STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 1095
DOCKET NO. E-7, SUB 1100
DOCKET NO. G-9, SUB 682

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Duke Energy Corporation and Piedmont Natural Gas, Inc., to Engage in a Business Combination Transaction and Address Regulatory Conditions and Code of Conduct	)))))	ORDER APPROVING MERGER SUBJECT TO REGULATORY CONDITIONS AND CODE OF CONDUCT

HEARD: On July 18 and 19, 2016, in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Chairman Edward S. Finley, Jr., Presiding; Commissioners Bryan E. Beatty, ToNola D. Brown-Bland, Don M. Bailey, Jerry C. Dockham, James G. Patterson, and Lyons Gray

APPEARANCES:

For Duke Energy Corporation:

Kodwo Ghartey-Tagoe, Senior Vice President, State and Federal Regulatory Legal Support, 550 S. Tryon Street, Charlotte, North Carolina 28202

Lawrence B. Somers, Deputy General Counsel, Post Office Box 1551/NCRH 20, Raleigh, North Carolina 27602

For Piedmont Natural Gas Company, Inc.:

James H. Jeffries IV, Moore & Van Allen PLLC, 100 N. Tryon Street, Suite 4700, Charlotte, North Carolina 28202

For North Carolina Waste Awareness and Reduction Network, Inc., The Climate Times, Inc., and North Carolina Housing Coalition, Inc.:

John D. Runkle, 2121 Damascus Church Road, Chapel Hill, North Carolina 27516

For the Public Works Commission of the City of Fayetteville:

James P. West, West Law Offices, PC, 434 Fayetteville Street, Suite 2325, Raleigh, North Carolina 27601

For Carolina Utility Customers Association, Inc.:

Robert F. Page, Crisp, Page & Currin, LLP, 4010 Barrett Drive, Suite 205, Raleigh, North Carolina 27609

For the Environmental Defense Fund:

Tatjana Vujic, Director, Southeast Clean Energy, 4000 Westchase Boulevard, Suite 510, Raleigh, North Carolina 27607

For the Using and Consuming Public:

Antoinette R. Wike, Chief Counsel, and Elizabeth D. Culpepper, Staff Attorney, Public Staff – North Carolina Utilities Commission, 4326 Mail Service Center, Raleigh, North Carolina 27699

BY THE COMMISSION: On January 15, 2016, pursuant to G.S. 62-111(a), and Commission Rule R1-5, Duke Energy Corporation (Duke Energy) and Piedmont Natural Gas Company, Inc. (Piedmont) (collectively, Applicants), filed an Application, including exhibits, for authorization to: (i) engage in a business combination transaction (transaction or merger); and (ii) revise and apply Duke Energy Carolinas, LLC's (DEC's) and Duke Energy Progress, LLC's (DEP's) Regulatory Conditions and Code of Conduct to Piedmont (Application). The Application included a copy of the Agreement and Plan of Merger between Duke Energy, Forest Subsidiary, Inc. (Forest), and Piedmont (Merger Agreement) as well as a cost-benefit analysis (Cost-Benefit Analysis) and a market power analysis (Market Power Analysis) as required by the Commission's Order Requiring Filing of Analyses, issued November 2, 2000, in Docket No. M-100, Sub 129 (M-100, Sub 129 Order). The Applicants also filed the testimony of Lynn J. Good, Thomas E. Skains, Frank Yoho, Steven K. Young, and James D. Reitzes.

Concurrent with the filing of the Application in this proceeding, Duke Energy also filed a Request of Duke Energy for Expedited Approval of Piedmont Transaction-Related Financing seeking authorization to engage in certain debt and equity transactions necessary to effectuate the proposed business combination.

On January 29, 2016, the Commission issued an order approving Duke Energy's request for approval of transaction-related financing.

On March 2, 2016, the Commission issued its Order Scheduling Hearing, Establishing Procedural Deadlines, and Requiring Public Notice (Scheduling Order). The Scheduling Order, among other things, established a hearing date of July 18, 2016, set prefiled testimony dates, and required the Applicants to give notice to their customers of

the hearing on this matter. In addition, the Scheduling Order found and concluded that the Application satisfied the requirements of the M-100, Sub 129 Order.

Petitions to intervene were filed by the Public Works Commission of the City of Fayetteville (FPWC); Carolina Utility Customers Association, Inc. (CUCA); Environmental Defense Fund (EDF); and North Carolina Waste Awareness and Reduction Network, Inc., the Climate Times, Inc., and the North Carolina Housing Coalition, Inc. (collectively, NC WARN). By various orders, the Commission granted these petitions to intervene. The intervention of the Public Staff – North Carolina Utilities Commission (Public Staff) is recognized pursuant to G.S. 62-15(d) and Commission Rule R1-19(e).

On June 9, 2016, EDF filed the testimony and exhibits of Dianne Munns.

On June 10, 2016, the Public Staff filed an Agreement and Stipulation of Settlement between the Applicants and the Public Staff, which included stipulated Regulatory Conditions and a Code of Conduct, and the supporting testimony of Public Staff witness James G. Hoard.

Also, on June 10, 2016, testimony was filed by NC WARN witnesses Touché Howard and J. David Hughes.

On June 14, 2016, the Applicants filed a Settlement Agreement between the Applicants and CUCA (CUCA Agreement).

On June 16, 2016, the Applicants moved to strike portions of NC WARN witnesses Hughes' and Howard's testimony on the grounds that the testimony was irrelevant and beyond the scope of this docket and moved, in limine, to preclude questioning at the hearing of this matter on the subjects raised by NC WARN witnesses Hughes and Howard. NC WARN responded to this motion in a filing on June 22, 2016.

On June 17, 2016, the Commission issued the Order Allowing Testimony in Response to Settlement Agreements, which called for comments to be filed by July 1, 2016, in response to the Applicants' settlements with the Public Staff and CUCA.

On June 21, 2016, a Settlement Agreement between the Applicants and EDF (EDF Agreement) was filed. The Commission issued an Order on June 23, 2016, allowing comments in response to the EDF Agreement by July 1, 2016.

On June 25, 2016, consistent with the provisions of the EDF Agreement, EDF filed a notice of the withdrawal of the testimony and exhibits of EDF witness Munns.

On June 28, 2016, the Commission issued an Order Granting Motion to Strike and Reserving Decision on Motion in Limine (Motion to Strike Order). In summary, the Motion to Strike Order concluded that the bulk of NC WARN's testimony was not evidence relevant to the facts pertinent to the Commission's decision to approve or deny the proposed merger of Duke and Piedmont. Therefore, the Motion to Strike Order struck the

majority of witnesses Howard's and Hughes' testimony. However, the Commission reserved a ruling on the Applicants' Motion in Limine until the expert witness hearing.

On June 28, 2016, NC WARN filed the testimony of Samuel Gunter in response to the settlement between the Applicants and the Public Staff.

On July 1, 2016, the Applicants filed the Supplemental and Rebuttal Testimony of Bruce P. Barkley regarding the settlement agreements reached with the parties in this proceeding.

On July 6, 2016, the Commission issued its Order Regarding Procedure of Public Hearing, which established procedures for the public witness testimony to be received by the Commission at the July 18, 2016 hearing.

On July 14, 2016, pursuant to the Commission's Scheduling Order, the Applicants filed the Joint List and Order of Witnesses with Estimated Times for Cross-Examination for the July 18, 2016 expert witness hearing.

On July 15, 2016, the Applicants filed an Amendment to the Agreement and Stipulation of Settlement between the Applicants and the Public Staff along with the Supplemental Settlement Testimony of Bruce P. Barkley. The Agreement and Stipulation of Settlement between the Applicants and the Public Staff and the Amendment thereto are hereinafter collectively referred to as "the Settlement."

Numerous statements of position from members of the public were received by the Commission and the Public Staff and were filed in these dockets.

The matter came on for hearing on July 18, 2016, as scheduled. At the beginning of the hearing, testimony was received from public witnesses Ruth Zalph, John Wagner, Dr. Steven Norris, Beth Henry, Catherine Chandler, Andrew Hernandez, Clint McSherry, Hope Taylor, Dr. Richard Fireman, Dr. Steve English, and Emily Wilkins. Following the testimony of public witnesses, the pre-filed testimony and exhibits of the following party witnesses were received into evidence:

> For the Applicants: Lynn J. Good, Chairman, President and Chief Executive Officer of Duke Energy; Thomas E. Skains, Chairman, President and Chief Executive Officer of Piedmont; Frank Yoho, Senior Vice President and Chief Commercial Officer of Piedmont; Steven K. Young, Executive Vice President and Chief Financial Officer of Duke Energy; James D. Reitzes, a Principal of the Battle Group; and Bruce P. Barkley, Vice President – Regulatory Affairs, Rates and Gas Cost Accounting of Piedmont.
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> For the Public Staff: James G. Hoard, Director of the Accounting Division of the Public Staff.

For NC WARN: Samuel Gunter, Director of Policy and Advocacy for the North Carolina Housing Coalition.

At the hearing, the Application and exhibits, as well as the settlement agreements between the Applicants and CUCA, EDF, and the Public Staff, including the Amendment thereto filed on July 15, 2016, were entered into the record without objection.

On August 25, 2016, the Applicants and the Public Staff filed a Joint Proposed Order Approving Merger Subject to Regulatory Conditions and Code of Conduct.

On August 25, 2016, FPWC filed a post-hearing Brief.

On August 25, 2016, NC WARN filed a post-hearing Brief, which included a Motion for Reconsideration requesting that the Commission reconsider the Motion to Strike Order.

On August 26, 2016, in Docket Nos. E-2, Sub 1095A, E-7, Sub 1100A and G-9, Sub 682A, the Applicants filed Amended Affiliate Agreements that they intend to use should the proposed merger be approved and consummated.

On August 30, 2016, the Applicants filed a document entitled Supplemental Evidence and Conclusions for Find of Fact No. 36.

On September 1, 2016, the Applicants simultaneously filed a motion for leave to file a response to NC WARN's Motion for Reconsideration along with their response.

On September 7, 2016, the Commission issued an Order granting the Applicants' motion for leave to file a response to NC WARN's Motion for Reconsideration and accepting the Applicants' response for filing.

DECISION ON MOTION IN LIMINE AND CONTINUING OBJECTIONS

In their motion in limine, the Applicants moved to preclude cross-examination by NC WARN's counsel regarding certain issues relating to environmental concerns, gas cost price volatility, methane emissions, and other matters raised in the prefiled testimony of witnesses for NC WARN, which the Commission struck from the record as irrelevant to this proceeding under Rule 402 of the North Carolina Rules of Evidence. The Commission initially reserved ruling on the in limine motion until the hearing. At the hearing, counsel for Applicants renewed the motion and also raised objections to questions by NC WARN's counsel on these topics. The Chairman granted Applicants a continuing objection to these questions but allowed the questions subject to objection. The Public Staff subsequently joined in the Applicants' objection. The Chairman reserved a ruling on the objections in order to give NC WARN the opportunity to establish a nexus between the subject matter of its questions and the factors to be considered in determining whether the proposed merger meets the public convenience and necessity standard.

On August 25, 2016, NC WARN filed a post-hearing Brief. With regard to the relevance of the testimony elicited by NC WARN in cross-examination, NC WARN contends that the purchase of Piedmont by Duke Energy will result in the use of more natural gas by DEC and DEP for the generation of electricity. NC WARN cites the Integrated Resource Plans (IRPs) filed by DEC and DEP in 2015 in Docket No. E-100, Sub 141, stating that the IRPs show DEC's and DEP's plans to significantly increase the number of natural gas-fired plants they use to serve retail electric customers in North Carolina. Therefore, NC WARN argues that evidence concerning methane emissions from natural gas, potential additional safety costs related to natural gas, gas price volatility and potential shortages of natural gas are relevant to the Commission's decision in this proceeding.

On the other hand, the Applicants contend that the evidence elicited by NC WARN on cross-examination of the Applicants' witnesses concerns the same subjects addressed by NC WARN's testimony that was struck by the Commission as irrelevant, and, therefore, should be found to be irrelevant and struck from the record. With regard to the Applicants' objections to NC WARN's cross-examination questions, the subjects covered with Applicants witnesses Good and Skains, who testified together as a panel, were several risk factors addressed in Piedmont's Form 10K filed with the Securities and Exchange Commission. These risk factors included potential gas shortages, possible increases in gas prices, and potential new regulations governing gas producers and pipelines. With respect to DEC and DEP, the main subject was their planned increase in the use of natural gas-fired electric generation facilities. See Transcript (T) Vol. 1, p. 111, line 24 through p. 114, line 14; p. 116, line 17 through p. 121, line 21; p. 122, line 13 through p. 132, line 3; p. 138, line 8 through p. 141, line 21.

The subjects of NC WARN's cross-examination questions to Applicants' witness Yoho were Piedmont's possible increased reliance on shale gas, the adequacy of gas supplies, and forecasts of gas prices. See Transcript Vol. 2, p. 74, line 7 through p. 78, line 3.

Pursuant to Rule 402 of the North Carolina Rules of Evidence, only relevant evidence is admissible. Under Rule 401, "relevant evidence" is defined as

> [e]vidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

G.S. 8C-1, Rule 401.

With regard to the admissibility of the above-referenced testimony elicited by NC WARN's cross-examination questions, the issue is whether the testimony has a bearing on "any fact that is of consequence to the determination of the action."

