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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE ORIGINAL JURISDICTION

ON COMMON LAW WRIT OF CERTIORARI
TO THE PUBLIC SERVICE COMMISSION

In re: Application of Duke Energy Progress, LLC to Have the
Terms of the Electric Rate Stabilization Adjustment Apply to
the Company's Rates and Charges for Retail Electric Service.....Petitioner.

Appellate Case No. 2026-001614

SUPPLEMENTAL APPENDIX

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BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COLUMBIA, SOUTH CAROLINA

HEARING #26-11233

JUNE 25, 2026

2:00 P.M.

Docket No. 2026-78-E:

DUKE ENERGY PROGRESS — Application of Duke Energy Progress, LLC to Have the Terms of the Electric Rate Stabilization Adjustment Apply to the Company's Rates and Charges for Retail Electric Service

Oral Argument regarding Duke Energy Progress, LLC's Notice of Election of the application of the terms of the South Carolina Electric Rate Stabilization adjustment mechanism to Duke Energy Progress, LLC's rates and charges for retail electric service provided within the State of South Carolina pursuant to S.C. Code Ann. Section 58-27-2700.

**TRANSCRIPT OF
ORAL ARGUMENT**

VOLUME 1 OF 1

HEARING BEFORE Delton W. POWERS, JR., CHAIR; Justin T. WILLIAMS, VICE CHAIR; *and* COMMISSIONERS Eugene HENNELLY, Florence P. BELSER, Stephen M. 'Mike' CASTON, H. David BRITT, and Swain E. WHITFIELD

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APPEARANCES:

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P R O C E E D I N G S

CHAIRMAN POWERS: Good afternoon, and welcome to the Public Service Commission. We're here this afternoon at approximately 2 o'clock on Docket 2026-78-E. This is an Application of Duke Energy Progress, LLC, to have the terms and electric rate stabilization adjustment apply to the company's rates and charges for retail electric service.

We are here this afternoon only for oral arguments, to hear the parties' positions regarding the Department of Consumer Affairs' comments related to Duke Energy Progress, LLC's Notice of Election of the Application, in terms of the South Carolina Electric Rate Stabilization adjustment mechanism to Duke Energy Progress, LLC's rates and charges for retail electric service provided within the State of South Carolina, pursuant to South Carolina Code Ann. Section 58-27-2700 et seq.

All right. First, let me say that all Commissioners are present in the hearing room.

And now I'm going to ask the parties to identify themselves, beginning with Department of Consumer Affairs.

MR. HALL: Good afternoon, Mr. Chairman, Mr.

1 Vice Chairman, and members of the Commission.
2 Roger Hall and Jake Edwards on behalf of the
3 Department.

4 **CHAIRMAN POWERS:** Thank you, very much.
5 And Duke Energy Progress, LLC.

6 **MR. WELLBORN:** Good afternoon, Chair Powers,
7 Vice Chair Williams, members of the Commission.
8 On behalf of Duke Energy Progress, I am Sam
9 Wellborn. I have with me this afternoon Ashley
10 Cooper of the law firm Baker Donelson.

11 **CHAIRMAN POWERS:** Thank you, very much.
12 Intervenors South Carolina Small Business
13 Chamber of Commerce?

14 **MR. CALLAS:** Good afternoon, Commissioner,
15 Vice Commissioner, and Commission. My name is
16 Nick Callas. I'm speaking on behalf of the South
17 Carolina Small Business Chamber of Commerce.

18 **CHAIRMAN POWERS:** Thank you, Mr. Callas.
19 And South Carolina Appleseed Legal Justice
20 Center.

21 **MR. PROTHEROE:** Good afternoon, Mr. Chairman,
22 Mr. Vice Chairman, and Commissioners. My name is
23 Adam Protheroe here for South Carolina Appleseed.

24 **CHAIRMAN POWERS:** Welcome back.

25 **MR. PROTHEROE:** Thank you.

1 **CHAIRMAN POWERS:** Nucor Steel has informed us
2 they will not participate in today's matter, so
3 Mr. Smith is not here. As to the Office of
4 Regulatory Staff?

5 **MR. TORRI:** Good afternoon, Mr. Chairman, Mr.
6 Vice Chairman, and Commissioners. My name is Chad
7 Torri on behalf of ORS. Thank you.

8 **CHAIRMAN POWERS:** We are going to proceed
9 with these arguments, of course, beginning with
10 the Department of Consumer Affairs, then Duke
11 Energy Progress and then the order I just stated.
12 Each party that wants to be heard will have ten
13 minutes, and at the end of that, the Department of
14 Consumer Affairs will have five minutes to
15 respond.

16 So, Department of Consumer Affairs?

17 [Document distributed]

18 **MR. EDWARDS:** Thank you, Chair Powers,
19 members of the Commission. We had a demonstrative
20 exhibit that we've handed out and that I'm ready
21 to begin when you are.

22 **CHAIRMAN POWERS:** The floor is yours.

23 **MR. EDWARDS:** Thank you, sir.

24 The Commission can't approve DEP's eRSA
25 election because DEP can't file a post-election

1 rate case, a mandatory condition of the eRSA
2 statute. The Commission just recently approved a
3 merger between the Duke entities. North Carolina
4 and FERC approved that same merger. The merger
5 has begun and it will be complete in 2027. The
6 result? DEP will not exist and, therefore, can't
7 file for a post-election rate case five years
8 after this election. And, therefore, the
9 Commission must reject.

10 The Commission should also reject DEP's
11 election because it leads to unjust and
12 unreasonable rates. Just six weeks prior to the
13 company's current election, the – just six weeks
14 prior to the company's current election seeking a
15 \$10.20 increase for the average DEP resident, the
16 same resident saw an increase of \$11.23. That \$11
17 increase was the result of a recent settlement
18 that DEP testified would provide them with
19 sufficient revenues to support their ongoing
20 investments, and would allow them to meet the
21 State's growing energy needs. These two dockets,
22 alone, could result in a residential customer
23 seeing an increase of \$21.43 all in a six-month
24 span. And this doesn't even consider other rate
25 increases this year.

Our first argument is simple. The eRSA statute states that the company electing for the adjustment must file for a rate case every five years. The post-merger rate case is not a DEP rate case. And, therefore, the statute does not allow the Commission to approve this filing. The language of the statute is clear and no one has argued otherwise, so, therefore, we must look to the plain language of the statute.

Section 58-27-2700 sets a foundation for the eRSA election. Its words speak to the entire Article and very clearly sets conditions necessary for the Commission to carry out the procedures established by this Article, and that Article is the eRSA portion of Title 27. Quote, “provided, however, that” end quote, certain conditions are met. Now, case law and *Black’s Law Dictionary* tell us that the terms “provided, however, that” set conditions. If the conditions aren’t or can’t be met, then the Commission can’t continue. These conditions must be ripe; the eRSA requires the Commission to consider these before continuing with the Article.

Now, the conditions are plain: One, the most recent rate order must have been issued no longer

1 than five years prior to this election; and, two,
2 the utility must file an application for a general
3 rate case five years after this election.

4 The word “must” makes these mandatory. They
5 must be satisfied for the Commission to continue.
6 It’s impossible for DEP to file a rate case five
7 years after this election because, at the end of
8 the already-started merger process, they won’t
9 exist. And we know this; we know this from three
10 different jurisdictions: This Commission, North
11 Carolina, and FERC approved a merger that results
12 in DEP’s non-existence, and they noted such in
13 their orders. The FERC order makes this the most
14 clear, saying, quote, “upon closing of the
15 proposed transaction, Duke Carolinas will survive
16 the merger and Duke Progress will cease to exist.”
17 The North Carolina and South Carolina order tell
18 us that Carolinas 1U will have a single set of
19 accounting books and records, meaning that this
20 new entity, providing service in the DEP
21 territory, will be operating with its own books
22 and records. These aren’t DEP’s books and
23 records. And before this Commission, in Docket
24 No. 2025-230-E, DEP indicates it will no longer be
25 subject to the Regulatory Code of Conduct and that

1 DEC – not DEP – will remain subject to full
2 regulation by the Commission.

3 This isn't a hypothetical merger. The
4 process has begun and has achieved all three
5 regulatory approvals. We know DEP will not exist
6 upon business combination in 2027. The Commission
7 must reject the election.

8 If you look further at the statute, there are
9 clear continuing obligations that a nonexistent
10 entity can't meet. Section 58-27-2730 uses the
11 word "shall" to impose mandatory and
12 nondiscretionary reporting obligations for the
13 electing utility. These monitoring reports
14 require the inclusion of rate-case figures and
15 amounts specific for the electing utility.

16 An entity that does not exist can't make
17 these filings. And the statute does not allow
18 these obligations to shift to a successor. This,
19 alone, is grounds to reject. And, moreover, this
20 election would produce unjust and unreasonable
21 rates. Just and reasonable rates require
22 balancing the investor and customer interests. We
23 know the utility must have the capital to invest
24 and continue to make the grid reliable, pay
25 shareholders, and serve their customers, but

1 approving the eRSA would go above and beyond that.
2 Approving both the eRSA election, as filed, with
3 that recent rate increase, would amount to a
4 \$21.43 monthly increase for the average resident.
5 That's 14.8 percent, and that's all within six
6 months. And this doesn't even include the other
7 bill impacts that customers felt this year,
8 already. It's absurd not to consider these
9 cumulative impacts when you're considering this
10 filing. That makes sense; the eRSA was not
11 intended to produce sticker shock. A common theme
12 from those who testified in favor of the eRSA was
13 that it would result in smaller annual increases
14 for customers, when compared to those rate cases
15 every three to five years.

16 Meanwhile, here, DEP's requested an amount
17 comparable to their recent rate increase. And
18 this is antithetical to what their own lobbyist
19 testified at subcommittee, saying that the eRSA
20 would make it easier for folks to budget for and
21 would produce smaller increases than those rate-
22 case increases. Senator Davis spoke on the Senate
23 floor, saying he thought the eRSA could, quote,
24 "obviate the sticker shock of the five-year
25 adjustment," end quote. Meanwhile, here, we have

1 a 14.8 percent increase in six months? That's not
2 easier to budget for. Folks are struggling right
3 now, and this is sticker shock. The Commission
4 can't allow unjust and unreasonable rates.

5 And lastly, I want to discuss the potential
6 gamesmanship at play with this eRSA Application.

7 In the last rate case, Company President Tim
8 Pearson testified in his rebuttal that the outcome
9 of that rate case will be a major factor in the
10 company's decision to elect for the eRSA. The
11 company then settled that case. President Pearson
12 testified that the revenue-requirement stipulation
13 provided a balanced outcome that supports the
14 company's ongoing investments while also balancing
15 the importance of affordability for customers.
16 President Pearson then testified that the
17 Settlement provided DEP with sufficient revenues.

18 Now, despite that, only six weeks after those
19 rates went into effect, the company came back
20 asking for more. And if you look at that, with
21 their unprecedented test-year usage, you can begin
22 to question whether this election was intended the
23 whole time. The 2025 rate case used a 2023 test
24 year, marking the first time DEP ever used a test
25 year more than one year before the rate-case

1 filing. The company then filed this just three
2 months into 2026, using a 2025 test year. This
3 timing pattern is unprecedented in DEP's filing
4 history, and it warrants this Commission's
5 scrutiny. And if you consider that testimony with
6 this anomalous test year, it should lead us to
7 question whether the gamesmanship is intended, and
8 if the company can be a good steward of the eRSA.
9 The eRSA has the potential for downward
10 adjustments, but, with this type of gamesmanship
11 behavior, that will never happen. And it creates
12 a clear policy issue if a party can make certain
13 representations to secure a favorable order and
14 settlement, only to then shortly thereafter
15 contradict those same representations. This is
16 what equitable estoppel is for. A party cannot
17 represent one thing under oath and then turn
18 around and do something else. Testimony must have
19 meaning, and sufficient rates do not become
20 insufficient in six weeks. And that would also
21 mean that this request would result in more than
22 sufficient rates. The company should be held to
23 their word, and equitable estoppel is intended to
24 encourage that honesty and fair dealing that we
25 want. The Commission's policy experts can

1 consider such, and whether this gamesmanship
2 occurred and led to unjust and unreasonable rates.
3 And ultimately the Commission exists to balance
4 the needs of the utility while protecting the
5 public from unjust and unreasonable rates. That
6 mandate fails if the Commission approves a rate-
7 increase filing that violates both the plain
8 language and intent of the eRSA. That cannot
9 comply with the terms of the eRSA Article and,
10 therefore, the Commission cannot carry out the
11 provisions of the eRSA.

12 DCA respectfully requests that the Commission
13 deny DEP's election in its entirety.

14 I'm available for questions now, or after.
15 Whichever y'all would like.

16 **CHAIRMAN POWERS:** Thank you, Mr. Edwards.

17 Would the Commission like to ask questions
18 now, or at the end?

19 **COMMISSIONER CASTON:** I'd like to –

20 **CHAIRMAN POWERS:** Okay. Go ahead?

21 All right. We're going to wait until after,
22 and we'll get you back up here. Thank you, very
23 much.

24 **MR. EDWARDS:** Thank you.

25 [Document distributed]

1 **MR. COOPER:** Mr. Chairman and members of the
2 Commission, thank you very much for this
3 opportunity to respond. Again, my name is Ashley
4 Cooper. I'm here appearing on behalf of Duke
5 Energy Progress. And I would like to address a
6 couple of things that were said.

7 First of all, I just want to make clear –
8 there are kind of two big issues that are going on
9 here where the DCA, respectfully, is just wrong.
10 And one is, is their review and read of the
11 statute as it relates to DEP in the merger. And,
12 then, two, is they're essentially upset with the
13 General Assembly and the reading of the plain
14 language of the eRSA. That's not what we're here
15 for today. And I'll speak to both of those
16 points.

17 But their arguments are not supported by law.
18 Their arguments are not ripe. And, if allowed, it
19 would undermine the eRSA statute, itself, and the
20 legislative intent behind the eRSA statute. And
21 I'm going to walk you through all of those things.
22 I've also provided a hand-out that you-all should
23 have, that has some highlighted portions
24 [indicating] of the statute. And I'll kind of,
25 from time to time, go back and forth and show you

1 those things.

2 I want to, first, begin by just noting right
3 up front, the very first line out of the statute.
4 And what does it say? It says, "A public utility
5 providing retail electric service, in its
6 discretion...at any time, may elect to have the
7 terms of this article apply to its rates and
8 charges for...electric service." Okay? So that's
9 our very first issue, right, that we have a
10 problem with.

11 The DCA said we've come in too quickly.
12 That's a problem with the General Assembly and
13 their Act, but that's not an issue with DEP,
14 because the plain language of this statute says at
15 our discretion and at any time. So, we were
16 perfectly within our right to come in when we did.
17 Okay?

18 It also – it's clear that we've come in,
19 we've used 2025 data, as they've said, right, to
20 file – it's the underpinning for this eRSA
21 election. Clearly, that's DEP data. Clearly, DEP
22 exists today. And, clearly, DEP has made that
23 election today. So there's no doubt that DEP
24 submitted its monitoring report in March, that
25 there's going to be a mandatory order in July –

1 July 15th – and it goes into rates after August 1.
2 Those are DEP rates, those are DEP customers, and
3 those are DEP bills.

4 Now, what's going to happen in 2027? I'm
5 going to talk about this some more and I'm going
6 to put a timeline to show you about the company's
7 transparency.

8 There will be a merger, but in 2027 what are
9 you going to have under the eRSA? You're going to
10 have a year, 2026, data that's DEP data. That's
11 going to be filed in March. But then this is
12 going to all be subsumed into the general rate
13 case of the two companies. Okay?

14 So here's where we come with the second
15 issue. And that is that you just heard the DCA
16 say – and they put up an overhead. I'm going to
17 use their overhead, not mine. [Indicating.] They
18 said, under this statute, you have to wait five
19 years to file a rate proceeding. And that's their
20 big issue on why it can't be DEP, because they
21 said DEP will not exist in five years and you must
22 wait five years.

23 With all due respect, that's not how this
24 statute works, okay? What does it say? It says
25 that – it's using five years on either side of an

1 election; it's kind of the outer time frame. So
2 you can't go – you can't – your most recent rate
3 case can't be more than five years prior. Right?
4 Then you can't go beyond another five years before
5 having the next rate case. But look at what
6 else – this is from their section that they
7 posted. It says the election shall remain in
8 effect until the next general rate proceeding.
9 That's the plain language. You hear a lot of talk
10 about just give it the plain language. It says
11 here "until the next general rate proceeding."

12 And there are multiple references in the
13 statute that you have in front of you that talk
14 about the next general proceeding.

15 I'm going to go – I'm going to put back up
16 here [indicating] – so, you have this in front of
17 you, Commissioners. You see the section that I
18 just read to you above, but look at Section 58-27-
19 2710: "once made shall remain in effect until the
20 next general rate proceeding for the public
21 utility...at which time the public utility [then
22 may] elect to continue the applicability..." or
23 charge, "or opt out of the provisions of this
24 article." It didn't say five years; it said until
25 the next one.

1 So, DEP clearly is in existence.

2 Clearly, this is DEP's data. It's clearly going
3 to be DEP's rates that are adjusted. It all falls
4 underneath the statute.

