks and bike
21 lanes (100 miles of sidewalks and 50 miles of bike lanes), and
22 modernizing the transit fleet.

- 1 • Implementing the \$134 million Transportation Bond for the downtown
2 greenway, Cone Boulevard Extension, Gate City Boulevard streetscape,
3 Isaacson Boulevard Extension, Horsepen Creek Road, and sidewalks and
4 bike lanes (100 miles of sidewalks and 50 miles of bike lanes).
- 5 • Coordinate over \$1 billion in transportation improvements for the
6 Greensboro MPO through the State Transportation Improvement Program.

7

8 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

9 A. I am testifying in this proceeding on behalf of the North Carolina League of
10 Municipalities (the “League”).

11

12 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THE**
13 **COMMISSION?**

14 A. No.

15

16 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
17 **PROCEEDING?**

18 A. My testimony in this proceeding will describe the impact of the proposed rate
19 increase on the City of Greensboro and Greensboro’s taxpayers, and discuss the
20 ways in which the rate designs Duke Energy Carolinas, LLC (“DEC”),
21 specifically those related to street lighting, should be changed to encourage

1 energy conservation that will benefit DEC, Greensboro, and Greensboro's
2 taxpayers.

3

4 **Q. IS GREENSBORO CONCERNED ABOUT DEC'S PROPOSED**
5 **ADJUSTMENTS IN RATES?**

6 A. Yes, Greensboro is concerned about DEC's request for a substantial increase in
7 rates.

8

9 I want to initially point out that the City of Greensboro is not unsympathetic to the
10 challenges of operating a utility. For example, similar to the operation of an
11 investor-owned utility, Greensboro provides water and sewer services to its
12 ratepayers, and in that role is concerned with peak flow, capital-intensive
13 infrastructure, and the challenge of encouraging conservation to limit long-term
14 capital expenditures without undermining the revenue stream that is necessary for
15 the City to continue to maintain the distribution and treatment infrastructure we
16 own. Considering the operational similarities between the responsibilities of DEC
17 and the City, the City would like to work with DEC to find new and creative ways
18 to make municipal enterprises cost-effective, sustainable, resilient, and efficient,
19 with the understanding that DEC has the same challenge that municipalities have
20 in paying for the fixed costs of providing service.

21

1 Municipalities, such as the City of Greensboro, also share certain electricity usage
2 characteristics with DEC's large industrial customers. Like large industrial
3 operations, municipalities make substantial investments in energy efficiency and
4 in building systems technology to operate a wide variety of crucial municipal
5 facilities. Greensboro also has the ability to shift load from on-peak to off-peak
6 hours in the same way that industrial customers do. For these reasons,
7 municipalities, including Greensboro, should be eligible for the same rates as
8 large, high load factor industrial customers.

9
10 It is important to point out a key difference between large industrial customers
11 and municipalities. Unlike large industrial customers, municipalities' costs for
12 electric service are paid by taxpayers. Municipalities thus have an obligation to
13 taxpayers to operate their enterprises and provide services in the most efficient
14 manner--for 24-hours a day and seven days a week, rather than just during peak
15 load periods. Because taxpaying citizens bear all increased costs directly, for
16 residential use, and indirectly, by paying for municipal services, the City
17 respectfully requests that the Commission carefully consider the impact on
18 taxpayers of the increases proposed in this rate case proceeding.

19

20 **Q. IN REGARD TO ELECTRICITY USAGE BY THE CITY, WHAT ARE**
21 **THE CATEGORIES OF USAGE BY THE CITY?**

1 A. Greensboro's usage of electricity can be divided into several categories,
2 including: municipal buildings, parking decks, area lighting, water pumping,
3 traffic signals, water treatment, wastewater treatment, street lighting, and non-
4 metered service. Municipal buildings, such as the City Hall, community centers,
5 law enforcement buildings, and fire and emergency response centers, are
6 responsible for about 30% of the total electricity consumed and are the largest
7 category of usage in Greensboro. Street lighting is a close second to municipal
8 buildings, and represents just under 30% of total electricity consumed by
9 Greensboro. There are 26,814 street lights installed within Greensboro's
10 municipal limits.

11
12 Water treatment and wastewater treatment also represent significant energy usage
13 for Greensboro, as is the case for most of North Carolina's municipalities.

14
15 **Q. IS THE CITY COMMITTED TO ENERGY CONSERVATION?**

16 A. The City is absolutely committed to energy conservation.

17

18 **Q. DESCRIBE THE EFFORTS TAKEN BY GREENSBORO TO MANAGE**
19 **ELECTRICITY CONSUMPTION ACROSS ITS MUNICIPAL**
20 **ENTERPRISE AND TO CONSERVE ENERGY.**

21 A. Consistent with the mandate set forth in North Carolina General Statute § 143-
22 135.7 related to energy efficiency for new and renovated state-owned or -leased

1 facilities, many municipalities implement energy efficiency standards for public
2 facilities through local ordinances. Greensboro has already implemented, or is
3 implementing, many Energy Conservation Measures (“ECM”) in municipal
4 buildings, libraries, recreation centers, public safety facilities, and parking decks
5 across the City. Energy saving technology used throughout the City includes
6 high-efficiency lighting systems, building automation systems, and Hi-SEER air
7 conditioning systems. The City is also planning to install low-flow water fixtures
8 and variable speed pumps and fans. These measures were approved by the City
9 Council, and will reduce the City’s energy consumption and spending on
10 electricity and help clean-up Greensboro’s environment by reducing its carbon
11 footprint. And, these ECMs will be paid for by energy savings—meaning there
12 will be no additional cost to the City. Once the upgrades are paid for, Greensboro
13 will continue to receive energy savings through reduced utility bills.

14
15 I want to mention that in past years the City has implemented many ECM. For
16 example, in 2010, the City invested \$6.1 million to retrofit 46 City-owned
17 facilities with energy and water savings measures. These measures included:
18 energy efficient lighting upgrades (including LED lighting in four parking decks);
19 building automation system enhancements; HVAC improvements; and water
20 efficiency improvements. During the second phase of Greensboro’s efforts to
21 reduce energy consumption which was completed in 2011, the City invested \$1
22 million to retrofit 15 City-owned facilities with energy and water savings

1 measures. These measures included: energy efficient lighting upgrades; HVAC
2 improvements; and domestic water and irrigation efficiency improvements.

3

4 Additionally, Greensboro would like to convert all of its street lighting to Light
5 Emitting Diode (“LED”) lighting as further efforts to conserve energy and
6 manage electricity consumption.

7

8 **Q. DO THOSE EFFORTS REQUIRE CAPITAL INVESTMENT ON THE**
9 **PART OF THE CITY?**

10 A. Yes, and in some cases, a significant capital investment. The City considers
11 whether the energy savings will cover the capital investment and the time period
12 over which the energy savings will cover the investment when determining
13 whether to make the investment.

14

15 **Q. DOES GREENSBOR CONSIDER THE COST OF ELECTRICITY AND**
16 **THE POTENTIAL COST SAVINGS WHEN EVALUATING WHETHER**
17 **TO MAKE A CAPITAL INVESTMENT?**

18 A. Yes. The City services debt using cost savings achieved through decreased
19 electricity consumption. If cost savings are decreased, the City’s ability to service
20 the debt incurred for the capital investment is impaired.

21

1 **Q. YOU MENTIONED THAT LED LIGHTING WOULD FURTHER**
2 **GREENSBORO’S ENERGY CONSERVATION EFFORTS. IN ADDITION**
3 **TO CONSERVATION OF ENERGY, ARE THERE ADDITIONAL**
4 **BENEFITS OF LED LIGHTING?**

5 A LED lighting uses much less energy and is much better for the environment than
6 the old style high pressure sodium vapor (“HPSV”) lighting. In addition to the
7 energy efficiency benefits of LED lighting, LED lighting is a “whiter/cleaner”
8 light that is better for nighttime acuity and assists in crime prevention and
9 deterrence. Moreover, LED lighting has a much longer expected life than the
10 HPSV lighting, as it lasts ten times longer than the HPSV lighting. These
11 measurable benefits are additional reasons that the City wishes to convert all of its
12 street lighting to LED lighting, and there are 26,814 street lights in the City. The
13 City believes that DEC should provide incentives for Greensboro and other
14 municipalities to convert less energy efficient lighting to LED lighting.

15
16 **Q. PLEASE DESCRIBE GREENSBORO’S STREET LIGHTING PROGRAM**
17 **AND BUDGET.**

18 A. Greensboro maintains a street lighting budget that covers the cost of providing
19 street lighting services on public streets. The City contracts with DEC for the
20 installation and maintenance of street lights and poles within its municipal limits.
21 The majority of the street lighting budget is spent on payment to DEC for this

1 service. A portion of the budget is utilized to respond to public safety requests
2 and citizen petitions that arise during the year.

3

4 **Q. PLEASE DESCRIBE ANY PLANS THAT GREENSBORO HAS TO**
5 **CONVERT EXISTING STREET LIGHTING TO LED AND WHY**
6 **CONVERSION IS IMPORTANT TO THE CITY.**

7 A. Greensboro has not yet been able to convert all of its HPSV street lights to LED
8 lighting. However, as mentioned above, LED lighting provides a number of
9 tangible benefits to the City, and the City would like to be able to convert the
10 remaining street lights that have not yet been converted to LED. The City would
11 like to be able to convert those street lights to LED as quickly as possible.

12

13 **Q. PLEASE EXPLAIN THE REASONS THAT THE CITY HAS NOT**
14 **COMPLETED ITS LED STREET LIGHT CONVERSION PROCESS.**

15 A. Due to the cost of conversion, Greensboro has not been able to convert all of its
16 street lighting to LED lighting. In this rate case proceeding, DEC has proposed
17 charging a transition fee of \$40/luminaire to any customer that opts to replace
18 HPSV lighting with LED lighting. Therefore, if Greensboro were to convert all
19 of the HPSV street lights to LED under DEC's proposed rates and transition fees,
20 the City would have to pay 2.8% more than the amount that it is currently paying
21 for street lighting. That additional cost will make the City's plans to convert to
22 LED lighting more expensive and difficult.

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Q. WHAT RECOMMENDATIONS DO YOU HAVE FOR DEC'S STREET LIGHT RATE SCHEDULES AND LED CONVERSION RATES?

A. While Greensboro appreciates DEC's proposed reduction from \$54.00 to \$40.00 for conversion of street lights in service for less than 20 years to LED lighting, DEC's proposed rate schedules nonetheless serve to penalize municipalities, such as Greensboro, that wish to convert to a better and more efficient technology that is better for the environment. DEC should remove the barriers to conversion to LED lighting by eliminating the transition fee entirely, and DEC should also lower the proposed rates for LED lighting to further encourage municipalities to convert to LED lighting. Conversion to LED lighting will not only benefit municipalities and the environment, but will also benefit DEC in savings in maintenance costs and energy costs.

Furthermore, if DEC agrees to not charge a transition fee for LED lighting, in no case should the rates attributable to LED fixtures increase as they do in DEC's proposed PL rate schedule. As mentioned previously, LED lighting requires less service and maintenance over its operating life, and this rate schedule should have a lower rather than a higher rate.

1 Finally, in the event that a municipality is required to pay a transition fee to
2 switch to LED street lighting, in no circumstance should the rates paid for LED
3 street lighting increase.

4
5 **Q. IS GREENSBORO AND OTHER MUNICIPALITIES ADVERSELY**
6 **AFFECTED BY DEC'S RATE DESIGNS?**

7 A. Yes. The current and proposed LED-specific rate provisions adversely affect
8 municipalities. The current transition fees and requirement to shift from a PL to
9 GL rate for conversions that are inconsistent with DEC's conversion schedule
10 create a disincentive to convert to LED street lighting. While the proposed
11 transition fees are lower, they simply do not provide sufficient incentive for
12 municipalities to convert to LED street lighting. DEC's position is contrary to
13 Commission Rule R8-47(a) that urges utilities "to investigate new, more efficient
14 lighting systems as they are developed and, where such systems are efficient and
15 economical to the customer, to request approval of newer systems as standard
16 tariff items."

17
18 DEC also has requested rates for street lighting with a rate of returns for the GL
19 class of 27.22% and the PL class of 12.20%, the highest rates of return for any
20 class except the NL class that is being phased out. DEC is proposing a total retail
21 rate of return of 7.98%. Clearly the proposed street lighting rates of return fall
22 well outside of the +/-10% band of reasonableness for rates of return relative to

1 the overall jurisdictional rates of return. This adversely affects Greensboro and its
2 taxpaying citizens.

3

4 **Q. WHAT ACTIONS DOES THE CITY REQUEST THAT THE**
5 **COMMISSION TAKE WITH RESPECT TO THE ISSUES YOU RAISED**
6 **IN YOUR TESTIMONY?**

7 A. The City respectfully requests that the Commission's final order in this docket
8 modify DEC's rates schedules to address the issues raised in my testimony. The
9 City requests that the Commission consider the burden on taxpayers that would
10 result from any increase in rates or disproportionate rates of return for rate classes
11 that affect Greensboro and other municipalities. In addition, the City requests that
12 the Commission consider the technological advances of LED lighting that will
13 provide benefits to DEC and municipalities and will benefit the environment.
14 Therefore, Greensboro requests that the Commission remove barriers to
15 conversion so that municipalities will have the ability to convert to this important
16 technology. Especially in light of the substantial rate increase that DEC has
17 requested, Greensboro believes that DEC should provide municipalities that are
18 committed to conservation the ability to save money on their electricity bills
19 through LED lighting.

20

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

22 A. Yes, at this time.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the **Direct Testimony of Adam Fischer on behalf of NC League of Municipalities** have been duly served upon counsel of record for all parties to this docket by either depositing a true and exact copy of same in a depository of the United States Postal Service, first-class postage prepaid, and/or by electronic delivery as follows:

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This the 23rd day of January, 2018.

SMITH MOORE LEATHERWOOD LLP

BY: /s/ Karen M. Kemerait

Karen M. Kemerait
Attorneys for: NC League of Municipalities

January 23, 2018

Ms. M. Lynn Jarvis
Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27603

**Re: *In the Matter of: Application of Duke Energy Carolinas, LLC
For Adjustment of Rates and Charges Applicable to
Electric Service in North Carolina
NCUC DOCKET NO. E-7, SUB 1146***

Dear Ms. Jarvis:

Attached please find the **Direct Testimony of F. Hardin Watkins, Jr. on behalf of NC League of Municipalities** for filing with North Carolina Utilities Commission in the above-referenced docket.

If you have any questions or comments regarding this filing, please do not hesitate to contact me.