Pursuant to G.S. 62-111(a), the Commission must examine all relevant facets of the proposed merger having a bearing on the public convenience and necessity. In that

regard, two of the most important considerations are whether the merger would have an adverse impact on the rates and services provided by the utilities, and whether retail ratepayers would be protected as much as possible from potential costs and risks of the merger. See Order Approving Merger Subject To Regulatory Conditions and Code of Conduct, Docket Nos. E-2, Sub 998 and E-7, Sub 986 (Duke/Progress Merger Order), aff'd, In re Duke Energy Corporation, 232 N.C. App. 573, 755 S.E.2d 382 (2014). Thus, the Commission's emphasis is on the rates, services and protection of North Carolina's ratepayers. Further, in assessing adverse impacts and potential risks of the merger, the Commission necessarily focuses on adverse impacts and potential risks that might be created by the combination of the two companies, not adverse impacts and risks that already exist and may continue to exist irrespective of whether the merger is approved by the Commission.

Duke Energy's acquisition of Piedmont may facilitate Duke Energy's ability to acquire natural gas with added reliability and at marginally lower costs from the interstate pipeline system produced at the widespread sources of gas supply through its platform as owner of Piedmont. This should benefit Duke Energy's consumers through lower prices. However, there is no indication that Duke Energy will build more gas-fired generating facilities or burn more natural gas to generate electricity after its acquisition of Piedmont than it would have without the acquisition. Neither Duke Energy nor Piedmont engages in natural gas extraction through hydro fracturing or other extraction methods. Further, there is no indication that natural gas extracted through hydro fracturing and horizontal directional drilling will be materially affected as a result of Duke Energy's acquisition of Piedmont. Many markets both domestic and foreign exist for the acquisition of low-priced natural gas. Moreover, in the event production of natural gas from shale plays does not materialize as the overwhelming majority of experts in the field expect, Piedmont will bear the responsibility of providing service to its ratepayers just as it did before gas extraction from shale became widespread.

Based on the foregoing and the record, the Commission concludes that the cross-examination testimony referenced above is not evidence of any fact of consequence to the Commission's decision to approve or deny the merger of Duke Energy and Piedmont. NC WARN's cross-examination was permitted conditionally upon NC WARN's representation that NC WARN would establish its relevancy. The Commission determines that NC WARN has failed to do so. Rather, the testimony elicited through cross-examination addresses NC WARN's generic concerns over methane emissions, the potential inadequacy of future natural gas supplies, and the possibility that higher natural gas prices will be passed on to the Applicants' ratepayers. These are concerns of NC WARN that exist today with Duke and Piedmont operating as separate companies. In addition, the subject cross-examination testimony is based on the premise that the merger of Duke and Piedmont will result in an increased use of natural gas by Duke Energy and Piedmont. However, there is no evidence in the record that the merger of Duke Energy and Piedmont will cause an increase in their use of natural gas.

As discussed in the Motion to Strike Order, the risks cited by NC WARN – such as methane emissions, potential natural gas supply shortages and possible cost increases -

are risks that DEC, DEP and Piedmont face today and will continue to face irrespective of whether the merger is consummated. For example, as testified to by Applicant witness Young, Duke Energy acquired a 40% interest in the proposed Atlantic Coast Pipeline, a risk that it decided to undertake even before it applied for approval to purchase Piedmont. In addition, as NC WARN notes, DEC's and DEP's 2015 IRPs, filed prior to the merger application, forecast an increased reliance on natural gas-fired generation. However, in order to build such a plant DEC or DEP would have to acquire a certificate of public convenience and necessity (CPCN) from the Commission. There is no application for a CPCN to build gas-fired electric generation in this docket. Likewise, there is no application to pass along increased rates in this docket. In addition, if DEC or DEP files an application for a CPCN to build a new natural gas-fired plant, that will be the docket in which relevant testimony regarding an increased use of natural gas by DEC or DEP will be appropriate.

With respect to Piedmont, a primary reason that it would increase its use of natural gas is to expand its services to new customers. Economic expansion of natural gas service to unserved areas is a public policy of the State of North Carolina. See G.S 62-2(a)(9). However, there is no evidence in the record that the merger, in itself, will increase Piedmont's expansion of natural gas services. Further, there is no request in this docket to approve such an expansion of Piedmont's services, or to pass along increased rates. While Piedmont might also increase its use of natural gas to deliver it to electric generating plants, such delivery is as likely to occur without the proposed merger as with it.

In conclusion, there is no evidence in this proceeding that Duke Energy's purchase of Piedmont, in and of itself, will result in an increased use of natural gas by DEC, DEP, or Piedmont. Thus, the risks of increased methane emissions, potential natural gas supply shortages and possible cost increases are not relevant to the question of whether the merger should be approved by the Commission. As a result, the Commission finds and concludes that NC WARN has failed to establish a nexus between the proposed merger and its concerns regarding methane emissions, potential natural gas supply shortages, and possible gas cost increases. Despite the Chairman’s having allowed counsel latitude to elicit on cross-examination a tie between the proposed merger and an increase in the use of gas by the combined company that could be attributed to the combination, counsel never asked questions or elicited answers that established such a tie. Consequently, the above-referenced testimony elicited by NC WARN in its cross-examination of Applicants witnesses Good, Skains and Yoho on those subjects is irrelevant and should be and is struck.

DECISION ON MOTION FOR RECONSIDERATION

Included in NC WARN's post-hearing Brief is a Motion for Reconsideration requesting that the Commission reconsider the Motion to Strike Order. In summary, NC WARN contends that the cross-examination testimony discussed above demonstrates that the merger will create risks of increased methane emissions, potential natural gas supply shortages and potential gas cost increases. Accordingly, NC WARN maintains that the Commission should rescind its Motion to Strike Order and admit the testimony of NC WARN witnesses Howard and Hughes.

Pursuant to G.S. 62-80

> The Commission may at any time upon notice to the public utility and to the other parties of record affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision made by it. Any order rescinding, altering or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original orders or decisions.

The Commission's decision to rescind, alter or amend an order upon reconsideration under G.S. 62-80 is within the Commission's discretion. State ex rel. Utilities Comm'n v. MCI Telecommunications Corp., 132 N.C. App. 625, 630, 514 S.E.2d 276, 280 (1999). However, the Commission cannot arbitrarily or capriciously rescind, alter or amend a prior order. Rather, there must be some change in circumstances or a misapprehension or disregard of a fact that provides a basis for the Commission to rescind, alter or amend a prior order. State ex rel. Utilities Comm'n v. North Carolina Gas Service, 128 N.C. App. 288, 293-294, 494 S.E.2d 621, 626, rev. denied, 348 N.C. 78, 505 S.E.2d 886 (1998).

The Commission finds and concludes that there has been no change in circumstances or misapprehension or disregard of a fact with respect to its Motion to Strike Order. As discussed above, NC WARN has failed to establish a sufficient nexus between the proposed merger and its concerns regarding methane emissions, potential natural gas supply shortages, and possible gas cost increases. Thus, the testimony of witnesses Howard and Hughes remains as irrelevant as it was when the Commission issued the Motion to Strike Order. As a result, the Commission finds and concludes that NC WARN's Motion for Reconsideration should be denied.

DECISION ON APPLICANTS' REQUEST FOR MERGER APPROVAL

Based on the foregoing, the testimony and exhibits presented at the hearing of this matter, and the record as a whole, the Commission makes the following:

FINDINGS OF FACT

I. Jurisdiction

1. Duke Energy is a corporation duly organized and existing under the laws of Delaware and is headquartered in Charlotte, North Carolina. DEC and DEP, wholly-owned subsidiaries of Duke Energy, are limited liability companies organized, existing, and operating under the laws of North Carolina.

2. DEC is engaged in the business of generating, transmitting, distributing, and selling electricity to approximately 2.5 million retail customers in a service area that covers more than 24,000 square miles in portions of central and western North Carolina and western South Carolina. DEC also sells electricity in the wholesale market to various municipal, cooperative, and investor-owned electric utilities.

3. DEP is engaged in the business of generating, transmitting, distributing, and selling electricity to approximately 1.5 million retail customers in a service area that covers more than 34,000 square miles in portions of eastern, central, and western North Carolina and eastern South Carolina. DEP also sells electricity in the wholesale market to various municipal, cooperative and investor-owned electric utilities.

4. DEC and DEP are public utilities under the laws of North Carolina and their respective public utility operations are subject to the jurisdiction of this Commission.

5. Duke Energy also owns two combined electric and natural gas local distribution utilities in Ohio and Kentucky – Duke Energy Ohio, LLC (DEO), and Duke Energy Kentucky, LLC (DEK) – which collectively provide natural gas transportation, distribution, and sales service to approximately 500,000 customers in those states.

6. Duke Energy is also the sole owner of Forest, a North Carolina corporation formed for the purpose of effectuating a business combination transaction with Piedmont.

7. Piedmont is a corporation duly organized, existing, and operating under the laws of North Carolina.

8. Piedmont is engaged in the business of transporting, distributing, and selling natural gas in North Carolina, South Carolina and Tennessee, serving approximately one million retail customers throughout a service territory comprising approximately 39,000 square miles in portions of eastern, central, and western North Carolina, western South Carolina, and the greater Nashville metropolitan area in Tennessee.

9. Piedmont is a public utility under the laws of North Carolina and its public utility operations are subject to the jurisdiction of this Commission.

10. The Applicants are lawfully and properly before this Commission pursuant to G.S. 62-111(a) with respect to the relief sought in the Application and are in compliance

with the requirements of the M-100, Sub 129 Order with respect to the filing of a market power analysis and a cost-benefit analysis related to the proposed transaction.

11. The Application, testimony, exhibits, affidavits of publication, and public notices submitted by the Applicants are in compliance with the procedural requirements of the North Carolina General Statutes and the Rules and Regulations of the Commission.

II. The Proposed Transaction

12. The Merger Agreement provides that, at closing, Piedmont will merge with Forest and "New" Piedmont will be the surviving corporation. In conjunction with this combination, Piedmont shareholders will receive $60.00 a share, in cash, for each outstanding share of Piedmont stock. Following the closing of the merger, Piedmont's shareholders will no longer own any interest in Piedmont, and Piedmont will be a wholly-owned subsidiary of Duke Energy.

13. Following the closing of the merger, Duke Energy will add one member from Piedmont's Board of Directors to the Duke Energy Board of Directors, Thomas E. Skains, Piedmont's current Chairman, President, and Chief Executive Officer.

14. Following the closing of the merger, Piedmont will be operated as a fully functional and separate natural gas subsidiary of Duke Energy.

15. Following the closing of the merger, Piedmont will be managed predominantly by members of Piedmont's existing executive management team and will be led by Frank Yoho, Piedmont's current Senior Vice President and Chief Commercial Officer.

16. Following the closing of the merger, management of Duke Energy's existing natural gas properties and investments will be consolidated under the leadership of Mr. Yoho.

17. Following the closing of the merger, Piedmont will continue to operate under its existing name, will continue to maintain its headquarters in Charlotte at its existing offices, and will retain most of its current operational employees.

III. The Settlements

18. In summary, the Applicants' Settlement with the Public Staff includes agreements by the Applicants to forego the recovery of specific costs, including both operational and merger costs; to provide specific amounts of funds for various charitable organizations; to provide a specific amount of funds for workforce development and low income energy assistance; and to apply the existing DEC and DEP Regulatory Conditions and Code of Conduct, with amendments, to Piedmont.

19. In summary, the Applicants' Agreement with CUCA includes a guarantee by DEC and DEP that their North Carolina retail ratepayers will receive an additional $35 million in fuel and fuel-related cost savings under the Joint Dispatch Agreement (JDA) mechanism approved by the Commission in the 2012 merger of Duke Energy and Progress Energy, Inc., in Docket Nos. E-2, Sub 998 and E-7, Sub 986 (Duke/Progress Merger Order).

20. In summary, the Applicants' Agreement with EDF requires DEC and DEP to study the costs and benefits of implementing integrated voltage control systems in their North Carolina operations.

21. After carefully reviewing the Settlement, the CUCA Agreement and the EDF Agreement, the Commission finds and concludes that these three settlement agreements are the product of give-and-take in settlement negotiations among the parties, and are material evidence entitled to be given appropriate weight by the Commission.

IV. Quantifiable Benefits

22. The merger will result in quantifiable economic benefits for the customers of DEC, DEP and Piedmont. The quantifiable benefits provided in the Settlement and described in Findings of Fact Nos. 23 through 29 below are substantial benefits of the merger.

23. The Settlement requires Piedmont to provide its North Carolina customers a total credit of $10 million in merger-related cost savings through a one-time direct bill credit issued to its customers on or before December 31, 2016. The bill credit will be allocated based upon the allocation factors utilized under Piedmont's Integrity Management Rider (IMR) deferred account.

24. The Settlement requires Piedmont to withdraw its pending Application for Approval of Deferred Accounting Treatment of Certain Distribution Integrity Management [Program] Costs (DIMP Deferral Application), filed on March 11, 2016, in Docket No. G-9, Sub 686, in which Piedmont estimated that its costs subject to deferral would be as high as $18.03 million for North Carolina over the next five years, or approximately $3.6 million per year.