5 And now I want to talk about some of the
6 other charges – some of the other allegations.
7 Those are all just attacks on the statute itself.
8 Those are not attacks at Duke, you know, that you
9 should think about other rate proceedings and the
10 impact of other rate proceedings. That's nowhere
11 in the statute that it says that. This statute is
12 very clear; it says you go to the prior rate case
13 and you look at the authorization and you use that
14 and you stay within those bounds. That's what it
15 says, and that's what DEP has done.

16 The statute is very detailed and it's very
17 clear and it sets out clear parameters. And so
18 the idea of, "Well, let's go beyond those
19 parameters and let's look at other riders, let's
20 look at other things, or let's look at other
21 statements made," I understand they may be
22 frustrated, but their frustration is at the
23 Statehouse. It's at the General Assembly. It's
24 at the Act itself. You can't read those things
25 into the Act; they don't appear anywhere into the

1 Act.

2 So let's go back through. I just want to
3 highlight a couple of other things. We talked
4 about DEP made its election, and there's no
5 argument that DEP's monitoring report – it was
6 complete. It was timely, right? It's there. So
7 it's done that. What was the next thing that's
8 happened under the Act is that ORS conducted its
9 review. The ORS conducted a thorough review.
10 They reviewed everything. And they came with a
11 number of recommendations after their thorough
12 review, and they were timely. And the company sat
13 down and worked with the ORS. There were some
14 disagreements, as there always are. There were
15 some places where there was agreement and we
16 conceded that ORS had a good point; there were
17 certain things we said, "You know what? We don't
18 agree, but for purposes of moving forward, we'll
19 agree this time, as long as we don't set
20 precedent, and we have a stipulation. So that's
21 before you.

22 And what does the statute say, it says the
23 ORS conducted its review under the statute,
24 fulfilled its statutory obligations. Based upon
25 that report and the findings of any audit

1 conducted by the Office of Regulatory Staff, “the
2 Commission shall order the utility to make the
3 adjustments to tariff rates necessary to achieve
4 the revenue levels indicated in Section 58-27-
5 2740.”

6 So this statute works a little bit different,
7 right? The statute is about – it’s the discretion
8 of the utility to file any time, as long as
9 there’s a prior rate case that’s within five
10 years. You work off those existing parameters,
11 right? And it’s about staying within accepted,
12 predetermined bounds. So the utility has the
13 right to make that election at any time. Then it
14 becomes the obligation of the ORS. And the ORS –
15 as the statute says – shall review the monitoring
16 report. It shall determine compliance with the
17 terms, “taking into account the findings of any
18 audit conducted by the Office of Regulatory Staff
19 concerning compliance with Section 58-27-2730,
20 Section 58-27-2740. The Office of Regulatory
21 Staff shall propose those adjustments it
22 determines to be required to bring the report into
23 compliance...” They did an admirable job. They
24 did those things; they met those requirements.

25 “Based on that report and the findings of any

1 audit conducted by the Office of Regulatory Staff,
2 the Commission shall order the utility to make the
3 adjustments to the tariff rates necessary to
4 achieve the revenue levels indicated in Section
5 58-27-2740.” Pretty straightforward statute.

6 Finally, I just want to go back through a
7 quick timeline with you, because the company has
8 been very transparent and it’s been very
9 consistent about how this would all work.

10 DEP had a rate case. You heard about that.
11 We said the Commission-approved stipulation had
12 the adopted ROE, the equity/debt capital
13 structure. Those are the defined parameters we’re
14 operating under.

15 It also required DEP to file a combined rate
16 proceeding, including a cost-of-service study
17 within 12 months of the date the DEC/DEP
18 combination takes legal effect, once all
19 regulatory approvals are obtained – which is
20 planned for mid-2027. Okay?

21 Then you have the 1U combination. And in
22 that hearing, we heard from Witness Heather
23 Shirley Smith. And I took her words – and I
24 apologize to Ms. Shirley Smith because it’s not
25 fair to take somebody’s quote when they’re on the

1 stand, but let's look at her words. What did she
2 say? She said it's a train – I love this; it's a
3 very good descriptor. “[It's] a train you get
4 on...you don't get off until a rate case. And so
5 when I look at the timing of eRSA, we've initiated
6 the first DEP – or really the first electric eRSA
7 proceeding... And so that was initiated in March,
8 and it requires annual filings. So it may be
9 [that] we [will be making] another filing in
10 March, but I think that will get quickly subsumed
11 within the rate case that we're obligated to
12 file.”

13 It will quickly get subsumed in the rate case
14 we're obligated to file.

15 “As part of the Stipulation – and I think
16 this was in our Application, as well – we intend
17 to come back to the Commission in 2027 for a rate
18 case, and that rate case will actually address a
19 lot of the issues...we've heard today. So that's
20 how I think [the] regulatory cycle, because
21 [that's the] rate case...you get off the train
22 with the initiation...” Okay?

23 So, very clear. It's just what I set forth.
24 So the company has been very consistent and
25 transparent this whole time. The Commission, with

1 this testimony and with this knowledge, approved
2 the merger.

3 Then you had the election of the eRSA, okay?
4 And as I mentioned on March 13, 2026, we had 2025
5 data for DEP. It applies the new rates that are
6 effective February 1, 2026. We're going to have
7 2026 data for DEP, all of this year. We'll then
8 be ready to file again in 2027.

9 **CHAIRMAN POWERS:** Mr. Cooper?

10 **MR. COOPER:** Yes, sir.

11 **CHAIRMAN POWERS:** We have gone way over ten
12 minutes.

13 **MR. COOPER:** Oh, I apologize. I knew I
14 talked slow, but I apologize.

15 **CHAIRMAN POWERS:** If you could just kind of
16 wrap it up a little bit.

17 **MR. COOPER:** You know, I think I can wrap it
18 up right now, because it was just a quick look
19 ahead, and just to say, as I mentioned, the
20 company projects to file that next general rate
21 case in mid-2027 and the eRSA will be subsumed
22 into that.

23 Thank you very much for your time. And I
24 do – I apologize that I went over, but I certainly
25 appreciate you-all indulging me.

1 **CHAIRMAN POWERS:** Thank you, very much.

2 All right. Anything from the Small Business
3 Chamber of Commerce, Mr. Callas?

4 **MR. CALLAS:** Mr. Chairman and members of the
5 Commission, before I address the comments of the
6 Department of Consumer Affairs, let me first
7 express that the South Carolina Small Business
8 Chamber appreciates the work of the Office of
9 Regulatory Staff in finding a significant non-
10 allowable cost in the Duke Energy Progress filing
11 and having the utility agree to pay – agree to
12 reduce its new revenue request by 33½ percent.

13 We would encourage the Commission, in the
14 future, to assess some form of penalty to all
15 utilities if they are continuing to include costs
16 under the headings of dues, sponsorships, novelty,
17 or image building, that the Commission has already
18 ruled as non-allowable expenses. We believe the
19 utilities are disrespecting the Commission, the
20 ORS, and the ORS should not have to continue to
21 spend resources identifying these previous non-
22 allowable expenses as determined by the
23 Commission.

24 Now, in regard to the Department of Consumer
25 Affairs' comments on Duke Energy Progress' eRSA

1 filing, the South Carolina Small Business Chamber
2 fully agrees with all of DCA's arguments.

3 In the short amount of time that I have, we'd
4 like to focus our time on two arguments. First,
5 the eRSA was intended to provide small increases
6 compared to full rate cases. The President and
7 CEO of the South Carolina Small Business Chamber,
8 Frank Knapp, sat in on the legislative hearings
9 when the Electric Rate Stabilization Act was being
10 promoted by Duke and Dominion lobbyists. Consumer
11 Affairs is correct when it says that a common
12 theme from those who testified in favor of the
13 eRSA was that it would result in smaller increases
14 for customers, compared with a typical rate case
15 that occurs every three to five years.

16 Mr. Knapp heard Duke's lobbyists say that the
17 purpose of the eRSA was to alleviate large
18 increases caused by delayed rate cases. Moreover,
19 Dominion Energy lobbyists said, and I'm quoting,
20 "What the Rate Stabilization Act does for the
21 customer is it's just small bites rather than
22 waiting a few years and then jumping up." The
23 testimony of Duke and Dominion convinced Senator
24 Tom Davis to successfully 163introduce the eRSA
25 amendment on H.3309. Senator Davis said that he

1 was persuaded that it was in the best interest of
2 customers and would result in savings and avoid
3 sticker shock with a five-year adjustment. DEP
4 reflected these comments in its eRSA filing. When
5 describing the purpose of the mechanism, DEP's
6 filing notes that the periodic adjustments will
7 allow for smaller rate adjustments than would be
8 expected in general rate proceedings.

9 Clearly, small bites is not what the
10 customers got with this filing. Even after DEP
11 agreed to reduce its revenue request, the rate
12 increases would still be over 50 percent the DEP
13 rate hike that went into effect just five months
14 ago. I can only imagine how Senator Davis and
15 other legislators feel about being misled by Duke
16 and Dominion into passing the eRSA under the
17 supposedly small-bites appeal. The Legislature is
18 probably hoping that the Public Service Commission
19 will protect its customers and voters from the
20 wrath by holding DEP to the intent of the eRSA as
21 adopted.

22 While the Commissioners might conclude that
23 the law doesn't require only a small bite, such as
24 a 2 percent increase, clearly the intent of the
25 eRSA was to enact small-bite increases.

1 Now, let's address the eRSA statute. I've
2 been practicing law since 1990, primarily in the
3 areas of workers' compensation and Social Security
4 disability, so I know that you don't see me very
5 much at these hearings. But no matter what court
6 or what State commission I represent my clients,
7 the one thing that we all have in common is the
8 rule of law. Those bodies expect me to follow the
9 law and, likewise, I expect those making rulings
10 to also follow the law. That is the only way that
11 our legal and quasilegal systems work. Judges and
12 commissions are bound by the law, regardless of
13 arguments to the contrary. To do otherwise
14 diminishes the rule of law and invites successful
15 appeals.

16 Consumer Affairs makes a solid case that the
17 Commission must deny Duke Energy Progress's eRSA
18 election because DEP cannot satisfy the statutory
19 conditions required by the eRSA statute. Consumer
20 Affairs is absolutely correct when it says, "As a
21 quasijudicial body, the Commission must interpret
22 the laws passed by the General Assembly and, in
23 carrying out this interpretation, it must follow
24 the rules of statutory construction."

25 The eRSA statute says that if the Commission

1 provides a utility's eRSA filing, the utility shall
2 file with the Commission monitoring reports for
3 each 12-month period, ending on the last day of
4 each quarter in March, June, September, and
5 December, for each year. The purpose of these
6 monitoring reports is to protect the consumer from
7 paying excessive electricity rates, increases that
8 could result in excessive revenue that would lead
9 to a Commission-approved return on equity outside
10 the allowed range set by the eRSA statute.

11 On June 3rd of this year, the Commission
12 approved the merger of Duke Energy Carolinas and
13 Duke Energy Progress. That merger, which Duke
14 acknowledges will result in Duke Energy Progress
15 no longer existing, is anticipated to be completed
16 by the end of this year or early next year.

17 There are no gray areas here. Duke Energy
18 Progress cannot comply with the monitoring reports
19 required under the eRSA and there is nothing in
20 the eRSA statute that allows for another party to
21 file the monitoring reports on their behalf of the
22 utility that has had a rate adjustment approved by
23 the eRSA.

24 Recently, the Commission held a hearing on
25 Dominion Energy and Santee Cooper's filing for a

1 Certificate of Environmental Compatibility and
2 Public Convenience and Necessity for the
3 construction of new gas plants in Colleton County.
4 In the hearing, a number of parties advocated that
5 the Commission set up a cost cap on the
6 construction costs and the consumers would be
7 responsible for paying. The Dominion Energy
8 witness said that PSC cannot put a cost cap on the
9 Canadys project because there were no provisions
10 in the law that authorized the Commission to
11 impose a cost cap.

12 Mr. Chairman, you and the other Commissioners
13 agreed that the Legislature did not give the
14 Commission the authority to impose a cost cap and
15 you didn't in your order. Similarly, you must
16 follow the law in this case, as well.

17 Duke Energy Progress will not be able to
18 comply with the continued monitoring reports
19 requirement under the eRSA because it won't exist
20 in a few months. Duke asked for a merger of the
21 two utilities. Duke states that Duke Energy
22 Progress will cease to exist. And there is
23 nothing in the eRSA statute that allows for
24 another party to file the monitoring reports on
25 the behalf of a utility that is approved for a

1 rate adjustment and then no longer exists.

2 These are the facts in the case, facts that
3 Duke Energy Progress knew in advance of filing and
4 hoping the Commission will interpret the law to
5 not require accountability, so that Duke Energy
6 Company will require – or, receive more revenue
7 than what was spelled out in the merger filing.

8 The Commission must follow the strict
9 interpretation of the law and deny Duke Energy
10 Progress' Application for a rate adjustment under
11 the eRSA. To do otherwise, my client's legal
12 rights to review the required monitoring reports
13 prepared and submitted by Duke Energy Progress
14 will not exist. Plus, all small businesses in the
15 current Duke Energy Progress service area will be
16 denied their right to be protected, as the
17 Legislature intended, from paying excessive
18 electricity rates. Thank you.

19 **MR. WELLBORN:** Mr. Chair, I have a point of
20 order and just a brief procedural comment, if
21 you'll allow it.

22 **CHAIRMAN POWERS:** [Indicating.]

23 **MR. WELLBORN:** The – I didn't want to
24 interrupt counsel for the Small Business Chamber
25 of Commerce, but, respectfully, that organization

1 did not file comments and we're, frankly, hearing
2 these arguments for the first time, and I'm not
3 sure whether counsel for the Appleseed Legal
4 Justice Center may also have comments, because
5 they didn't make a filing, sort of similar to the
6 Business Chamber of Commerce.

7 My request, as a remedy, would be for us to –
8 for you to allow us to do a brief reply after the
9 DCA presents its closing comments.

10 **CHAIRMAN POWERS:** Well, that is allowed
11 normally in a hearing, but this is an oral
12 argument, and I don't think I'm going to allow
13 that.

14 **MR. WELLBORN:** Yes, sir. And so, I would
15 ask, is – will the Appleseed Legal Justice Center
16 be presented to – or, be permitted to present
17 argument? Because, again, they didn't file any
18 comments. We don't know what their position is
19 going to be – presumably piling onto the DCA's
20 arguments, much like the Small Business Chamber of
21 Commerce did. But I just wanted to ask that
22 question.

23 **CHAIRMAN POWERS:** Well, we set these
24 arguments. I'd like to hear what they have to
25 say.

1 **MR. WELLBORN:** Understood. Thank you, Chair.

2 **MR. PROTHEROE:** Thank you, Mr. Chairman, Vice
3 Chair. I will do my best to not pile on any more
4 than necessary. My primary point of my comments
5 would be to add some context to who this request
6 is affecting.

7 Briefly, first, I wanted to address two
8 things that the company said in their comments.
9 First, the idea that this proceeding could somehow
10 be subsumed in a later rate case filed by an
11 entirely different utility. I don't think that
12 fits within the language of Section -2700 of the
13 eRSA.

14 The second is that, even assuming that DEP
15 could file another rate case earlier than the
16 five-year window that -2700 refers to, it's
17 unclear to me how it would do that in the time
18 that it will still be alive, before the – what,
19 around January 2027, whenever the entity ceases to
20 exist.

21 But the DCA has done a good job of showing
22 you the legal hook and the authority that you have
23 here, and the reasons why, from a legal
24 standpoint, I don't think DEP can make this
25 election at this point.

1 I want to add a little bit of context,
2 though, as to who this request affects, and I
3 think this matters quite a bit. DEP's service
4 territory covers some of the highest
5 concentrations of poverty in South Carolina:
6 Marlboro, Marion, Dillon, Lee, Williamsburg, some
7 of these counties have poverty rates approaching
8 or exceeding twice the State average. Dillon, I
9 think, is the highest poverty concentration in
10 South Carolina.

11 And this request also comes in the context of
12 two earlier increases, one already approved, one
13 in which there's a proposed settlement. I realize
14 the timing of the fuel case is not something that
15 DEP has a whole lot of discretion in, and that's
16 the product of a settlement, of course, that we
17 were involved in, as well. But cumulatively, the
18 effects of the earlier general rate case, of the
19 fuel case, and of the request in this case is very
20 significant when you're talking about the folks
21 who live in the counties that the company serves.

22 By my math, which I'm not going to promise
23 that I'm the best math person in this room by any
24 stretch, we're looking at about \$22.73, or so,
25 increase between January of 2026 and August of

1 2026, if these things are approved, and that
2 accounts for the ORS stipulation. Now, please
3 correct me on my math, if I'm wrong on that point.
4 But that's no small ask for someone living at 100
5 percent of the federal poverty guidelines – 30
6 percent of the folks in Dillon County. For
7 context, that's about \$15,960 a year, or \$1330 a
8 month, in income. Another \$22.73 every month,
9 month after month after month, is no small ask for
10 somebody at that income level. And an electric
11 bill is obviously no ordinary bill, either. You
12 can't push it off; you can't delay it. If you
13 don't pay it, the lights go out. You get evicted
14 from your apartment if you're a renter. You lose
15 the food in your refrigerator, your insulin
16 spoil. There are some serious effects for folks
17 in those counties.

18 Ultimately, the point I want to make is:
19 This proceeding, kind of piling one – speaking of
20 piling on – piling one rate case on top of fuel
21 case on top of an eRSA election – doesn't fit
22 within the statute. And it really is rate shock;
23 it's just rate shock with more docket numbers.
24 This isn't what the eRSA was designed for. I
25 don't think it's what the General Assembly

1 intended.