Sincerely,

Smith Moore Leatherwood LLP



/s/ Karen M. Kemerait

CC: All Parties of Record
Enclosure

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-7, SUB 1146

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:

Application of Duke Energy Carolinas, LLC
For Adjustment of Rates and Charges Applicable
to Electric Service in North Carolina

DIRECT TESTIMONY

OF

F. HARDIN WATKINS, JR.

ON BEHALF OF NORTH CAROLINA LEAGUE OF MUNICIPALITIES

January 23, 2018

1 **Q. WHAT IS YOUR NAME, ADDRESS, AND TITLE?**

2 A. My name is F. Hardin Watkins, Jr. and my address is 518 Fountain Place,
3 Burlington, NC 27215. I am the City Manager for the City of Burlington.

4
5 **Q. WHAT ARE YOUR RESPONSIBILITIES AS CITY MANAGER?**

6 A. I was appointed by the Burlington City Council to manage the day-to-day
7 operations of the City's government, overseeing all municipal services and
8 departments. The City Manager's Office carries out the policies approved by the
9 City Council and keeps the City Council informed of the City's financial status as
10 well as other affairs of the City.

11

12 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**
13 **WORK EXPERIENCE.**

14 A. I received a Bachelor of Arts in Public Policy Analysis, with a specialization in
15 State and Local Administration and a Masters of Public Administration, both from
16 the University of North Carolina at Chapel Hill. I have been the City Manager in
17 Burlington since January, 2016. Before coming to Burlington, I served as the
18 Town Manager of Garner, NC. Prior to working for the Town of Garner, I served
19 as the City Manager of the City of Suwanee, GA. Prior to that, I served as
20 assistant to the City Manager of Decatur, Georgia and as city planner and
21 community development coordinator for the City of Bennettsville, South

1 Carolina. Among my recent professional affiliations is service on the City of
2 Raleigh Utility Advisory Committee.

3 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

4 A. I am testifying in this proceeding on behalf of the North Carolina League of
5 Municipalities (the “League” or “NCLM”).
6

7 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THE**
8 **COMMISSION?**

9 A. No.
10

11 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
12 **PROCEEDING?**

13 A. My testimony in this proceeding will: 1) describe the impact of the proposed rate
14 increase on Burlington; 2) discuss the ways in which the rate designs and
15 operating procedures of Duke Energy Carolinas, LLC (“DEC”), specifically those
16 related to street lighting, should be updated and changed to benefit League
17 Members such as Burlington; and 3) suggest ways that DEC and the League can
18 work together for the benefit of municipalities, utilities and taxpayers.
19

20 **Q. IN GENERAL, WHY IS THE LEAGUE CONCERNED ABOUT THE**
21 **PROPOSED ADJUSTMENTS IN RATES?**

1 A. League members are not unsympathetic to the challenges of operating a utility.
2 For example, similar to the operation of an investor-owned utility, the City of
3 Burlington provides water and sewer services to ratepayers and in that role is
4 concerned with peak flow, capital-intensive infrastructure, and the challenge of
5 encouraging conservation to limit long-term capital expenditures without
6 undermining the revenue stream that is necessary for the City to continue to
7 maintain the distribution and treatment infrastructure we own. Considering the
8 operational similarities between the responsibilities of League members and the
9 investor-owned utilities, the NCLM wants to continue to engage with investor-
10 owned utilities to find new and creative ways to make municipal enterprises cost-
11 effective, sustainable, resilient and efficient, while respecting that utilities have
12 the same challenge that municipalities and public authorities have in paying for
13 the fixed costs of providing service.

14
15 Municipalities and authorities also share certain electricity usage characteristics
16 with industrial customers. Like large industrial operations, municipalities and
17 water and sewer authorities make substantial investments in energy efficiency and
18 in building systems technology to operate a wide variety of crucial municipal
19 facilities. While many municipalities manage several more meter/billing points
20 than most large industrial customers, many municipalities now have the resources
21 to manage aggregate energy consumption within the enterprise from a single
22 point. In addition, municipalities and public authorities can shift load from on-

1 peak to off-peak hours in the same way that industrial customers do. For these
2 reasons, municipalities and public authorities should be eligible for the same rates
3 as large, high load factor industrial customers.
4 Unlike large industrial customers, however, municipalities' and public authorities'
5 costs for electric service are paid by taxpayers. In addition, municipalities and
6 public authorities have an obligation to taxpayers to operate their enterprises and
7 provide services in the most efficient way, 24-hours a day/seven days a week, not
8 just during peak load periods. Because taxpayer citizens bear all increased costs
9 directly, for residential use, and indirectly, by paying for municipality and
10 authority use, the League respectfully requests that the Commission carefully
11 consider the impacts on taxpayers of the increases proposed in this proceeding by
12 DEC.

13

14 **Impact of Proposed Rate Increase on Burlington**

15 **Q. TURNING NOW TO ELECTRICITY USAGE, WHAT ARE THE**
16 **CATAGORIES OF USAGE BY THE CITY?**

17 A. Burlington's usage of electricity can be divided into several categories, including:
18 municipal buildings, recreation facilities, water pumping, traffic signals, water
19 treatment, wastewater treatment, street lighting, and non-metered service.
20 Municipal services, including administration, recreation and public safety, are
21 responsible for approximately 21% of the total electricity consumed and are the
22 second largest category of usage in Burlington.

1 Street lighting is close to the total for municipal buildings and represents 20% of
2 total electricity consumed in Burlington. There are 5,074 street lights installed
3 within Burlington's municipal limits.

4
5 Water treatment and wastewater treatment represent significant energy usage for
6 Burlington accounting for the remaining 59% of total electricity consumed, as is
7 the case for most of North Carolina municipalities.

8

9 **Q. HOW MUCH DID THE CITY OF BURLINGTON PAY DEC FOR**
10 **ELECTRICITY USAGE, BY CATEGORY, LAST YEAR?**

11 A. In Fiscal Year 2016-2017, the City of Burlington paid DEC approximately \$2.5
12 million (not including electricity consumed for capital projects). These costs are
13 broken down into the following categories:

14	Water & Sewer	\$1,468,899
15	Street Lights	\$ 513,232
16	Recreation	\$ 221,116
17	Municipal Support	\$ 166,124
18	Public Safety	\$ 137,460

19

20 **Q. HOW WILL THE RATE INCREASES PROPOSED BY DEC IMPACT**
21 **THE AMOUNT PAID BY BURLINGTON FOR ELECTRICTY USAGE?**

1 A. Assuming a 12.8% rate increase as initially proposed by DEC, Burlington's total
2 cost for electricity will increase to approximately \$2.8 million.

3

4 **Q. DESCRIBE THE EFFORTS TAKEN BY BURLINGTON TO MANAGE**
5 **ELECTRICITY CONSUMPTION ACROSS THE MUNICIPAL**
6 **ENTERPRISE.**

7 A. Several municipalities implement energy efficiency standards through local
8 ordinance. Burlington has implemented the following energy conservation
9 measures: Replacement of inefficient HVAC equipment; upgrades to wastewater
10 treatment plants; and upgrades to LED building lighting. Most recently,
11 Burlington has focused on conversion of its street light to LED both to manage
12 electricity consumption and to reduce crime.

13

14 **Q. DO EFFORTS SUCH AS THOSE DESCRIBED ABOVE REQUIRE**
15 **CAPITAL INVESTMENT ON THE PART OF THE CITY?**

16 A. Yes. The City services debt using cost savings achieved through decreased
17 electric consumption. If the savings are decreased, then the City's ability to
18 service the debt incurred is reduced.

19

20 **Q. IF ELECTRICITY COSTS CONTINUE TO RISE, WILL BURLINGTON**
21 **BE ABLE TO MAKE CAPITAL INVESTMENTS IN ENERGY**
22 **EFFICIENCY EFFORTS?**

1 A. It is challenging to make new capital investments if the City's operating expenses
2 due to increased electricity costs continue to rise.

3

4 **Needed Changes to Lighting Rate Design and Operating Procedures**

5 **Q. PLEASE DESCRIBE BURLINGTON'S STREET LIGHTING PROGRAM**
6 **AND BUDGET.**

7 A. Burlington maintains a street lighting budget that covers the cost of providing
8 street lighting services on public streets. Burlington contracts with DEC for the
9 installation and maintenance of street lights and poles within the municipal limits.
10 The majority of the street lighting budget is spent on payment to DEC for this
11 service.

12

13 **Q. PLEASE DESCRIBE ANY PLANS THAT BURLINGTON HAS TO**
14 **CONVERT EXISTING STREET LIGHTING TO LED LIGHTING AND**
15 **WHY THIS IS IMPORTANT TO THE CITY.**

16 A. During the summer of 2016, Burlington experienced a major uptick in gun
17 violence and violent crimes, including homicides, rapes, robberies and aggravated
18 assaults. Officers from Burlington Police Department responded to 203 calls for
19 service involving gunshots, shooting and shots heard during the period between
20 May and August of 2016.

21

1 The Burlington Police Department used its resources and officers to attempt to
2 address the problem, but the community also looked at additional solutions. One
3 of the proposed solutions that gained unanimous support was to improve street
4 lighting across the City, especially in areas that were experiencing drive-by
5 shooting and related retaliatory acts of violence. Most experienced police
6 professionals will tell you that if you improve lighting and make an area brighter,
7 criminals and nefarious persons will move away from that area. National and
8 international studies have found that sensitively deployed street lighting can lead
9 to reductions in crime and fear of crime, and increase pedestrian street use after
10 dark.

11
12 It is for these reasons that Burlington is investigating the feasibility and timeline
13 for converting all of the City's street lights to LED as quickly as possible. The
14 City's Transportation Department has worked with the Police Department to
15 identify and prioritize the locations that need additional street lighting. Several
16 new lights were added at the City's expense to trouble spots and areas that had
17 been overlooked for street lighting fixtures in the past.

18
19 **Q. HAS THE CITY COMPLETED ITS LED STREET LIGHT CONVERSION**
20 **PROCESS?**

21 A. No. Due to costs, Burlington has to conduct the LED street light conversion
22 project in phases.

1 The current phase of the LED street light conversion project replaces 1,908 old
2 style mercury vapor (“MV”) street lights and 781 high pressure sodium (“HPS”)
3 street lights with LED street lights. The majority of the MV street lights being
4 replaced are 100 watt fixtures. Of the 781 HPS street lights being replaced, 579
5 are 100 watt fixtures, 16 are 150 watt fixtures and 186 are 250 watt fixtures.

6 There is no cost to convert to a MV fixture to LED under DEC’s rate schedule.
7 However, at the current conversion rate of \$54/unit fee it will cost Burlington
8 \$45,126.81 to replace 781 HPS fixtures with LED lights. In addition, 90.5% of
9 Burlington’s street lights are on the PL rate schedule. Any lighting change to
10 LED that varies from DEC’s conversion schedule will result in the fixture
11 switching from the PL to the GL rate schedule.

12
13 After the first phase of the conversion, Burlington will still have approximately
14 200 MV, 1,250 HPS and 37 metal halide (“MH”) fixtures to convert to LED.
15 These fixtures are primarily located along thoroughfare routes in commercial
16 areas. The conversion cost of the HPS and MH fixtures at the current \$54/unit
17 conversion fee will be approximately \$74,350.

18
19 **Q. HOW DO DEC’S STREET LIGHTING RATES AND CONVERSION**
20 **RATES AFFECT BURLINGTON’S ABILITY TO PAY FOR LED**
21 **CONVERSIONS?**

1 A. Because DEC charges a transition fee for HPS and MH fixtures to LED street
2 lights, Burlington has to budget for these costs. The City also has to budget for
3 any rate increase that is associated with LED lighting. Under, both the current
4 and proposed transition fees and associated rate schedules it is difficult for
5 Burlington and other municipalities to afford a complete conversion to LED
6 lighting. This inhibits us from maximizing energy efficiency and preventing
7 crime.

8

9 **Q. YOU WERE THE CITY MANAGER IN GARNER, NC; DID GARNER**
10 **HAVE A DIFFERENT EXPERIENCE WITH STREET LIGHT**
11 **CONVERSIONS?**

12 A. Yes. Garner is in Duke Energy Progress, LLC's ("DEP") service territory. Garner
13 was one of the initial municipalities in the North Carolina to do a full LED street
14 light conversion. Garner converted 3,200 street lights. At that time, DEP charged
15 a \$50/unit transition fee to retrofit lights that were being leased from DEP and
16 were in service for less than 20 years. Fixtures in service for more than 20 years
17 were converted at DEP's cost. The total cost to Garner of the conversion for 1,451
18 lights that were in service for less than 20 years was \$72,550. Garner benefited
19 from associated energy cost savings of \$5,595.43/month or \$67,121.16/year. The
20 first year of savings almost completely covered the conversion.

21

1 **Q. WHAT RECOMMENDATIONS DO YOU HAVE FOR DEC’S STREET**
2 **LIGHT RATE SCHEDULES AND LED CONVERSION RATES?**

3 A. While the NCLM appreciates DEC’s proposed reduction from \$54.00 to \$40.00
4 for conversion of street lights in service for less than 20 years to LEDs, given the
5 demonstrated benefits of LED lighting DEC should cover the cost of conversions
6 for HPS and MH fixtures as well as MV fixtures.

7
8 If DEC decides not to charge a transition fee for LED lighting, in no case should
9 the rates attributable to LED fixtures increase as they do in DEC’s proposed PL
10 rate schedule. LED lighting requires less service and maintenance over its life
11 cycle and should have a lower rather than a higher rate.

12
13 Finally, in the event that a municipality is required to pay a transition fee to
14 switch to LED street lighting, in no circumstance should the rates paid for LED
15 street lighting increase.

16
17 **Q. ARE MUNICIPALITIES ADVERSELY AFFECTED BY ANY OF DEC’S**
18 **RATE DESIGNS?**

19 A. Yes. The current and proposed LED-specific rate provisions adversely affect
20 municipalities. The current transition fees and requirement to shift from a PL to
21 GL rate for conversions that are inconsistent with DEC’s conversion schedule
22 create a disincentive to convert to LED street lighting. While the proposed

1 transition fees are lower, they simply do not provide sufficient incentive for
2 municipalities to convert to LED street lighting. It also appears that this was
3 DEC's intent, since witness Cowling testified that one of the purposes of the
4 transition fees was to slow the early retirement of installed assets. This approach
5 runs contrary to Commission Rule R8-47(a) that urges utilities "to investigate
6 new, more efficient lighting systems as they are developed and, where such
7 systems are efficient and economical to the customer, to request approval of
8 newer systems as standard tariff items."