25. The Settlement requires a contribution of a total of $7.5 million by DEC, DEP, and Piedmont to the Duke Energy Foundation and the Piedmont Natural Gas Foundation within 12 months following the closing of the merger, with the funds to be used for workforce development and low-income energy assistance in the North Carolina service territories of DEC, DEP and Piedmont.

26. The Settlement requires a continuation of annual community support and charitable contribution initiatives in North Carolina by the Duke Energy Foundation and the Piedmont Natural Gas Foundation for four years from the closing of the merger at annual levels of not less than $9.65 million, $6.375 million, and $1.5 million, for community

support and charitable contributions in the North Carolina service territories of DEC, DEP, and Piedmont, respectively.

27. The Settlement requires Piedmont to reduce the interest rate applicable to monies owed to Piedmont by customers for under-recovery of gas costs from the present 10% level to 6.58%.

28. The CUCA Agreement requires DEC and DEP to guarantee that their North Carolina retail customers will receive their allocable shares of an additional $35 million in fuel and fuel-related cost savings under the JDA mechanism approved by the Commission in the Duke/Progress Merger Order.

29. The Cost-Benefit Analysis, provided as Exhibit B with the Application, projects merger-related cost savings of approximately $9.45 million per year for Piedmont ratepayers in future general rate case proceedings.

V. Non-Quantifiable Benefits

30. The merger will result in non-quantifiable economic and non-economic benefits for the customers of DEC, DEP and Piedmont. The non-quantifiable benefits identified in the Cost-Benefit Analysis and testimony, as described in Findings of Fact Nos. 31 through 36 below, are substantial benefits of the merger.

31. The Cost-Benefit Analysis and testimony projects an increase in Piedmont's ability to access on reasonable terms the capital needed to expand services to new customers and meet its obligations under federal pipeline safety requirements.

32. The Cost-Benefit Analysis and testimony projects reductions in the costs of operating Piedmont, DEC, and DEP based on efficiencies to be gained by combining the control and operation of certain aspects of the three utilities.

33. The Cost-Benefit Analysis and testimony concludes that the merger will create enhanced efficiencies in the procurement of natural gas supplies and capacity, including enhanced opportunities for procurement of upstream capacity and supply at favorable prices, as a result of integrated planning and the sharing of corporate best practices between DEC, DEP and Piedmont.

34. The Cost-Benefit Analysis and testimony concludes that the combination of DEC, DEP and Piedmont under the corporate structure of Duke Energy will create a larger, more diversified and economically stable utility holding company with lower aggregate market risk capable of more effectively competing for capital and efficiently developing and expanding natural gas and electric infrastructure and service within North Carolina.

35. The Cost-Benefit Analysis and testimony conclude that the merger will produce more efficient and reliable customer service by Piedmont, DEC, and DEP

through the preservation of Piedmont's recognized customer service focus and the opportunity to share best customer practices among Piedmont, DEC and DEP.

36. The Cost-Benefit Analysis and testimony establish that the merger will result in the retention of Piedmont's corporate headquarters and its operational management team, resulting in a strong corporate presence with business operations in North Carolina, which reduces the risk that Piedmont will be a target for acquisition by out-of-state entities.

VI. Potential Costs

37. The merger will result in known and potential costs to North Carolina customers of DEC, DEP and Piedmont. However, the known and potential costs of the merger are eliminated or mitigated to the fullest extent reasonably possible by the Settlement and the continued full regulatory authority of the Commission.

38. The Settlement requires the Applicants to exclude from recovery from customers of DEC, DEP and Piedmont the acquisition premium paid by Duke Energy for the purchase of Piedmont's stock.

39. The Settlement requires the Applicants to exclude from recovery from customers of DEC, DEP and Piedmont the merger-related direct expenses and severance costs.

40. The Settlement limits the recovery of merger-related transition costs from customers of DEC, DEP and Piedmont to capital costs when: (i) the costs result in quantifiable benefits from the incurrence of the costs; (ii) the quantifiable benefits exceed the costs; (iii) the costs are incurred within the first three years after the merger; (iv) the costs relate to qualified capital investments; and (v) the costs are approved for recovery by the Commission.

41. The Settlement excludes from recovery from customers of DEC, DEP and Piedmont all Piedmont long-term incentive plan costs, including performance shares and restricted stock units/shares, that result from the increase in the Piedmont stock price above the $42.22 per share closing price on October 23, 2015, adjusted for changes in the stock price that would have occurred absent the merger.

VII. Potential Risks

42. The merger will result in potential risks to North Carolina customers of DEC, DEP and Piedmont. However, the potential risks of the merger are eliminated or mitigated to the fullest extent reasonably possible by the Settlement, the Regulatory Conditions, the Code of Conduct, and the continued full regulatory authority of the Commission.

A. Potential Risks Addressed by the Settlement

43. The Settlement provides reasonable and adequate assurance that the existing competition between electric and natural gas by DEC, DEP and Piedmont will be preserved.

44. The Settlement provides reasonable and adequate regulatory scrutiny over transactions involving DEC, DEP, or Piedmont with each other or with non-utility affiliates of Duke Energy.

45. The Settlement provides reasonable and adequate protections against the potential for discriminatory behavior in intra-company transactions by DEC, DEP, and Piedmont compared to their similar transactions with third parties.

46. The Settlement provides reasonable and adequate assurance of the continued independent operations of DEC, DEP, and Piedmont, and precludes adverse impacts from the merger on rates and services provided by DEC, DEP and Piedmont.

47. The Settlement provides reasonable and adequate protection to ratepayers by excluding secondary market sales of gas by Piedmont to DEC or DEP from Piedmont's secondary market sharing mechanism.

B. Potential Risks Addressed by the Regulatory Conditions

48. The Regulatory Conditions included in the Settlement are another benefit of the merger to North Carolina retail customers in that they update, clarify, strengthen, and expand the existing Regulatory Conditions and Code of Conduct approved by the Commission in the Duke/Progress Merger Order.

49. The Regulatory Conditions effectively address as much as reasonably possible potential risks and concerns related to financing issues arising from the merger by ensuring that (a) DEC's, DEP's and Piedmont's capital structures and cost of capital are not adversely affected because of their affiliation with Duke Energy, each other, and other affiliates, and (b) DEC, DEP and Piedmont have sufficient access to equity and debt capital at reasonable costs to adequately fund and maintain their current and future capital needs and otherwise meet their service obligations to their retail customers.

50. The Regulatory Conditions effectively address as much as reasonably possible potential risks and concerns related to corporate governance and ring-fencing issues arising from the merger by ensuring the continued viability of DEC, DEP and Piedmont and insulating and protecting DEC, DEP and Piedmont, and their retail ratepayers from the business and financial risks of Duke Energy and the affiliates within the Duke Energy holding company system, including the protection of utility assets from the liabilities of affiliates.

51. The Regulatory Conditions effectively enable the Commission to exercise its jurisdiction over future business combinations involving Duke Energy or other members of the Duke Energy holding company family following the merger by ensuring that the Commission receives sufficient notice and opportunity to exercise its lawful authority.

52. The Regulatory Conditions effectively address as much as reasonably possible potential risks and concerns related to structure and organization arising from the merger by ensuring that the Commission will receive adequate notice of, and opportunity to review and take such lawful action as is necessary and appropriate with respect to changes to the structure and organization of Duke Energy, DEC, DEP, Piedmont, and other affiliates, and non-public utility operations as they may affect North Carolina retail ratepayers.

53. The Regulatory Conditions provide appropriate and effective procedures requiring advance notices and other filings arising from the merger, and ensure monitoring of and compliance with their provisions, including the Code of Conduct, by requiring Duke Energy, DEC, DEP, Piedmont and other affiliates to establish and maintain the structures and processes necessary to fulfill the commitments expressed in the Regulatory Conditions and the Code of Conduct in a timely, consistent, and effective manner.

54. The Regulatory Conditions effectively ensure that DEC, DEP and Piedmont maintain a strong commitment to customer service following the merger.

55. The Regulatory Conditions effectively ensure that DEC's, DEP's and Piedmont's North Carolina retail ratepayers are protected as much as reasonably possible from any adverse effects of any tax sharing agreement and receive an appropriate portion of any income tax benefits associated with services taken by DEC, DEP and Piedmont from an affiliated service company.

56. The Regulatory Conditions effectively protect as much as reasonably possible the Commission’s jurisdiction as a result of the merger, including risks related to agreements and transactions between and among DEC, DEP, Piedmont, and their affiliates; financing transactions involving Duke Energy, DEC, DEP or Piedmont, and any other affiliate; the ownership, use, and disposition of assets by DEC, DEP or Piedmont; participation in the secondary transactions market by DEC, DEP or Piedmont; and filings with federal regulatory agencies. In addition, they insulate DEC's, DEP's and Piedmont's retail ratepayers as much as reasonably possible from any adverse consequences potentially resulting from the merger.

57. The Regulatory Conditions effectively address as much as reasonably possible potential risks and concerns related to the possible adverse impact on the cost of capital of DEC, DEP, and Piedmont from merger-related credit downgrades.

C. Potential Risks Addressed by the Code of Conduct

58. The Code of Conduct, as well as existing regulatory requirements, provides reasonable and adequate regulatory oversight of affiliate contracts and cost allocations.

59. The Code of Conduct provides reasonable and adequate regulatory oversight to ensure that the costs of common goods and services are fairly allocated among affiliates, to protect ratepayers from overcharges by non-regulated affiliates, and to prevent cross-subsidization of non-regulated affiliates by DEC's, DEP's and Piedmont's customers.

60. The Code of Conduct provides reasonable and adequate regulatory oversight to ensure that costs incurred by DEC, DEP and Piedmont are properly incurred, accounted for, and directly charged, assigned, or allocated to their respective North Carolina retail operations.

61. The Code of Conduct provides reasonable and adequate regulatory oversight by providing for appropriate and effective auditing and reporting requirements with respect to affiliate transactions and cost of service for retail ratemaking purposes.

62. The Code of Conduct provides reasonable and adequate regulatory oversight to ensure that the priority of natural gas service provided by Piedmont to DEC and DEP is consistent with Commission established priorities and not unduly discriminatory with respect to third-party gas-fired electric generators.

63. The Code of Conduct provides reasonable and adequate regulatory oversight to ensure that DEC, DEP and Piedmont continue to independently acquire and own their own upstream pipeline capacity and supply contracts based upon the needs of their respective customers.

VIII. Market Power Study

64. The proposed merger will not lead to the concentration or creation of significant additional market power in either Duke Energy, DEC, DEP or Piedmont, will not result in an anti-competitive impact on markets subject to the Commission’s jurisdiction, and will not create the potential for self-dealing by and among DEC, DEP and Piedmont.

IX. Public Witness Testimony

65. The public witnesses testified regarding a variety of subjects, including concerns about the size and manageability of Duke Energy, effects of the proposed merger on customer service and rates, methane emissions and climate change.

66. The Commission finds and concludes that portions of the public witness testimony are relevant to the issues presented by the proposed merger, and that such

testimony is entitled to significant weight and consideration in the Commission's decision in this matter.

X. Approval of Settlements

67. The Commission finds and concludes in light of the evidence presented that the provisions of the Settlement are just and reasonable to the customers of DEC, DEP and Piedmont, and to all parties to this proceeding, and that the Settlement serves the public interest. Therefore, the Settlement should be approved in its entirety. In addition, it is entitled to substantial weight and consideration in the Commission's decision in this matter.

68. The Commission finds and concludes in light of the evidence presented that the CUCA Agreement is just and reasonable to the customers of DEC, DEP and Piedmont, and to all parties to this proceeding, and that it serves the public interest. Therefore, the CUCA Agreement should be approved in its entirety. In addition, it is entitled to substantial weight and consideration in the Commission's decision in this matter.

69. The Commission finds and concludes in light of the evidence presented that the EDF Agreement is just and reasonable to the customers of DEC, DEP and Piedmont, and to all parties to this proceeding, and that it serves the public interest. Therefore, the EDF Agreement should be approved in its entirety. However, the EDF Agreement is entitled to less weight and consideration than other evidence in the Commission's decision in this matter.

XI. Public Convenience and Necessity

70. The proposed merger, as modified, limited and restricted by the Settlement, the CUCA Agreement and the EDF Agreement, is justified by the public convenience and necessity, serves the public interest, and should be approved pursuant to G.S. 62-111.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-11

The evidence supporting these findings of fact is set forth in the Application, the Merger Agreement, the Market Power Analysis, the Cost-Benefit Analysis, the testimony of Applicants witnesses Good and Skains, and the Commission’s records in this and other proceedings. These findings are essentially informational, procedural, and jurisdictional in nature and are not contested by any party.

According to the Application and Merger Agreement, as well as the testimony of witnesses Good and Skains, Duke Energy and Piedmont intend to engage in a transaction pursuant to which Duke Energy will become the owner of Piedmont through the purchase of all the outstanding stock of Piedmont from Piedmont’s existing shareholders. There is no dispute that such a transaction requires the approval of this Commission under G.S. 62-111(a) and the Application seeks such approval.

In addition, the M-100, Sub 129 Order requires the Applicants to file both a market power analysis and a cost-benefit analysis in conjunction with an application for Commission approval of the proposed merger. The market power analysis must include a Herfindahl-Hirschman Index (HHI) evaluation of the proposed merger and the cost-benefit analysis must set forth a "comprehensive list of all material areas of expected benefit, detriment, cost and savings over a specified period (e.g., three to five years) following consummation of the merger . . . ." See M-100, Sub 129 Order, p. 7. The purpose of these required filings is to assist the Commission in making the public convenience and necessity determination required under G.S. 62-111(a).