2 If any Commissioners have any questions, I'm
3 happy to address them, but that's the context I'd
4 like to provide.

5 **CHAIRMAN POWERS:** Thank you, very much.

6 **MR. PROTHEROE:** Thank you.

7 **CHAIRMAN POWERS:** ORS.

8 **MR. TORRI:** Thank you, Mr. Chairman. Again,
9 my name is Chad Torri. I'm here today on behalf
10 of ORS.

11 Under Section 58-27-2750 of our new eRSA
12 statute, ORS is directed to audit the monitoring
13 report filed in this case by DEP, to determine its
14 compliance with the terms of Sections 58-27-2730
15 and 58-27-2740, and propose those adjustments ORS
16 determines to be required to bring the company's
17 monitoring report into compliance with the eRSA
18 statute.

19 Commissioners, the ORS report follows what
20 the statute requires. The ORS report did not
21 analyze the issues presented by the DCA as to
22 whether DEP's election into the eRSA is
23 permissible or not.

24 With respect to the stipulation between DEP
25 and ORS filed on June 15, 2026, DEP and ORS were

1 able to reach an agreement as to ORS's proposed
2 adjustments and the amount of revenue resulting
3 from the application of the eRSA statute. The
4 stipulation does not in any manner address the
5 arguments raised by DCA and its comments.

6 Because those are legal arguments on which
7 ORS does not take a position, we believe it's
8 appropriate for those to be ruled on by the
9 Commission.

10 Mr. Chair, Mr. Vice Chair, Commissioners,
11 thank you for your time today.

12 **CHAIRMAN POWERS:** Thank you, very much.

13 All right. I have pulled up and seen the
14 earlier letter I think you got from our counsel,
15 which he did, in his letter, said rebuttal, but in
16 conversations today, I think I interpreted it a
17 different way. What I would do at this time, I
18 would ask if any of the parties would like to have
19 a five-minute rebuttal, but I think DCA should, as
20 they would in civil court, be allowed to go last.

21 So if you would like to do a rebuttal, I
22 would certainly allow it.

23 **MR. WELLBORN:** Thank you, Mr. Chair.

24 **MR. COOPER:** Thank you, Mr. Chair, members of
25 the Commission. Particularly since I went over

1 last time, I'll try to be very brief and maybe be
2 within the five minutes.

3 I think you've heard – a lot of people have
4 said and stood before you and said stick to the
5 strict language of the statute, and then their
6 arguments have veered from that. Let me tell you
7 how the rate impacts, let me tell you about the
8 rate increase, let me tell you about Duke's state
9 of mind. I think those were interesting: I'm
10 going to tell you about the statute, but before I
11 do that, I'm going to – I already know what Duke's
12 plan is and I'm going to comment on that. Those
13 aren't legal arguments you just heard. Those were
14 things to be emotional arguments way outside the
15 context of an eRSA.

16 An eRSA is a streamlined – look at the words
17 in the statute; it says adjustments. Okay. So
18 you go off the last rate case, and you go and you
19 look at what the Commission approved in terms of
20 ROE and you say, "What expenses did the company
21 incur, what investments did the company have to
22 make, and are they within the reasonable bounds of
23 what the Commission said they should earn?" And
24 it's a true-up; it's an adjustment. And that's
25 what's happened here. That's what the statute

1 provides for.

2 Now, if that true-up, that adjustment – it's
3 a relative term as to whether that's gradual or
4 not. The company set forth the investments it had
5 to make. These were new investments. These were
6 all investments that all occurred in 2025. Okay?
7 And those were things to promote grid reliability,
8 storm resilience, generation maintenance and
9 upfits, things we have to do to meet our statutory
10 obligation to serve our customers, to keep the
11 lights on.

12 And so what happened is we looked at those
13 expenses. They were audited per the statute.
14 They were reviewed per the statute. And it was
15 determined there needed to be an adjustment to
16 keep DEP within the bounds of the last approved
17 rate case. And so, these adjustments are in the
18 ORS' reports, and that's how the statute works.
19 This is not a general rate case. These policy
20 arguments of impact or whether it's good or bad
21 that the company is spending money, with all due
22 respect, they're not before you. That's not how
23 the RSA works. The eRSA is: Take the data from
24 the last test year. Look at the Commission-
25 approved rates and structures, and determine if

1 adjustments are made, are needed. And that's what
2 the ORS has done and that's what's before you.
3 Thank you, very much.

4 **CHAIRMAN POWERS:** Thank you, very much.

5 ORS, you had a chance to respond to the
6 Intervenors. Do you have anything further?

7 **MR. TORRI:** Nothing further, Mr. Chair.
8 Thank you.

9 **CHAIRMAN POWERS:** All right. Can we hear
10 from DCA?

11 **MR. EDWARDS:** Thank you, sir.

12 Duke's counsel would want you to believe that
13 the Legislature heard small increases when they
14 were trying to pass this statute and that their
15 intent was for a large increase six months after a
16 big increase. They'll tell you you can't consider
17 legal arguments. That's ridiculous. That's not
18 true. And they'll tell you you can't consider
19 just-and-reasonable because it's not in the eRSA
20 statute. The Commission can always consider just
21 and reasonable rates.

22 Now, the company tries to be very careful in
23 what it's saying. They'll say DEP's data, DEP's
24 data, it'll come in for the rate case. That's not
25 DEP. That's not the utility.

1 The statute clearly says the “utility” has to
2 come in for the rate case five years later. Now,
3 Duke clearly understands that the utility has to
4 come in five years before, but they’ll try and
5 tell you something different about the five years
6 after. It’s DEP that has to bring that case.

7 And even that “revenue requirement” term that
8 they claim requires a combined rate case? It
9 says, quote, “DEC will be the surviving entity,”
10 end quote, meaning DEP is not making that filing.

11 They tell you we frustrated Legislative
12 intent because they can file any time. Well, they
13 filed after – six weeks after they received rates
14 they said would be sufficient.

15 Just and reasonable rates require balancing
16 investor and customer interests. If sufficient
17 rates were true six weeks prior, these rates have
18 to be insufficient. Therefore, it skews that
19 balance to the investor and away from the
20 customer, and it’s not just and reasonable.

21 And the company would tell you that our claim
22 is not ripe. Well, you heard it from them just
23 before. They’re merging in 2027. That merger
24 case, DEP will not exist in 2027. And further,
25 ripeness requires the fitness for the judicial

1 decision and how fit that issue is for judicial
2 decision, and the hardship to the parties of
3 withholding that court's consideration. I mean,
4 here, it's clearly ripe. The statute requires you
5 to consider it before continuing with the Article.
6 And then for the hardship to the parties? I mean,
7 the company gets a windfall if this is approved
8 today. The Commission will set unlawful rates
9 and, therefore – and the customers get hurt.

10 And we would argue that if you take the
11 company's ripeness argument in their final
12 rebuttal that we propose a condition that would
13 require the return of all funds with interest if
14 DEP does not file a rate case five years after
15 election or when DEP ceases to exist.

16 [Brief pause due to technical
17 difficulty.]

18 Just to be clear, this is ripe – is it still
19 good?

20 **VICE CHAIRMAN J. WILLIAMS:** Just check the
21 button here [indicating].

22 **MR. EDWARDS:** [Indicating.] Is there a time
23 limit, or...

24 [Laughter]

25 **VICE CHAIRMAN J. WILLIAMS:** Take your time.

1 **MR. EDWARDS:** Okay.

2 **VICE CHAIRMAN J. WILLIAMS:** The mic is coming
3 to you.

4 **CHAIRMAN POWERS:** Let her check it, because
5 there will be questions.

6 **MR. EDWARDS:** That works. Thank y'all.

7 **VICE CHAIRMAN J. WILLIAMS:** She has a
8 lavalier for you.

9 **MS. BOYD:** [Indicating.]

10 **MR. EDWARDS:** [Indicating.] Can y'all hear
11 me?

12 **VICE CHAIRMAN J. WILLIAMS:** Loud and proud.

13 **MR. EDWARDS:** Okay. I wasn't planning to
14 pivot like this. If I could have a minute just to
15 re-collect myself real quick.

16 [Brief pause]

17 The last argument I want to address from the
18 company is, in their filing, they mention that our
19 comments need to be on the company's monitoring
20 report. Our comments only have to be in response
21 to the monitoring report. That's what 58-27-2760
22 requires, "in response to." And the monitoring
23 report was filed attached to the election as an
24 exhibit. Our comments are clearly in response to
25 that, and we can make legal arguments.

1 Thank y'all. I'm ready for questions.

2 **CHAIRMAN POWERS:** Thank you, Mr. Edwards.

3 Well, unless there's anything further, I
4 think we would go to Commissioner questions at
5 this time. I know the parties have microphones
6 there. Mr. Edwards, if you'd stay up here and,
7 Mr. Cooper, could you come to the other one, just
8 so we can see you better?

9 **MR. COOPER:** [Indicating.]

10 **CHAIRMAN POWERS:** Now we'll have Commissioner
11 questions. Commissioner Hennelly.

12 **COMMISSIONER HENNELLY:** How's everyone doing
13 today?

14 **MR. EDWARDS:** Doing good, sir. Thank you.

15 **COMMISSIONER BELSER:** Could you turn on your
16 mic?

17 **COMMISSIONER HENNELLY:** Yeah [indicating].

18 Before I start, I was going to ask, how
19 should I address – to either party, since –

20 **CHAIRMAN POWERS:** Any way you want.

21 **COMMISSIONER HENNELLY:** So, on the difference
22 of whether or not the company exists, do you – I
23 think, more specifically, just their ability to
24 follow the directive of the statute to file their
25 rate case in a few years, because the entity is

1 being merged and ceases to exist, I think, is –
2 take that for what it is. But, you know, in that
3 merger proceeding, we discussed at length, you
4 know, the gradualism and how, over the next – so,
5 from Legal Day 1, over the next several rate
6 cases, I believe is how it's described, the rate
7 classes would converge, so presumably there would
8 be two – there would be separate sets of books
9 that could be used for monitoring. Is it that
10 that's not acceptable because it's not formally
11 filed by DEP?

12 **MR. EDWARDS:** Thank you, sir. I appreciate
13 that question. So what we're saying here is that
14 would not be acceptable. It's not on the plain
15 meaning of that statute. The statute says very
16 clearly that the utility must file rates. And
17 this court can't just cross out a part of a
18 statute in a way that renders it superfluous.

19 So, therefore – if you just want to just play
20 out how absurd the result can be – if you look at,
21 say, "data" or "rates," as that term, instead of
22 "utility," the last part of the statute allows ORS
23 two additional staff per utility, electing. If
24 you read that as "rates," which is what that
25 effectively would do, then ORS would get new staff

1 for each rate that's under the eRSA, which, I
2 mean, that might be more than Mr. Bateman can
3 handle. But, essentially, it would create an
4 absurd result in that statute, so...

5 **COMMISSIONER HENNELLY:** And so, if I can kind
6 of redirect it, then, back to Duke, you know,
7 mergers aren't like a novel idea. And to the
8 extent, you know, ratemaking is prospective in
9 nature, you know, are you comfortable that the
10 surviving entity is capable of meeting that
11 criteria, or how would you address that specific
12 issue?

13 **MR. COOPER:** Yes, Commissioner. And I
14 appreciate the question. I am, as I mentioned.
15 So, you're going to have a test year – right –
16 that's going to be a historical test year, so
17 let's just start now and we'll carry it forward
18 how it would work.

19 So we took – DEP took 2025 data, a full year
20 of data, and looked at its investments, costs, and
21 it filed its eRSA election in March of this year,
22 based on that data, which was audited and
23 reviewed. That will go into effect in August.

24 You'll now have 2026 data, right? So the
25 next report would be March 17th, so you would have

1 a full year of data for DEP that would be capable
2 of being audited and reviewed – right – and there
3 would be adjustments made. But then you have a
4 committed general rate case that the companies
5 have committed to as part of this merger that will
6 occur mid-year next year, and then the eRSA is
7 subsumed into that general rate case, and the
8 election goes away.

9 So the difference between us is, I think the
10 DCA is suggesting, “No, you would have to keep
11 this eRSA election going for five years, and if
12 it’s anything short of that five-year period, then
13 you can’t do that.” And that’s not how I read the
14 statute. The statute says, as I highlighted for
15 you, it says, “Once made, shall remain in effect
16 until the next general rate proceeding.” It
17 doesn’t say that – which is five years from now.

18 **COMMISSIONER HENNELLY:** And could include the
19 surviving entities.

20 **MR. WELLBORN:** Yes. The point is, is it –
21 thank you, Commissioner. It says, “public utility
22 providing electric service.” So we have an entity
23 that’s providing electric service that has books
24 and expenses capable of being audited. That’s the
25 key part.

1 **COMMISSIONER HENNELLY:** And to be clear,
2 you'll be maintaining –

3 **MR. COOPER:** That's correct.

4 **COMMISSIONER HENNELLY:** – both the legacy
5 rates and books that support them, as well as the
6 new rate that's created that others merge into
7 over the – that's the gradualism plan, right?

8 **MR. COOPER:** That's – that's right.

9 **COMMISSIONER HENNELLY:** So, for monitoring
10 purposes, you'd be able to file the monitoring
11 report for DEP, specifically, as part of the
12 surviving entity.

13 **MR. COOPER:** That's right.

14 **COMMISSIONER HENNELLY:** Okay. So I'm okay on
15 that issue. I guess what I would go back to,
16 though, is, you know, we talked a lot about the
17 spirit of the Act in your testimonies. You know,
18 the prior rate case clause – you know, the “within
19 five years of the prior rate case” – that's not
20 the rate that we're actually adjusting here to get
21 you back to the ROE, though, is it? Because when
22 you elected for the RSA, that was before new rates
23 went into effect; is that right?

24 **MR. COOPER:** Well, the new rates would have
25 gone into effect February 1 of 2026. We would've

1 elected the RSA in March. So we would –

2 **COMMISSIONER HENNELLY:** Okay.

3 **MR. COOPER:** If DEP applied the approved
4 rates that went into effect in February 1, they
5 applied those approved rate structures and they
6 applied that to the 2025 data, which said, “Okay,
7 we know now – even now, you’re not going to be
8 earning – you’re not going to be within the band
9 of what was approved in your most recent rate case
10 because of the investments you’ve made.”

11 **COMMISSIONER HENNELLY:** So let me make sure I
12 understood that. New rates went into effect in
13 February of this year.

14 **MR. COOPER:** [Nodding head.]

15 **COMMISSIONER HENNELLY:** But the inaugural
16 eRSA election would be to adjust 2025 performance
17 versus what was in 2025 rates, right?

18 **MR. COOPER:** You’re – you’re still making an
19 adjustment that would hit bills in August of 2026.
20 You’re using 2025 data to show that need and those
21 updated expenses and investments that were
22 incurred, that shows that you’re outside the
23 band –

24 **COMMISSIONER HENNELLY:** Right.

25 **MR. COOPER:** – of what the Commission

1 approved.

2 COMMISSIONER HENNELLY: But are we
3 adjusting –

4 MR. COOPER: It would be a –

5 COMMISSIONER HENNELLY: – rates that were in
6 effect –

7 MR. COOPER: – a prospective adjustment.

8 COMMISSIONER HENNELLY: – in 2025 that drove
9 that performance, which would have been approved
10 in 2024, right? And adjusting them to the most
11 recent rate-case order from 2025, though. Does
12 that make sense? Is that what we're doing, or
13 proposed to do?

14 MR. COOPER: I think, if I understand your
15 question correctly, I think I'd like to say it
16 back –

17 COMMISSIONER HENNELLY: Yeah.

18 MR. COOPER: – just because in case I may
19 have misunderstood something that you intended.
20 But the way I think about it, and I understand
21 that nobody will have to do a sudoku puzzle
22 tonight. But the way I think about it is that you
23 look at the rates that were approved, right, that
24 went into effect this year. And you take that and
25 you say, "Okay, let's apply those using the most

1 recent test year we would've had," which would be
2 2025. And so, is the company meeting and earning
3 its approved – what's been approved in that rate
4 case? And the answer is, no. So we need to make
5 an adjustment within the year to hit the – to
6 align within those bands that have been approved.

7 **COMMISSIONER HENNELLY:** See, that's where I'm
8 hung up, I guess. So why would you – why would
9 rates that were put into place in 2024 for '25
10 ever be designed to hit rates that were
11 subsequently put into effect.

12 **MR. COOPER:** Sorry. You're – sorry. You're
13 not using the rates from 2025; you're just taking
14 the data from 2025 and you're using the 2026
15 rates.

16 **COMMISSIONER HENNELLY:** Yeah. It's –

17 **MR. COOPER:** So, think of – so, if I may,
18 Commissioner.

19 **COMMISSIONER HENNELLY:** I just don't –

20 **MR. COOPER:** Let me –

21 **COMMISSIONER HENNELLY:** – understand why –

22 **MR. COOPER:** – try it this way.

23 **COMMISSIONER HENNELLY:** – it's not
24 retroactive ratemaking.