9
10 DEP has offered LED-specific provisions in its street lighting rate schedule for
11 more than seven years and has a much higher conversion rate to LED street lights.
12 While DEP still can improve its street lighting rates, DEC has much farther to go.

13
14 DEC also has requested rates for street lighting with a rate of returns for the GL
15 class of 27.22% and the PL class of 12.20%, the highest rates of return for any
16 class except the NL class that is being phased out. DEC is proposing a total retail
17 rate of return of 7.98%. Clearly the proposed street lighting rates of return fall
18 well outside of the +/-10% band of reasonableness for rates of return relative to
19 the overall jurisdictional rates of return. This adversely affects municipalities and
20 their taxpaying citizens.

21

1 **Q. SHOULD DEC CONTINUE TO MEET WITH THE LEAGUE ABOUT**
2 **STREET LIGHTING ISSUES AND HOW CAN THESE MEETINGS BE**
3 **MORE PRODUCTIVE?**

4 A. The League is appreciative of the semi-annual meetings with DEC to address
5 issues of interest to municipalities and to specifically address lighting issues. The
6 League also appreciates DEC’s plans to continue the outdoor-lighting specific
7 dialogue that has been established between the League and DEC. However, the
8 League does not agree with witness Cowling that these meetings should only be
9 on an as needed basis. The League wants to continue to meet semi-annually and
10 wants the meetings to be more productive and forward looking. This is especially
11 necessary in light of DEC’s Power/Forward grid modernization planning process.
12 As more municipalities make use of AMI technology, the League wants to make
13 sure that it has input on new rate designs and technology implementation before
14 the next rate case.

15 **Q. WHAT ACTIONS DOES THE LEAGUE REQUEST THE COMMISSION**
16 **TO TAKE IN THIS DOCKET WITH RESPECT TO THE ISSUES YOU**
17 **RAISED IN YOUR TESTIMONY?**

18 A. The League respectfully requests that the Commission’s final order in this docket
19 modify DEC’s rates schedules to address the issues raised in my testimony. In
20 doing so, the League requests that the Commission keep in mind the burden on
21 taxpayers that would result from any increase in rates or disproportionate rates of
22 return for rate classes that affect municipalities and public authorities. In

1 addition, the League respectfully requests that the Commission consider the
2 technological advances, discussed herein, now available to municipalities and
3 public authorities to manage load and to increase energy efficiency of operations
4 that offer DEC potential savings in operations and maintenance and the reduction
5 of peak demand.

6

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

8 **A.** Yes, at this time.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the **Direct Testimony of F. Hardin Watkins, Jr. on behalf of NC League of Municipalities** have been duly served upon counsel of record for all parties to this docket by either depositing a true and exact copy of same in a depository of the United States Postal Service, first-class postage prepaid, and/or by electronic delivery as follows:

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This the 23rd day of January, 2018.

SMITH MOORE LEATHERWOOD LLP

BY: /s/ Karen M. Kemerait

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March 2, 2018

VIA ELECTRONIC FILING

M. Lynn Jarvis, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
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**RE: Duke Energy Carolinas, LLC Amended Partial Settlement Agreement
with the North Carolina League of Municipalities, City of Concord,
City of Kings Mountain and City of Durham
Docket No. E-7, Sub 1146**

Dear Ms. Jarvis:

I enclose the Amended Partial Settlement Agreement among Duke Energy Carolinas, LLC (“DEC”), the North Carolina League of Municipalities (the “League”), the City of Concord (“Concord”), the City of Kings Mountain (“Kings Mountain”), and the City of Durham (“Durham”) (the “Amended Settlement Agreement”) for filing in connection with the referenced matter. The Amended Settlement Agreement adds Durham as a party and makes changes to paragraphs 3, 4, 12 and 15 from the Partial Settlement Agreement filed on behalf of DEC, the League, Concord and Kings Mountain on February 28, 2018.

Thank you for your attention to this matter. If you have any questions, please let me know.

Sincerely,

Lawrence B. Somers

Enclosure

cc: Parties of Record

OFFICIAL COPY

Mar 02 2018

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 1146

In the Matter of)	
Application of Duke Energy Carolinas, LLC,)	
for Adjustment of Rates and Charges Applicable)	Amended Partial Settlement
Agreement to Electric Utility Service in)	
North Carolina)	

This Amended Partial Settlement Agreement (“Settlement Agreement”) is entered into this 2nd day of March, 2018 by and among Duke Energy Carolinas, LLC (“DEC” or the “Company”), the North Carolina League of Municipalities (“NCLM” or the “League”), the City of Concord (“Concord”), the City of Kings Mountain (“Kings Mountain”), and the City of Durham (“Durham”)(collectively, the “Settling Parties”).

WHEREAS, on August 25, 2017, DEC filed an application for a general rate increase with the North Carolina Utilities Commission (“Commission”) in Docket No. E-7, Sub 1146 (the “Docket”);

WHEREAS, the NCLM represents 540 municipalities in the State of North Carolina and intervened in the Docket and in its testimony has taken the position that the Commission should order DEC to (1) adjust all rates downward to account for the lower corporate income tax rate in the Tax Cuts and Jobs Act of 2017; (2) eliminate the transition fees for change out of High Pressure Sodium (“HPS”) and Metal Halide Luminaires (“MH”); (3) adjust the proposed costs for lighting under the rates such that on a cost/kWh consumed basis, the rates for LED lighting are equal to or lower than the costs of HPS luminaires in order to encourage conversion to LED lighting; (4) lower the rate of return (“ROR”) for street lighting so that rates do not fall outside of the +/-10% band of reasonableness relative to the overall jurisdictional rate of return; (5)

increase time-of-use based and critical peak pricing/dynamic pricing options and information for customers; and (6) continue semi-annual meetings with the NCLM and all interested localities;

WHEREAS, Concord, Kings Mountain and Durham have intervened in the Docket and support the positions taken by the NCLM;

WHEREAS, the Settling Parties have shared this Agreement with the Public Staff-North Carolina Utilities Commission ("Public Staff") and are authorized to represent that the Public Staff does not object to this Partial Settlement Agreement;

WHEREAS DEC, the League, Concord and Kings Mountain filed a Partial Settlement Agreement on February 28, 2018 and wish to make changes in Paragraphs 3, 4, 12 and 15, and to add Durham; and

WHEREAS, the Settling Parties now desire to resolve and settle four of NCLM's six issues, set forth as (2), (3), (4) and (6) above, to narrow the number of issues in controversy in the Docket between themselves.

NOW, THEREFORE, for an in consideration of the foregoing, the mutual commitments and promises set forth herein, and other good and valuable consideration, the receipt and sufficiency is hereby acknowledged, the Settling Parties hereby agree to resolve four of the issues among them regarding the Docket on the following terms:

1 DEC shall keep the current proposed LED transition fee reduction for HPS luminaires from \$54.00 to \$40.00, but will evaluate adoption of LED technology and its impact on the transition fees every two years between rate cases and adjust the fees downward if applicable. DEC will eliminate the HPS transition fee on entire fixture failure. Transition fees will not be increased outside of a general rate proceeding. The results of any re-evaluation will be reported to the Commission and be subject of a filing for a fee reduction.

2 DEC will allow municipalities to spread the billing for transition fees for up to four years without incurring carrying costs, to be billed annually in August.

3 DEC will combine Rate Schedule GL (Governmental Lighting) and Rate Schedule PL (Street and Public Lighting) to reflect PL pricing as approved by the Commission in its final order in this Docket, effective September 1, 2018 and close Rate Schedule GL. Lights on Schedule GL will be mapped to the rates proposed on PL for inside municipal limits. For Schedule GL lights served underground, DEC will apply underground charges assuming up to 200 feet served from overhead to underground for a monthly fee of \$0.87 per month. Additional decorative and/or non-standard charges for poles, fixtures, or underground fees greater than 200 feet will still apply as would be applicable under the currently-identical provision of Schedules GL and PL. This will lower the ROR on the GL rate.

4 Combining Rate Schedule GL and Rate Schedule PL and not seeking an increase in LED rates in this Docket results in a \$1.658 million revenue requirement deficit to DEC. Upon approval by the Commission, the lighting ROR will be reduced to fall within the +/- 10% range of the retail average and the resulting revenue reduction (\$1.658 million under proposed rates) would be allocated to the other rate classes (RES, GS, I and OPT). The Parties affirm that this Agreement reflects the spirit and intent to continue moving government lighting's ROR closer to the average retail customer ROR.

5 DEC will maintain current LED prices for GL and PL customers and not seek a rate increase for LED fixtures in this Docket. After September 1, 2018, all LED rates applicable to governmental customers will be billed on the PL schedule.

6 For all customer lighting classes, DEC will eliminate the HPS transition fee if the entire HPS fixture fails. Upon complete fixture failure, unless no comparable LED fixture is

available, DEC will replace any standard or non-standard and/or decorative HPS fixture with a comparable LED fixture and the monthly rate for the new fixture will apply. DEC will continue to maintain HPS fixtures and perform minor repairs. DEC will not waive the transition fee for HPS fixtures that are replaced prematurely due to willful damage of the fixture and/or when minor repairs can be performed and the customer chooses to voluntarily upgrade to LED.

7 DEC will close HPS to new installations in all lighting class Rate Schedules (PL, GL, and OL) to lessen the impact on the net book value to all lighting. Where the governmental customer requests the continued use of the same HPS fixture type for appearance reasons, DEC will attempt to provide such fixture, and the governmental customer shall be billed in accordance with the applicable provisions on Schedule PL.

8 The Company's floodlight service is currently billed on Schedule FL. In this Docket, DEC requested to close Schedule FL and move the floodlights to either Schedule OL (private customers) or to Schedule GL (public customers). Effective upon Commission approval, DEC will proceed to add the governmental floodlights to Schedule GL at the proposed rates. Effective September 1, 2018, DEC will move these newly added floodlights from Schedule GL to Schedule PL, including any notations and applicable rates at the same time that DEC transitions the other non-floodlights from Schedule GL to Schedule PL.

9 As of September 1, 2018, governmental customers seeking new non-floodlight service which involves installing a new pole and/or new underground service will pay the current new pole and underground charges on Schedule GL. Currently, a standard wood pole is \$6.49 per pole and underground charges begin at \$4.62 up to 150 feet. The aforementioned fees will not be applicable to fixtures, poles and underground services for non-floodlights moved from

Schedule GL to Schedule PL. Current PL fees for such services will apply unless otherwise modified in a future rate proceeding.

10 When Schedule GL is merged into the new PL, the Company will continue to provide an option for customers to prepay the initial capital costs of poles and underground wiring for products with the tiered rate structure (existing pole, new pole, and new pole underground) as provided for in Paragraph 9. These products will include LEDs and floodlights that are merging from GL to PL with the tiered rate design. Thus, if customers chose to prepay capital costs for the pole and underground wiring, customers will be billed for the existing pole rates accordingly.

11 As part of DEC's proposal to accelerate the conversion of MV fixtures to LED for governmental customers, the Company agrees to file semi-annual conversion progress reports with the Commission as proposed in the Docket testimony of Public Staff witness Jack Floyd. The Company will also provide governmental customer-specific data regarding proactive MV to LED conversions to impacted governmental customers before such work begins, as well as providing information summarizing the benefits of the conversion to LED for each governmental customer.

12 The Company will continue regular meetings with the NCLM and all interested localities at mutually convenient times and locations to discuss outdoor lighting issues.

13 The Settling Parties will support this Partial Settlement Agreement and use their best efforts to implement and achieve its purpose.

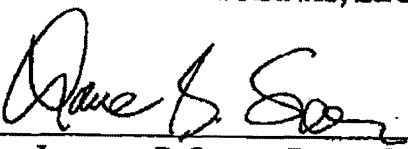
14 This Partial Settlement Agreement shall be binding upon the parties upon the execution hereof but its substantive terms shall be effective only upon the approval of the Partial Settlement Agreement, in its entirety, by the Commission in the Docket. In the event this

condition fails to occur, the Settling Parties agree that this stipulation shall not be binding upon the Settling Parties.

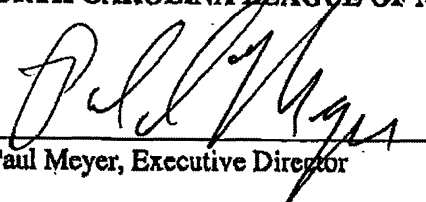
15 The Settling Parties agree to waive their rights to cross-examine each other's witnesses with respect to their pre-filed testimony and exhibits with the exception that the League shall have the right to cross-examine Company witnesses regarding issues of increased time-of-use based and critical peak pricing/dynamic pricing options and associated customer information and Durham shall have the right to cross-examine Company witnesses regarding non-lighting issues. If questions should be asked on cross-examination by an intervenor who is not a party to this agreement or a member of the Commission, the Company and the League reserve the right to present testimony and exhibits to respond to such questions and cross-examine any witnesses with respect to such testimony and exhibits, provided that such testimony, exhibits and cross-examination are not inconsistent with this Settlement Agreement.

IN WITNESS WHEREOF, the Parties have signed and executed as of the date set forth above.

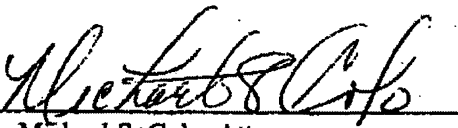
DUKE ENERGY CAROLINAS, LLC

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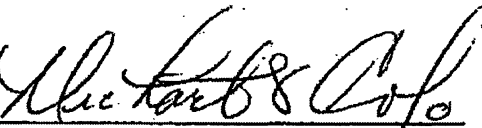
THE NORTH CAROLINA LEAGUE OF MUNICIPALITIES

By: 
Paul Meyer, Executive Director

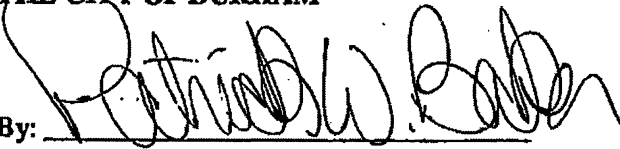
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Michael S. Colo, Attorney

THE CITY OF KINGS MOUNTAIN

By: 
Michael S. Colo, Attorney

THE CITY OF DURHAM

By: 
Patrick W. Baker, City Attorney

CERTIFICATE OF SERVICE
Docket No. E-7, Sub 1146

I certify that a copy of Duke Energy Carolinas, LLC's Amended Partial Settlement Agreement with NCLM, City of Concord, City of Kings Mountain and City of Durham, in Docket No. E-7, Sub 1146, has been served by electronic mail, hand delivery or by depositing a copy in the United States mail, postage prepaid to the following parties:

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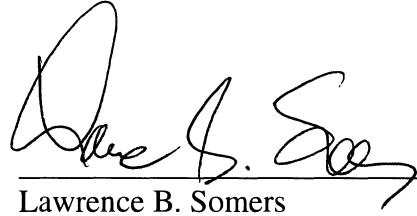
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**Tools for Blighted Areas;
Code Enforcement
Materials**

Submit a revitalization project for UNC-Chapel Hill graduate students enrolled in Community Revitalization course

Graduate students enrolled in the Community Revitalization course and working with the School of Government's Development Finance Initiative (DFI) are current professional degree students in business (MBA), planning (MCRP), and public administration (MPA), among others. Under the supervision of faculty and staff, students conduct market research, feasibility analysis, and financial modeling to **help communities understand how they can attract *private* investment into community revitalization projects** across North Carolina. Students work in multi-disciplinary teams over the course of a semester **at no charge to the local government**.