Consistent with the requirements of the M-100, Sub 129 Order, the Application included both a Cost-Benefit Analysis and a Market Power Analysis as Exhibits B and C to the Application. The Market Power Analysis was prepared by the Brattle Group and contains, among other things, an HHI analysis of the relative market power of Duke Energy both before and after the proposed merger as required by the M-100, Sub 129 Order. The Cost-Benefit Analysis enumerates identified costs and benefits associated with the proposed merger transaction. In its Scheduling Order, the Commission found and concluded that "the application satisfies the requirements of the November 2, 2000, Order in Docket No. M-100, Sub 129." Scheduling Order, p. 2. No party challenged Applicants' satisfaction of the M-100, Sub 129 Order requirements.

Finally, a review of the record in this proceeding indicates that the Applicants have complied with all procedural and notice requirements established by the Commission in the Scheduling Order.

The Commission, therefore, finds and concludes that Duke Energy and Piedmont are lawfully before the Commission with respect to the relief sought in the Application and are in compliance with the merger filing requirements established in Docket No. M-100, Sub 129, with respect to the market power and cost-benefit analyses submitted with the Application.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12-17

The evidence supporting these findings of fact is set forth in the Application, the Merger Agreement, and the testimony of Applicants witnesses Good, Skains, and Yoho, and is uncontested.

Through the Application and supporting testimony, the Applicants described the process for accomplishing the merger and the holding company structure that will exist upon closing.

The Application describes the proposed merger transaction as follows:

a. Forest and Piedmont will merge, with Piedmont being the surviving entity (this surviving entity is referred to herein as New Piedmont);

b. The articles of incorporation and bylaws of New Piedmont will be in the form of the articles of incorporation and bylaws of Forest prior to the Transaction;

c. Immediately following the Transaction closing, the directors of New Piedmont will be those persons that were the directors of Forest immediately prior to the Transaction closing. Subsequent to the Transaction closing, changes to the directors of New Piedmont may be made based upon integration efforts and Duke Energy's entity management conventions;

d. Immediately following the Transaction closing, the officers of New Piedmont will be those persons that were the officers of Piedmont immediately prior to the Transaction closing. Subsequent to the Transaction closing, changes to the officers of New Piedmont may be made based upon integration efforts and Duke Energy's entity management conventions; and

e. New Piedmont will be a direct, wholly-owned subsidiary of Duke Energy.

Application, at Paragraph No. 4.

The Application further indicates that

> upon consummation of the Transaction: (i) each issued and outstanding share of common stock of Piedmont will be converted into and will thereafter represent solely the right to receive an amount in cash; and (ii) each issued and outstanding share of capital stock of Forest will be converted into and become one validly issued, fully paid, and non-assessable share of common stock of New Piedmont. Thus, as a result of the Transaction: (i) Duke Energy (which presently owns all the stock of Forest) will own all the stock of New Piedmont; and (ii) the ownership of stock in Duke Energy will not be impacted.

Application, at Paragraph No. 5.

Finally, the Application indicates that "[u]nder the terms of the Merger Agreement, each share of Piedmont's common stock will be converted into the right to receive $60.00 in cash, without interest and less any applicable taxes." Application, at Paragraph No. 6.

This structure is confirmed by the provisions of the Merger Agreement itself, which is attached to the Application as Exhibit A. This structure is also described in the testimony of Applicants witnesses Good and Skains, and those descriptions are consistent with the Application and Merger Agreement.

The Application provides, in Paragraph No. 21, that "[t]he Transaction will not have a net adverse impact on the rates and services of DEC, DEP and Piedmont."

The Merger Agreement provides, in Section 1.7(c), that Duke Energy "will take all necessary action so that, as soon as practicable after the Effective Time, Parent will expand the size of its board of directors by one seat and appoint a mutually agreeable current member of the Company's Board as a director to serve on Parent's board of directors."

The Application provides that "Duke Energy has agreed, following the Transaction, to expand the size of its board of directors by one seat and has designated Mr. Thomas E. Skains . . . to serve as a director on Duke Energy's Board of Directors." Application, at Paragraph No. 7.

In addition, Applicants witnesses Good and Skains confirmed Mr. Skains' selection to sit on the Duke Energy Board of Directors following the closing of the merger.

The Application provides, in Paragraph No. 8, that "[a]t the closing of the Transaction, Piedmont will become New Piedmont, a wholly-owned subsidiary of Duke Energy that will continue to exist as a separate legal entity. New Piedmont will retain its existing headquarters in Charlotte." Similarly, in Paragraph No. 14, the Application states that "New Piedmont will retain its name and operate as a business unit of Duke Energy and continue to maintain its current headquarters office in Charlotte." In Paragraph No. 16, the Application states that "Mr. Yoho will lead Duke Energy's natural gas operations in the Carolinas, Tennessee, Ohio, and Kentucky and report to Ms. Good. He will be assisted in these efforts by members of Piedmont's existing operational leadership team . . . ." In Paragraph No. 23, the Application provides that "Duke Energy and Piedmont do not anticipate a significant number of involuntary workforce reductions associated with the combination."

The Merger Agreement provides additional evidence on these matters. In Section 1.7(d), the Merger Agreement provides that upon closing, Duke Energy "intends to offer to retain the existing executive operating management team of the Company to manage Parent's and the Company's combined natural gas operations and . . . expects the head of such combined operations to report directly to the Chief Executive Officer of Parent and serve on Parent's Senior Management Committee." In Section 1.7(g) the Merger Agreement provides that upon closing Duke Energy "intends to cause [Piedmont] . . . to maintain the Company brand and continue to operate their business thereunder."

Applicants witness Good testified that "Piedmont will retain its current name, corporate form and headquarters" and that "[f]or the most part, Piedmont's overall operational management team and operational philosophy will be unchanged, which will allow for the continuation and enhancement of the already excellent service that Piedmont provides to North Carolina customers." (T Vol. 1, pp. 75 and 79) Witness Good further testified that "[u]pon closing of the Merger, Frank Yoho . . . will manage Duke Energy's natural gas operations . . . [and] will report directly to me." (T Vol. 1, pp. 79-80) Finally, witness Good testified that the "Carolinas and Tennessee gas LDC operations will continue to be run under the Piedmont Natural Gas brand, and the operations team will be based at Piedmont's current headquarters in Charlotte, North Carolina." (T Vol. 1, p. 80)

Applicants witness Skains testified that his "belief is that Duke Energy intends to operate Piedmont as a separate natural gas subsidiary and combine Duke Energy's existing LDC operations and additional interstate joint venture investments . . . under the leadership of Frank Yoho . . . who has been named by Ms. Good as head of Duke Energy/Piedmont's combined gas operations upon the close of the Merger." (T Vol. 1, p. 94) According to witness Skains, this "will preserve and expand the Piedmont name and 'brand' and allow the Company to maintain and expand its high-performance/customer service focused culture in providing natural gas service to both existing and new customers." (T Vol. 1, p. 94)

Applicants witness Yoho testified that as of the effective date of the merger he "will assume responsibility for Piedmont's operations, as well as Duke Energy's gas LDC operations and the consolidated gas pipeline investments. . . . [and that he] will report directly to Lynn Good . . . ." (T Vol. 2, p. 58) Witness Yoho further testified that "the intent of the parties is that Piedmont will continue as a fully functional operating natural gas subsidiary of Duke Energy following closing . . . [and that] Piedmont will maintain its core management team and strong local presence to ensure the continued provision of safe, reliable and efficient natural gas service in and throughout the service areas in which we currently operate." (T Vol. 2, p. 59) Finally, witness Yoho testified that "after the Merger, Piedmont will continue to provide safe and reliable natural gas service to the public with the same high level of customer service and operational excellence that we currently provide. This service will also continue to be fully regulated by this Commission and the other state public service commissions under whose jurisdiction we operate." (T Vol. 2, p. 61)

Witness Good's testimony, as well as the testimony of witness Skains and witness Yoho, described the proposed merger as "strategic" in nature and not based on "synergies." (T Vol. 1, pp. 75-76, 96, and 162, and Vol. 2, pp. 60-61) As a result, as testified to by witness Yoho, job displacement should be limited.

Based on the foregoing evidence, the Commission finds that the rates and service of DEC, DEP, and Piedmont will remain subject to the same degree of regulatory oversight and control by the Commission as they were before the merger. Additionally, the proposed integration plan will allow Piedmont to continue operating as a fully functional and separate natural gas entity following the close of the merger. Further, the proposed management plan ensures that Piedmont's operations will continue to be managed by individuals with extensive experience in the natural gas distribution industry and the operations of Piedmont.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 18-21

The evidence supporting these findings of fact is set forth in the Application, the Public Staff Settlement, the CUCA Agreement, the EDF Agreement, the testimony of Applicants witness Barkley, and the testimony of Public Staff witness Hoard.

On June 10, 2016, the Public Staff, Duke and Piedmont (Stipulating Parties) filed an Agreement and Stipulation of Settlement (Settlement or Public Staff Settlement)

between the Applicants and the Public Staff. The Settlement includes stipulations, revised Regulatory Conditions, and a revised Code of Conduct. The main stipulations included in the Settlement are:

- Piedmont will withdraw its Application for Approval of Deferred Accounting Treatment of Certain Distribution Integrity Management Costs, filed on March 11, 2016, in Docket No. G-9, Sub 686, in which Piedmont estimates that its costs subject to deferral would be as high as $18.03 million for North Carolina over the next five years, or approximately $3.6 million per year.

- Piedmont will commit to credit a total of $10 million to its North Carolina customers as follows: $5 million per year to its North Carolina Integrity Management Deferred Account (IM Deferred Account) in each of the first two years after the merger. However, in the event of a Piedmont general rate case with rates effective no more than two years after the merger, Piedmont will reserve the right to reflect an adjustment in the general rate case that would increase its revenue requirement for a portion of this $10 million in savings and if that is exercised, the Public Staff reserves the right to incorporate the effect of additional merger-related savings in its proposed revenue requirement calculation. On July 15, 2016, the Settlement was amended to provide that Piedmont will credit the full $10 million to its customers by means of a one-time bill credit issued no later than December 31, 2016.

- Beginning January 1, 2017, DEC, DEP and Piedmont will fund The Duke Energy Foundation and Piedmont Natural Gas Foundation for four years after the merger at annual levels of no less than $9.65 million, $6.375 million, and $1.5 million, for community support and charitable contributions in the North Carolina service territories of DEC, DEP and Piedmont, respectively.

- DEC, DEP, and Piedmont will contribute a total of $7.5 million to The Duke Energy Foundation and Piedmont Natural Gas Foundation in support of workforce development and low income energy assistance in the North Carolina service territories of DEC, DEP, and Piedmont as may be agreed upon with the Public Staff, within 12 months after the merger. The contribution will be allocated among the North Carolina service territories of DEC, DEP and Piedmont in proportion to the number of North Carolina jurisdictional customers served by each.

- Direct merger costs will be excluded from DEC's, DEP's, and Piedmont's regulated expenses.

- Severance costs will be excluded from DEC's, DEP's, and Piedmont's cost of service for ratemaking purposes.

- DEC's, DEP's, and Piedmont's respective shares of capital costs associated with achieving merger savings, such as system integration costs, may be requested to be recovered through depreciation or amortization, and inclusion

in rate base, as appropriate, provided that such costs are incurred no later than three years after the merger and result in quantifiable cost savings that offset the revenue requirement effect of including the costs in rate base.

- Effects of all Piedmont long-term incentive plan costs above the Piedmont stock price of $42.22 per share closing price on October 23, 2015, adjusted for changes that would have occurred absent the merger, will be excluded from DEC's, DEP's, and Piedmont's regulated expenses and plant accounts.

- Beginning in the month that the merger closes, Piedmont will use the net-of-tax overall rate of return from its last general rate case (6.58%) as the applicable interest rate on all amounts over-collected or under-collected from customers reflected in its Sales Customers Only, All Customers, and Hedging Deferred Gas Cost Accounts.

- DEC, DEP and Piedmont will file proposed amended affiliate agreements no later than 30 days prior to close of the merger.

In the Settlement, the Applicants and Public Staff also agreed to a number of changes to the Regulatory Conditions and Code of Conduct approved by the Commission in the Duke/Progress Merger Order[1]. The proposed Regulatory Conditions and Code of Conduct are set forth in Attachment A of the Settlement Agreement. The Stipulating Parties generally made revisions throughout the various sections of the Regulatory Conditions and Code of Conduct to include Piedmont and references to natural gas services and customers, or to explicitly indicate that a specific section does not apply to Piedmont. Section 16 of the Settlement states, in pertinent part, that the agreement "is the product of give-and-take negotiations."

In addition, the Settlement is supported by the testimony of Public Staff witness Hoard and Applicants witness Barkley. In his pre-filed direct testimony, witness Hoard describes the steps taken by the Public Staff in its investigation of the Applicants' proposed merger. He states that the Public Staff organized a task force of accountants, engineers, attorneys and financial analysts who reviewed the Application, Applicants' testimony, Cost-Benefit Analysis and Market Power Study. In addition, witness Hoard states that the Public Staff submitted data requests to the Applicants and reviewed the information obtained in response to the data requests. He also testifies that the Public Staff reviewed merger proxy statements and other documents filed by the Applicants with the Securities and Exchange Commission, the Federal Trade Commission and the United States Department of Justice.