25 **MR. COOPER:** Well, it's not, because you're –

1 that's why this is actually an incremental catch-
2 up and you're trying to avoid rate shock. So you
3 establish – the rates that came into effect this
4 year, in 2026, was based off of 2023 expenses,
5 okay? So you've brought that forward and you've
6 said, "Okay, are they, based on 2025 expenses with
7 the rates we've approved, with the earning the
8 company is entitled to earn, is it staying within
9 that bound," and we're saying, "No, it's not."
10 So you go ahead and make an adjustment now.

11 Then you go and, next year, you come back in
12 in 2027, file a monitoring report based off 2026
13 data, and you'd say, "Okay, where is the company?
14 Is it within those bounds?" And it could be up or
15 down, you're making those adjustments.

16 So that's – so it is the kind of incremental
17 adjustments up and down as you move along.

18 **COMMISSIONER HENNELLY:** It's a more
19 complicated sequencing for me to follow than if
20 you were to elect for the eRSA for 2026 and submit
21 your first –

22 **MR. COOPER:** Yeah.

23 **COMMISSIONER HENNELLY:** – monitoring report
24 in the first quarter of 2026.

25 **MR. COOPER:** I understand.

1 **COMMISSIONER HENNELLY:** And that's where I'm
2 struggling with kind of going back to 2025 for
3 this adjustment. But – okay.

4 **MR. COOPER:** There's just an idea of
5 regulatory – I mean, they call it lag. I mean,
6 there's a rates lag that happens. And that's – I
7 think that's what you're struggling with.

8 **COMMISSIONER HENNELLY:** Well, no. I'm not –
9 that's not what I'm struggling with.

10 **MR. COOPER:** Okay, sorry.

11 **COMMISSIONER HENNELLY:** It's the Rate
12 Stabilization Act.

13 **MR. COOPER:** Yes.

14 **COMMISSIONER HENNELLY:** You know, I think the
15 title of the bill speaks a lot towards the intent,
16 obviously.

17 **MR. COOPER:** Right.

18 **COMMISSIONER HENNELLY:** On a prospective
19 basis like I just described how you would
20 potentially think about starting with the 2026.

21 **MR. COOPER:** Right.

22 **COMMISSIONER HENNELLY:** And, you know, I
23 believe the statute actually specifically does
24 require – it doesn't say four monitoring reports,
25 but it says – let me just read it to you, if

1 you'll give me one sec. "The utility shall file
2 with the Commission monitoring reports for each
3 12-month period ending March 31st, June 30th,
4 September 30th, and December 31st of each year."
5 To me, that means there's, per the statute, four
6 monitoring reports, quarterly monitoring reports –
7 annualized quarterly monitoring reports or
8 whatever – required for the year-end monitoring
9 report which starts this proceeding that we're
10 kind of kicking off now.

11 **MR. COOPER:** That's – yes, Commissioner. I
12 understand what you're saying and I agree with
13 that. So, the company started this March and
14 filed 12 months' worth of data. You would then
15 kick off additional quarterly reports that would
16 still end with an annual –

17 **COMMISSIONER HENNELLY:** Correct.

18 **MR. COOPER:** – report, right?

19 **COMMISSIONER HENNELLY:** But it will be
20 forgoing the four quarterly monitoring reports
21 with the –

22 **MR. COOPER:** Because of – because this first
23 one, because we filed the annual and elected now.

24 **COMMISSIONER HENNELLY:** Why didn't you file a
25 third-quarter quarterly monitoring report?

1 **MR. COOPER:** Back in 2025?

2 **COMMISSIONER HENNELLY:** Correct.

3 **MR. COOPER:** At that point, the company had
4 not made a decision – I mean, I don't work for the
5 company, Commissioner, so I – I mean, I guess I
6 don't – I may not know fully the full facts of
7 that, but I guess you could argue that, you know,
8 that you hadn't made an election to come under the
9 eRSA, so you have to elect to come under the eRSA
10 to trigger your reporting obligations and your
11 filing obligations.

12 **COMMISSIONER HENNELLY:** Yeah, you're not
13 obligated to, okay.

14 **MR. COOPER:** Correct.

15 **COMMISSIONER HENNELLY:** Okay. Then, you
16 know, to the point of, I think, stabilization –
17 and I'll even bring back the word I referenced
18 before in "gradualism" – how do you tie that with
19 the request, the quantum of the request, almost
20 effectively coming to what you asked for in the
21 last rate case?

22 **MR. COOPER:** Commissioner, I think, because
23 that – it just – it reflects what the companies
24 are having to spend and the investments they're
25 having to make. And so, if you didn't do that

1 this year, right – and hypothetically – I don't
2 know the answers; I'm just working through this in
3 terms of the mechanics of the statute. But it's a
4 potential, right, that all of a sudden, if they
5 have these same investments the next year, same
6 investments the next year, their carrying costs on
7 top of those things, so you're increasing your
8 customer costs the longer you wait and the more –
9 you know, until you make an adjustment. So by
10 making an adjustment now, you're avoiding some of
11 those carrying costs, but the expenses and the
12 estimates are there. I mean, the company had to
13 make those, and that's what the ORS' review and
14 recommendations related to.

15 **COMMISSIONER HENNELLY:** So, I'll recast that
16 question, but emphasis on the "quantum." So if
17 your last rate increase was for \$40 million,
18 roughly, and this adjustment would be upwards of
19 \$40 million to rates being – was it thirty-six
20 originally in the filing? Thirty-seven? It's
21 effectively almost another full rate case, right?

22 **MR. COOPER:** With the exception, though, that
23 you're not opening back up, Commissioner, like,
24 your return on equity, your ratio of debt and
25 equity, all of those things. You're working off

1 of these established parameters, right, that are
2 also recent. It has to be within five years. So
3 you have these recent, you know, approved
4 parameters, and so you're then saying, "Okay, look
5 at our costs and look at our investments, and are
6 we staying within the bounds of what we were
7 allowed to – right – that we were authorized to
8 earn under our last recent rate case. So that's
9 the – I guess that's how the statute is designed,
10 you know, and their adjustments have to be made up
11 or down, irrespective of maybe you had to make
12 more adjustment – more investments one year than
13 the next.

14 **COMMISSIONER HENNELLY:** So – and maybe I'll
15 leave this follow-up or these follow-ups for
16 another witness – just let me know – but I guess
17 it would be helpful for me if we can walk through
18 the major – or the order of operation of their
19 materiality, what these gaps are, versus allowed.
20 Should I come back to that one with another
21 witness?

22 **MR. COOPER:** I'm happy to – I mean, I'm –

23 **COMMISSIONER HENNELLY:** Can you list off, by
24 order of magnitude, what the largest difference is
25 between – that drove the under-earning in this

1 current filing Application?

2 MR. COOPER: You mean, the factors that
3 contributed to this?

4 COMMISSIONER HENNELLY: Correct. So like
5 cost of debt was actually experienced at 4
6 percent – sorry. In the rate case, it was 4
7 percent and it's actually 4.2, and that drove a
8 \$10 million undercollection, which is 10 percent
9 of the ask.

10 MR. COOPER: So, in the company's Application
11 when it initiated the eRSA on page five, the
12 company states that – it says it recognizes the
13 impact this adjustment will have on the customers
14 and communities the company serves. "The
15 adjustment reflects the necessary investments DEP
16 has made to strengthen the grid, improve storm
17 readiness, maintain and enhance our generation
18 fleet, in serving our growing customer needs." So
19 this is really being driven by those investments
20 that –

21 COMMISSIONER HENNELLY: So to give, like,
22 the –

23 MR. COOPER: – are all about –

24 COMMISSIONER HENNELLY: – top two or three –

25 MR. COOPER: – providing service.

1 **COMMISSIONER HENNELLY:** – things?

2 **MR. COOPER:** I wouldn't have a – sorry
3 [indicating].

4 **COURT REPORTER:** We're just having some
5 talking over top.

6 **COMMISSIONER HENNELLY:** Sorry.

7 **MR. COOPER:** Well, and I appreciate your
8 question, Commissioner, and, with all due respect,
9 I mean, I'm probably not prepared to answer
10 those. I came for the legal arguments and
11 prepared for the legal arguments.

12 **COMMISSIONER HENNELLY:** That's fine.

13 **MR. COOPER:** So, yes, but I now see why you
14 said would that be for another witness.

15 **COMMISSIONER HENNELLY:** So, let me go back,
16 then, to my next question with respect to the
17 merger savings that we talked about in the merger
18 docket, so separately. But how should we think
19 about going forward with and without the eRSA and
20 your ability to share those cost savings back with
21 customers?

22 **MR. COOPER:** So, I think – you know, it just
23 hit me, Commissioner, and I apologize. I should
24 have thought about this when you asked your last
25 question. But I think, if I may, I think both of

1 these questions, if I – I mean, as a lawyer and
2 not a rates person or somebody who's employed by
3 the company – hopefully will still be after this
4 hearing.

5 [Laughter]

6 But I go back to what Ms. Shirley Smith said
7 in her testimony before you. And she said, by
8 mid-2027, we've committed to filing a general rate
9 case. That general rate case is going to be when
10 all of these details, these answers –
11 respectfully, the issues you've heard today, the
12 concerns you've heard today – those will all –
13 that's the time, in mid-2027, when you have that
14 agreed-to rate case where all of these things will
15 come up. And so that will be a time when there is
16 a fresh view of rate of return, cost of debt, all
17 those things you mentioned. The eRSA is a more
18 formulaic adjustment between them, and that is as
19 Witness Shirley Smith said. So the eRSA is going
20 to be subsumed and go away next year with the
21 filing of that general rate case.

22 **COMMISSIONER HENNELLY:** Okay. This is where
23 I struggle, again, though, because it's either
24 formulaic or it's based on investments that you
25 made that were not contemplated in the prior rate

1 case, right?

2 MR. COOPER: So – I – but you have a – so you
3 have established parameters, though, that were
4 established in the rate case, and then you're
5 providing your investments and your expenses in
6 these monitoring reports that ORS gets to audit,
7 and they get to say, "Okay. Are these – are you
8 categorizing these expenses, these investments,
9 appropriately? Can you support it?" They did
10 extensive data requests, there was discovery,
11 there were meetings, and reviewed to make sure
12 there was support for these costs and investments.
13 And then it's applied to what was set forth in the
14 rate case, in terms of the allowed rate of return
15 and things like that.

16 So, I think of that as rather formulaic in
17 terms of, you know, if they're expenses and it's
18 been audited and you have the data, you know, then
19 it becomes, "Are you within the acceptable bands
20 or are you not," and you follow the statute.

21 COMMISSIONER HENNELLY: Yeah, I guess, to the
22 extent they're expenses that were over- or under-
23 appreciated in the past case is one thing versus
24 not contemplated in the last case, and the concern
25 being that you're bypassing some level of scrutiny

1 in an RSA proceedings for those expenses versus
2 what you would've otherwise gone through in a rate
3 case.

4 **MR. COOPER:** Right. And I think that's why
5 the statute is clear in terms of what can be
6 adjusted through the eRSA and what cannot be. So,
7 in other words, the company can't say, through an
8 eRSA proceeding, "We think that our return on
9 equity should be changed," or, "our allocation of
10 debt to equity needs to be changed." You have to
11 go through – that's not an adjustment. This talks
12 about adjustments.

13 **COMMISSIONER HENNELLY:** Okay. All right.
14 I'll save my more granular questions for the next
15 witness. Thank you.

16 **MR. COOPER:** Thank you, Commissioner. I
17 appreciate the questions.

18 **CHAIRMAN POWERS:** Thank you, Commissioner
19 Hennelly.

20 Vice Chair Williams.

21 **VICE CHAIRMAN J. WILLIAMS:** Thank you, Mr.
22 Chair.

23 Gentlemen, thank you-all for being here. I
24 appreciate everyone's passionate arguments. The
25 last time I've been in this situation – a similar

1 situation regarding arguments on the law and
2 feelings about the law was as a prosecutor. And
3 my instructions from my boss were to prosecute and
4 not reduce charges – specifically, Burglary-First
5 charges – that were legally sufficient. If there
6 was no problems with the case, evidentiary or
7 otherwise, then a Burglary-First should be
8 prosecuted as a Burglary-First. Now, why would
9 someone potentially take issue with that?
10 Burglary-First, at least at that time – and I
11 believe still today – carries a mandatory minimum
12 of 15 years' violent time in SCDC, meaning you
13 have to do 85 percent of it.

14 Who, in Richland County, were committing a
15 lot of Burglary-First at the time? Kids, 18, 19
16 years old. A lot of time, first-time offenders.
17 And so, when I would be in my office and it was
18 time to talk about the case with opposing counsel,
19 I would pull out the law and I would be concerned
20 with whether or not the facts and the evidence
21 regarding the allegations were legally sufficient
22 and whether or not it was a case that was worthy
23 of prosecuting as a Burglary-First, based on the
24 law. And then opposing counsel would talk about
25 the law. Maybe there were some holes there, but a

1 lot of times there were not and we would end up
2 talking about policy and socio-economic issues,
3 and a whole lot of things outside of the law that
4 could pull on your heartstrings, but then we have
5 to go back to the law.

6 So I understand all the arguments that
7 everyone has made – economic hardship arguments,
8 impoverished communities, which I'm from one
9 originally. I understand all that. But I want to
10 talk about the law. And what I want to make sure
11 I'm clear on, DCA, is why you think the company
12 cannot file the eRSA, legally. Not whether or not
13 they should, not whether or not it would be
14 burdensome because anytime you're taking money out
15 of someone's pocket, even if they received a
16 service for it, they will feel like it's a
17 hardship, I think. And that hardship would be
18 worse on some and more so than others. I
19 understand all of that. But based on the law, why
20 do you think the company is prohibited from filing
21 for the eRSA? And then, before you respond – once
22 he finishes, I want to hear why the company thinks
23 that they can, based on just simply the law.

24 **MR. EDWARDS:** Thank you, sir. I'd like to
25 start with – you heard our arguments on 58-27-

1 2700. We're not necessarily disputing that the
2 company can't file. What we're saying is the
3 Commission can't approve. I'd just like to point
4 that out, because I do think there's a distinction
5 between those two: "filing" versus y'all
6 "approving." And what we're saying is we know, as
7 a matter of fact, from their words in those merger
8 dockets in three different jurisdictions, that
9 Legal Day 1 is January 1, 2027. And Mr. Cooper
10 even affirmed that it would be in 2027 today. And
11 if you look at those conditions and that statute,
12 what – y'all should still have the demonstrative
13 copy in front of us – you'll see that, in that
14 sentence, that, in carrying out the procedures
15 established by this Article with respect to such
16 election, and then we'll skip over the rate base
17 components and we'll go to that semi-colon where
18 you get your "provided, however, that," and those
19 are conditions.

20 I don't think we would have any dispute over,
21 let's say, for instance, DEP's last rate case was
22 in 2010, that you guys couldn't approve that
23 election. What we're just saying is the inverse
24 of that. There's two conditions; it's that second
25 condition. They cannot satisfy that and,

1 therefore, you guys can't move forward; you don't
2 have what's required to carry out the provisions
3 of the Article. And this is, is a very rare
4 circumstance. This might be one of the few
5 circumstances where we know an entity can't file a
6 rate case – that post-election rate case. It's a
7 different entity. It's Carolinas 1U.

8 **VICE CHAIRMAN J. WILLIAMS:** Got it. And so,
9 based on what we understand regarding the
10 bookkeeping and that the books will be kept in a
11 way where we know what the DEP expenses are, are
12 you saying that none of that matters, they made
13 the investment. So what? The entity won't exist.
14 Utility, you're just going to have a take a "L"?

15 **MR. EDWARDS:** Not necessarily. I'm not
16 asking that the Commission make any decision on
17 the reasonableness and prudence of the costs.
18 That would happen in that Carolinas 1U rate case.
19 All I'm saying now is that you can't approve the
20 election because, if you take any other meaning,
21 you're going beyond the plain meaning of that
22 statute – for the word "utility." "Utility" is
23 the entity that filed this election, and if you go
24 beyond that statute it would be essentially like
25 amending that Article and adding a term either to

1 be, you know, the utility or its successor, and
2 that's just not what it says. It says, "the
3 utility shall file," or "must file."

4 **VICE CHAIRMAN J. WILLIAMS:** Okay. I'm
5 following you. I just – I think I'm following
6 you. I just want to be clear. So what happens to
7 the expenses?

8 **MR. EDWARDS:** Whenever Carolinas 1U decides
9 to file their rate case with whichever test year
10 they choose, if it's – I'm assuming it would be
11 the first merged year. They should appear, in
12 that case of – or, they would – excuse me. Yeah,
13 it should be in that 2027 post-merger rate case.

14 **VICE CHAIRMAN J. WILLIAMS:** Okay. Are you
15 saying that – so you don't take issue with the
16 expenses that could create increased rates. You
17 just take issue with how the company is seeking to
18 recover those expenses through the eRSA?

19 **MR. EDWARDS:** Our issue is just the words of
20 the statute have that condition, and it has to
21 mean something.

22 **VICE CHAIRMAN J. WILLIAMS:** Okay.

23 **MR. EDWARDS:** So, if – essentially, the
24 company can't do this because they're going
25 through this very unique merger event, and things

1 are changing that then that '27 rate case is going
2 to capture. You're not barring any recovery,
3 necessarily. You're just not allowing it at this
4 moment.