We invite you to submit your community revitalization projects for consideration by students in the course. The projects to be performed by student teams are selected by students themselves, so please provide details that will make your project appealing. The best projects tend to be located in the heart of a downtown or other significant community space and focus on important structures that the community wants to preserve. The local government or a civic-oriented nonprofit must own the property or have a clear path to obtaining site control (e.g., owner intends to sell or donate the property to the local government). In addition, **please provide the name of a local government staff member to serve as liaison to the students** who is accessible, enthusiastic, and in a position to help the assigned student team secure the information that is required for the analysis, such as land use and planning documents, building inspection records, and interviews with key stakeholders. Importantly, *the liaison must assist students with obtaining comprehensive tax parcel data and GIS shapefiles at the beginning of the semester*.

To apply for a student project to be performed in your community, fill out and return this form to Marcia Perritt (mperritt@sog.unc.edu) and/or Tyler Mulligan (mulligan@sog.unc.edu), **or submit this information online using the link on the CED Blog home page at ced.sog.unc.edu**. If you have questions, contact Marcia Perritt at (919) 538-1545.

1. **Local Government Liaison Name/Job Title:**
2. **City/County:**
3. **Tel:**
4. **Email:**
5. **Building/area targeted for redevelopment (e.g., historic theater, school, mill, etc.) and status of site control (e.g., local government has clear path to ownership/control of site):**
6. **Redevelopment project summary and anticipated local government role** (up to 5-6 sentences to describe project, needs, and any special circumstances—feel free to provide maps or pictures to better convey project and make it more appealing to students):

Local Govt Authority to Address Blight

I. General resources

A. SOG Resources

1. [Introduction to Local Government Finance, 3rd Ed.](#)
2. [County & Municipal Government in North Carolina, 2d Ed.](#)
3. Mulligan, [How a North Carolina Local Government Can Operate a Land Bank for Redevelopment](#)

B. Other resources

1. [Strategic Code Enforcement for Vacancy & Abandonment in High Point NC \(CCP Report 2016\)](#)

II. Local government authority to address blighted structures

A. Eminent domain to address blight

1. In general and public facilities
 - a) Szypszak, [Eminent Domain and Local Government in North Carolina: Law and Procedure](#)
2. Urban redevelopment and affordable housing
 - a) Mulligan, [Using a Redevelopment Area to Attract Private Investment](#)
 - b) Mulligan, [How a North Carolina Local Government Can Operate a Land Bank for Redevelopment](#)
3. Economic development
 - a) Mulligan, [Kelo Revisited: Eminent Domain for Economic Development in North Carolina](#)
4. Statutory references
 - a) Blighted parcels in designated urban redevelopment areas (G.S. 160A-515)
 - b) Housing authorities - low and moderate income housing (G.S. 157-11)
 - c) Eminent domain of historic landmarks facing demo (G.S. 40A-3(b)(8))

B. Police power and regulatory activities to address blight

1. Police power and regulation of public nuisances
 - a) Allen, [May a City Mow an Overgrown Lot without a Court Order?](#)
 - b) Allen, [Ordinance Enforcement Basics](#)
 - c) Allen, [King v. Town of Chapel Hill: The Supreme Court Issues a Major Decision on the Police Power of Local Governments \(Part 1\)](#)
 - d) Allen, [King v. Town of Chapel Hill: The Supreme Court Issues a Major Decision on the Police Power of Local Governments \(Part 2\)](#)
 - e) Mulligan, [Housing Codes for Repair and Maintenance](#)

Local Govt Authority to Address Blight

2. Code enforcement - zoning & land use regulation
 - a) Owens, [Land Use Law in North Carolina, Second Edition](#)
 3. Code enforcement - maintenance codes
 - a) Mulligan, [Housing Codes for Repair and Maintenance](#)
 - b) Mulligan, Handout: Repair of Nonresidential Buildings: NC Local Government Authority
 - c) Mulligan, [Using a Redevelopment Area to Attract Private Investment](#)
 - d) Mulligan, [Periodic Inspections, Permits, and Registration of Residential Rental Property: Changes in 2017](#)
 - e) [Strategic Code Enforcement for Vacancy & Abandonment in High Point NC \(CCP Report 2016\)](#)
 4. Code enforcement - historic landmarks and demolition by neglect
 - a) Lovelady, [The Tortoise, the Hare, and Demolition in Historic Districts](#)
 5. Tax liens and tax foreclosure
 - a) McLaughlin, [Fighting Blight with Property Tax Bills](#)
 - b) McLaughlin, [Tax Foreclosure and Redevelopment](#)
 - c) [Strategic Code Enforcement for Vacancy & Abandonment in High Point NC \(CCP Report 2016\)](#)
 6. Statutory references
 - a) Periodic inspections (G.S. 153A-364, 160A-424)
 - b) Regulation of businesses (G.S. 153A-134, 160A-194)
 - c) General ordinance making power and nuisance (G.S. 153A-121, 153A-123, 160A-174, 160A-175)
 - d) Summary abatement of nuisance (G.S. 153A-140, 160A-193)
 - e) Repair, closing, and demolition of nonresidential buildings (G.S. 160A-439, 153A-372.1)
 - f) Minimum housing code (G.S. Ch. 160A, Art. 19, Part 6)
 - g) Abandoned structures (G.S. 160A-441)
 - h) Compulsory repair in urban redevelopment area (G.S. 160A-512 exercised pursuant to G.S. 153A-376 and 160A-456)
 - i) Unsafe buildings condemned (G.S. 153A-366, 160A-426)
- C. Development activities through voluntary exchanges**
1. Acquisition and improvement of property
 - a) Mulligan, [Follow Procedures Prior to Acquiring Property for Redevelopment](#)
 - b) Mulligan, [Acquiring real property for redevelopment—can local governments keep it confidential?](#)

Local Govt Authority to Address Blight

2. Sale of property with conditions or restrictions
 - a) Mulligan, [Conveyance of Local Government Property for Affordable Housing](#)
 - b) Mulligan, [Sale of Historic Structures by NC Local Governments for Redevelopment](#)
 - c) Mulligan, [Conveyance of Local Government Property to Nonprofit EDC for Industrial Park](#)
 - d) Mulligan, [Conveyance of property in a public-private partnership for a “downtown development project”](#)
 - e) Mulligan, [Handout: Statutory Authority for Conveying Real Property to a Private Entity](#)
3. Financing for development activities
 - a) Millonzi, [Introduction to Local Government Finance, 3rd Ed.](#)
 - b) Mulligan, [When May NC Local Governments Pay an Economic Development Incentive?](#)
 - c) Mulligan, [Legal and Business Reasons Why Downtown Development Programs Should Involve Secured Loans—Not Grants](#)
 - d) Mulligan, [Local Government Support for Privately Constructed Affordable Housing](#)
 - e) Mulligan, [Economic Development Incentives Must Be “Necessary”: A Framework for Evaluating the Constitutionality of Public Aid for Private Development Projects](#), Harvard Law & Policy Review, Vol. 11 (2017)
4. Public-private partnerships for development
 - a) Houston, [New Construction Delivery Methods – Public-Private Partnerships \(P3\)](#)
 - b) Mulligan, [Conveyance of property in a public-private partnership for a “downtown development project”](#)
5. Statutory references (see blog posts provided above and [conveyance handout](#))

Full report available at: http://www.communityprogress.net/filebin/161102_HighPoint_TASP_Report_FINAL.pdf



November 2016

IMPLEMENTING A COORDINATED APPROACH TO ADDRESS THE SYSTEMIC CAUSES OF VACANCY AND ABANDONMENT IN HIGH POINT, NORTH CAROLINA

Center for Community Progress Report to High Point, North Carolina
2016 Technical Assistance Scholarship Program Recipient

A Center for Community Progress TASP Final Report



This report was prepared by the Center for Community Progress. For additional information, please contact the authors listed below.

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ABOUT CENTER FOR COMMUNITY PROGRESS

Founded in 2010, the Center for Community Progress is the only national 501(c)(3) nonprofit organization solely dedicated to building a future in which entrenched, systemic vacancy, abandonment, and blight no longer exist in American communities. The mission of Community Progress is to ensure that communities have the vision, knowledge, and systems to transform blighted, vacant, and other problem properties into assets supporting neighborhood vitality. As a national leader on solutions for blight and vacancy, Community Progress serves as the leading resource for local, state, and federal policies and best practices that address the full cycle of property revitalization.

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SECTION 3.

FOCUS AREA #2: CODE ENFORCEMENT SYSTEMS

OVERVIEW

Imagine a community that has neighborhoods ranging from strong to extremely weak but has no housing and building code enforcement systems. Inevitably, properties would slide into decline at varying rates, largely determined by the underlying economics and market strength of the neighborhood. Neighbors would be confronted with nuisances and safety risks. Property values of nearby homes would be threatened. The overall market strength of a neighborhood would weaken, and the ability to attract responsible private investment would diminish more and more over time. Speculators and predatory landlords would become the norm. Eventually, properties beyond repair would be abandoned, with local taxpayers on the hook for costly demolitions.

The ultimate purpose of code enforcement regimes is to prevent the above (and admittedly simplified) scenario. Housing and building code enforcement is, in some sense, an effort to prevent any individual owner from ‘externalizing’ the costs of property ownership to the public. Of course, such enforcement systems must be fair (respecting property rights and constitutional due notice), equitable (accommodating financial hardship as reasonably as possible), and focused on compliance as the ultimate goal. They also must be efficient and effective, such that when a property begins to accrue multiple and routine violations, is not brought up to code, and presents greater economic, social and fiscal costs to the community at large, local government has the ability to compel a transfer to new, responsible ownership in an expeditious and routine manner.

Community Progress describes an optimal code enforcement system as one that hews to the underlying logic of “Fix it Up, Pay it Up, Give it Up.” What does this mean? Under this approach, property owners will be given appropriate notice of the code violation, and the opportunity to fix the problem. If the owner doesn’t fix the problem, the local government will take timely action to cure the violation, and bill the owner for costs incurred. If the owner fails to reimburse the government’s out-of-pocket expenses, the local government, on behalf of the taxpayers, will lien the property and pursue all remedies, including the option to foreclose on the lien in a timely and effective manner, to recover all costs and/or compel the transfer of the problem property to a new, responsible owner. As mentioned previously, this approach must also be equitable, with hardship programs in place to help the most vulnerable home owners. Moreover, this optimal approach does not rely on criminal actions against the owner (*in persona*), which is a resource-heavy approach that yields few positive outcomes. Some of the worst violators, often absentee landlords and LLCs, are extremely challenging to bring

to court. On the other hand, local residents who might mean well but lack the appropriate resources to cure the violation often end up appearing for court and getting fined. Thus, this optimal approach instead relies on *in rem* judicial proceedings, attaching enforcement actions to the property.

The regulatory and statutory frameworks at both the local and state level will determine whether the “Fix it Up, Pay it Up, Give it Up” approach can be implemented, and to what effect. The crux of the matter is whether a municipality can place a lien for the costs incurred to cure the violation, and more importantly, what priority and enforcement value is given to the lien. In some states, code liens have low priority, meaning they sit behind all other previously recorded liens, including property taxes and mortgages. A low priority code lien, therefore, has little to no enforcement value, virtually eliminating the chances to successfully foreclose on the lien and making it very difficult to ever recover costs. Alternatively, where state and local law confer ‘super priority’ status to code liens, the above approach has proven very effective in achieving multiple outcomes: higher compliance rates, improved recovery of costs, and when needed, the effective and efficient transfer of the problem property to new ownership. For example, after the Louisiana state legislature agreed in 2008 to grant code liens superpriority status in the City of New Orleans as a pilot, city leadership in 2010 began using the new tool to significant effect.¹¹ In fact, the results were so impressive that state leaders agreed in 2013 to amend the pilot legislation and extend it statewide, allowing any community in Louisiana to use code lien foreclosure as part of their efforts to address the challenges imposed by problem properties.

In-depth discussions about this optimal approach, as well as what approaches North Carolina state statutes allow, were the focus of the day-long legal and policy workshop on housing code enforcement, which was held on July 14, and co-facilitated by UNC School of Government (Tyler Mulligan) and Community Progress. Approximately 25 City representatives and a three-member delegation from Durham, NC, participated in the workshop, which started with a 2.5 hour interactive presentation by Tyler Mulligan on state law, local authority, current practices in High Point, and plenty of simulated exercises. The afternoon was spent discussing results from a pre-survey workshop (see Appendix B for a summary of the results), learning more about the systems of vacancy and abandonment and best practices nationally, and identifying potential next steps. The following findings and recommendations derive from on-site and remote interviews with key personnel, the workshop, and additional research into local ordinances, policies and relevant documents provided by the City.

¹¹ The City of New Orleans, facing a substantial inventory of deteriorating vacant and abandoned properties in the aftermath of Hurricane Katrina, and with few tools to effectively tackle this major challenge, successfully lobbied for state legislation that granted code liens super priority status. Coupled with other reform efforts and a new data-driven approach to vacancy and blight, this legislative fix helped the City achieve some impressive outcomes in just four years (2010 – 2013). To learn more about the City's comprehensive approach to reducing vacancy and blight, see the City's *Blight Reduction Report (January 2014)*, which can be found at: http://www.nola.gov/getattachment/Performance-and-Accountability/Initiatives-and-Reports/BlightSTAT/Blight-Report_web.pdf/.