Further, witness Hoard discusses the public convenience and necessity standard that has been traditionally applied by the Commission in assessing the benefits and risks

[1] Subsequent to the Duke/Progress Merger Order, the Regulatory Conditions were modified by the Commission's Order Approving Revisions to Regulatory Conditions Nos. 7.7 and 7.8 issued March 24, 2015, in Docket Nos. E-7, Subs 986 and 986A, and E-2, Subs 998 and 998A, and Order Approving Transfer of Employees and Amendment to Regulatory Condition [No. 5.3] issued November 25, 2015, in Docket Nos. E-7, Sub 986, and E-2, Sub 998.

of a proposed merger. He states that the Settlement evinces the Public Staff's belief that the quantitative benefits provided in the Settlement, along with the Regulatory Conditions, are sufficient to meet the standard.

In his pre-filed supplemental and rebuttal testimony, Applicants witness Barkley describes the investigation by the Public Staff and the negotiations between the Applicants and the Public Staff. Witness Barkley testifies that the Public Staff served the Applicants with more than one hundred data and document requests set forth in fourteen sets of discovery. He states that the discovery process also included multiple and varied informal follow-up requests and discussions. In addition, witness Barkley states that in early May the Applicants and the Public Staff began discussions regarding the parameters of a possible settlement. He testifies that the discussions continued for about five weeks and involved a large number of issues discussed in multiple face-to-face meetings. Witness Barkley further states that the process involved substantial compromise on the issues by the Applicants and Public Staff and resulted in the Settlement filed with the Commission.

As the Settlement has not been adopted by all of the parties to this docket, its acceptance by the Commission is governed by the standards set out by the North Carolina Supreme Court in State ex rel. Utils. Comm'n v. Carolina Util. Customers Ass'n, Inc., 348 N.C. 452, 500 S.E.2d 693 (1998) (CUCA I), and State ex rel. Utils. Comm'n v. Carolina Util. Customers Ass'n, Inc., 351 N.C. 223, 524 S.E.2d 10 (2000) (CUCA II). In CUCA I the Supreme Court held that

> [A] stipulation entered into by less than all of the parties as to any facts or issues in a contested case proceeding under Chapter 62 should be accorded full consideration and weighed by the Commission with all other evidence presented by any of the parties in the proceeding. The Commission must consider the nonunanimous stipulation along with all the evidence presented and any other facts the Commission finds relevant to the fair and just determination of the proceeding.
>
> The Commission may even adopt the recommendations or provisions of the nonunanimous stipulation as long as the Commission sets forth its reasoning and makes "its own independent conclusion" supported by substantial evidence on the record that the proposal is just and reasonable to all parties in light of all the evidence presented.

348 N.C. at 466, 500 S.E.2d at 703.

However, as the Court made clear in CUCA II, the fact that fewer than all of the parties have adopted a settlement does not permit the Court to subject the Commission's Order adopting the provisions of a nonunanimous stipulation to a "heightened standard" of review. 351 N.C. at 231, 524 S.E.2d at 16. Rather, the Court said that Commission approval of the provisions of a nonunanimous stipulation "requires *only* that the Commission ma[k]e an independent determination supported by substantial evidence on the record [and] ... satisf[y] the requirements of chapter 62 by independently considering

and analyzing all the evidence and any other facts relevant to a determination that the proposal is just and reasonable to all parties." Id. at 231-32, 524 S.E.2d at 16 (emphasis added).

The Commission gives substantial weight to the testimony of Public Staff witness Hoard and Applicants witness Barkley regarding the Stipulating Parties' efforts in negotiating the Settlement. Further, the Commission finds and concludes that the Settlement is the product of the give-and-take between the Applicants and the Public Staff during their settlement negotiations in an effort to appropriately balance the costs, benefits and risks of the proposed merger and to protect ratepayers from the risks. As a result, the Settlement is material evidence to be given appropriate weight in this proceeding.

On June 13, 2016, Duke, Piedmont, and the Carolina Utility Customers Association, Inc. (CUCA) entered into a Settlement Agreement (CUCA Agreement). The CUCA Agreement was filed with the Commission on June 14, 2016. Duke, Piedmont, and CUCA resolved all the issues among them. The main stipulation included in the CUCA Agreement is:

> DEC and DEP guarantee that their North Carolina retail customers will receive their allocable shares of an additional $35 million in fuel and fuel-related cost savings achieved by DEC and DEP over and above the amount DEC and DEP are obligated to provide to them pursuant to the Commission Order Approving Merger Subject to Regulatory Conditions and Code of Conduct issued June 29, 2012, in Docket Nos. E-2, Sub 998, and E-7, Sub 986 (DEC-DEP Merger Order) and Duke was ordered to guarantee in the December 12, 2012 Order Approving Settlement Agreement and Closing Investigation in Docket No. E-7, Sub 1017. The additional $35 million in fuel and fuel-related costs savings will be achieved on or before December 31, 2017; however, such period shall be further extended by an additional 18 months if the conditions outlined in the Stipulation approved by the DEC-DEP Merger Order occur. The total cumulative amount of guaranteed fuel and fuel-related costs savings from the DEC-DEP merger and this Agreement is $721,800,000.

The CUCA Agreement further states that "the Settling Parties agree to resolve all issues among them regarding the Docket." Further, it states that CUCA agrees to waive cross-examination of the Applicants witnesses and to stipulate their testimony into the record.

On June 20, 2016, Duke, Piedmont, and the Environmental Defense Fund (EDF) entered into a Settlement Agreement (EDF Agreement). The EDF Agreement was filed with the Commission on June 21, 2016. Duke, Piedmont and EDF resolved all the issues among them. The main stipulation in the EDF Agreement states:

> Duke Energy will complete a cost-benefit study for a broad deployment of Integrated Volt-VAR Control in the Duke Energy

> Carolinas, LLC, territory, similar to the deployment plan that Duke Energy developed for its Duke Energy Indiana territory. Additionally, the Company will perform a cost-benefit analysis for the Duke Energy Progress Distribution System Demand Response (DSDR) program to evaluate the expansion of Integrated Volt-VAR Control beyond current peak demand reduction such that Integrated Volt-VAR Control includes conservation voltage reduction and balancing of grid management and customer reliability requirements. Duke Energy will provide the cost-benefit estimates in the October 2018 North Carolina Smart Grid Technology Plan filing.

The EDF Agreement further states that "the Settling Parties agree to resolve all issues among them regarding the Docket." Further, it states that EDF agrees to withdraw the pre-filed direct testimony of its witness, Diane Munns. In addition, it provides that EDF agrees to waive cross-examination of the Applicants witnesses and to stipulate their testimony into the record.

The testimony of Applicants witness Barkley supports both the CUCA Agreement and the EDF Agreement. Witness Barkley describes the main provisions of the Agreements and states that the Applicants support both Agreements. The Commission gives substantial weight to the testimony of Applicants witness Barkley, and the terms of the CUCA and EDF Agreements whereby CUCA and EDF waive their right to cross-examine the Applicants' witnesses and stipulate to the introduction of their testimony. The Commission concludes that the CUCA Agreement and the EDF Agreement are the product of give-and-take between the Applicants and CUCA and EDF, respectively. Based on the same factors and reasoning discussed above with regard to the Public Staff Settlement, the Commission concludes that the CUCA Agreement and EDF Agreement are material evidence to be given appropriate weight in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 22-29

The evidence supporting these findings of fact is set forth in the Application, the Cost-Benefit Analysis, the Public Staff Settlement, the CUCA Agreement, the testimony of Applicants witnesses Good, Skains, Young, Yoho, and Barkley, the testimony of Public Staff witness Hoard, and the Commission's statutory and inherent supervisory authority over public utilities.

In the Public Staff Settlement, the Applicants and the Public Staff agreed to a number of benefits to be provided to customers of Piedmont, DEC, and DEP upon closing of the merger. These benefits include: (i) accelerated sharing of merger-related cost savings with Piedmont's North Carolina customers in the total amount of $10 million delivered through a one-time direct bill credit issued on or before December 31, 2016; (ii) a four-year commitment to continue annual community support and charitable contribution initiatives in North Carolina by the Applicants, through the Duke Energy Foundation and the Piedmont Natural Gas Foundation, in the aggregate amount of no

less than $17.525 million[2] a year; (iii) a contribution to North Carolina workforce development and low-income energy assistance within 12 months of the close of the merger in the amount of $7.5 million; (iv) a reduction in the interest rate applicable to Piedmont under-collected gas costs; and (v) a requirement to refile non-service related affiliate contracts for re-approval by the Commission.

The Public Staff Settlement requires Piedmont to withdraw its DIMP Deferral Application wherein it seeks Commission authorization to defer Distribution Integrity Management Program Operations and Maintenance costs projected to total $18.03 million over the next five years.

The Public Staff Settlement provides that, beginning with the month in which the merger closes, Piedmont will use the net-of-tax overall rate of return from its last general rate case as the applicable interest rate on all amounts over-collected or under-collected from customers reflected in its Sales Customers Only, All Customers, and Hedging Deferred Gas Cost Accounts. The methods and procedures used by Piedmont for the accrual of interest on the Deferred Gas Cost Accounts will remain unchanged.

The CUCA Settlement guarantees that DEC's and DEP's North Carolina retail customers will receive the benefit of their allocable shares of an additional $35 million in fuel and fuel-related cost savings under the mechanism approved in the Duke/Progress Merger Order.

In the Cost-Benefit Analysis, Exhibit B to the Application, Duke Energy and Piedmont also identified a number of benefits attendant to the proposed merger of these two companies. These benefits include a reduction in annual public company operating costs associated with the merger of at least $9.45 million (Cost-Benefit Analysis at p. 5). Applicants witness Barkley also testified regarding benefits of the settlements with the Public Staff, CUCA, and EDF and supported those settlements.

Finally, Public Staff witness Hoard testified in some detail as to the benefits provided by the Public Staff Settlement discussed above. Witness Hoard's testimony focused on the context and contents of the Public Staff Settlement and the Applicants' support for the Settlement.

Public Staff witness Hoard also described the proposed new Regulatory Conditions and Code of Conduct provisions that address matters related to the affiliate relationship of Piedmont's local distribution gas company operations with the electric utility operations of Duke Energy. These provisions are subsequently discussed in detail.

The Commission has carefully reviewed and considered all of the evidence set forth above describing the known and potential benefits of the proposed merger and finds

[2] This annual aggregate amount consists of $9.65 million from DEC, $6.375 million from DEP, and $1.5 million from Piedmont.

it to be credible. Many of these benefits have been enhanced and guaranteed as a result of the settlements filed in this proceeding

The Commission notes that many of the quantifiable benefits and concessions by the Applicants are described in terms of minimum commitments and there is reason to believe that actual benefits in several categories may be greater. The most significant example of this is in the area of merger-related cost savings. The Applicants projected in the Cost-Benefit Analysis that such savings would be approximately $9.45 million per year. This annual amount consists of $2.1 million in Board of Director costs; $3 million in CEO compensation; $0.4 million in outside counsel costs; $1 million in outside auditor costs; $0.55 million in transfer agent costs; $2.3 million in insurance costs; and $0.1 million in stock listing fees. However, this amount represents only the immediately quantifiable cost savings resulting from the merger and contains no additional savings projections from the integration process now being conducted by the Applicants. To the extent that this integration process results in additional merger-related cost savings, Piedmont's customers will benefit as those savings are incorporated into updated rates for Piedmont in future general rate case proceedings. In the meantime, Piedmont has agreed to an immediate sharing of a total of $10 million in merger-related cost savings with its ratepayers through a onetime direct bill credit to be made prior to December 31, 2016.

NC WARN witness Gunter, Director of Policy and Advocacy for the North Carolina Housing Coalition, testified with regard to the Applicants' commitment to contribute $7.5 million to North Carolina workforce development and low-income energy assistance within 12 months of the close of the merger. Witness Gunter opined that this commitment is "not nearly sufficient to meet the needs of families who might be harmed by the proposed merger" and is "inadequate." (T Vol. 2, p. 185) Witness Gunter recommended that the Applicants be required to provide "an increased financial commitment to families that would be most vulnerable to cost increases, and that the money be distributed with the advice of an outside non-profit that works directly with low-income families in North Carolina. The amount of the contribution should be established with the goal of providing lower bills for the most vulnerable households." (T Vol. 2, p. 186)

In response to witness Gunter's testimony, the Applicants' presented the rebuttal testimony of Applicants witness Barkley. Witness Barkley noted his disagreement with the apparent assumption of witness Gunter that low-income families will be harmed by the proposed merger. Further, witness Barkley testified that he believes that the merger will have both economic and non-economic benefits for all of Duke Energy's and Piedmont's customers. Witness Barkley also stated that the provisions relating to low-income energy assistance and workforce development, as well as the other economic and non-economic benefits of the Public Staff Settlement, were negotiated with and agreed to by the Public Staff – the agency charged with representing the interests of the using and consuming public, including low-income ratepayers. Finally, witness Barkley pointed out that the alternate proposal of witness Gunter to increase payments to low-income customers is both indeterminate and more properly addressed in separate proceedings before the Commission involving energy efficiency measures.