5 VICE CHAIRMAN J. WILLIAMS: All right. Thank
6 you.

7 Sir –

8 CHAIRMAN POWERS: Thank you, Mr. Vice Chair.

9 VICE CHAIRMAN J. WILLIAMS: Mr. Chair?

10 CHAIRMAN POWERS: Commissioner –

11 VICE CHAIRMAN J. WILLIAMS: Mr. Chair?

12 CHAIRMAN POWERS: – Belser.

13 VICE CHAIRMAN J. WILLIAMS: Mr. Chair?

14 CHAIRMAN POWERS: I'm sorry.

15 VICE CHAIRMAN J. WILLIAMS: I'd like to hear
16 from –

17 MR. COOPER: I apologize. I think –

18 VICE CHAIRMAN J. WILLIAMS: Yes, sir. Mr.
19 Cooper?

20 MR. COOPER: So, I'd say that there is a
21 utility; it's DEP. There's no question there's –
22 someone's providing electric retail service.
23 There's no doubt somebody's providing electric
24 retail service this year, next year, and
25 continuing, right? And it says, "in its

1 discretion, at any time, may elect.”

2 So, we have that. We have DEP, which is in
3 existence now. It will be in existence this whole
4 year. We have data for DEP. It’s been reviewed.
5 It’s been audited by the ORS and it’s made its
6 recommendations. So what I would say,
7 Commissioner, is, just quickly, I would start with
8 58-27-2700 that says a utility, at its discretion,
9 may elect to have the terms of this Article apply.
10 So, you elect it. Then it says, in 58-27-2710,
11 you know, at any time you’re under this eRSA until
12 your next general rate case. It doesn’t say it
13 has to be five years. I think we’ve covered that,
14 so I won’t belabor that point.

15 Then you go – the next events that happen is
16 you jump over to 48-27-2750, and that’s the
17 statutory role of the ORS, and the ORS “shall
18 review the monitoring report,” and it must
19 determine compliance with its terms, taking into
20 account the findings of any audit. And then, it
21 shall propose those adjustments it determines to
22 be required to bring the report into compliance
23 with 58-27-2740. Based upon that report and the
24 findings of any audit conducted by the Office of
25 Regulatory Staff, the Commission shall order – I

1 mean, based on their report, the Commission shall
2 order the utility to make the adjustments to
3 tariffs' rates necessary to achieve the revenue
4 levels indicated. I mean, there's not kind of a
5 look under the hood. I mean, the other part is,
6 if you look under 57_[sic]-27-2760(5), it says, On or
7 before July 15 of each year, the commission shall
8 issue an initial order setting forth any changes
9 required in the utility's request." "In the
10 absence of such an Initial Order, the
11 electric...adjustment contained in the utility's
12 filing shall be considered granted."

13 So, I mean, those are the – that's how I
14 would read the statute.

15 **VICE CHAIRMAN J. WILLIAMS:** Thank you,
16 gentlemen.

17 Mr. Chair, that's all I have.

18 **CHAIRMAN POWERS:** Thank you, and I apologize
19 for the interruption.

20 Commissioner Belser.

21 **COMMISSIONER BELSER:** Thank you, Mr.
22 Chairman.

23 I appreciate the arguments and the comments
24 today. I grew up in CP&L territory, which became
25 Duke Energy Progress after a series of mergers, so

1 I'm well aware of a lot of the poverty in that
2 area. But when I'm looking at this law – would
3 you agree with me that this law was drafted along
4 the lines of the natural gas RSA that was approved
5 in the early 2000s?

6 **MR. EDWARDS:** Yes, ma'am, I would agree with
7 you on that, and...

8 **COMMISSIONER BELSER:** There are a few
9 differences.

10 **MR. EDWARDS:** Yes.

11 **COMMISSIONER BELSER:** But primarily. So when
12 the statute says "a public utility, in its
13 discretion, [and] at any time, may elect," where
14 is Commission approval in that?

15 **MR. EDWARDS:** It's not –

16 **COMMISSIONER BELSER:** Where in this – where
17 in this Act does it give the Commission the
18 discretion to approve or not approve this
19 election?

20 **MR. EDWARDS:** I would argue it's inherent in
21 the Commission's powers, already, that they can
22 not approve the election. Otherwise, they would
23 just be a rubber stamp. And it says that you have
24 to carry out the procedures in the Article.
25 "Carrying out the procedures" is a unique term.

1 And if you can't carry out those procedures
2 because of those conditions not being present,
3 then you can't go further, so it has to be a
4 rejection, just by virtue of that. And, I mean,
5 you astutely pointed out that there are a few
6 differences between this and the gas RSA statute.
7 One of the differences is that condition where
8 they have to file a rate case five years after
9 election.

10 **COMMISSIONER BELSER:** I agree. And I think I
11 have a reason why, even though it's not stated in
12 there. But I agree with that. But I'm trying not
13 to look outside of the law, and there's been a lot
14 brought in that's outside of the law, so that was
15 my main question. Thank you very much, Mr.
16 Edwards.

17 Mr. Cooper, same question.

18 **MR. COOPER:** I think I'm – Commissioner, I
19 appreciate you providing it to me, but I don't
20 want to take up any more time than I've taken up
21 of the Commission.

22 I agree. I think that the law is clear. I
23 mean, it's saying it's the utility's discretion to
24 elect it at any time. You have a monitoring
25 report that's been filed, you had data that was

1 capable of being audited. I think that this is a
2 streamlined statute that's very direct and
3 prescriptive, but, again, there are safety –
4 there's some –

5 **COMMISSIONER BELSER:** I'm just asking –

6 **MR. COOPER:** Yeah, I'll stop there.

7 **COMMISSIONER BELSER:** I'm just asking about
8 where does it say the Commission has to approve or
9 not approve.

10 **MR. COOPER:** I agree, I do not see that.

11 **COMMISSIONER BELSER:** Thank you, Mr.

12 Chairman.

13 **CHAIRMAN POWERS:** Commissioner Caston.

14 **COMMISSIONER CASTON:** Thank you. Thank y'all
15 for your patience.

16 I want to make sure I understand this. I may
17 be duplicating, but I'm a simple man. So DCA has
18 asserted that 58-27-2700 dictates two
19 prerequisites for making an election under the
20 eRSA. The first one, that the most recent rate
21 order must be issued within five years of the
22 election, and the utility must file an application
23 for a general rate proceeding every five years
24 after such election.

25 So, is DCA, and perhaps the others – I don't

1 know – saying that the utility must file in five
2 years? Is that one of the arguments, that they
3 must file –

4 **MR. EDWARDS:** This –

5 **COMMISSIONER CASTON:** – but it would be
6 impossible to do that? Is that what you're
7 saying?

8 **MR. EDWARDS:** So, yes, we are saying it would
9 be impossible to do that. And the statute does
10 explicitly say five years after this election.
11 We're not arguing that it necessarily has to be
12 exactly five years after, but this merger is
13 complete on – or, DEP ceasing to exist as a result
14 of that merger – on January 1, 2027, and that's,
15 what, only six, maybe five months now, away?
16 We're not even looking at a full year, here, where
17 at the end of this year, basically, DEP's not
18 existing. So we're saying they just – they're not
19 going to be able to file that.

20 **COMMISSIONER CASTON:** And if I understood you
21 earlier, I think in response to the Vice Chair's
22 question, were you saying or implying that, in
23 this case, DEP can elect to come under the eRSA,
24 but to comply with the "shalls" and "musts," the
25 Commission can't grant it?

1 **MR. EDWARDS:** Yes, sir, I think that's a good
2 summary. The Commission can't carry out the
3 procedures necessary for the Article to commence.

4 **COMMISSIONER CASTON:** And the utility that is
5 applying for the election to the eRSA is Duke
6 Energy Progress; is that correct?

7 **MR. EDWARDS:** Yes, sir.

8 **COMMISSIONER CASTON:** And, again, it's DCA's
9 position that Duke Energy Progress cannot comply
10 with the requirement to file a subsequent rate
11 proceeding –

12 **MR. EDWARDS:** Yes, sir.

13 **COMMISSIONER CASTON:** – because it will no
14 longer be a separate legal entity?

15 **MR. EDWARDS:** Yes, sir, because Carolinas 1U,
16 or just DEC, would be the new legal entity there.

17 **COMMISSIONER CASTON:** And relative to 58-27-
18 2030_[sic], DCA asserts that Duke Energy Progress will
19 not be able to comply with the continuing
20 monitoring reports as required, because that's a
21 "shall" area? Is that – that's what your filing
22 said, to me. Is that what DCA's position is?

23 **MR. EDWARDS:** Yes, sir. And then, just very
24 clearly, it's because that will not be DEP making
25 those filings; that would be Carolinas 1U making

1 those filings. And it's just the specific term,
2 "the utility." I mean, I read it to mean the
3 electing utility. I think that's the most plain
4 meaning of that term.

5 **COMMISSIONER CASTON:** That was kind of my
6 next question. I put it as the post-combination,
7 Duke Energy Carolinas. I think – I think it was
8 called Carolinas U1 or 1U, in the merger docket,
9 is not the same utility as Duke Energy Progress.

10 **MR. EDWARDS:** No, sir, they're different
11 utilities. And I think you could look at just
12 some very common-sense things, like the service
13 territory is completely different. I mean, just
14 from that, they have different population density,
15 line miles. The characteristics are significantly
16 different between Duke Energy Progress today and
17 what that entity, on January 1, 2027, is.

18 **COMMISSIONER CASTON:** So, DCA agrees that
19 Duke Energy Carolinas, or Carolinas U1 – or 1U. I
20 don't – I may have that backwards; I don't know –
21 will assume the commercial responsibilities and
22 obligations of Duke Energy Progress whenever that
23 is finalized, that legal –

24 **MR. EDWARDS:** The –

25 **COMMISSIONER CASTON:** – data?

1 **MR. EDWARDS:** Yes, sir. They will have a
2 service territory, but we don't believe that they
3 can continue the obligations under this statute.

4 **COMMISSIONER CASTON:** And I noticed in your
5 filing, also, you referenced the FERC order and
6 North Carolina Utilities Commission's order
7 stated, on Legal Day 1, I think that Carolinas 10
8 would begin operating under a single set of
9 accounting books and records; is that correct?

10 **MR. EDWARDS:** Yes, sir. In the South
11 Carolina order that you guys released just after
12 we filed our comments is the same, as well, on
13 page 13.

14 **COMMISSIONER CASTON:** I haven't forgotten
15 you, Mr. Cooper. You look bored.

16 **MR. COOPER:** I promise you I'm not,
17 Commissioner.

18 [Laughter]

19 **COMMISSIONER CASTON:** Regulatory treatment.
20 You know, stabilizing a utility's rates, it's not
21 a simple commercial contract, correct?

22 **MR. COOPER:** You're saying – what is not
23 a simple –

24 **COMMISSIONER CASTON:** It's not like you're
25 negotiating a contract with any entity, the

1 regulatory treatment process, the ratemaking
2 process.

3 MR. COOPER: The ratemaking process? I think
4 I understand where you're going, but – I'll agree
5 for now, if I understand you correctly, but yes,
6 sir.

7 COMMISSIONER CASTON: Probably a lousy
8 question.

9 MR. COOPER: No, no, no.

10 COMMISSIONER CASTON: All right. Let me –
11 think in these terms. The stabilization of rates
12 is highly dependent on, I guess, the utility's
13 individualized operating expenses. Would –

14 MR. COOPER: Yes.

15 COMMISSIONER CASTON: – you agree?

16 MR. COOPER: Yes, I would. Thank you,
17 Commissioner, for –

18 COMMISSIONER CASTON: I probably should have
19 asked it that way.

20 MR. COOPER: It was a good question. I just
21 missed you, but that's a very – that's a great way
22 to put it. And, yes, I agree.

23 COMMISSIONER CASTON: I'm pretty sure, Mr.
24 Cooper, that wasn't your fault; that was mine.

25 [Laughter]

1 And in this instant case, the rate
2 stabilization is highly dependent on allocation of
3 costs of a soon-to-be-no-longer-existing company,
4 which will constitute, I guess, a portion of a
5 larger entity, which is being – you can clear this
6 up for me. Carolinas – is it 1U or U1? I don't
7 remember.

8 **MR. COOPER:** I've heard 1U, is what I've
9 heard.

10 **COMMISSIONER CASTON:** Okay. Is that correct?

11 **MR. COOPER:** That's correct.

12 **COMMISSIONER CASTON:** And after the merger,
13 DEP will no longer be operated separately,
14 correct?

15 **MR. COOPER:** That's correct.

16 **COMMISSIONER CASTON:** And Carolina 1U would
17 begin operating under a single set of accounting
18 books and records, correct?

19 **MR. COOPER:** That's correct. But that will
20 be when there's this general rate case that
21 merges, and you have the single set of books and
22 records. It would be mid-2027, as Ms. Shirley
23 Smith indicated.

24 **COMMISSIONER CASTON:** Okay, but I've kind of
25 heard – and maybe I just didn't understand some of

1 the back-and-forth, but it seemed like I was
2 hearing that there would be two separate sets of
3 books, you know, that you were going to be –

4 **MR. COOPER:** Correct.

5 **COMMISSIONER CASTON:** – tracking that. Then
6 how can it be, you know – I guess I don't
7 understand that, how it can be operating under a
8 single set of accounting books and records, since
9 DEP no longer exists. It is now a totally
10 separate company: Carolinas 1U. I mean, that's
11 one set of books and accounting –

12 **MR. COOPER:** Correct. Correct, Commissioner.
13 I think it's just a timing issue of when the
14 merger would be approved, then the ability to
15 merge rates and come in and have approval –
16 Commission approval – for merged rates.

17 **COMMISSIONER CASTON:** Everything in life
18 comes down to timing, doesn't it?

19 **MR. COOPER:** Yes. Yes, Commissioner.

20 **COMMISSIONER CASTON:** Does the statute
21 contemplate the application of the eRSA for a
22 once-existing legacy portion of a utility?

23 **MR. COOPER:** Well, so, the statute says “a
24 public utility providing retail electric service.”
25 I mean, there is going to be a utility providing

1 retain electric service, you know, continuing.
2 So, what we're saying is, today, when DEP elected
3 this in March of this year, DEP is in existence.
4 DEP is in existence all of this year. So it's
5 eligible to – it's in its discretion at any time
6 to make an election under this statute, which it
7 has done. It will, further, be able to comply
8 with this statute going into next year, because it
9 will have a full year of data from 2026 to report
10 to the Office of Regulatory Staff that will be DEP
11 data. And then, as Ms. Shirley Smith has said,
12 there will be a general rate case and that's when
13 you'll have this combination. So DEP – and that's
14 also why we've said the idea of this – the
15 argument is not ripe. I mean, DEP exists today.
16 DEP will exist this whole year. I mean, it's –
17 there is a utility right now providing retail
18 electric service that is DEP.

19 **COMMISSIONER CASTON:** I – well, I mean, you
20 heard DCA's response to the "must," and I think I
21 understand what they said, in 58-27-2700. I don't
22 know, about three-quarters of the way down, where
23 it says, "a utility must file an application for a
24 general rate proceeding every five years after
25 such election." Now, "shall" and "must." Does

1 that mean a utility must file an application for a
2 general rate proceeding every five years after
3 such election?

4 **MR. COOPER:** So, Commissioner, I would read
5 that in context of the statute – right – the whole
6 statute. So it's saying, "Effect of Election."
7 58-27-2710 says "The election by a utility to have
8 the terms of this article apply to its rates and
9 charges for retail electric service, once made,
10 shall remain in effect until the next general rate
11 proceeding for the public utility." Okay? The
12 section right above it, it also says, "the
13 election shall remain in effect until the next
14 general rate proceeding." So what it's saying is,
15 it's in effect until your next general rate
16 proceeding, but whenever that is, but it can't
17 exceed five years.

18 **COMMISSIONER CASTON:** And -2730, go to that
19 one, if we can, because I want to ask the same
20 thing, because I'm – I guess everyone has their
21 view of what "shall" and "must" mean. I want to
22 hear yours, too. "The utility shall file with the
23 Commission monitoring reports for each 12-month
24 period ending..." and you've heard that.

25 **MR. COOPER:** That's correct.

1 **COMMISSIONER CASTON:** March 31st and – and I
2 know, I think you’ve responded to it a couple of
3 different times. Let me hear it one more time.

4 **MR. COOPER:** Okay. So, I would say that,
5 Commissioner, DEP would fulfill this, because it
6 filed – on March 31st – it filed a 12-month report
7 of data from 2025, so it properly initiated the
8 eRSA. It will now have data this whole year. So
9 it will be able to comply and file updates and it
10 will be able to file an annual report ending
11 December 31st – the data will end on December
12 31st – that will be due March 15th of next year.
13 It would be able to make that filing. And then
14 you will have – then you go back to the language I
15 was reading, which says, “the public utility may
16 then – that once made, this remains in – the
17 election to be under the eRSA shall remain in
18 effect until the next general rate proceeding.
19 And so that’s why I keep coming back to Ms.
20 Shirley Smith is that will be mid-year next year.
21 And so then that ends the eRSA.

22 **COMMISSIONER CASTON:** Final thing, after
23 hearing that – again. I’m going to ask you the
24 same thing again, I guess, relative to 58-27-2700.
25 You know, when I just read just the part about

1 "The utility must file an application for a
2 general rate proceeding every five years after
3 such election," and you heard what Attorney Cooper
4 said.

5 MR. EDWARDS: Yes, sir. And the "must" means
6 it is mandatory; it has to be done. That's what
7 we've shown in case law is that you have to file
8 that. It's got to be the utility that's electing.
9 And, again, we cited the FERC order. They said
10 DEP will cease to exist on Legal Day 1.