CURRENT PRACTICES AND WORKSHOP FINDINGS:

1. The City is currently rebuilding a code enforcement division and program from the ground-up, which includes reorganizing the division within the Department of Community Development, tripling staff capacity under a new Supervisor, and migrating enforcement activity and lien data to an enterprise software program (Accela).
2. One of the priorities for the second half of 2016 has been attending to a backlog of approximately 270 case files with outstanding Orders to Demolish. As of October, all case files have been reviewed, according to the City. While exact numbers were not provided, city officials reported one of three outcomes: the case file was closed (the owner had complied), or the case file was restarted with a new inspection (it was determined the case was defective, such as insufficient noticing), or the case was forwarded to City Council seeking approval to proceed with demolition with public resources.
3. State law contemplates four potential code enforcement abatement actions that a local government might carry out, and defines the priority of the resultant code lien:
 - a. Normal nuisances: The city is authorized to classify certain situations as nuisances pursuant to its general police power, G.S. 160A-174, such as the presence of trash, debris, and overgrown vegetation. However, enforcement of abatement orders, which are authorized pursuant to G.S. 160A-175, requires a court order and costs result in a low priority lien.
 - b. Recurring nuisances: When an owner becomes a chronic violator of a nuisance ordinance, meaning the city gave notice of a nuisance violation at least three times in the previous calendar year, then upon occurrence of a violation during the current calendar year, G.S. 160A-200.1 authorizes the city to provide a single notice, with the expense of further actions becoming a high priority lien that “shall be collected as unpaid taxes.”
 - c. Minimum housing code violations: G.S. 160A-443 authorizes the City to follow certain procedures to effectuate minimum housing orders, and the costs of effectuation become a high priority lien collected as a special assessment.
 - d. Public health nuisances: G.S. 160A-193 authorizes the City to summarily abate or remedy anything that is “dangerous or prejudicial to the public health or public safety.”¹² The costs incurred become a lien that is collected as unpaid taxes. In non-emergency situations, normal nuisance procedures (described in items a and b above) must be followed.
4. The City’s nuisance abatement code does not appear to reflect the distinctions described above. It appears to suggest that the costs incurred for all nuisance abatement actions can be collected using the same enforcement mechanism as a public health nuisance—that

¹² The NC Court of Appeals, in *Monroe v. New Bern*, interprets this statute as providing authority to take summary actions when there is an “imminent danger to the public health or safety.”

is, collected like delinquent taxes (Section 12-3-6(c)). Currently, the City uses third party contractors to abate nuisances (mowing high grass and weeds, removing trash and debris, and boarding and securing vacant structures) when a private owner fails to remedy the violation (usually within ten days of appropriate notice). The City pays the third party contractor from the general fund, and records a lien for the amount, including a nominal administrative fee. Table 2 summarizes, for the last three full years, the amount paid out annually to third party contractors to cut high grass and remove trash or debris on privately owned properties and the amount recovered to date. The collection rate is approximately 19% for this time period.

Table 2. Activity and status of code liens stemming from abatement actions, specifically mowing high grass and weeds, and removing trash and debris, from 2013 through 2015.

Year	Paid to Contractor	Value of Liens Filed	# of Liens Filed	Average Lien Value	Liens Paid	Net Cash Flow to City
2015	\$90,300	\$99,100	224	\$442	\$12,200	-\$78,100
2014	\$98,100	\$122,900	227	\$541	\$15,400	-\$82,700
2013	\$87,300	\$118,400	337	\$351	\$24,200	-\$63,100
TOTALS	\$275,700	\$340,400	788	\$432	\$51,800	-\$223,900

- Based on data provided by the City, there are nearly 1,700 unpaid code liens (including those stemming from mowing, trash removal, boarding and securing properties, and demolitions) totaling \$690,000, recorded on approximately 860 properties. Of these 860 properties, only 118 have four or more unpaid code liens, suggesting these are the chronic code violators that drain local resources. Approximately 75% of these “chronic code violators” are tax delinquent, with an average delinquency term of 7.2 years. Due to the lack of tax enforcement, these chronic violators are posing negative impacts, such as placing a high demand on code enforcement services, exhausting local tax dollars, and becoming less and less marketable to potential investors as title is encumbered by more and more debt (tax liens and code liens).
- State law limits a local government’s ability to create citywide rental registration and inspection programs. In fact, portions of the Rental Action Management Program (RAMP) in Fayetteville, NC, a successful proactive inspection program that High Point was interested in emulating, will be significantly more difficult to enforce beginning in 2017 due to state legislative reforms passed less than two weeks before the code enforcement workshop.¹³

¹³ Fayetteville officials announced in early September that, due to the unfortunate changes in state law, RAMP will be rendered largely ineffective, and possibly even terminated, http://www.fayobserver.com/news/local/new-law-stops-fayetteville-s-rental-enforcement-effort/article_961aa1e8-8576-5ab0-a149-248f8fecf27d.html.

7. Despite the restrictive state statutory environment, there are still a few ways the City can legally implement strategic inspection programs should it choose to do so as it builds a code enforcement program from the ground up. These different options are discussed below under recommendations.
8. Language in High Point's local minimum housing ordinance specific to repair orders is outdated, and might actually be contributing to boarded-up, vacant properties. Currently, if a residence is cited for violations under the minimum housing code, repair orders are issued that grant the owner the option to "repair" or "vacate and close." It seems many owners are simply choosing the latter to achieve compliance, and effectively eliminating the City's ability to pursue additional enforcement options. State law (G.S. 160A-443(3)(a)), however, does authorize local governments to order owners cited under the minimum housing code to "repair, alter, or improve" *only*.
9. Language in High Point's local ordinance specific to the estimated cost of repairs as a percentage of the property's market value might be compelling the City to order demolition more than is necessary. The City's local ordinance contemplates what are reasonable costs for repair, and currently the language states that if the estimated costs to repair are more than 50% of the property's current value, then the City shall order the property demolished. Given property values in many of the more challenged Core neighborhoods are so low, even moderate repairs could exceed the 50% threshold, obligating the City to order demolition.

RECOMMENDATIONS:

Inspection and/or Registration Programs.

One of the top priorities identified by City officials is to develop a strategic code enforcement program that includes more frequent and proactive property inspections, and/or a registration element for some of the worst problem properties. While state law narrows what strategies local governments can adopt, the City can still roll-out and implement property inspection and/or registration programs in a number of ways. Each approach varies slightly, and the City ought to consider carefully which approach makes the most sense after more rigorous analysis of the existing datasets by the Data Team and Task Force. In addition, the City must in all cases consult local counsel to ensure the appropriateness of the recommendations under local and state law.

1. Reasonable cause inspections. Consider employing to a greater extent the new inspections authority of G.S. 160A-424, as modified by Session Law 2016-122, effective January 1, 2017. For each type of reasonable cause described in G.S. 160A-424(a), and included in Table 3, set City policy on the frequency of follow-up inspections.
 - a. As an example only, when reasonable cause is derived from a complaint, City could establish a policy of imposing four periodic inspections on the building: an initial inspection to verify the complaint, then a follow-up to determine that violations

have been corrected (and additional inspections as necessary to ensure compliance), and then a follow-up once a year for the following two years to ensure no relapse has occurred.

2. Targeted area inspections. Establish inspections within targeted inspection areas “to respond to blighted or potentially blighted conditions” that “shall reflect the city’s stated neighborhood revitalization strategy” as authorized by G.S. 160A-424(b) (effective January 1, 2017). Planning will be required to ensure the inspection area reflects the City’s stated revitalization strategy, to conduct required notice and hearing process, and *to establish a plan to address the ability of low-income residential property owners to comply with minimum housing codes.*¹⁴ The analysis and findings in the Market Segmentation Study, as well as in this report, likely provide more than sufficient background and evidence to justify establishing a targeted area in key parts of the Core. One caveat with this approach is that the targeted area must not exceed 1 square mile, or 5% of the jurisdiction’s total land mass. However, once established, all properties within the designated area are subject to periodic inspections. If pursued, City officials are encouraged to engage in active and transparent communication with property owners within the proposed area, and use positive language (such as “Targeted Investment Zone”) instead of negative terminology (such as “Blighted Zone”).
3. High crime rental property registration. Consider establishing a rental registration and/or permitting program, with accompanying fee schedule, for problem properties as authorized by G.S. 160A-424(c). While problem properties under this statute fall into two broad categories, based either on crime or code violations, the standard for the latter as amended in June 2016 is so high as to be almost unattainable (which is why certain components of Fayetteville’s RAMP Ordinance are more difficult to enforce, as mentioned above). Therefore, the only appropriate category of problem properties that can, as a practical matter, be subjected to a rental registration and/or permitting program are those connected with high incidents of criminal activity. Specifically:
 - a. Properties identified as “within the top ten percent (10%) of properties with crime and disorder problems” as defined and set forth in a local ordinance. Key parameters include the point value to be assigned for different types of crimes and disorder, a notification system for violators, and police department policy for testifying at eviction proceedings.
4. Vacant property registration. A vacant property registration program must apply to commercial and residential properties alike. A brief overview of a vacant property registration program is provided in a 2011 School of Government law bulletin, *Residential Rental Property Inspections, Permits, and Registration: Questions and Answers.*¹⁵

¹⁴ Note, this legal requirement actually aligns with the City’s desire to integrate human services with more strategic code enforcement to create an effective and equitable approach to dealing with vacancy and abandonment.

¹⁵ <http://sogpubs.unc.edu/electronicversions/pdfs/cedb8.pdf>

A vacant property registration program, provided it does not target rental property alone, is authorized by the City’s general ordinance-making power (general police power) and by G.S. 160A-424(c)(iii).

Regardless of which program(s) the City finds of value and ultimately pursues, City officials are encouraged to determine whether tenants will be displaced by the City’s inspection and code enforcement program and consider establishing a relocation assistance program for tenants as authorized by G.S. Chapter 133 Article 2 in order to mitigate unintended negative consequences.

Table 3. Reasonable causes, allowed by state law, that local governments can use to place a residential property into a program of periodic inspections.

Threshold Conditions	Scope of Property Evaluated and Affected
Complaint or request for inspection	Entire building
Actual knowledge of unsafe condition	Entire building
Safety hazard in one unit of multi-family building that poses threat to occupant	Other dwelling units in building "to determine if that same safety hazard exists"
Violations of local ordinances or codes are visible from outside the property	Property as a whole

Audit and Modify Local Minimum Housing Ordinance

Consider making modifications to the City’s minimum housing ordinance to suit the City’s strategic priorities as authorized by State statutes.

5. Repair Orders. Consider the advantage of altering local ordinance so that the residents cited under minimum housing code are ordered to “repair, alter, or improve” *only*, as authorized by G.S. 160A-443(3)(a). Currently, orders under the current City ordinance grant the owner the option to “repair” or “vacate and close,” and it seems many owners are simply choosing the latter to achieve compliance. If deemed advantageous, eliminate “vacate and close” orders except during the time allowed for repair to protect occupants as authorized by G.S. 160A-443(3)(a).
6. Minimizing Demolitions. Adjust the City’s “reasonable cost of repair” percentage as authorized under G.S. 160A-443(3). Currently, it is set at 50%. A higher percentage would be expected to result in relatively more “repair” orders and relatively fewer “remove or demolish” orders. A lower threshold would be expected to result in relatively more “remove or demolish” orders and relatively fewer “repair” orders.¹⁶ Given the market conditions of many Core neighborhoods, and the City’s stated goal to use demolition as a last resort, a higher percentage (65 – 70%) seems appropriate.

¹⁶ For more detail, see Mulligan & Ma, *Housing Codes for Repair and Maintenance: Using the General Police Power and Minimum Housing Statutes to Prevent Dwelling Deterioration* 43 (2011), available for purchase at <https://www.sog.unc.edu/publications/books/housing-codes-repair-and-maintenance-using-general-police-power-and-minimum-housing-statutes-prevent-1>.

SECTION 4.

FOCUS AREA #3: PROPERTY TAX ENFORCEMENT SYSTEMS

OVERVIEW

As discussed previously, the tax enforcement system is the second key *preventative* system. However, we also see too often that, if rendered inefficient or ineffective either by statute or practice, this preventative system can actually contribute to vacancy and abandonment. An optimal property tax enforcement system should be just, equitable, and when needed, allow for the efficient and effective transfer of property, with clear insurable title, to a responsible owner.

Community Progress recommends that the appropriate equitable elements be in place first. Hardship programs, such as local homestead property tax exemptions, can help protect financially vulnerable populations.¹⁷ A formal payment plan for those who occasionally miss tax payments due to income volatility or an unexpected expense is essential. And communities could even consider free legal assistance for non-English speaking populations or heirs who inherit a property, in addition to more advanced noticing of delinquency.

Once the above provisions are in place to protect vulnerable homeowners, the property tax enforcement system should then be designed to be efficient and effective and applied universally with objectivity to guard against exceptionalism or political favoritism, or even the perception thereof.

A half-day legal and policy workshop on property tax enforcement systems was held on September 8, and co-facilitated by UNC School of Government (Chris McLaughlin) and Community Progress. Approximately a dozen city representatives were joined by the Guilford County Tax Director and two members of his team, including the lawyer that primarily handles all tax foreclosures. The workshop primarily involved a nearly 2.5 hour interactive presentation by Chris McLaughlin on state law and current practices by Guilford County and the City of High Point. Community Progress then presented some of the key findings from the data analysis, and engaged attendees on policy options to consider. The following findings and recommendations derive from on-site and remote interviews with key personnel, the workshop, and additional research into local ordinances, policies and relevant documents provided by the City and Guilford County.

¹⁷ The State of North Carolina allows only three local property tax relief programs: (i) the elderly or disabled property tax homestead exclusion (G.S. 105-277.1); (ii) the elderly or disabled property tax homestead circuit breaker (G.S. 105.277.1B); and (iii) the disabled veteran property tax homestead exclusion (G.S. 105-277.1C). Unfortunately, local governments in North Carolina have no authority to offer any other property tax relief programs.