In its post-hearing Brief, NC WARN repeats the contentions made by witness Gunter with regard to the $7.5 million to be contributed by the Applicants for workforce development and low-income energy assistance. In addition, NC WARN assails the Applicants' commitment to make annual contributions of at least $17.5 million for four years to the Duke Energy Foundation and the Piedmont Natural Gas Foundation as merely a continuation of contribution levels that the Applicants would likely make irrespective of the Settlement.

With respect to witness Gunter's concerns, the Commission does not find his testimony persuasive. First, there is no evidence in this proceeding that costs to Piedmont's, DEC's or DEP's customers will increase as a result of the merger. To the contrary, the substantial evidence before the Commission supports the opposite conclusion – that customers will receive substantial benefits from the proposed merger and that such benefits will be both economic and non-economic in nature. Thus, the main premise underlying witness Gunter's testimony is faulty. Secondly, while the Commission recognizes the burdens and challenges faced by low-income customers, the evidence demonstrates substantial merger benefits to be received by all of Piedmont's, DEC's and DEP's customers, including low-income customers. As a result, the Commission gives witness Gunter's testimony minimal weight.

With respect to the Applicants' commitment to make annual contributions of at least $17.5 million to the Duke Energy Foundation and Piedmont Natural Gas Foundation for four years, the Commission finds NC WARN's criticism to be unavailing. First, the contributions will total at least $70 million over the next four years. That is a very large commitment. Secondly, NC WARN's position that the Applicants would likely make these contributions irrespective of the Settlement is pure speculation. Undoubtedly, there are a myriad of factors that the Applicants weigh in deciding how much to contribute to these foundations each year. Nevertheless, the Applicants are willing to guarantee at least $70 million in contributions over the next four years. That guarantee should enable the foundations to engage in planning and activities that they might not otherwise have the opportunity to undertake absent the knowledge that they will have $70 million with which to fund such activities. As a result, the Commission concludes that the Applicants' commitment to make annual contributions of at least $17.5 million to the Duke Energy Foundation and Piedmont Natural Gas Foundation for four years is a substantial benefit provided by the Settlement.

The Commission has carefully reviewed the evidence presented regarding economic and non-economic benefits to customers cited by the Applicants and agreed to and set forth in the settlement agreements in this proceeding. Based upon that evidence, and the lack of any significant countervailing evidence, the Commission finds and concludes that the Public Staff Settlement and the CUCA Agreement provide substantial quantifiable benefits to the ratepayers of DEC, DEP and Piedmont.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 30-36

The evidence supporting these findings of fact is set forth in the Application, the Cost-Benefit Analysis, the testimony of Applicants witnesses Good, Skains, Young, Yoho, and Barkley, Public Staff witness Hoard, and the Commission's statutory and inherent supervisory authority over public utilities.

The Application recites several asserted benefits from the proposed merger. These include: (i) financial benefits resulting from a larger more diversified company; (ii) direct and immediate operational benefits to customers; (iii) enhanced ability of Duke Energy and Piedmont to participate in the growing natural gas sector of the United States economy; (iv) future integration benefits; and (v) maintenance of a strong corporate presence in North Carolina.

In the Application, the Applicants identified a number of projected benefits from the merger. These include the retention of Mr. Yoho to lead Piedmont's and Duke Energy's combined natural gas operations and investments assisted by the majority of Piedmont's existing operational management team (Application, at pp. 6 and 9); financial and strategic benefits associated with the incorporation of Piedmont's utility operations into a larger and more diverse energy company with enhanced access to capital and greater potential for further growth in the natural gas industry (Application, at pp. 8-9); enhanced opportunities for the combined companies to procure gas supplies and capacity at favorable prices, to participate in gas infrastructure expansion projects, and to ensure an adequate, reliable and cost-effective supply of natural gas for DEC and DEP, (Application, at pp. 10-11) which the Commission has previously recognized as a benefit in mergers between electric utilities and gas local distribution companies. See Order Approving Merger and Issuance of Securities, issued July 13, 1999, in Docket Nos. E-2, Sub 740 and G-21, Sub 377. The Application also projects benefits resulting from increased reliability and efficiency in the provision of both electric and natural gas service by the combined companies; no proposed increase in rates or changes to services provided by DEC, DEP and Piedmont resulting from the merger; and the opportunity for cost-savings for Piedmont customers resulting from the merger integration process.

In the Cost-Benefit Analysis, Duke Energy and Piedmont also identified the benefits attendant to the proposed merger, including (i) increased financial strength of the combined company resulting in greater ability of Piedmont to access capital on reasonable terms (Cost-Benefit Analysis, at p. 3); (ii) a reduction in market risk associated with a larger and more diversified utility holding company structure (Cost-Benefit Analysis, at p. 3); (iii) enhanced system efficiency and reliability for DEC and DEP resulting from the consolidation of Piedmont into the Duke Energy corporate structure (Cost-Benefit Analysis, at p. 3); (iv) potential enhancement of gas supply and capacity procurement activities by the combined utilities (Cost-Benefit Analysis, at p. 4); and (v) enhanced ability to facilitate infrastructure expansion for both gas and electric customers.

In addition, Applicants witness Good testified to the following anticipated benefits of the proposed merger: (i) creation of a strong natural gas platform within Duke Energy

to promote additional investment in the natural gas industry; (ii) diversification of Duke Energy's business and customer base; (iii) the addition of experienced and well-regarded management over natural gas assets and investments of the combined companies; (iv) enhanced ability to plan for and construct additional natural gas and electric infrastructure projects; (v) increased reliability and efficiency of service to DEC's and DEP's gas-fired generation facilities; (vi) customer benefits resulting from the sharing of best-practices with respect to the provision of customer service; and (vii) the addition of Thomas Skains to the Duke Energy board of directors.

Applicants witness Skains testified regarding benefits to Piedmont and its customers arising from the proposed merger. These included the preservation and potential expansion of the Piedmont brand as a consequence of Duke Energy's stated intent to allow Piedmont to operate as a separate gas subsidiary, and the opportunity for Piedmont to expand its high-performance/customer service focused culture. Witness Skains also indicated his belief that the proposed merger would enhance both growth opportunities for Piedmont and Duke Energy's ability to effectively participate in the growing natural gas sector of the energy economy in the United States.

In addition, Applicants witness Skains testified that he perceived the following benefits from the merger: (i) continued operation of Piedmont as a separate natural gas utility under the leadership of Mr. Yoho, who will have responsibility for Duke Energy/Piedmont's combined natural gas operations and investments; and (ii) enhanced opportunities for both Duke Energy and Piedmont to improve customer service through the sharing of best practices in that area.

Applicants witness Young testified to his belief that the proposed merger would have benefits for the companies and customers. Witness Young specifically identified the following discrete benefits from the transaction: (i) solid investment grade credit ratings for Duke Energy and Piedmont; (ii) enhanced ability to access capital at reasonable rates resulting from a larger corporate entity and access to expanded financing mechanisms (including the Duke Energy money pool); (iii) maintenance of a healthy balance sheet for the combined company; and (iv) stabilization of the companies' long term growth objectives. Witness Young also explained the possible downgrade of Piedmont's credit rating from "A" to "A-" by Standard & Poor's (S&P). In this regard, he explained that it is common practice for S&P to adjust a new subsidiary's credit rating to match that of its corporate parent. Furthermore, to the extent that such a credit rating downgrade occurs, witness Young testified that Regulatory Condition No. 8.2 will protect customers from any negative rate consequences of such a downgrade resulting from the merger.

Applicants witness Yoho testified regarding his belief that the merger will be "seamless" to customers as a result of Duke Energy's express intent to allow Piedmont to continue to be managed by existing Piedmont operational managers. He also testified that the ongoing integration process underway between the companies should result in operational cost savings going forward and enhanced service quality through the sharing of best practices between DEC, DEP and Piedmont, with limited job displacement and

without operational disruption from the merger. Witness Yoho also testified regarding his belief that the benefits described in the Cost-Benefit Analysis attached to the Application would be realized by the companies and their respective customers, including reductions in costs to Piedmont's ratepayers as a result of the merger and integration process.

In response to a question during cross-examination, Applicants witness Barkley testified that DEC, DEP and Piedmont will begin looking at and sharing best practices during the integration process. He stated that integration groups will examine the different approaches of the three utilities and try to choose the best practice, or perhaps combine the best aspects of two practices. Witness Barkley cited right-of-way practices and customer call center practices as examples of the areas in which the utilities will look to exact efficiencies.

Public Staff witness Hoard discusses in his testimony the importance of identifying the balance of costs and benefits in merger proceedings. He states that G.S. 62-111(a) provides that no merger or combination affecting any public utility shall be made through acquisition or control by stock purchase or otherwise, except after Commission approval, and that approval will be given if justified by the public convenience and necessity. He testifies that this statute requires that the Commission review all aspects of a proposed merger, including review of all costs and benefits to determine whether the transaction is in the public interest and should be approved. Witness Hoard further states that the Commission has considered factors such as “maintenance of or improvement in service quality, the extent to which costs can be lowered and rates can be maintained or reduced, the extent to which the merger could have anticompetitive effects, the continuation of effective state regulation, and the relationships between and among the various units of the merged firm.” (T Vol.3, p. 74) Witness Hoard also testifies that the Commission has historically made sure that ratepayers are held harmless in these types of transactions and are insulated to the highest extent possible from any risks and costs associated with the transaction and that any benefits resulting from the transaction offset any of those potential risks or costs. Public Staff witness Hoard additionally provided testimony regarding the Applicants' Cost-Benefit Analysis. Witness Hoard states that its March 2, 2016 Scheduling Order in this docket, the Commission found and concluded that the application satisfies the requirements of the Commission’s Order in Docket No. M-100, Sub 129, which requires an applicant to file a cost-benefit analysis, among other things. Witness Hoard further testifies regarding the Cost-Benefit Analysis that the Public Staff believes that the quantitative benefits of the merger, together with the agreed upon Regulatory Conditions provided for in the Settlement, are sufficient to meet the public convenience and necessity standard.

With regard to maintaining Piedmont as a North Carolina based business, the Commission views this as a significant benefit of the merger. The possibility that Piedmont could be purchased by an out-of-state holding company is not purely academic. Indeed, witness Skains discusses in his direct testimony an inquiry that he received from a potential purchaser of Piedmont at virtually the same time as the inquiry from Duke Energy.

The Commission has carefully reviewed the evidence presented regarding the non-quantifiable economic and non-economic benefits from the merger to customers of DEC, DEP and Piedmont testified to by the Applicants and finds the evidence to be credible. Based upon that evidence, and the lack of any significant countervailing evidence, the Commission finds and concludes that there are substantial non-quantifiable economic and non-economic benefits to be derived from the merger by the customers of DEC, DEP and Piedmont.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 37-41

The evidence supporting these findings of fact is set forth in the Application, the Cost-Benefit Analysis, the Public Staff Settlement, the CUCA Agreement, the testimony of Applicants witnesses Good, Skains, Young, Yoho, and Barkley, the testimony of Public Staff witness Hoard, and the Commission's statutory and inherent supervisory authority.

In the Public Staff Settlement, the Applicants and the Public Staff agreed to a number of benefits to be provided to customers of Piedmont, DEC, and DEP upon closing of the merger. These benefits include the elimination or mitigation of potential costs of the merger from recovery by the three utilities' in their rates.

In particular, the Public Staff Settlement precludes Piedmont’s recovery from ratepayers of direct merger-related expenses and severance costs. The Public Staff Settlement further provides for recoverability of merger-related transition costs only in circumstances involving capital costs associated with achieving merger savings, such as system integration costs and the adoption of best practices, where such costs are incurred no later than three years from the close of the merger and result in quantifiable cost savings that offset the revenue requirement effect of including the costs in rate base. The Settlement also provides that only the net depreciated costs of such system integration projects at the time the request is made may be included, and that no request for deferrals of these costs may be made.

The Public Staff Settlement also holds customers harmless from the effects of all Piedmont's long-term incentive plan (performance shares and restricted stock units/shares) that result from the increase in the Piedmont stock price above the $42.22 per share closing price on October 23, 2015, adjusted for estimated changes in the stock price that would have occurred absent the merger.

Applicants' witness Yoho testified to the protection of ratepayers from costs of the merger through absorption by Duke Energy and Piedmont shareholders of the acquisition premium and transaction costs associated with the merger.

First, the Application and the Cost-Benefit Analysis appended thereto as Exhibit B commits the Applicants not to seek recovery of several categories of merger-related costs of which they would otherwise be entitled to seek recovery. Specifically, the Applicants have expressly waived, in both the Application and Cost-Benefit Analysis, any right to seek recovery of the acquisition premium associated with the merger as well as any transaction

fees associated with the merger. See Cost-Benefit Analysis, at p. 7. This commitment is significant inasmuch as the acquisition premium in this merger is approximately $3.4 billion, and the transaction fees identified in the Cost-Benefit Analysis, which include one-time costs associated with the merger transaction, such as investment bankers fees, costs relating to security issuances, legal costs, accounting costs, and other advisory fees are estimated at $125 million. Hence, these commitments by the Applicants serve to insulate ratepayers from the major costs of the merger transaction itself.