11 COMMISSIONER CASTON: And, finally, the 58-
12 27-2730, again, that utility shall file those
13 reports. And Attorney Cooper has been consistent
14 with his response.

15 MR. EDWARDS: Yes, sir, he's been very
16 consistent using the words "data" and being very
17 explicit that the data is being filed, but, I
18 mean, the FERC order is clear. They're not
19 existing as a legal entity; it's someone else
20 making that filing. It's not this utility.

21 COMMISSIONER CASTON: All right. I'm
22 done, tired, and y'all arm wrestle after this is
23 over.

24 [Laughter]

25 All right. Thank you.

1 **COMMISSIONER WHITFIELD:** Mr. Chairman. Mr.
2 Chairman.

3 **CHAIRMAN POWERS:** Commissioner Whitfield.

4 **COMMISSIONER WHITFIELD:** Thank –

5 **CHAIRMAN POWERS:** And then Commissioner
6 Hennelly.

7 **COMMISSIONER WHITFIELD:** Okay.

8 [Brief pause]

9 **CHAIRMAN POWERS:** You go ahead, Commissioner
10 Whitfield.

11 **COMMISSIONER WHITFIELD:** Thank you, Mr.
12 Chairman.

13 I'll try to be brief. We've been going –
14 you've been standing there a long time; our court
15 reporter's been going a long time. So, I'm going
16 to try to be fair to both of you. Please don't
17 take any inference as any way to what I might ask
18 either of you, but we can both agree this is a
19 rare situation. Can you agree to that, Mr.
20 Edwards, and you also, Mr. Cooper?

21 **MR. EDWARDS:** Yes, sir.

22 **COMMISSIONER WHITFIELD:** We're in a rare
23 situation, right?

24 **MR. COOPER:** Certainly, we're in the
25 initial – this is the first election under the

1 eRSA. I agree with that, Commissioner.

2 COMMISSIONER WHITFIELD: Rare. I think one
3 of you even used that word.

4 MR. EDWARDS: Yes, sir.

5 COMMISSIONER WHITFIELD: So we're in
6 agreement there. Mr. Cooper – and a good many of
7 my questions are going to be for you. I'll have
8 some for you [indicating], but, Mr. Cooper, is it
9 fair to say that the eRSA was – one of the intents
10 was to avoid or get away from regulatory lag, i.e.
11 rate shock caused by regulatory lag. Is that a
12 fair statement?

13 MR. COOPER: That's a fair statement,
14 Commissioner.

15 COMMISSIONER WHITFIELD: Would you agree with
16 that?

17 MR. EDWARDS: Yes, sir.

18 COMMISSIONER WHITFIELD: Okay. And we're
19 two-for-two, so far. And we also could agree the
20 eRSA became law May 12, 2025? Does that sound
21 about right?

22 MR. COOPER: That's correct, Commissioner.

23 MR. EDWARDS: Yes, sir, that's correct.

24 COMMISSIONER WHITFIELD: Okay, we're moving
25 along. Mr. Cooper, when was that – help me out

1 chronologically, here. I know this is all in the
2 file, in the record, but just help me out. When
3 was the merger announced, if you could give me a –
4 don't need to know the exact date maybe. Maybe
5 the month, year.

6 **MR. COOPER:** When the merger – I may have
7 to – I may, if I may consult my colleague to know
8 the exact month it was announced, could I update
9 you with that figure, if I don't have that handy
10 right now? I'm sure somebody can give me the
11 month shortly.

12 **COMMISSIONER WHITFIELD:** It was – well, let's
13 don't get hung up on that. It was after the May
14 12 – May 2025 date when the eRSA became law,
15 right?

16 **MR. COOPER:** That sounds correct, yes.

17 **MR. EDWARDS:** I just want to make one
18 clarification. When you say "announced," do you
19 mean when that docket is filed? Because it's
20 mentioned in the 2012 order with Progress that
21 they would be moving towards a merger one day.

22 **COMMISSIONER WHITFIELD:** I recall that from
23 way back. I was here then, and I recall that.
24 Let's say, when did it become recently public?
25 Not necessarily filed here. When did it become

1 public? Do we know?

2 MR. COOPER: I believe it would be, subject
3 to check, sometime in 2025, I believe, would be –

4 COMMISSIONER WHITFIELD: After the – well,
5 where I'm going with this, after the eRSA became
6 law; is that fair to say?

7 MR. COOPER: I – Commissioner, I just –
8 honestly, to give a credible answer, I don't know
9 the answer right off the top my head. I
10 apologize.

11 COMMISSIONER WHITFIELD: Okay. Well,
12 Commissioner Caston asked a question, does the
13 statute contemplate – did the statute contemplate
14 a merger by any of the said utilities who be
15 eligible to choose this election. And I think
16 that's a big issue here today. I know you've
17 answered that, he's asked you that. You've been
18 asked that. So, one of the other pieces of
19 contention that you-all had, Mr. Cooper had in his
20 slides when he was over here earlier, that the –
21 one of his slides said that the utility could not
22 stay out more than five years; must have a rate
23 case. I think you were saying that they had to
24 wait five years and he highlighted somewhere "not
25 more than five years." Can we both agree – you,

1 Mr. Edwards, and you, Mr. Cooper – that it does
2 say utility must come in within five years for a
3 general rate case?

4 MR. EDWARDS: [Indicating.] You're referring
5 to 58-27-2700?

6 COMMISSIONER WHITFIELD: Yes.

7 MR. EDWARDS: It explicitly says, "The
8 utility must file an application for a general
9 rate proceeding every five years after such
10 election."

11 COMMISSIONER WHITFIELD: Okay.

12 MR. COOPER: And, Commissioner, then it goes
13 on to say in that same section, it says, "and the
14 election shall remain in effect until the next
15 general rate proceeding," and then it says,
16 "Effect of Election"; there's a specific section
17 that elaborates on the effect of election, so it
18 gets more specific. Okay? And then it says that
19 "At which time the public utility" – again, it
20 says it "shall remain in effect until the next
21 general rate proceeding for the public utility."

22 So, clearly, you know, that's the more
23 specific section of the effect of the election;
24 it's saying it's in effect until your next general
25 election_[sic]. It didn't say which can – which can't

1 be sooner than five years.

2 And just think about it. I mean, it's
3 telling you, on the one hand, you can't go back
4 beyond five years, and then it's telling you, on
5 the other hand, you've got to come back within
6 five years. I mean, just apply – you have to
7 apply, you know, all the words to make them
8 logically connect, and that's the most reasonable
9 way to give effect to both these sections,
10 Commissioner.

11 **COMMISSIONER WHITFIELD:** Thank you for your
12 answer, and thank you for your answer
13 [indicating].

14 I'm going to kind of boil this down and wrap
15 it up. So, the uniqueness or rareness of today is
16 we're going from something that could be
17 characterized as a system of regulatory lag to a
18 system – the eRSA – which is supposed to mitigate
19 that, and here we are caught in the gap between
20 the two, with a merger that's thrown in the mix.
21 Is that a fair statement?

22 **MR. COOPER:** Well, with all due respect, I
23 would say I disagree that we're caught between the
24 two. I would say two things: I'd say, you know,
25 it is to help eliminate the regulatory lag, which

1 drives up costs for customers. I agree with that
2 statement. It is also designed to provide rate
3 stability for the utility. I mean, that is a big
4 part of this. I don't want to overlook that. And
5 I would say there's – I don't think this is that
6 unique, in the sense that DEP exists. It had its
7 data; it's in existence today, and elected to be
8 under the eRSA. It could do that at any time. It
9 had a full year of data. It has rates that will
10 be in effect this year. The adjustment will take
11 place this year for DEP's customers. And I'm
12 pretty sure there's going to, you know – I mean,
13 and there will be a utility providing electric
14 retail service to this area.

15 **COMMISSIONER WHITFIELD:** There – and I think
16 that's been stated here several times today, but
17 DEP, it's not like it's – I just want to inquire –
18 DEP's not going to exist anymore after the end of
19 the year. So that company is going to cease to be
20 in existence. So I guess we're getting down to
21 that test year. And I'm trying not to – even
22 though we had two other attorneys – Mr. Protheroe
23 and Mr. Callas – make some comments the Chairman
24 allowed in, I'm trying not to go there, but some
25 dates were – and I think you mentioned some dates

1 from the ending of DEP until the time of when the
2 rate case – and I think we’re looking at the end
3 of the year to, what, May 2027? Is that right?
4 And, again, I know that’s not the test year.

5 **MR. EDWARDS:** Are we referring to what the
6 next year would be? I just want to make sure I’m
7 following.

8 **COMMISSIONER WHITFIELD:** Well, I think the
9 next rate case is going to be May 2027. Is that
10 what you stated?

11 **MR. COOPER:** I mentioned mid-year of 2027.
12 It could be May; it could be June, July, August.
13 But I think roughly mid-year 2027.

14 **MR. EDWARDS:** And I was under the
15 understanding that, based on that revenue
16 requirement stipulation term, it’s after they have
17 a test year of that merged entity. I believe I
18 have a copy.

19 **MR. HALL:** [Indicating.]

20 **MR. EDWARDS:** [Indicating.] It’s just within
21 12 months of the merger. So it could be, I guess,
22 as he says, May or at the end of the year in
23 December.

24 **COMMISSIONER WHITFIELD:** Thank you for your
25 answer [indicating]. Thank you for your answer

1 [indicating]. I think we got some agreement, but
2 obviously still some things out there, but thank
3 you for your answers.

4 **MR. COOPER:** Thank you, Commissioner.

5 **CHAIRMAN POWERS:** Thank you, Commissioner
6 Whitfield.

7 [Brief pause]

8 All right. Commissioner Hennelly?

9 **COMMISSIONER HENNELLY:** Just to be clear, I –
10 I don't have an issue with whether or not you
11 exist or will exist. To me, you know, mergers
12 don't relieve obligations, so, you know, I'm not
13 aware that you're retiring DEP or DEC debt
14 obligations; you'll continue to service them,
15 right?

16 **MR. COOPER:** Correct.

17 **COMMISSIONER HENNELLY:** Your contracts are
18 all still in place? And so I don't see that
19 really as an issue. And to go further, I'm not
20 sure why DEP having to file a rate case isn't
21 satisfied by a joint rate case filed by – whatever
22 you want to call it – DEP+DEC. While it might
23 cease to exist for corporate hygiene purposes,
24 it – for all intents and purposes – continues to
25 exist and will have the ability to file any – it's

1 not relieved of obligations. That's where I was
2 on that.

3 I want to go back to back just on the
4 stabilization piece with one of y'all. And just
5 my understanding is these effects accumulate. So
6 if there's an eRSA process that is approved with
7 an adjustment and those get added into rates
8 prospectively, that that adjustment should
9 inherently mitigate – assuming it's an upward
10 adjustment, it would mitigate under-earning into
11 the following RSA. Is that –

12 **MR. COOPER:** That's a – I agree with that.

13 **MR. EDWARDS:** I'm not a technical expert, so
14 I would have to just sit on the sidelines here.
15 I –

16 **COMMISSIONER HENNELLY:** So they were –

17 **MR. EDWARDS:** – apologize, sir.

18 **COMMISSIONER HENNELLY:** – earning 9 versus
19 their 10 allowed, and they get an X million dollar
20 adjustment that puts them back to their midpoint.
21 Now, in the subsequent year, with that adjustment
22 having been in place for the subsequent 12 months,
23 they'd be – they wouldn't be under-earning as much
24 going into the following years of the RSA,
25 assuming – you follow me? They would've had those

1 rates helping them.

2 MR. EDWARDS: I'm following you, but I'm not
3 quite sure that's how that works. And, again, I'm
4 just going to have to say I'm not a technical
5 expert here. I'm not.

6 COMMISSIONER HENNELLY: Where it wouldn't
7 work would be if even greater circumstances that
8 weren't foreseen from the prior RSA – I'm not
9 saying it couldn't happen. That's fair.

10 MR. EDWARDS: Oh.

11 COMMISSIONER HENNELLY: But all else equal,
12 it should help your under-/over-earning dilemma or
13 gap.

14 MR. EDWARDS: Okay.

15 COMMISSIONER HENNELLY: Okay. I just wanted
16 to make sure that – so I can understand
17 prospectively where the stabilization kind of
18 comes in from the adjustments, because it is hard
19 to digest the inaugural adjustment as a stabilizer
20 when it's really just increasing rates.

21 MR. COOPER: That – I understand your – yes,
22 I understand the point.

23 COMMISSIONER HENNELLY: Okay. That's all.

24 CHAIRMAN POWERS: Thank you, Commissioner
25 Hennelly. Commissioner Britt?

1 **COMMISSIONER BRITT:** Mr. Chairman, thank you,
2 and I have just a quick question for you, Mr.
3 Cooper.

4 Will DEP or Carolina 1, or whatever you want
5 to call them, as of January '27, have the
6 opportunity to come before the Public Service
7 Commission and ask for an eRSA rate increase based
8 on the 2026 data?

9 **MR. COOPER:** It would. It would be able to –
10 it would – not trying to parse your words,
11 Commissioner, but technically what it could do is
12 it would be able to make a filing in March showing
13 2026 data. It would not necessarily ask for – it
14 would show that data, whatever that data shows.

15 **COMMISSIONER BRITT:** It would give –

16 **MR. COOPER:** Whether that –

17 **COMMISSIONER BRITT:** – them the –

18 **MR. COOPER:** – would be –

19 **COMMISSIONER BRITT:** – opportunity to
20 present –

21 **MR. COOPER:** – an adjustment up or –

22 **COMMISSIONER BRITT:** – the data.

23 **MR. COOPER:** – down, it would be an
24 adjustment. But you're correct, yes.

25 **COMMISSIONER BRITT:** That's all I need.

1 Thank you.

2 MR. COOPER: Thank you.

3 CHAIRMAN POWERS: Thank you, Commissioner
4 Britt.

5 Mr. Cooper, just one thing. You used the
6 word "true-up" in your earlier argument. That's
7 not in this particular statute, is it?

8 MR. COOPER: I – if I did, I should have – I
9 think I stuck to the word "adjustment."
10 Thereafter, I may have said "true-up," and if I
11 did, I –

12 CHAIRMAN POWERS: Because when I think of a
13 true-up, I think –

14 MR. COOPER: You know, this is –

15 CHAIRMAN POWERS: – you've got to –

16 MR. COOPER: – to adjust –

17 CHAIRMAN POWERS: – have a reason.

18 MR. COOPER: Yes.

19 CHAIRMAN POWERS: And with this, you don't
20 have to have a reason to apply it, except for one
21 thing from Vice Chair Williams – I was a
22 prosecutor, too, and if a defendant got five
23 years' prison sentence and he died in six months,
24 you can't make him serve that five years. Is that
25 correct?

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MR. COOPER: Right.

CHAIRMAN POWERS: Is that correct?

MR. COOPER: That's correct.

CHAIRMAN POWERS: Okay. That's all I have.
Anything further?

[No response]

Thank you all so much. Thank you, Ms. Wheat,
for putting up with us this long.

Anything from any party?

MR. COOPER: Thank you for your time.
Appreciate the questions.

CHAIRMAN POWERS: All right.

MR. EDWARDS: Thank you, sir.

CHAIRMAN POWERS: We are adjourned.

[WHEREUPON, at 4:01 p.m., the
proceedings in the above-entitled matter
were adjourned.]

C E R T I F I C A T E

I, Jo Elizabeth M. Wheat, CVR-CM-GNSC, Notary Public in and for the State of South Carolina, do hereby certify that the foregoing is, to the best of my skill and ability, a true and correct transcript of the proceedings had in oral argument held in the above-captioned matter before the PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA;

IN WITNESS WHEREOF, I have hereunto set my hand, on this the 28th day of August, 2026.



Jo Elizabeth M. Wheat, CVR-CM/M|GNSC
Hearings Reporter - Public Service Commission
of South Carolina

Notary Public in/for the State of South Carolina
My Commission expires: January 12, 2031.

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COLUMBIA, SOUTH CAROLINA

SPECIAL CBM #26-16a

June 29, 2026

2:00 ~ 2:09 P.M.

COMMISSION MEMBER(S) PRESENT:

Delton W. POWERS, JR., CHAIR
Justin T. WILLIAMS, VICE CHAIR
COMMISSIONER Eugene HENNELLY
COMMISSIONER Florence P. BELSER
COMMISSIONER Stephen M. 'Mike' CASTON
COMMISSIONER H. David BRITT
COMMISSIONER Swain E. WHITFIELD

COMMISSION MEMBER(S) ABSENT: —

PRESENTING AGENDA: Norman Scarborough
TECHNICAL ADVISORY STAFF

**MINUTES / TRANSCRIPTION
OF
SPECIAL COMMISSION BUSINESS MEETING**

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

101 EXECUTIVE CENTER DRIVE
COLUMBIA, SC 29210

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<u>TRANSPORTATION AGENDA</u>	N/A

In accordance with S.C. Code § 30-4-80(E), the Public Service Commission hereby certifies that it has notified all persons, organizations, local news media, and all other news media requesting notification of the time, date, place, and agenda of this public meeting, by posting a copy of the Notice in its principal office, by e-mailing such Notice to all who request same, and by posting the Notice on the Commission's official Internet website.