Current Practices and Workshop Findings

1. Guilford County provides tax collection and enforcement services to all jurisdictions in the county but one, and provides these services to the City pursuant to an interlocal agreement, which in May 2016 was extended for another five years (through June 2021).
2. State law allows taxing jurisdictions to initiate foreclosure proceedings within one year of delinquency.¹⁸ Per state law, a tax lien expires after ten years. Guilford County generally waits until a property is 7 to 8 years tax delinquent before initiating tax foreclosure proceedings, a practice that according to workshop participants is typical across North Carolina.
3. Guilford County is currently moving 426 parcels located in High Point through the foreclosure process, and these parcels are, on average, delinquent seven years. Guilford County maintains a user-friendly online portal for the public to review and assess these foreclosures. However, only the 426 properties that are actively moving through the foreclosure process are included online, which is about 22% of the 1,910 tax delinquent properties in the City.
4. Guilford County Tax Department self-reported that it lacks the capacity and resources to pursue more enforcement actions at this time, but representatives expressed an interest in finding ways, in partnership with the City, to make the process more efficient. Tax Department representatives acknowledged that delaying foreclosure action, particularly in weak or constrained housing markets, may be creating more harm than good, and would welcome the chance to initiate foreclosures before 7 or 8 years of delinquency under two conditions: (i) there is political support for such reforms, and (ii) additional resources are secured and sustained to expand departmental capacity.
5. Per the interlocal agreement, “The City retains the right to initiate foreclosure on any City liens and to include City tax liens in such foreclosure actions if it so chooses.”
6. When Guilford County initiates a foreclosure proceeding for property taxes in High Point—or in any other jurisdiction for which it provides tax collection services—it does not include any municipal liens, such as code liens or demolition liens. This practice appears to generate a good deal of confusion between the City, County, and Clerk’s Office, and often times the City is not reimbursed for code liens that could have been included and (possibly) recovered from the foreclosure action.
7. State law does allow Guilford County, if it desired, to include the City’s nuisance abatement costs and housing code enforcement repair and demolition costs on annual property tax bills.

¹⁸ Foreclosure of property tax liens may begin after those taxes become delinquent on January 6 of the fiscal year for which they were levied. For example, 2016-2017 property taxes will become delinquent on January 6, 2017. If the City or County so chose, tax foreclosures of unpaid 2016-2017 property taxes could begin on that same date, which is less than a year from when taxpayers received the 2016/2017 tax bill.

8. State law allows for two types of foreclosures, but Guilford County currently and almost exclusively pursues *in rem* judicial foreclosures.¹⁹
9. In the event of nonpayment by the owner during a foreclosure action, Guilford County advertises the tax liens, notifies all interested parties, and eventually offers the property for sale. Per the interlocal agreement, the City is *obligated* to enter a minimum bid on the property for the amount of taxes owed to both County and City. After the auction, there is a ten-day upset bid period, meaning another party can engage in a bidding war (must be 5% or \$750 above winning bid, whichever is greater), and this 10-day period resets every time there is a legitimate ‘upset bid.’ During this time, the original owner may also come in and pay the amount of outstanding taxes, which would end the foreclosure action and trump all bids to date.
10. Given the interlocal agreement obligates the City to enter a minimum bid equal to the amount of taxes owed to both the County and City, there are a couple of possible outcomes:
 - a. Another party enters a higher bid, and the City is not obligated to bid again (but it may choose to do so).
 - b. No other party enters a bid, and the City assumes ownership of the property after the upset bid period. State law does not require that the City actually outlay cash to cover all liens if it is the winning bidder on foreclosed properties. In the event the City wins the bid, it only pays the legal fees associated with the foreclosure action.²⁰ The foreclosure sale extinguishes all local government liens on the property. If the City later sells the property, it would be obligated to share the sale proceeds with the County based on the relative amounts of those extinguished liens. The County and City would expect to agree to share sales proceeds on a proportional basis if the sales price is insufficient to cover the full amount of the extinguished liens.
11. If the winning bid is more than the total amount owed of the liens included in the foreclosure action, then the surplus proceeds must be turned over to the clerk of court for distribution to other creditors or to the former owner of the property. Note, however, that if the City is the winning bidder and purchases the property, it is permitted to retain any surplus proceeds that might result from the subsequent sale of that property. This might occur if local market conditions improve or if the City makes repairs or improvements and enhances the property’s value.

¹⁹ G.S. 105-374 authorizes “mortgage-style” foreclosures, which require the filing of a complaint and the resolution of a civil lawsuit. G.S. 105-375 authorizes “in rem” foreclosures, an expedited procedure in which the local government skips the filing of a complaint and moves straight to the docketing a judgment for delinquent taxes and other included liens.

²⁰ Guilford County retains private legal counsel to manage and handle all tax enforcement actions, and these associated legal fees are what state law requires be reimbursed.

12. If the City is the winning bidder, then State law (G.S. 153A-163) requires that any subsequent sale at a later date to a third party must be equal to or greater than the City's winning bid. An exception to this rule, however, is if the redevelopment will support low-income housing, for which the sale price can then be lower than the City's winning bid.²¹
13. The City currently owns vacant residential lots in the Core, but officials acknowledge there is little capacity and no concrete plan to assume and perform maintenance responsibilities for structures that may be acquired through the tax foreclosure process with no immediate end-use plan.

Two Key Problems and the Need for Reforms

Many other intricacies of the tax foreclosure process, and what state law allows, were discussed during the workshop. However, the above findings provide enough of a picture to identify two key problems with the current property tax enforcement system and potential reforms that could align with and help advance some of the City's goals with this TASP engagement.

The database, narrowed to the 55,732 parcels that are wholly in High Point and Guilford County, offers some general findings relative to tax delinquency:

- 1,910 parcels (3.4%) are currently tax delinquent, at least one year, with a total amount owed of \$4,878,508
- But when you narrow the pool of tax delinquent properties to only those that are delinquent two years or more, the number drops to 888 parcels (1.6%), with \$4,006,884 in total owed (see Table 4)

The first critical problem of the current tax enforcement system is the standard practice of waiting until a property owner is seven or eight years tax delinquent before initiating a tax foreclosure action (which can then take another year or more to complete). An optimally efficient system would be able to complete the foreclosure process and transfer the property to a new responsible owner within two years of delinquency—a practice that isn't unusual in other states. The practice of delaying foreclosure in Guilford County undermines the health and

Table 4. Breakdown by land classification of properties that are at least two years tax delinquent.

Land Classification	Amount of Taxes Owed	# of Properties Delinquent
Apartment	\$519.37	20
Commercial	\$541,635.28	40
Common Area	\$823.45	16
Condominium	\$37,503.79	13
Encumbered or Restricted by Easements	\$19,517.32	6
Government Owned	\$8,055.79	3
Industrial	\$810,809.38	91
Institutional	\$53,576.98	9
Multi Family < 4	\$99,018.92	43
Office	\$33,330.87	4
Residential	\$2,145,841.73	621
Retail	\$191,107.44	4
Townhouse	\$14,190.98	7
Vacant	\$35,499.46	9
No classification – Blank	\$15,454.17	2
Grand Total	\$4,006,884.93	888

²¹ To better understand disposition options as it relates to affordable housing, see Tyler Mulligan's September 2016 blog post on this issue, <http://ced.sog.unc.edu/conveyance-of-local-government-property-for-affordable-housing/>.

vitality of neighborhoods, particularly those with constrained or weak housing markets; likely harms the marketability of a property and reduces future tax revenues to both the County and City; and imposes significant costs to the City of High Point.

In the absence of any real strategic and consistent code enforcement program over the last decade,²² delaying the enforcement of delinquent taxes invites negligence and abuse by unscrupulous owners, particularly in Core neighborhoods with a prevalence of substandard rental housing and constrained or weak housing markets. With these two preventative systems inefficient, ineffective, or both, a property that could have been repaired may eventually need to be demolished. A rental property owner might reasonably “ride it out,” letting the tax bills mount, carrying out only basic maintenance, relying on the City for basic lawn maintenance, and collecting \$5,000 or more per year in rent in a weak Core neighborhood. Seven years later, that property has deteriorated, generated no tax revenue, negatively impacted the equity of adjacent homeowners, and will now require a greater investment to repair, if repair is even feasible. In other words, the broken preventative systems can enable an individual owner to profit handsomely, externalize all the costs of ownership to the public and the local taxpayer, and then simply walk away without penalty.

While the above example is exaggerated for effect, the truth is that individual properties falling into disrepair at varying degrees can compound each other and, when aggregated, compromise a neighborhood’s future. The adjacent table (Table 5) analyzes the 1,910 delinquent properties based on occupancy status and property rating, the latter of which is known for 1,017 tax-delinquent properties. The majority of tax delinquent properties for which a rating is available are occupied (779), and rated good or fair. If one drills down into these numbers a bit more based on how long the properties have been tax delinquent, a compelling but somewhat expected trend emerges. The properties that are only a few years delinquent are overwhelmingly occupied and rated good. As you look at properties delinquent five years and seven years and eight years, more properties slide from occupied to vacant, and

Table 5. Summary of all tax delinquent properties in High Point based on occupancy status and property rating, as determined by the visual parcel survey completed as part of the Market Segmentation Study.

Property Traits	Delinquent Taxes Owed	# of Properties
Occupied	\$2,043,348.23	779
Fair	\$499,511.33	273
Good	\$1,446,827.58	452
Poor	\$97,009.32	54
Unsure	\$289,033.01	101
Fair	\$156,272.20	52
Good	\$74,251.07	27
Poor	\$58,509.74	22
Suggest Demo	\$99,018.92	43
Vacant	\$500,019.44	137
Fair	\$87,430.13	37
Good	\$63,977.62	16
Poor	\$316,575.69	77
Suggest Demo	\$32,036.00	7
Not Rated	\$2,046,107.52	893
Grand Total	\$4,878,508.20	1910

²² While being strategic is important when enforcing housing and building codes, so too is being consistent. According to multiple city officials, including current City Council members, prior Councils would arbitrarily extend deadlines or repeatedly side with “well-connected” property owners, in effect politicizing the enforcement of housing code and rendering it ineffective. The current Council recognizes that enforcement must not be arbitrary, capricious, or political, and that so long as basic hardship programs are in place, enforcement must be objective, predictable, and consistent.

to lower ratings. In other words, each passing year of tax delinquency adds greater likelihood the property will trigger more service calls, serve as a haven for criminal activity, and/or become cost-prohibitive to repair for the existing owner or potential new investor. Aggregated to the block level, or a few blocks, these downward trends can significantly stifle private investment. Arresting and eventually reversing such trends (in other words, rebuilding a neighborhood’s market potential and restoring investor confidence), becomes far more challenging and more dependent on the targeted infusion of larger sums of public dollars.

Although there are fewer tax delinquent properties known to be vacant and assigned a rating (137), vacant properties typically draw large volumes of service calls and, in the process, drain local revenues. High Point Police reported that 68% of all departmental resources are dedicated to the Core neighborhoods, and officers noted—similar to the national research—a strong correlation between crime and vacant properties. Vacant, abandoned properties are not only magnets for crime, but also safety risks to neighbors and municipal firefighters. Add in the six or seven years of adjacent residents or business owners calling about trash, high grass, and broken windows and doors—and the City paying third-party contractors to remedy the violation in the absence of compliance—and it becomes clear that the social, economic and fiscal costs of allowing tax delinquent properties to languish are significant.²³

There is another cost, less obvious, to delaying the foreclosure action. Waiting seven years or so also means the minimum bid that the City must enter at the auction is substantially higher than if that property was foreclosed upon five years prior. While state law doesn’t require the City to pay all outstanding liens upfront, it could make reselling the parcel to a third party more difficult if the goal is to recoup the outstanding tax liens. For example, Table 6 is a breakdown of tax delinquent properties by year and the average amount owed per parcel. Of course, the average amount owed increases with each year of delinquency. However, it’s important to fully grasp the potential fiscal impacts of these delays. Take the 124 properties that have been delinquent since 2010, and now owe an average of about \$5,917 per property. If these were to be auctioned off, the minimum bids would total approximately *half a million dollars more* than if these same 124 parcels had been auctioned off after two years of delinquency. It makes no sense to burden problem properties with additional debt and simultaneously risk losing precious equity by

Table 6. Breakdown of tax delinquent properties by year, showing average amount owed per parcel, and the potential fiscal impacts of delaying foreclosure actions.

Year Delinquent	Average Amount Owed/Parcel	# of Properties	Sum of Taxes Owed
2003	\$3,847.15	1	\$3,847.15
2005	\$5,273.23	91	\$479,863.55
2006	\$5,237.48	39	\$204,261.76
2007	\$5,036.37	51	\$256,854.84
2008	\$5,570.70	61	\$339,812.44
2009	\$4,825.54	90	\$434,298.28
2010	\$5,916.84	124	\$733,687.64
2011	\$7,268.67	96	\$697,792.60
2012	\$3,101.05	144	\$446,550.82
2013	\$2,146.16	191	\$409,915.85
2014	\$1,076.30	352	\$378,858.68
2015	\$735.47	670	\$492,764.59
Tax Current			
Grand Total	\$2,554.19	1910	\$4,878,508.20

²³ Examples of recently completed cost of blight studies, as well as current research documenting the positive impacts of demolition, are included in Appendix C.

delaying foreclosure multiple years. Such delays saddle the City with higher obligated minimum bids, risk losing properties to negligence and decline, and potentially compromise a property’s marketability to private investors.

The second most noticeable problem is the low collection rate of code and demolition liens, particularly when state law allows the City and County to work together and pilot a new approach that would benefit all parties.

As mentioned in the section on Code Enforcement Systems, the collection rate for liens filed the last three years (2015 – 2013) is approximately 19% (\$51,800 collected out of \$340,400). On the other hand, Guilford County posts an excellent collection rate of property taxes of more than 96% (measured by number of parcels).

If one sorts all outstanding code liens based on tax payment status, the findings are quite revealing. There are 1,692 code liens recorded on 861 individual properties.²⁴ As Table 7 shows, of the 861 properties for which code liens remain unpaid, 584—a whopping 68% —are tax current. These represent half of the total dollar amount owed on all liens. It stands to reason that connecting the City’s cost-recovery efforts to the County’s annual tax billing and collection process will significantly increase the current collection rate of 19%. State law allows Guilford County to include the costs incurred in abating a nuisance on private property as a line item on that individual’s property tax bill, as it does with special assessments. While modifying the County’s tax billing software system to accommodate this line item charge might be onerous at first—and require financial support from the City—once completed, it could become seamlessly integrated into standard operating procedures for tax billing and collection.

It is understandable that the above policy reform might take some time to implement, and potentially require an amendment to the interlocal agreement. In the interim, the County could consider agreeing to include all municipal code liens in its annual tax

Table 7. Analysis of tax payment status of properties with code liens, which shows that approximately half of the total dollar amount of outstanding code liens exists on tax compliant properties.