Second, in the Public Staff Settlement, the Applicants have contractually precluded the possibility that they may seek recovery of either merger-related direct expenses or severance costs from ratepayers. As defined in Paragraph No. 5 of the Public Staff Settlement, the direct merger costs are "change-in-control payments made to terminated executives, regulatory process costs, and transaction costs, such as investment banker and legal fees for transaction structuring, financial market analysis, and fairness opinions based on formal agreements with investment bankers." The Public Staff Settlement, in Paragraph No. 6, also limits recovery of merger-related transition costs to capital/rate base related integration expenses to the extent they are incurred no later than three years after the merger and result in quantifiable cost savings that offset the revenue requirement impact of including them in rate base. In Paragraph No. 7 of the Public Staff Settlement, the Applicants have agreed to exclude from cost-recovery the impact of the merger premium on Piedmont employee incentive plan and benefit plan costs. These provisions provide significant additional protections for DEC, DEP, and Piedmont ratepayers from the costs and quantifiable risks associated with the merger.

In its post-hearing Brief, NC WARN asserts that the acquisition premium will unduly overcompensate Piedmont's shareholders, and that a portion of the acquisition premium should be received by ratepayers. NC WARN's argument is based on the fact that Piedmont's ratepayers have contributed to building the rate base assets, including goodwill, of Piedmont and should profit from the sale of these assets to Duke Energy.

Duke Energy is not purchasing Piedmont's assets. Rather, Duke Energy is paying an acquisition premium to Piedmont's shareholders for the purchase of Piedmont's stock. Piedmont's assets will remain the property of Piedmont. Further, Piedmont's rate base will remain the same after Duke Energy's acquisition of the Piedmont stock as it was while the stock was in the hands of the Piedmont shareholders. Were this an asset acquisition, Piedmont's rate base in the hands of a new owner would be the lesser of Piedmont's net original cost or the purchase price on the theory that ratepayers should only be responsible for paying rates on the cost of assets financed by the utility's investors. In this case, a stock acquisition, Piedmont's rate base stays the same. Piedmont's ratepayers bear responsibility for paying a return on rate base and a return of the costs financed by investors. However, the risks of ownership in Piedmont's common equity stock and the increase or decrease in the value of that stock continue to reside with the owners of that stock.

NC WARN's witnesses did not provide testimony regarding its position that the Commission should require Duke Energy to pay a portion of the acquisition premium to

Piedmont's ratepayers. In addition, NC WARN's post-hearing Brief does not cite any direct authority or precedent in support of its argument, and the Commission is not aware of any such direct authority or precedent. In its Order Determining Regulatory Treatment of Gain on Sale, in Docket No. W-354, Sub 331 (2011), aff'd, State of North Carolina ex rel. Utilities Comm'n v. Carolina Water Service, Inc. of North Carolina, 225 N.C. App. 120, 738 S.E.2d 187 (2013) (CWS Order), the Commission made an exception to its long-standing policy of allocating 100% of a gain or loss to the shareholders of the utility where there is a sale of assets of a regulated water and/or sewer utility. The Commission's policy is based on its goal to incentivize the transfer of water and sewer systems to municipalities where the municipality has annexed the subdivision or area served by the regulated water and sewer utility. See Order Determining Regulatory Treatment of Gain on Sale of Facilities, Docket Nos. W-354, Subs 133 and 134 (1994). However, in the CWS Order the Commission addressed a situation in which the franchise and assets that CWS was using to serve several subdivisions, about 6,200 customers, were being sold to the Charlotte-Mecklenburg Utilities department (CMU). CMU had agreed to pay CWS $19.2 million more than CWS's net investment in the assets being acquired by CMU. In addition, CMU would thereafter serve the 6,200 former CWS customers. Further, the Commission found as a fact that the sale of the assets and the loss of 6,200 customers would have a significant adverse impact on the rates of the remaining customers of CWS, resulting in an increase of 5.8% and 6.0% in their average monthly water and sewer bill, respectively. Based on those facts, the Commission determined that the sale to CMU was in the public interest only if CWS's remaining ratepayers received 17.5% of the $19.2 million gain on sale, about $3.36 million, to protect them from the increase in their rates.

The present case is distinguishable from the CWS case in several respects. First, the CWS case involved a sale of assets not the acquisition of stock. Second, Piedmont's assets will remain the property of Piedmont. Third, Piedmont will continue to use those assets to provide natural gas service to its customers. Fourth, Piedmont's rates will not increase as a result of the merger.

Therefore, the Commission concludes that there is no factual or legal basis for the Commission to adopt NC WARN's position that Duke Energy should be required to pay a portion of the acquisition premium to Piedmont's customers.

The Commission has carefully reviewed and considered all of the evidence set forth above describing the known and potential benefits of the proposed merger and finds it to be credible. The Commission finds and concludes that the commitments in the Public Staff Settlement are significant and effectively mitigate as much as reasonably possible the potential costs of the merger to ratepayers. Further, even if such potential costs are not effectively mitigated by these commitments, the Commission retains full power and authority to address any potential impact from the merger on the ratepayers of DEC, DEP and Piedmont.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 42-47

The evidence supporting these findings of fact is set forth in the Application, the Cost-Benefit Analysis, the Public Staff Settlement, the CUCA Agreement, the testimony of Applicants witnesses Good, Skains, Young, Yoho, and Barkley, the testimony of Public Staff witness Hoard, and the Commission's statutory and inherent supervisory authority over electric utilities.

The Application asserts, in Paragraph No. 27, that "DEC, DEP, and New Piedmont will remain subject to full regulation by the Commission. The Merger in no way diminishes the authority of the Commission to regulate service quality and rates of any of these companies. Therefore, effective state regulatory oversight of all three utilities will continue." The Application also states, in Paragraph No. 20, that the merger will enhance customer service and will not have a net adverse impact on the rates and services of DEC, DEP and Piedmont. The stipulated Regulatory Conditions and Code of Conduct also contain provisions designed to ensure that the Commission's regulatory jurisdiction over DEC, DEP, and Piedmont is not diminished as a result of the merger.

According to the direct testimony of Applicants witness Good

> [D]uke Energy would experience compelling strategic benefits that include a diversified energy company that will be well positioned to provide the highest quality service to our customers at just and reasonable rates. This transaction establishes a valuable natural gas infrastructure platform which will provide strong growth opportunities for years to come. Abundant, low-cost natural gas will continue as an increasingly important part of the nation's energy mix as the shift away from coal continues. Duke Energy has been a leader in the coal-to-gas transition during the last decade, and this acquisition further solidifies our leadership for the future.

Witness Good also states that Piedmont will exist as a separate entity and subsidiary of Duke Energy and maintain its separate headquarters in North Carolina. Public Staff witness Hoard also states that Piedmont is expected to retain its current name, corporate form and headquarters.

Public Staff witness Hoard testified that customer rates and services will not be adversely impacted by the proposed merger in light of the Public Staff Settlement and the other commitments of the Applicants in this proceeding. His testimony recites the standard for approval of utility mergers under G.S. 62-111 and Commission precedent, describes, in some detail, the provisions of the Public Staff Settlement that are designed to prevent any adverse consequences to customers, and ultimately recommends approval of the merger subject to the restrictions and requirements of the Public Staff Settlement and the stipulated Regulatory Conditions and Code of Conduct.

As is discussed later in this Order, the Regulatory Conditions and Code of Conduct also provide significant ratepayer protections against potential future cost impacts of the merger by ensuring that DEC, DEP and Piedmont continue to operate independently and

competitively, except where greater efficiencies can be gained without negatively impacting customers.

In order to protect the jurisdiction of the Commission against the risk of federal preemption as a result of the merger, the Stipulating Parties agree in Regulatory Condition No. 3.9 (g) (vii) (B) that the Applicants will take all actions to hold North Carolina ratepayers harmless from rate increases, foregone opportunities for rate decreases, or any other adverse effects of such preemption.

In regards to overall service quality, according to Regulatory Condition Nos. 11.1 and 11.2, DEC, DEP, and Piedmont shall provide superior public utility service and shall maintain the overall reliability of electric services and natural gas services at levels no less than the overall levels it has achieved in the past decade and shall incorporate each other's best practices into its own practices to the extent practicable. According to Regulatory Condition No. 11.9, DEC, DEP, and Piedmont shall each meet annually with the Public Staff to discuss service quality initiatives and results and to discuss potential new tariff programs and services that enable their customers to appropriately manage their energy bills based on the varied needs of their customers.

According to Regulatory Condition No. 15.2, concerning the procedures for determining long-term sources of pipeline capacity and supply, Piedmont shall retain title, ownership, and management of all gas contracts necessary to ensure the provision of reliable natural gas services consistent with Piedmont's best cost gas and capacity procurement methodology.

Finally, the testimony of Public Staff witness Hoard and Applicants witness Barkley supports the conclusion that ratepayers are protected from potentially adverse impacts on rates and costs associated with the merger. Public Staff witness Hoard's testimony discusses each aspect of the Public Staff Settlement as well as changes to the Regulatory Conditions and Code of Conduct and concludes that the merger should be approved subject to the protections afforded customers provided by the Public Staff Settlement.

In his testimony, Applicants witness Barkley describes the Public Staff Settlement and indicates both his agreement with witness Hoard's description of the Settlement as well as the Applicants' support for the Settlement.

The Commission notes that several provisions of the General Statutes also serve to protect customers from potential negative consequences of the proposed merger. These include G.S. 62-130 – Commission supervision over rates; and G.S. 62-139 – prohibition of service at other than Commission approved rates.

In this regard, the Commission notes that the provisions of the Public Utilities Act, Chapter 62 of the General Statutes, provide the Commission with broad supervisory authority over DEC, DEP and Piedmont, including the authority to establish (and modify if necessary) the rates, terms, and conditions of service for these entities. As such, and given the absence of any proposal by any of these companies to actually change rates or services

in these dockets - other than the proposal to credit Piedmont ratepayers with a one-time $10 million bill credit, which is an immediate benefit to those ratepayers - the Commission finds no evidence that the merger will increase rates, or diminish services, or that the Commission's jurisdiction over DEC, DEP or Piedmont as regulated public utilities will be adversely impacted in any way. Additionally, any currently unknown risks to customers arising out of the proposed merger are sufficiently mitigated through the terms contained in the Public Staff Settlement, including the Regulatory Conditions and Code of Conduct, and the Commission's continuing exercise of jurisdiction over Piedmont, DEC and DEP.

In response to questions on cross-examination, Applicants witness Barkley testified that Piedmont is confident that the merger, in and of itself, will not cause an increase in Piedmont's rates. He elaborated by explaining that the bulk of the costs of the merger have been specifically excluded from Piedmont's rates pursuant to the terms of the Settlement. Further, he cited the Settlement restrictions on Piedmont's recovery of certain integration costs, such as information technology upgrades, noting that the Settlement prohibits cost recovery from ratepayers unless there are corresponding savings in at least the same amount.

With respect to continued competition between the electric services provided by DEC and DEP and the gas services provided by Piedmont, some of the public witnesses expressed concerns about maintaining that competition. For example, witnesses Ruth Zalph stated:

> [t]his merger would stifle both the spirit and the reality of marketplace competition. When you have a number of companies and they all want a piece of the pie, you have competition and you have innovation. This might advance new technologies in the harnessing and delivery of cleaner, non-toxic and sustainable energy that can reduce global warming and save our planet. (T Vol. 1, pp. 18-19)

In addition, Steve English testified that, "Eliminating competition and doubling down on burning more fossil fuels is a fool's errand." (T Vol. 1, p. 58)

Neither of those witnesses acknowledged the measures in the Settlement and Code of Conduct that address the need to preserve competition.

However, the Commission shares these concerns and notes that they are addressed in the proposed Code of Conduct. Section III.H of the Code of Conduct states that

> DEC, DEP and Piedmont shall continue to compete against all energy providers, including each other, to serve those retail customer energy needs that can be legally and profitably served by both electricity and natural gas. The competition between DEC or DEP and Piedmont shall be at a level that is no less than that which existed prior to the Merger.

Further, Section III.H lists minimum standards as follow:

1. Piedmont will make all reasonable efforts to extend the availability of natural gas to as many new customers as possible.

2. In determining where and when to extend the availability of natural gas, Piedmont will at a minimum apply the same standards and criteria that it applied prior to the Merger.

3. In determining where and when to extend the availability of natural gas, Piedmont will make decisions in accordance with the best interests of Piedmont, rather than the best interest of DEC or DEP.

4. To the extent that either the natural gas industry or the electricity industry is further restructured, DEC, DEP and Piedmont will undertake to maintain the full level of competition intended by this Code of Conduct subject to the right of DEC, DEP, Piedmont or the Public Staff to seek relief from or modifications to this requirement from the Commission.

In response to a question on cross-examination, Applicants witness Good confirmed that Duke Energy is prepared to maintain Piedmont's residential and commercial customer addition rate. In addition, she agreed that combined heat and power, and direct use by residential and commercial customers were all potential considerations. She further stated that

> [w]e have seen an increasing interest on the part of some of our industrial customers and direct gas products because of the cost-competitive nature of natural gas at this point. So every direction we look we see additional customer interest. (T Vol. 1, p. 158)

In its post-hearing Brief, NC WARN contends that the merger will potentially eliminate the competition between electricity and natural gas in Piedmont's service area overlapping DEC's and DEP's service areas. However, the Commission is not persuaded that the merger will reduce such competition. As previously discussed herein, the Code of Conduct provisions on continued competition between Piedmont, DEC and DEP, and the Commission's continuing regulatory authority over the three utilities provide reasonable assurances that they will continue to compete with each other to provide gas and electric service to their customers in the same manner that they have performed prior to the merger.