P R O C E E D I N G S

CHAIRMAN POWERS: Good afternoon and welcome to the South Carolina Public Service Commission's special business meeting today. Today is June 29th and it is approximately 2 o'clock. All Commissioners are present in the hearing room.

Mr. Scarborough, if you would, please present our special business meeting docket.

MR. SCARBOROUGH: Good afternoon, Chair Powers, Vice Chair Williams, and Commissioners. Staff offers a reminder that the next regularly scheduled Commission business meeting is set for Thursday, July 9, 2026, at 1 p.m.

CHAIRMAN POWERS: Next business meeting will be July 9th at 1:00.

MR. SCARBOROUGH: Thank you, sir.

Today, we have just one item on the agenda. Item No. 1 on the Utilities Agenda is in Docket No. 2026-78-E and all Commissioners are eligible to vote. This item involves final disposition of this docket.

CHAIRMAN POWERS: All right. As to the item as presented by Mr. Scarborough, is there a motion?

COMMISSIONER CASTON: Chair Powers.

CHAIRMAN POWERS: Commissioner Caston.

1 **COMMISSIONER CASTON:** Thank you.

2 First, the clear and unambiguous language of
3 58-27-2700 requires that the utility must file an
4 application for a general rate proceeding every
5 five years after such election. Yet, pursuant to
6 the merger approved by this Commission, the
7 utility, which is Duke Energy Progress, LLC, will
8 no longer exist as an independent utility. The
9 utility thereafter will be Carolina 1U or Duke
10 Energy Carolinas in its post-merger form. Duke
11 Energy Progress, LLC, will be a portion of the
12 combined single utility or be dissolved as an
13 independent entity altogether. Under either
14 circumstance, however, compliance with the clear
15 and unambiguous requirement of the statute is
16 impossible. Therefore, the Commission may not issue
17 an order, nor grant approval for regulatory
18 treatment wherein compliance is not possible.

19 Second, the Commission is charged with setting
20 just and reasonable rates. According to DCA in its
21 comments, approval of the election of the eRSA
22 would mean that the Duke Energy Progress retail
23 electric ratepayers of South Carolina would
24 experience an approximate cumulative 28 percent
25 increase, or about \$41 a month for a residential

1 customer using 1000 kilowatts per month in average
2 bills since June of 2025. This strains the limits
3 of "just and reasonable." The *Federal Power*
4 *Commission versus Hope Natural Gas Company* defines
5 just and reasonable rates as being rates which
6 enable the company to operate successfully, to
7 maintain its financial integrity, to attract
8 capital, and to compensate its investors for the
9 risks assumed.

10 Docket No. 2025-154-E contained the testimony
11 in fact, a supported settlement that was approved
12 by Order No. 2025-757 – that asserted that Duke
13 Energy Progress, once granted the \$11.23 for a
14 residential customer using 1000 kilowatt-hours per
15 month increase, in its last rate case, would have
16 sufficient opportunity to earn sufficient income
17 for the exact things required by *Hope*. To seek
18 additional rate relief within six weeks after the
19 last general rate case, wherein the company agreed
20 that the rates being set, under which the company
21 still operates, are just, reasonable, and
22 sufficient for the company to continue its
23 operational duties, would result in a rate that is
24 not just and reasonable to the retail electric
25 ratepayers.

1 Additionally, even if it were permitted, the
2 resulting rates would be unjust, unreasonable, and
3 contrary to the concepts of incrementalism and
4 gradualism in adjustment of rates.

5 I move that the Commission find that Duke
6 Energy Progress, LLC, is not eligible to elect to
7 be subject to the eRSA. So move.

8 **CHAIRMAN POWERS:** Thank you, Commissioner
9 Caston. Having heard the motion of Commissioner
10 Caston, is there any further discussion?

11 **COMMISSIONER HENNELLY:** Mr. Chair.

12 **CHAIRMAN POWERS:** Commissioner Hennelly.

13 **COMMISSIONER HENNELLY:** So, before I put
14 forward my alternative motion, you know, I,
15 personally, I don't agree with all the arguments
16 made in the DCA's Petition, but I think, what's
17 more, it's just worth playing out, so – and that's
18 the reason why I'm offering an alternative. But
19 the implications of the DCA Petition I think would
20 be effectively – preclude DEP from electing and
21 using this mechanism at any point going forward,
22 either. So I have an alternative motion.

23 **CHAIRMAN POWERS:** All right. If you have a
24 substitute motion, we'll move to that and then, if
25 necessary, come back to Commissioner Caston's

1 motion.

2 **COMMISSIONER HENNELLY:** So on March 13, 2026,
3 Duke informed the Commission the company elects to
4 utilize the Electric Rate Stabilization Adjustment
5 mechanism provided by the 2025 South Carolina
6 Energy Security Act, or Act 41. Concurrent with
7 this election, the company also submitted its first
8 annual monitoring report for the 12-month period
9 ending December 31st, 2025, along with a schedule
10 specifying changes in its tariff rates required to
11 achieve the requested increase in revenue.

12 Pursuant to S.C. Code Section 58-27-2730, the
13 utility is required to file monitoring reports with
14 the Commission for each 12-month period ending
15 March 31st, June 30th, September 30th, and December
16 31st of each year, with the filings to be made no
17 later than the fifteenth day of the third month
18 following the close of the period.

19 In the instant case, Duke Energy Progress did
20 not submit to the Commission and ORS a monitoring
21 report for the period ending March 31st, 2026, on
22 or before June 15th, 2026. The Commission cannot
23 waive a statutory requirement in carrying out its
24 procedures established by the Electric Rate
25 Stabilization Act. And given the procedural

1 failure, I move the Commission deny the stipulation
2 and reject the company's proposed election at this
3 time.

4 To be clear, my motion today does not
5 foreclose the company's ability to elect in the
6 future upon satisfying the procedural requirements
7 as outlined in the Electric Rate Stabilization Act.

8 **CHAIRMAN POWERS:** Thank you, Commissioner
9 Hennelly.

10 Having heard the motion, is there any further
11 discussion?

12 **COMMISSIONER CASTON:** If I may –

13 **CHAIRMAN POWERS:** Commissioner Caston.

14 **COMMISSIONER CASTON:** – I understand what was
15 proposed. I would prefer that we vote on my motion
16 first, but I understand that this is the process
17 we've used in the past. So with the greatest
18 respect, I won't be able to support it, but
19 primarily because I made my motion. But thank you.

20 **CHAIRMAN POWERS:** Thank you, Commissioner
21 Caston. Any further discussion?

22 **COMMISSIONER BELSER:** Mr. Chairman?

23 **CHAIRMAN POWERS:** Commissioner Belser.

24 **COMMISSIONER BELSER:** I respectfully will not
25 be supporting the alternative motion. And depending

1 on what happens there, I will not be supporting the
2 original motion. I think that the company has the
3 ability to make the election and does not require
4 Commission approval, and I would be voting to
5 approve the stipulation between the company and
6 ORS. So, I will not be supporting either of these
7 motions. Thank you.

8 **CHAIRMAN POWERS:** Thank you, Commissioner
9 Belser.

10 Any further discussion?

11 [No response]

12 Hearing none in this matter, we'll proceed
13 to a roll-call vote, beginning with Commissioner
14 Hennelly.

15 **COMMISSIONER HENNELLY:** This is on my
16 alternative motion? Aye.

17 **CHAIRMAN POWERS:** Commissioner Belser.

18 **COMMISSIONER BELSER:** No.

19 **CHAIRMAN POWERS:** Commissioner Caston.

20 **COMMISSIONER CASTON:** No.

21 **CHAIRMAN POWERS:** Commissioner Britt.

22 **COMMISSIONER BRITT:** Aye.

23 **CHAIRMAN POWERS:** Commissioner Whitfield.

24 **COMMISSIONER WHITFIELD:** Aye.

25 **CHAIRMAN POWERS:** Vice Chair Williams.

1 **VICE CHAIR WILLIAMS:** I vote aye.

2 **CHAIRMAN POWERS:** And I vote aye. The motion
3 carries.

4 **MR. SCARBOROUGH:** Chairman Powers,
5 Commissioners, this concludes all business noticed
6 before the Commission today.

7 **CHAIRMAN POWERS:** Thank you, Mr. Scarborough,
8 and all those who have joined us. Today is my last
9 hearing as Chairman of this Commission. Although
10 I'm ready for a break, I admit it has been a very
11 interesting and a good experience.

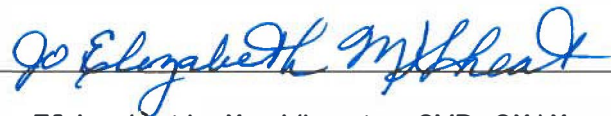
12 I want to thank my fellow Commissioners for
13 their patience, their help and guidance. I want to
14 thank Staff, technical and otherwise, and our
15 lawyers. I'm very proud of all of them for getting
16 the work done and we are now getting orders out as
17 PURC Committee has told us to.

18 What I'll miss most would be the everyday work
19 and interaction with Ms. Jocelyn Boyd, our
20 Executive Director. I don't know of any two people
21 who could do the work she does as one. She is
22 absolutely the best. So, I am done. Chair Williams
23 and Vice Chair Britt, I look forward to serving
24 under your leadership and help you any way I can.
25 Having said that, Happy Fourth of July, America.

1 We're adjourned.

2 [WHEREUPON, at 2:09 p.m., the proceedings
3 in the above-entitled matter were
4 adjourned.]

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20 Finalization completed, upon request,
21 this the 12th day of August, 2026.

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24 Jo Elizabeth M. Wheat, CVR-CM|M, GNSC
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BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COLUMBIA, SOUTH CAROLINA

SPECIAL CBM #26-17a

July 13th, 2026

12:01 ~ 12:31 P.M.

★ [A/V]

COMMISSION MEMBER(S) PRESENT:

Justin T. Williams, CHAIR
H. David Britt, VICE CHAIR
COMMISSIONER Eugene Hennelly
COMMISSIONER Florence P. Belser
COMMISSIONER Stephen M. 'Mike' Caston
COMMISSIONER Swain E. Whitfield
COMMISSIONER Delton W. Powers, JR.

COMMISSION MEMBER(S) ABSENT: —

ADVISING ATTORNEY: Nicole Given, Special Counsel
LEGAL ADVISORY STAFF

PRESENTING AGENDA: Norman Scarborough
TECHNICAL ADVISORY STAFF

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^[A/V] AUDIO- AND/OR VIDEOCONFERENCED PARTICIPATION

[EI] = ELECTRONIC INTERFERENCE

P R O C E E D I N G S

CHAIRMAN WILLIAMS: Good afternoon, Ladies and Gentlemen. Welcome to the Public Service Commission of South Carolina. We're here for a special business meeting. All Commissioners are present in the hearing room. Before we get started, please join me in a brief moment of silence recognizing the sudden passing of our senior senator, Senator Lindsey Graham. And the Commission wants to express its deepest sympathies and send our condolences to the family of Senator Graham.

[brief pause]

All right. Thank you, Ladies and Gentlemen. Mr. Scarborough, if you would, please read the Agenda.

MR. SCARBOROUGH: Good afternoon, Chair Williams, Vice Chair Britt, and Commissioners. Staff offers a reminder that the next regularly scheduled Commission business meeting is set for Thursday, July 16, 2026, at 1:00 p.m. Today, we have just one item on the Agenda.

[1:33] Item No. 1 on the Utilities Agenda is in Docket No. 2026-78-E and all Commissioners are eligible to vote. This item concerns a request from Duke Energy Progress, LLC, for expedited

1 reconsideration of the Commission's decision in
2 this docket on June 29, 2026.

3 **CHAIRMAN WILLIAMS:** Thank you, Commissioner
4 Scarbor-, excuse me. Mr. Scarborough. I might need
5 to get you a seat up here with us.

6 **MR. SCARBOROUGH:** I got a promotion. All right.

7 **CHAIRMAN WILLIAMS:** I'm sorry about that. My
8 understanding is that there are several
9 Commissioners that want to be heard, and I'm going
10 to open the floor now to receive any motion.

11 **COMMISSIONER CASTON:** Chair Williams.

12 **CHAIRMAN WILLIAMS:** Commissioner Caston.

13 **COMMISSIONER CASTON:** Thank you. I move that
14 the Commission grant the Petition for
15 Reconsideration and vacate the June 29th Directive.
16 In its place, I'll present the following motion. As
17 a [threshold 2:30] issue, I move that the
18 Commission specifically find and conclude as a
19 matter of law that the Commission may approve or
20 reject a utility's request to elect into the eRSA.
21 There are at least 2 reasons for this. First, plain
22 language 58-27-2710 calls it a request. And second,
23 there are statutory provisions such as in 58-27-
24 2700, which set conditions precedent to making the
25 election. If those conditions are not met, the

Commission must be able to deny the request for the statutory requirement to have any effect. The clear and unambiguous language of 58-27-2700 requires that the Utility must file an application for a general rate proceeding every 5 years after such election. Yet, pursuant to the merger approved by this Commission, the Utility, which is Duke Energy Progress, LLC, would no longer exist as an independent utility after January 1, 2027. Utility thereafter would be Carolinas 1U or Duke Energy Carolinas in its post-merger form. Duke Energy Progress, LLC, will be a portion of the combined single Utility or be dissolved as an independent entity altogether. Under either circumstance, compliance with the clear and unambiguous requirement of the statute is not possible. Therefore, the Commission may not issue an order nor grant approval for regulatory treatment wherein compliance is not possible.

Commission is charged with setting just and reasonable rates. According to the DCA in its comments, approval of the election of the eRSA would mean that the Duke Energy Progress retail electric ratepayers of South Carolina would experience an approximate cumulative increase of 28

1 percent or about \$41 per month for a residential
2 customer using 1000 kilowatts per month since June
3 2025. This strains the limits of just and
4 reasonable. Federal Power Commission versus Hope
5 Natural Gas Company defines just and reasonable
6 rates as being rates which enable the Company to
7 operate successfully, to maintain its financial
8 integrity, to attract capital, and to compensate
9 its investors for the risk assumed. Docket No.
10 2025-154-E contained testimony, in fact, supported
11 settlement that was approved by Order No. 2025-757
12 that asserted that Duke Energy Progress, once
13 granted the \$11.23 for 1000 kilowatt-hours per
14 month increase in its latest rate case, would have
15 sufficient opportunity to earn sufficient income
16 for the exact things required by Federal Power
17 Commission versus Hope Natural Gas Company. In
18 agreeing to the settlement, the Company agreed that
19 the rates being set were just and reasonable and
20 sufficient for the Company to continue its
21 operational duties. This additional rate increase
22 within 6 weeks of the Company's last general rate
23 case would result in a rate that is not just and
24 reasonable to its retail electric customers.

25 In summary, the Utility cannot comply with the

1 statutory requirements in making the eRSA election,
2 and therefore it must not be permitted to do so.
3 Additionally, even if it were permitted, the
4 resulting rates would be unjust, unreasonable, and
5 contrary to the concept of incrementalism and
6 gradualism in adjustment of rates. Therefore, I
7 move that the Commission find that Duke Energy
8 Progress, LLC, is not eligible to elect to be
9 subject to the eRSA. And I have a comment I'd to
10 make, if I may, at the appropriate time.

11 **CHAIRMAN WILLIAMS:** Yes sir. All right.
12 Commissioners, you heard Commissioner Caston's
13 motion. We'll now enter discussion. Commissioner
14 Caston.

15 **COMMISSIONER CASTON:** I think in the last rate
16 case, the - I think the way it was defined was - I
17 guess the average bill or the average bill for
18 [customer is 6:54] about 1,140 kilowatt-hours per
19 month, which is about 14 percent higher than that
20 1000 kilowatt-hours per month, so I think it's
21 worth noting that it would be higher than the \$41.
22 But that said, I believe this is appropriate, and
23 that's my motion, Chair Williams.

24 **CHAIRMAN WILLIAMS:** All right. Commissioners,
25 is there any more discussion before we take a roll

1 call vote?

2 **COMMISSIONER POWERS:** Mr. Chair.

3 **CHAIRMAN WILLIAMS:** Commissioner Powers.

4 **COMMISSIONER POWERS:** Thank you very much.

5 Having listened to Commissioner Caston's motion and
6 looking at some of the rate increases that were in
7 place, it just hits me that ratepayers - they don't
8 pay their utility bills out of some special account
9 or some trust fund or some stock dividends. They
10 pay them out of a family checking account, where
11 they also have to pay groceries, housing, medical
12 bills, childcare, automobiles insurance, repair
13 bills, and just a plethora of other expenses. My
14 point, regardless of the statutory reading that
15 some people may have, and some don't, is that this
16 is not what the legislature intended. And I think
17 as judges, that's our job is to figure out what the
18 legislation's intent was. Six weeks [earlier 8:32],
19 the president of this company testified that they
20 were getting enough to do what they needed to do,
21 and I haven't seen anything that's changed, so I
22 cannot be convinced that this is just and
23 reasonable, and certainly not affordable.

24 You mentioned that the average would not be
25 1000 but would also be another 14 percent increase.

1 That area of the State [that's served 8:59] is the
2 poorest area of the State. And also, with the
3 poorer areas, a lot of people go way beyond that.
4 They don't have proper insulation, they don't have
5 proper windows, and they may be paying - whereas
6 now somebody paying 500, they're going to be paying
7 700, 800, and that's just not feasible. It just
8 won't work. So Mr. Caston, I will have to say I
9 will support your motion.