Year Delinquent	# of Properties with Code Liens	Amount Owed	Average Amount Owed per Property
2003	1	\$1,788.50	\$1,788.50
2005	40	\$61,089.01	\$1,454.50
2006	15	\$19,220.33	\$1,281.36
2007	18	\$46,852.20	\$2,342.61
2008	17	\$27,870.69	\$1,639.45
2009	26	\$43,562.06	\$1,675.46
2010	28	\$32,282.55	\$1,113.19
2011	22	\$23,060.25	\$1,002.62
2012	23	\$23,740.54	\$949.62
2013	23	\$21,546.13	\$861.85
2014	36	\$32,880.86	\$801.97
2015	28	\$20,319.75	\$564.44
Tax Current	584	\$340,179.29	\$475.78
Grand Total	861	\$694,392.16	\$684.13

²⁴ It seems the database provided by the City of High Point does not include all the existing, unpaid code liens. Based on other files provided separately by City officials, there might be more than \$800,000 total in outstanding, unpaid code liens. Upon closer examination of the available data and various documents, it seems that some larger demolition liens may not have been included in the sizable database that was used for this analysis, which could explain the difference. The City is encouraged to make sure all liens stemming from abatement actions, whether mowing, removal of trash, board and secures, and demolitions, are integrated correctly into the new data visualization platform.

foreclosure actions. Indeed, the interlocal agreement states that the inclusion of other liens held by the City of High Point can be included in the tax foreclosure proceeding at “the discretion of County’s Tax Collector or its counsel,” and the hope is that following this engagement, the County is amenable to this solution to the City’s desire to improve the collection rate of its code liens as part of its more comprehensive approach to tackling vacancy, abandonment and blight.

RECOMMENDATIONS:

1. The City and County may consider establishing a goal that, by 2019, all properties that are two-years delinquent will move forward for foreclosure, without exception.
 - a. Both parties are encouraged to consult local counsel in developing a standard, formal payment plan, as authorized by state law, that would be of significant value to homeowners who fall behind on their taxes due to income volatility or an unexpected hardship.
 - b. Alternatively (or even in addition to item a), the City may want to explore legally whether it can create a tax repayment program to help homeowners that are one year delinquent.²⁵ Basically, the City would make payment to the County on behalf of homeowner so long as the homeowner enters into a payment plan with the City for the same amount. The program would charge no interest and no penalties, but require that 20% of the delinquent amount be paid as a down payment. As part of the payment plan, the homeowner would agree to grant the City a deed-in-lieu-of-foreclosure in the event of a default, and the City offers the homeowner free financial counseling, through a third-party provider such as a local housing counselor, if requested.
 - c. Develop a more aggressive, annual outreach campaign to senior homeowners to make sure they’re taking full advantage of local tax exemptions.
2. The City and County should consider piloting the inclusion of normal nuisance abatement costs (mowing, trash and debris removal, board and secure actions) on annual tax bills, understanding that the City of High Point might need to cover the initial costs of modifying the County’s billing software system to accommodate this line item charge. Perhaps the County agrees to include only those unpaid invoices that are less than \$500. To be clear, this means the City would not lien these unpaid costs, but report them as part of the City’s tax digest to the County each year.
 - a. The above reform seems likely to increase the amount of costs recovered, and such proceeds may be used to offset any additional costs of expanded code enforcement programs, or earmarked to support new neighborhood revitalization strategies, such as a summer youth program to clean and green residential vacant lots.





²⁵ Should the City designate a targeted area (or areas) for code enforcement inspections, as allowed by State law, this program could also be piloted within the targeted area, and limited to income-eligible homeowners. Such a community development program could be created pursuant to G.S. 160A-456 for the benefit of low and moderate income persons in the designated areas.

3. In addition to the above reform, Guilford County Tax Department is encouraged to include all municipal code liens in its foreclosure actions, as allowed under the interlocal agreement.
4. The City of High Point is strongly encouraged to plan for assuming responsibility for an expanded inventory of tax-foreclosed properties, and the maintenance demands that come with land banking parcels in constrained and weak markets. In time, it might make sense to build a small crew in-house to manage and maintain city-owned properties, or consider more creative partnerships with community organizations or resident groups to help address ongoing maintenance needs of vacant lots.

Table 1.1. The Spectrum of Statutory Tools for Code Enforcement

Dwelling Condition	Statute	Applicable When a Dwelling's Condition Is . . .	Comments
Green	General police power to regulate conditions detrimental to the health, safety, or welfare of citizens and the peace and dignity of the [city or county] G.S. 160A-174(a) and G.S. 153A-121(a)	"detrimental to the health, safety, or welfare of [the] citizens and the peace and dignity of the city"	These dwellings are in good repair. Any monitoring of such green condition dwellings must be done under a local government's general police power. Chapter 2 discusses the general police power in detail.
Yellow	General police power (same as above)	"detrimental to the health, safety, or welfare of [the] citizens and the peace and dignity of the city"	These dwellings exhibit visible signs of disrepair that pose risks justifying regulation to halt the decline and restore the dwelling to green condition.
Red	Minimum housing standards G.S. 160A-441 through G.S. 160A-450	"unfit for human habitation"	Local governments in North Carolina may utilize procedures established under the minimum housing statutes to regulate these dwellings. Chapter 3 discusses the minimum housing statutes in detail.
Black and blue (condemnation)	Condemnation G.S. 160A-426 through G.S. 160A-434	"especially dangerous to life because of its liability to fire or because of bad conditions of the walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress"	This statutory authority permits a local government to condemn property in this condition and order its repair, closing, or demolition as appropriate.
Black and blue (imminent danger)	Abatement of public health nuisances G.S. 160A-193	"dangerous or prejudicial to the public health or public safety"	Cities are authorized to "summarily remove, abate, or remedy" public health nuisances and may summarily demolish dwellings if they pose an "imminent danger." <i>Monroe v. City of New Bern</i> , 158 N.C. App. 275, 278–79, 580 S.E.2d 372, 374–75 (2003).

Repair of Nonresidential Buildings: NC Local Government Authority

Regulation / Order	NCGS Authority	Statutory standards	Recoup costs
Green Condition: Good condition but vacant			
 <p>Ordinance could require:</p> <ul style="list-style-type: none"> Vacant property registration 	<p>160A-174 & 153A-121 (General ordinance-making power) 160A-194 & 153A-134 (Regulating businesses)</p>	<p>“<u>detrimental</u> to the health, safety, or welfare of its citizens and the peace and dignity” of the city/county</p>	<ul style="list-style-type: none"> - Admin fee - Decriminalized civil penalty (GS 160A-175)
Yellow Condition: Obviously vacant or visible maintenance deficiencies (not dangerous or hazardous)			
 <p>Ordinance could require:</p> <ul style="list-style-type: none"> Keep bldg. appearance in good repair Exhibit no evidence of vacancy <p>Failure to comply, obtain:</p> <ul style="list-style-type: none"> Injunction or Court order of abatement <p>Gov’t may effectuate if owner cited for contempt for failing to comply with court order</p>	<p>160A-174 & 153A-121 (General ordinance-making power) 160A-194 & 153A-134 (Regulating businesses)</p> <p>In urban redevelopment area: “program of compulsory repair” and “loans therefor” 160A-503 & 160A-512 via 160A-456 & 153A-376</p>	<ul style="list-style-type: none"> “<u>detrimental</u> to the health, safety, or welfare of its citizens and the peace and dignity” of the city/county <i>State v. Jones</i> (1982): “<u>aesthetic</u> considerations may constitute a valid basis for the exercise of the police power” if public benefit outweighs private harm: <ul style="list-style-type: none"> “protection of property values” “preservation of the character and integrity of the community” “promotion of the comfort, happiness, and emotional stability of area residents” 	<ul style="list-style-type: none"> - Admin fee - Decriminalized civil penalty (GS 160A-175) - Costs of executing court order are mechanic’s lien on property (GS 160A-175)
Red Condition: Building is dangerous or hazardous but can be repaired at reasonable cost			
 <p>May order repair only if:</p> <ul style="list-style-type: none"> 160A-439: “dangerous and injurious” bldg. with repair cost <50% bldg. “value” (EXCEPT manuf. & warehousing) 160A-441: “abandoned structure” that is a “hazard” with repair cost that is “reasonable” as determined by local government 	<p>160A-439 (Nonresidential Buildings) - Counties: 153A-372.1</p> <p>160A-441 (Minimum Housing for any “abandoned” structure that is a “hazard”) - Counties: 160A-442(1)</p> <p>In urban redevelopment area: “program of compulsory repair” and “loans therefor” 160A-503 & 160A-512 via 160A-456 & 153A-376</p>	<p>160A-439: Repair cost LESS than 50% building value & “standards shall address only conditions that are dangerous and injurious to public health, safety, and welfare and identify circumstances under which a public necessity exists for the repair, closing, or demolition of such buildings or structures.” OR 160A-441: Repair cost is “reasonable” (% defined by local govt per GS 160A-443) for “...any abandoned structure which [is] a health or safety hazard [for enumerated reasons].”</p>	<ul style="list-style-type: none"> - Admin fee - Civil penalty authorized under GS 160A-439 but NOT 160A-441 - Costs become lien collected as special assessment - Costs also lien on owner’s other property within city (but not home)
Black & Blue Condition: Building in need of demolition or removal			
 <p>Ordinance can be enacted “to prevent the demolition by neglect of any designated landmark or any [structure] within an established historic district.”</p>	<p>160A-400.14 (Delay in demolition of landmarks and buildings in historic district) - Counties: 160A-400.2</p> <p>40A-3(b)(8) (Eminent domain)</p>	<p>Governing board may establish standards and requirements but ordinance shall “provide appropriate safeguards to protect property owners from undue economic hardship.”</p>	<p>General authority to enforce & effectuate ordinances (same as yellow condition) (GS 160A-175)</p>

Housing Codes for Repair and Maintenance

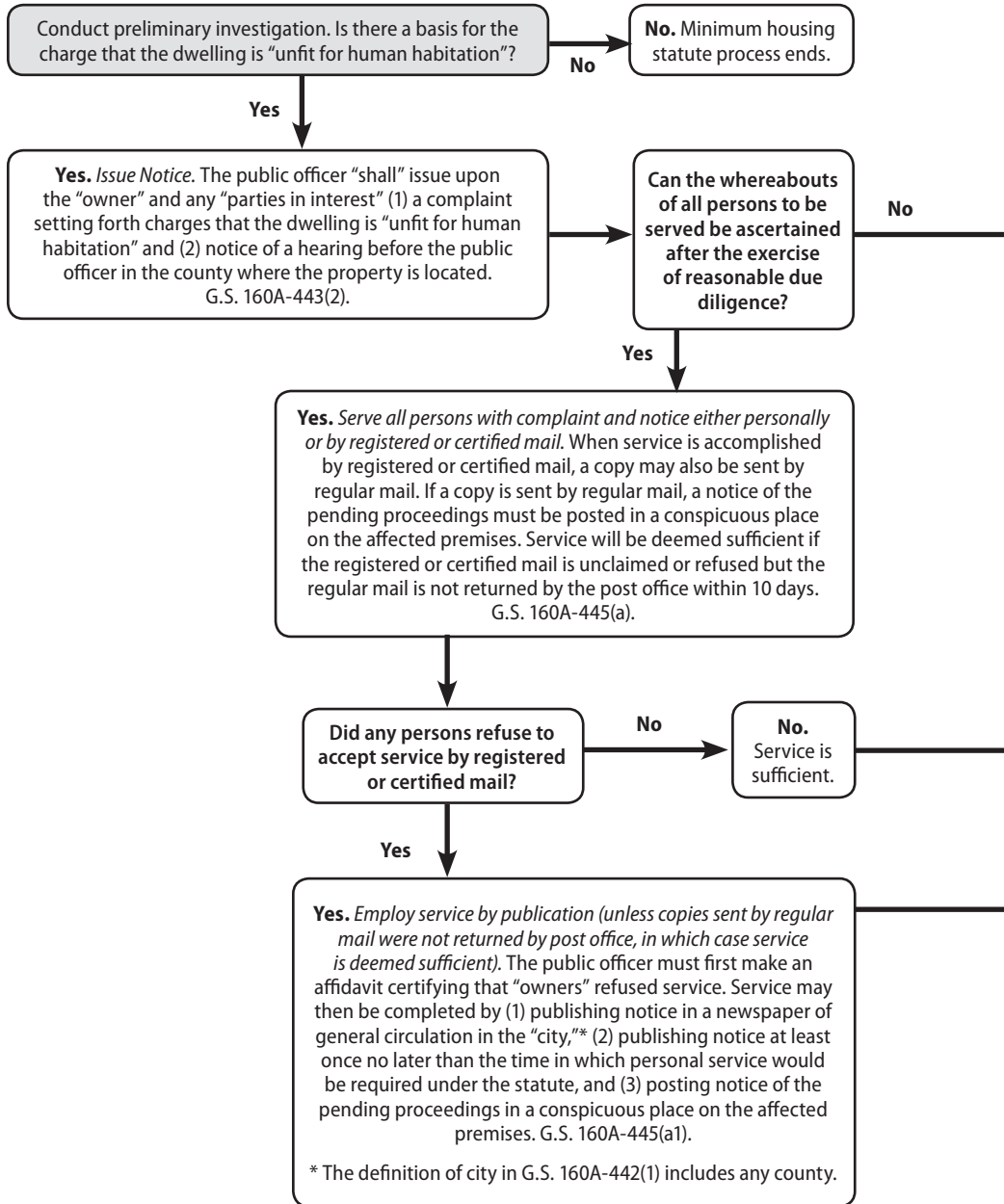
Using the General Police Power
and Minimum Housing Statutes to
Prevent Dwelling Deterioration