10 **CHAIRMAN WILLIAMS:** Commissioners, any more
11 discussion? All right. Hearing none, we will start
12 with a roll call vote starting with Commissioner
13 Caston.

14 **COMMISSIONER CASTON:** Aye.

15 **CHAIRMAN WILLIAMS:** Commissioner Hennelly.

16 **COMMISSIONER HENNELLY:** No.

17 **CHAIRMAN WILLIAMS:** Commissioner Belser.

18 **COMMISSIONER BELSER:** No.

19 **CHAIRMAN WILLIAMS:** Commissioner Britt.

20 **VICE CHAIR BRITT:** No.

21 **CHAIRMAN WILLIAMS:** Commissioner Whitfield.

22 **COMMISSIONER WHITFIELD:** No.

23 **CHAIRMAN WILLIAMS:** Commissioner Powers.

24 **COMMISSIONER POWERS:** Aye.

25 **CHAIRMAN WILLIAMS:** And Chairman Williams votes

1 no. Commissioner Caston's motion fails. Is there
2 another motion?

3 **COMMISSIONER BELSER:** Mr. Chairman.

4 **CHAIRMAN WILLIAMS:** Commissioner Belser.

5 **COMMISSIONER BELSER:** On June 29th, the
6 Commission issued a directive regarding the notice
7 of election into the Electric Rate Stabilization
8 Act filed by Duke Energy Progress. In my motion, I
9 may refer to Duke as D-E-P or DEP. I may refer to
10 the Act as the eRSA. That directive held that in
11 the instant case, DEP had not filed with the
12 Commission and ORS a monitoring report for the
13 period ending March 31, 2026, on or before June 15,
14 2026. Pursuant to South Carolina Code Annotated
15 Section 58-27-2730, the Utility is required to file
16 monitoring reports with the Commission for each 12-
17 month period ending March 31, June 30, September
18 30, and December 31 of each year, with the filings
19 to be made no later than the 15th day of the 3rd
20 month following the close of the period. Under the
21 eRSA, the monitoring report for the 12-month period
22 ending December 31 of each year indicates whether
23 any changes to the electrical utility's tariff
24 rates are required to achieve any indicated change
25 in revenue. Additionally, the monitoring report for

1 the 12-month period ending December 31 is the
2 monitoring report which informs the examination and
3 audit conducted by the Office of Regulatory Staff
4 for the purpose of determining the Company's
5 compliance with the provisions of the eRSA. I move
6 the Commission, pursuant to the authority granted
7 under South Carolina Code Annotated Section 58-27-
8 2130, rescind and vacate its prior directive, grant
9 the request for reconsideration, and enter a new
10 directive with the following findings and
11 conclusions.

12 1) The Commission shall issue an order
13 establishing procedures for DEP's election under
14 the eRSA as required by South Carolina Code
15 Annotated Section 58-27-2700.

16 2) The approved rates, charges, revenues,
17 expenses, capital structure, returns, and other
18 matters established in the Company's most recent
19 general rate proceeding as approved in Order No.
20 2025-757 issued in Docket No. 2025-154-E shall be
21 relied upon and utilized in carrying out the
22 procedures established by the eRSA with respect to
23 DEP's election.

24 3) DEP filed its notice of election on March
25 13, 2026, and included with its filing one exhibit,

1 which is the monitoring report for the period
2 January 1, 2025, through December 31, 2025. That
3 filing was timely made based on the plain language
4 of Section 58-27-2730. That monitoring report
5 contained the required elements of South Carolina
6 Code Annotated Section 58-27-2730, Subsections 1
7 through 4.

8 4) ORS conducted an audit of that monitoring
9 report and submitted its verified findings to the
10 Commission on June 1, 2026. That report, as
11 verified, asserted that ORS conducted an
12 examination of DEP's monitoring report for the 12-
13 month period ending December 31, 2025, also known
14 as the review period, to ascertain the
15 reasonableness and prudence of all matters
16 contained therein and any specific - and specify
17 any changes that the Office of Regulatory Staff
18 determines to be necessary to correct errors in the
19 report or otherwise bring the report into
20 compliance.

21 5) The ORS report presented an explanation of
22 the accounting and pro forma adjustments by ORS "in
23 order for the Company's monitoring report to comply
24 with South Carolina Code Annotated Sections 58-27-
25 2730 and 58-27-2750."

1 6) On June 15, 2026, ORS and DEP filed an
2 agreement and stipulation of settlement. DEP
3 adopted the adjustments set forth in the ORS report
4 unless otherwise specified in the stipulation. The
5 cumulative effect of the accounting and pro forma
6 adjustments set forth in the stipulation result in
7 a revenue requirement increase of \$24,343,000 as
8 compared to the increase of \$23,767,000 reflected
9 in the ORS report and the increase of \$36,625,000
10 reflected in the Company's monitoring report. I
11 think that on number 6, I left out the amended
12 agreement of stipulation. There was an amendment, I
13 think, that made that correction. But to that
14 extent, the agreement and stipulation shows the
15 amount that it is. I may need to go back and check
16 that.

17 7) The stipulation is reasonable, in the
18 public interest, and is in accordance with South
19 Carolina law and regulatory policy, and therefore
20 should be approved. Accordingly, DEP shall submit
21 an updated schedule reflecting any changes based on
22 the stipulation that specifies changes in its
23 tariffed rates required to achieve any indicated
24 change in revenue no later than July 15, 2026.

25 8) Based on the return on equity of 9.99

1 percent approved by the Commission in Order No.
2 2025-757, the Commission shall specify a range for
3 the Company's cost of equity of 9.49 percent to
4 10.49 percent in accordance with South Carolina
5 Code Annotated Section 58-27-2720, Subsection 1.

6 9) DEP shall file quarterly monitoring reports
7 as required by South Carolina Code Annotated
8 Section 58-27-2730. The monitoring report for the
9 12-month period ending March 31, 2026, must be
10 filed with the Commission and ORS in this docket no
11 later than Friday, July 17, 2026. DEP shall adhere
12 to the schedule prescribed in the statute in
13 submitting all future monitoring reports.

14 10) The Commission shall issue an initial
15 order as required by South Carolina Code Annotated
16 Section 58-27-2760, Subsection 5, on or before July
17 15, 2026. Mr. Chairman, that's my motion, and I do
18 have some comments.

19 **CHAIRMAN WILLIAMS:** All right. Commissioners,
20 you've heard Commissioner Belser's motion. I will
21 open the floor for discussion. Commissioner Belser.

22 **COMMISSIONER BELSER:** And Mr. Chairman, if I
23 may, I know I read a lot of code sections. If I
24 stated one incorrectly, I'll go back through the
25 motion and correct it for the record, but if I

1 stated any number incorrectly, and especially on
2 that amended - the amount from the stipulation - I
3 may have put that down incorrectly. I do want to
4 check that, but it would be the amount reflected in
5 the stipulation. Mr. Chairman and fellow
6 Commissioners, I want to be clear about something.
7 I don't like this filing. I don't like the timing
8 of it on the heels of the last rate [court 17:30]
9 case, and I don't like the size of the revenue
10 increase and the resulting increase in rates that
11 would follow, but - and this is a very big but -
12 based on my reading of the applicable statutory
13 provisions, Duke is within its rights under the
14 recently enacted Electric Rate Stabilization Act to
15 file the election to come under the terms of the
16 eRSA at this time.

17 As for the increase in revenue and the rates
18 from that filing, those are based on and supported
19 by the December 31 monitoring report. That December
20 31 monitoring report is the yearly quarterly report
21 which indicates what if any changes to the
22 utility's rates are required under the framework of
23 the eRSA. While I personally do not like the rate
24 increase, I make this motion because in my view,
25 the motion follows and implements the law as

1 contained in the eRSA. I find no procedural error
2 by Duke in not filing the March 31 monitoring
3 report by June 15th. If there was error in that
4 report not being filed, I think that that lies
5 squarely with this Commission for not having filed
6 the baseline order as requested by Duke. I think
7 there was discussion that the matter could be done
8 together at some point. I don't know that we made
9 an ultimate decision. I just remember discussing it
10 with others. But to the extent that we messed up,
11 that shouldn't be held on Duke. But as it is, I'm
12 not happy with it, but I'm trying to follow the law
13 as I read it, and I don't think that we need to
14 circumvent what - it's clear to me. It may not be
15 clear to everybody, but in my reading, it's clear
16 in my mind. And maybe my mind's wonky today, but
17 it's clear that Duke was allowed to elect, and
18 they've done so, and I think we need to proceed. I
19 don't like the fallout, but it is what it is. It's
20 based on the law. Thank you, Mr. Chairman.

21 **CHAIRMAN WILLIAMS:** All right. Commissioners,
22 you heard Commissioner Belser's motion. Is there
23 any more discussion? Commissioner Belser, I just
24 will say to the extent that the Commission may or
25 may have not fumbled the ball with issuing the base

1 order - the initial base order, we can ensure that
2 that won't happen again, if it did indeed happen.

3 **COMMISSIONER BELSER:** And that's an area of
4 disagreement, Mr. Chairman. That's just my
5 position, and I'll - to the extent that it's on me,
6 I have to own it, but I think we've learned a
7 valuable lesson through this. I just - I'm sorry
8 that it's probably created a lot of confusion that
9 could've been avoided had we done something
10 earlier. But that's my point of view, and I
11 recognize there are other points of view, and I
12 respect those. Thank you.

13 **CHAIRMAN WILLIAMS:** Yes, ma'am. All right.
14 Commissioners, any more discussion? Hearing none,
15 we'll move to a - all right. I've been notified
16 that there are lights on. I don't know if folks are
17 ready to vote or if they have comments. All right.
18 No comments? I think everyone is ready to vote. We
19 will start with Commissioner Belser.

20 **COMMISSIONER BELSER:** I vote aye.

21 **CHAIRMAN WILLIAMS:** Commissioner Hennelly.

22 **COMMISSIONER HENNELLY:** No.

23 **CHAIRMAN WILLIAMS:** Commissioner Caston.

24 **COMMISSIONER CASTON:** I respectfully vote no.

25 **CHAIRMAN WILLIAMS:** Commissioner Britt.

1 **VICE CHAIR BRITT:** Aye.

2 **CHAIRMAN WILLIAMS:** Commissioner Whitfield.

3 **COMMISSIONER WHITFIELD:** No.

4 **CHAIRMAN WILLIAMS:** Commissioner Powers.

5 **COMMISSIONER POWERS:** No.

6 **CHAIRMAN WILLIAMS:** Commissioner Williams votes
7 aye. Commissioner Belser's motion fails. Are there
8 any more motions?

9 **COMMISSIONER HENNELLY:** Mr. Chair.

10 **CHAIRMAN WILLIAMS:** Commissioner Hennelly.

11 **COMMISSIONER HENNELLY:** Thank you. So we've had
12 a motion to effectively approve as proposed or deny
13 on the DCA's argument effectively that the Company
14 doesn't exist after merging. For me - and this
15 likely was experienced by some of [those 22:14]
16 that were in the oral arguments with me. When this
17 came across my desk, I read this a certain way,
18 which I articulated in the oral arguments.
19 Effectively, my understanding of prospective. I
20 have an alternative motion that I think reflects my
21 understanding of how this process should work,
22 which will be outlined in this baseline order, but
23 just want to draw 2 contrasts to the other motions
24 presented today. The obvious I think to
25 Commissioner Belser's is on the approval denial,

1 but relative to Commissioner Caston's, that would
2 effectively preclude Duke Energy Progress from
3 participating in or electing the eRSA as it stands
4 going forward. I'd like to propose a motion, and
5 forgive me if I'm repeating some of the context
6 that's written, but - so Duke Energy Progress filed
7 a Petition for Reconsideration of the Directive
8 issued by the Commission on June 29, 2026.

9 I move the Commission grant the Petition for
10 Reconsideration and vacate the June 29th Directive.

11 This matter involves 2 requests by DEP: 1) DEP
12 asking the Commission to issue a Baseline Order
13 consistent with the notification to the Commission
14 that DEP elects to have the terms of the eRSA apply
15 to its rates and charges for retail electric
16 service; and 2) DEP asks the Commission to approve
17 DEP's request for an adjustment to rates based on a
18 Monitoring Report covering DEP's operational
19 experience for the calendar year 2025.

20 As to the first request, I move the Commission
21 find that Duke Energy Progress, having met the
22 statutory prerequisites, may elect to have the
23 terms of the eRSA apply. Consistent with this, I
24 move that the Commission issue a Baseline Order
25 incorporating matters established in the Company's

1 most recent general rate proceeding as approved in
2 Order No. 2025-757, issued in Docket No. 2025-154-
3 E.

4 As to the second request, South Carolina Code
5 Section 58-27-2760 requires the Commission, on or
6 before July 15th of each year, to issue an Initial
7 Order addressing a utility's request to adjust
8 rates under the eRSA.

9 The Code provides that the eRSA is prospective
10 in nature. I move the Commission find and conclude
11 that because the eRSA is prospective in nature, a
12 utility cannot request an adjustment in rates based
13 on its operational experience for a calendar year
14 preceding the calendar year in which the utility
15 elected to have the terms of the eRSA apply. This
16 interpretation is consistent with a robust
17 monitoring process throughout the year in which the
18 election is made rather than a retrospective
19 approach that considers an operational experience
20 outside of and preceding the utility's election
21 into the eRSA.

22 In the case of the eRSA, as opposed to other
23 rate stabilization adjustments, such adjustments
24 are made based on a calendar-year operating
25 experience, which is predictable and consistent

1 between utilities. Similarly, all utilities would
2 be subject to the same matching between the
3 election of the eRSA and application of adjustments
4 to their respective rates beginning in that
5 calendar year.

6 In this case, Duke Energy Progress has elected
7 to have the terms of the eRSA apply in 2026.
8 Therefore, Duke Energy Progress cannot request an
9 adjustment in rates based on a Monitoring Report
10 covering DEP's operational experience for the
11 calendar year 2025. In accordance with DEP's 2026
12 election, the request for a rate adjustment must be
13 based on DEP's 2026 calendar year operational
14 experience.

15 Consistent with this finding, I move that the
16 Commission issue an Initial Order denying DEP's
17 request for an adjustment to rates based on a
18 Monitoring Report covering DEP's operational
19 experience for calendar year 2025. This decision
20 does not affect DEP's election to have the terms of
21 the eRSA apply to its rates and charges for retail
22 electric service. DEP remains subject to the
23 Baseline Order and the terms of the eRSA. That
24 concludes my motion.

25 **CHAIRMAN WILLIAMS:** All right. Commissioners,

1 we've heard our third motion for the day, coming
2 from Commissioner Hennelly. Is there any
3 discussion?

4 **COMMISSIONER BELSER:** May I ask a question?
5 Commissioner Hennelly, would you entertain a
6 question?

7 **COMMISSIONER HENNELLY:** Sure.

8 **COMMISSIONER BELSER:** Under your motion, it
9 approves the eRSA election but does not accept the
10 December 31 report for adjustment in rates at this
11 time. Is that correct?

12 **COMMISSIONER HENNELLY:** Yes. So at the heart of
13 it, I don't have any issue with the eRSA mechanism
14 or any issue with the Utility's ability to elect,
15 and elect whenever they want I think is how the
16 Code words it. But what they're electing is to
17 participate in the eRSA and [subjecting 27:41]
18 themselves to monitoring throughout the remainder
19 of the year. The time period subject to monitoring
20 and potentially adjustment is not what they're
21 electing. That's simply a function of when they
22 elect.

23 **COMMISSIONER BELSER:** Okay. So the effect of
24 your motion would be that the Utility [would 28:07]
25 be under - in this instance, because the election

1 was made in March - that the Utility would have to
2 be under the Monitoring Reports for a year before
3 they could implement the rates from the December
4 2025 Monitoring Report? That would be delayed a
5 year?

6 **COMMISSIONER HENNELLY:** No. I think maybe you
7 were picking up on [inaudible 28:34].

8 **COMMISSIONER BELSER:** No. I'm just - I'm trying
9 to understand how this...

10 **COMMISSIONER HENNELLY:** It would be based on
11 the year-end Monitoring Report in the Year 2026.

12 **COMMISSIONER BELSER:** ...okay. Thank you.
13 Appreciate that clarification.

14 **CHAIRMAN WILLIAMS:** All right. Commissioners,
15 any more discussion? Hearing none, we will proceed
16 with a roll call vote starting with Commissioner
17 Hennelly.

18 **COMMISSIONER HENNELLY:** Aye.

19 **CHAIRMAN WILLIAMS:** Commissioner Belser.

20 **COMMISSIONER BELSER:** Respectfully no.

21 **CHAIRMAN WILLIAMS:** Commissioner Caston.

22 **COMMISSIONER CASTON:** Also respectfully no.

23 **CHAIRMAN WILLIAMS:** Commissioner Britt.

24 **VICE CHAIR BRITT:** Aye.

25 **CHAIRMAN WILLIAMS:** Commissioner Whitfield.

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COMMISSIONER WHITFIELD: Aye.

CHAIRMAN WILLIAMS: Commissioner Powers.

COMMISSIONER POWERS: Aye.

CHAIRMAN WILLIAMS: And Chairman Williams votes aye. Commissioner Hennelly's motion passes. All right. Ladies and Gentlemen, that's all we have for today. We are adjourned.

[WHEREUPON, at 12:31 p.m., the proceedings in the above-entitled matter were adjourned.]

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