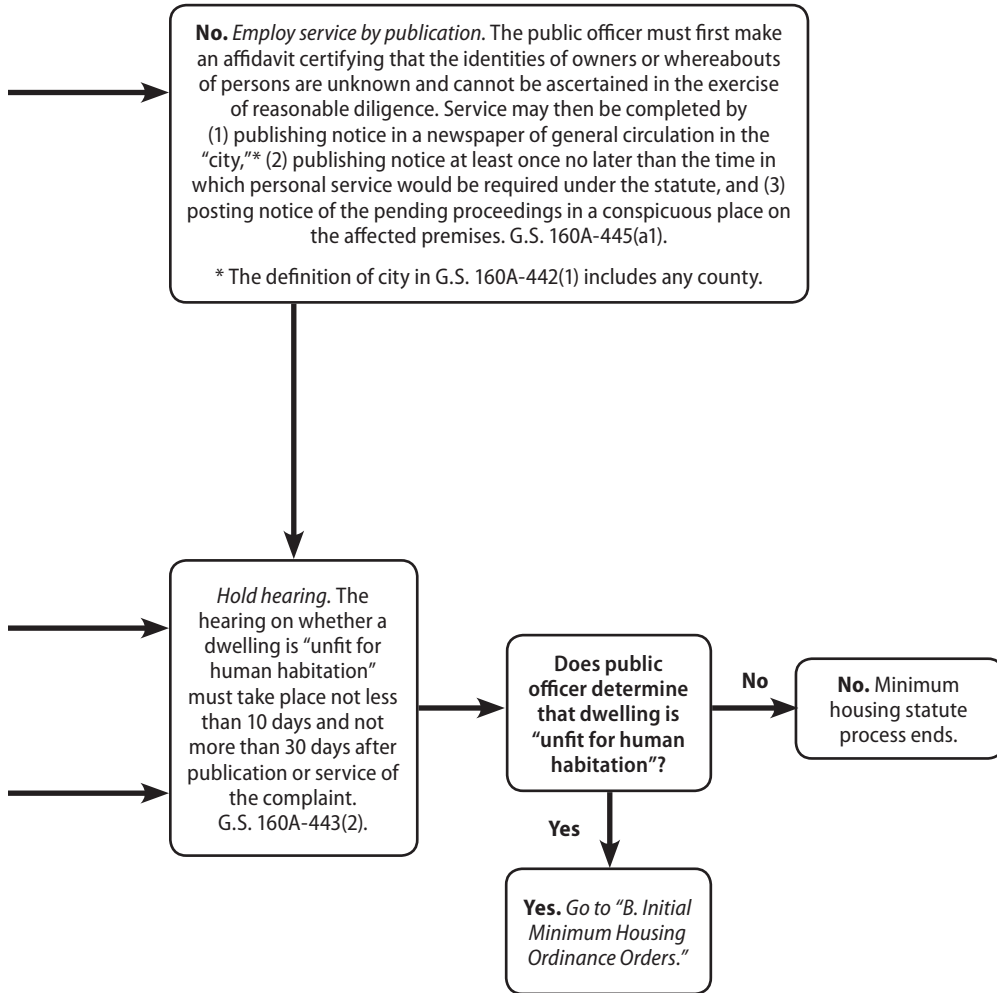
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Jennifer L. Ma

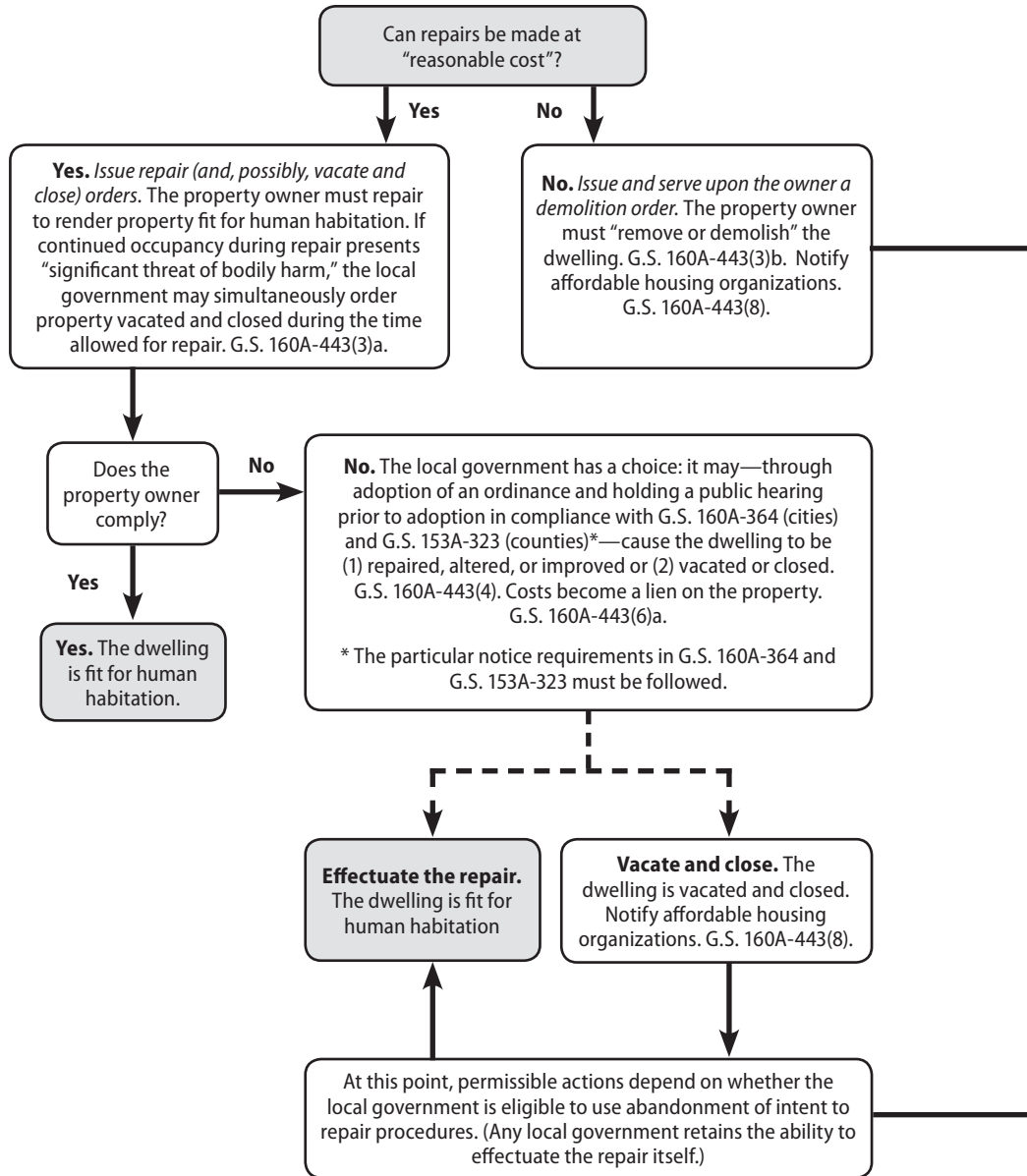


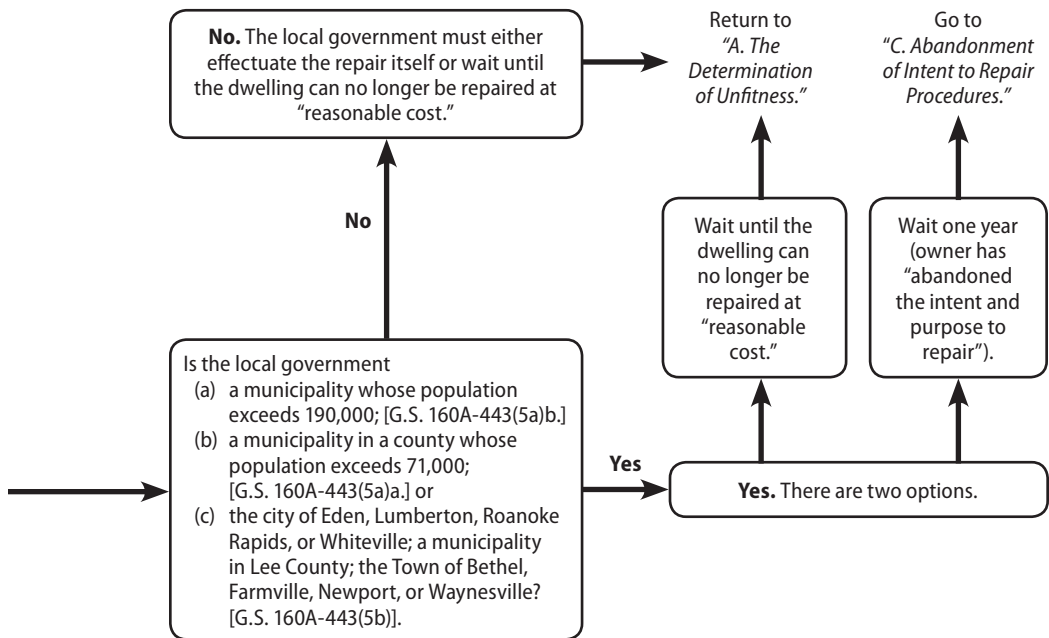
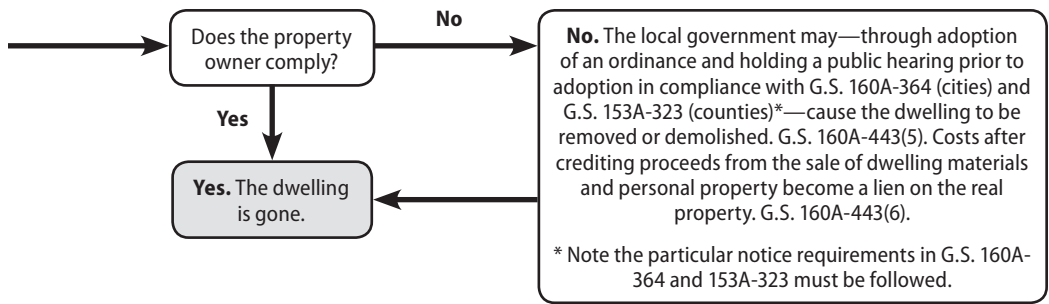
A. The Determination of Unfitness



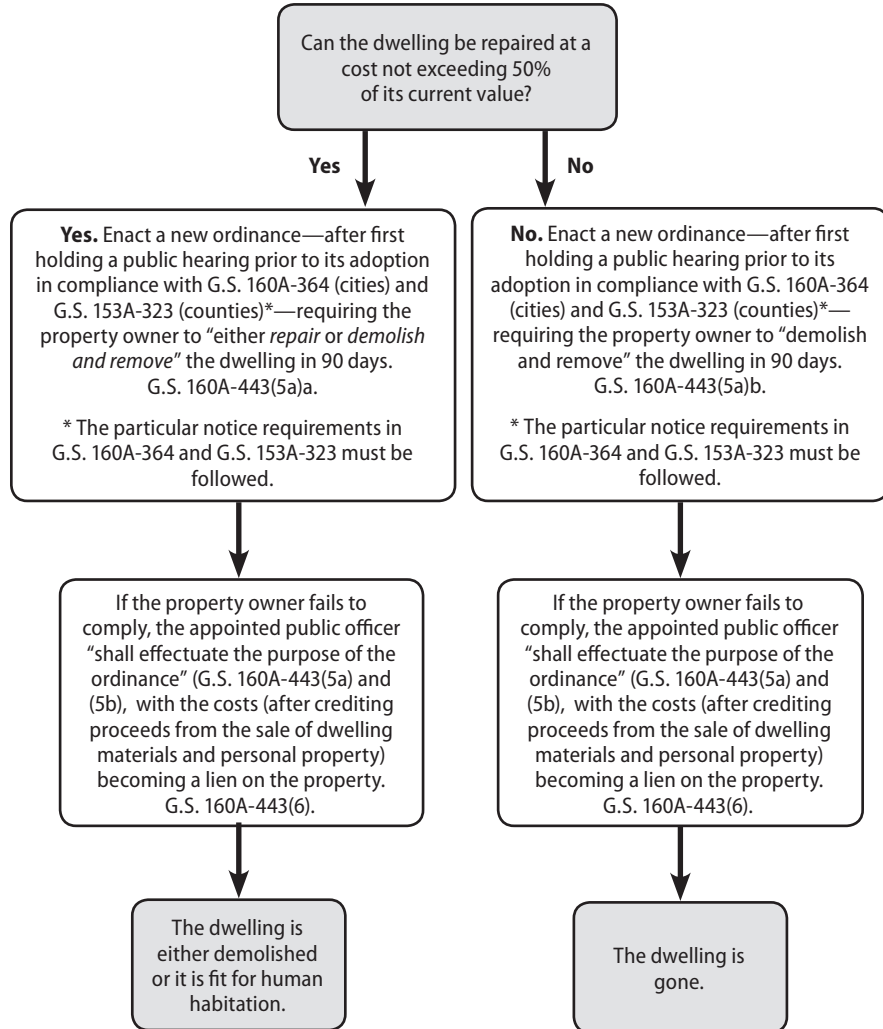


B. Initial Minimum Housing Ordinance Orders Subsequent to the Determination of Unfitness





C. Abandonment of Intent to Repair Procedures



STATUTORY AUTHORITY FOR CONVEYING REAL PROPERTY TO PRIVATE ENTITY

North Carolina law requires *real* property be disposed *without conditions on buyers* through one of three competitive bidding procedures— Sealed Bid (G.S. 160A-268), Upset Bid (G.S. 160A-269), or Public Auction (G.S. 160A-270)—*unless another method of conveyance is specifically authorized.*

Authority for Conveyance	Competitive Bidding Sale	Private Sale for Fair Market Value	Private Sale - Non-Monetary Consideration	Allowable Covenants/ Conditions	Notes
Economic Development G.S. 158-7.1	✓	✓	✓	Construct w/in 5 yrs or reverts to local gov't, plus any other desired conditions	G.S. 158-7.1(d2) allows next 10 years of local government revenue to count as consideration if purchaser creates "substantial number of jobs" paying above average wage and "parallel to Maready."
Urban Redevelopment Law G.S. 160A-514(c) Boards exercise powers directly: G.S. 160A-456, G.S. 153A-376	✓			In URA consistent with approved plan, as Redev. Comm'n deems necessary	Within formally designated urban redevelopment area (URA) consistent with redev plan; conveyance must comply with Art. 12 competitive bidding procedures.
Disposition for redevelopment by private developer G.S. 160A-457 (cities) G.S. 153A-377 (counties)	✓	(cities only, in CD area only, in accord with CD plan)		Only cities in CD areas in accord with CD plan; any unit may in URA, G.S. 160A-514	Acquire/convey blighted or inappropriately developed property. Cities: private sale only in commun. develop. (CD) areas (to remove blight or assist low-income), price no less than "appraised value."
Housing Authorities Law G.S. 157-9 Boards exercise powers directly: G.S. 160A-456, G.S. 153A-376	✓	✓	✓	Covenants and restrictions to ensure housing serves LMI persons	Housing Auth exempt from disposition rules for housing for low and moderate income (LMI) persons. Comply with G.S. 157-9.4 set aside. Counties have additional statute for affordable housing: G.S. 153A-378.
Conveyance to Historic Preservation Organizations G.S. 160A-266(b)	✓	✓		Historic covenants, limits on further sale	Historic covenants affect appraised value, but does not allow for conveyance for less than appraised. Also G.S. 160A-400.8.
Conveyance to Entities Carrying Out Public Purpose G.S. 160A-279 (cities and counties only)	✓	✓	✓	Ensure <i>recipient</i> puts property to public use, no subsequent sale	City or county must be authorized to appropriate funds to entity. Public use must continue or return property to local gov't (<i>Brumley v. Baxter</i> , 251 N.C. 691 (1945)). No conveyance to a for-profit corporation.
Downtown Dev Projects (DDP) P3 for construction G.S. 160A-458.3 G.S. 143-128.1C	✓	✓		Any	Public facility part of private development. Private sale if public facility <50% total project cost/financ. P3: Must use RFQ.