The Commission finds that the provisions in the Settlement, the Code of Conduct and the testimony of the witnesses provide reasonable and adequate assurance that the existing competition between electric and natural gas by DEC, DEP and Piedmont will be preserved.

With respect to the potential for favoritism or discrimination by DEC, DEP and Piedmont, G.S. 62-140 prohibits public utilities from making or granting any person an unreasonable preference or advantage in the rates and services offered by the utility. In addition, Section III.D of the Code of Conduct deals with "Transfers of Goods and Services, Transfer Pricing, and Cost Allocation." That section prohibits cross subsidies, and requires all costs incurred by affiliate personnel for or on behalf of Duke Energy or any affiliate or the Nonpublic Utility Operations to be charged to the entity responsible for the costs. Further, it includes explicit conditions as a general guideline to the transfer prices charged for goods and services.

In response to a cross-examination question with regard to interstate pipeline and storage capacity, Applicants witness Skains stated:

> [t]he FERC does have non-discriminatory rules and regulations which apply to offerings of existing pipeline capacity in the wholesale market. And, as I understand the regulatory conditions agreed to as a part of this merger settlement, the Companies have agreed to maintain separate capacity and supply portfolios for the gas utility versus the electric utilities. (T Vol. 1, p. 156)

The Commission finds that G.S. 62-140, the Settlement and the Commission's continuing regulatory authority over DEC, DEP and Piedmont provides reasonable and adequate protections against the potential for discriminatory behavior in intra-company transactions by DEC, DEP, and Piedmont compared to their similar transactions with third parties.

With regard to secondary market transactions, Code of Conduct Section III.D.3.(g) states

> All of the margins, also referred to as net compensation, received by Piedmont on secondary market sales to DEC and DEP shall be recorded in Piedmont's Deferred Gas Cost Accounts and shall flow through those accounts for the benefit of ratepayers. None of the margins on secondary market sales by Piedmont to DEC and DEP shall be included in the secondary market transactions subject to the sharing mechanism on secondary market transactions approved by the Commission in its Order Approving Stipulation, dated December 22, 1995, in Docket No. G-100, Sub 67. The sharing percentage on secondary market sales shall not be considered in determining the prudence of such transactions.

In response to a cross-examination question about whether that provision would give Piedmont an incentive to engage in secondary market transactions with unaffiliated parties rather than with DEC and DEP, Public Staff witness Hoard testified that Piedmont should not profit from sales to DEC and DEP. He did add that there have not been many transactions between Piedmont and DEC and DEP.

The Commission has carefully reviewed and considered all of the evidence set forth above describing the known and potential risks of the proposed merger and finds it to be credible.

Based on the foregoing, the Commission finds and concludes that the proposed merger poses no risk of any real or potential adverse impact on the rates and services provided by DEC, DEP, and Piedmont to their customers. Further, the Commission finds and concludes that other potential risks of the merger to ratepayers have been effectively mitigated by the commitments of the Applicants in the Application, the Cost-Benefit Analysis, and the testimony of Applicants witnesses, as well as the Public Staff Settlement, including the Regulatory Conditions and Code of Conduct. Further, even if such risks were not effectively mitigated by these commitments, the Commission retains full power and authority to address any potential impact from the merger on the ratepayers of DEC, DEP and Piedmont.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 48-57

The evidence supporting these findings of fact is set forth in the Application, the Public Staff Settlement, the testimony of Applicants witnesses Good, Skains, Young, Yoho, and Barkley, the testimony of Public Staff witness Hoard, and the Commission's statutory and inherent supervisory authority.

Under G.S. 62-30, the Commission has general power and authority to supervise and control public utilities. G.S. 62-32 grants the Commission supervisory power over public utility rates and service, including the power to compel reasonable service and set reasonable rates. As noted above, Paragraph No. 27 of the Application provides that “DEC, DEP, and New Piedmont will remain subject to full regulation by the Commission. The Merger in no way diminishes the authority of the Commission to regulate service quality and rates of any of these companies. Therefore, effective state regulatory oversight of all three utilities will continue.” This continuing and undiminished regulatory oversight will serve to protect ratepayers from any adverse consequences of the merger.

Separate and apart from the Commission’s inherent and continuing supervisory function, there is substantial evidence in this proceeding that ratepayers are and will be protected as much as possible from potential costs and risks of the merger.

In the Public Staff Settlement, Applicants and the Public Staff agreed to a number of benefits to be provided to customers of Piedmont, DEC, and DEP upon closing of the merger. These benefits include adoption of revised Regulatory Conditions and a Code of Conduct which ensure that the ongoing operations of DEC, DEP, and Piedmont will be independent, transparent, non-discriminatory, and consistent with the interests of their customers, as well as effective oversight by the Commission and the Public Staff.

Further, the Regulatory Conditions also provide numerous protections and restrictions governing the ongoing operations of DEC, DEP, and Piedmont. As discussed more fully below, these safeguards include a number of provisions designed to

(i) preserve the Commission's jurisdiction over the regulated utilities (Regulatory Conditions, Section III); (ii) establish intra-company financing requirements and separate accounting for each utility (Regulatory Conditions, Sections VII and VIII); (iii) ensure ongoing review of the operation of DEC, DEP and Piedmont under a holding company structure (Regulatory Conditions, Section VIII); (iv) provide the Commission with advance notice of proposed business combinations and mergers, and advance notice of changes in the structure and organization of Duke Energy, DEC, DEP, and Piedmont, (Regulatory Conditions, Section IX and X); (v) ensure continuing levels of service quality for the respective customers of DEC, DEP, and Piedmont (Regulatory Conditions, Section XI); (vi) ensure that DEC's, DEP's and Piedmont's North Carolina retail ratepayers do not bear any additional tax costs as a result of the merger and that they receive an appropriate share of any tax benefits associated with the service company affiliates (Regulatory Conditions, Section XI); and (vii) ensure that Duke Energy, DEC, DEP, Piedmont, and all other affiliates establish and maintain the structures and processes necessary to fulfill the commitments expressed in the Regulatory Conditions and the Code of Conduct in a timely, consistent and effective manner (Regulatory Conditions, Section XIV); and, (viii) preserve the integrity of utility specific acquisitions of upstream supply and capacity (Regulatory Conditions, Section XV).

The purpose of Section III of the Regulatory Conditions is to protect the Commission's jurisdiction from the risk of federal preemption. This section includes Regulatory Condition No. 3.1 that requires DEC, DEP and Piedmont to incorporate certain provisions into their affiliate agreements, and to refrain from asserting federal preemption claims regarding the Commission's retail ratemaking and regulatory accounting authority. Further, it requires DEC, DEP and Piedmont to file advance notice, including a copy of the proposed affiliate agreement, with the Commission prior to filing the agreement with FERC. The advance notice triggers certain procedures that allow the Commission, Public Staff and other interested parties the opportunity to review the agreement and address concerns about its potential for resulting in preemption issues.

Regulatory Condition No. 3.3 stipulates that DEC, DEP and Piedmont will own and control the assets used to serve their respective retail customers. Further, if DEC, DEP or Piedmont intends to transfer an asset having a gross book value in excess of $10 million, they are required to provide the Commission with at least 30 days advance notice of the proposed transfer.

The Commission finds and concludes, that the Regulatory Conditions effectively address as much as reasonably possible the concerns related to potential loss of or reduction in the Commission's jurisdiction arising from the merger.

The purposes of Section VII of the Regulatory Conditions are to ensure that (a) DEC's, DEP's and Piedmont's capital structure and cost of capital are not adversely affected through their affiliation with Duke Energy, each other, and other affiliates, and (b) that DEC, DEP and Piedmont have access to sufficient equity and debt capital at reasonable costs so as to adequately fund and maintain their current and future capital needs and otherwise meet their service obligations to their customers.

The Commission finds and concludes, that the Regulatory Conditions effectively address as much as reasonably possible the concerns related to potential financing issues arising from the merger. In particular, the Commission finds and concludes that the Regulatory Conditions effectively ensure as much as reasonably possible that (a) DEC's, DEP's and Piedmont's capital structures and cost of capital are adversely affected because of their affiliation with Duke Energy, each other, and other affiliates, and (b) that DEC, DEP and Piedmont have sufficient access to equity and debt capital at a reasonable cost to adequately fund and maintain their current and future capital needs and otherwise meet their service obligations to their customers.

Section VIII of the Regulatory Conditions addresses the risks and concerns related to corporate governance and ring-fencing issues arising from the merger. These Regulatory Conditions are intended to ensure the continued viability of DEC, DEP and Piedmont and to insulate and protect DEC, DEP and Piedmont, and their North Carolina retail ratepayers from the business and financial risks of Duke Energy and the affiliates within the Duke Energy holding company system, including the protection of utility assets from liabilities of affiliates.

"Ring-fencing" can be defined as the legal walling off of certain assets or liabilities within a corporate system, including the creation of a new subsidiary to protect (i.e., ring-fence) specific assets from creditors. Ring-fencing measures are used to insulate a regulated utility from the potentially riskier activities of unregulated affiliates. From a debt rating agency perspective, ring-fencing mechanisms are techniques used to isolate the credit risks of one company within an affiliated group from the risks of other companies within that group. Concurrent use of numerous ring-fencing measures, including regulatory, financial, structural, and operational restrictions, is considered to be the most effective way to separate risk.

The Settlement, which includes the Regulatory Conditions, requires the Applicants to implement the techniques of corporate governance and ring-fencing set forth in Section VIII of the Regulatory Conditions. For example, Regulatory Condition No. 8.1 requires DEC, DEP and Piedmont to manage their respective businesses so as to maintain an investment grade debt rating on all of their rated debt issuances with all of the debt rating agencies. If the debt rating of either DEC, DEP or Piedmont falls to the lowest level still considered investment grade at the time, a written notice by DEC, DEP or Piedmont must be filed with the Commission and provided to the Public Staff within five days, along with an explanation as to why the downgrade occurred. Furthermore, within 45 days of such notice, DEC, DEP or Piedmont are required to provide the Commission and the Public Staff with a specific plan for maintaining, improving and returning its debt rating to investment grade. The Commission, after notice and hearing, may then take whatever action it deems necessary, consistent with North Carolina law, to protect the interests of DEC's, DEP's or Piedmont's North Carolina retail ratepayers in the continuation of adequate and reliable service at just and reasonable rates. Another example is Regulatory Condition No. 8.2, which limits DEC's, DEP's and Piedmont's cumulative distributions paid to Duke Energy subsequent to the merger to (a) the amount of retained earnings on the day prior to the closure of the merger, plus (b) any future

earnings recorded by DEC, DEP and Piedmont subsequent to the merger. In addition, Regulatory Condition 8.2 also holds DEC's, DEP's and Piedmont's customers harmless, through DEC's, DEP's and Piedmont's next general rate cases, against any potential increase in costs associated with a debt downgrade attributable to the merger.

The Commission, therefore, finds and concludes that the Regulatory Conditions effectively address as much as reasonably possible potential risks and concerns related to corporate governance and ring-fencing issues arising from the merger by ensuring the continued viability of DEC, DEP and Piedmont, and insulating and protecting DEC, DEP, Piedmont, and their retail ratepayers from the business and financial risks of Duke Energy and the affiliates within the Duke Energy holding company system, including the protection of utility assets from the liabilities of affiliates.

The purpose of Section IX of the Regulatory Conditions is to ensure that the Commission receives sufficient notice to exercise its lawful authority over proposed mergers, acquisitions, and other business combinations involving Duke Energy, DEC, DEP, Piedmont, other affiliates, or the non-public utility operation. Regulatory Condition No. 9.1 provides for Commission approval of future proposed mergers by DEC, DEP or Piedmont. Regulatory Condition No. 9.2 requires that advance notification be filed with the Commission at least 90 days prior to the proposed closing date for the proposed merger, acquisition, or other business combination that is believed not to have an effect on DEC's, DEP's or Piedmont's rates or service, but which involves Duke Energy, other affiliates, or the non-public utility operations and which has a transaction value exceeding $1.5 billion. Any interested party may file comments within 45 days of the filing of the advance notification, and, if timely comments are filed, the Public Staff is required to place the matter on a Commission Staff Conference agenda and recommend how the Commission should proceed. This condition further provides that, if the Commission determines that the merger, acquisition, or other business combination requires approval, an order shall be issued requiring the filing of an application, and no closing can occur until and unless the Commission approves the proposed merger, acquisition, or business combination.

The Commission, therefore, finds and concludes that the Regulatory Conditions will effectively enable the Commission to exercise its jurisdiction over business combinations involving Duke Energy or other members of the Duke Energy holding company structure following the merger by ensuring that the Commission receives sufficient notice to exercise its lawful authority over proposed mergers, acquisitions, and other business combinations involving Duke Energy, DEC, DEP, Piedmont, other affiliates, or the nonpublic utility operations of DEC, DEP and Piedmont.

The Regulatory Conditions in Section X are intended to ensure that the Commission receives adequate notice of, and opportunity to review and take such lawful action as is necessary and appropriate with respect to changes to the structure and organization of Duke Energy, DEC, DEP, Piedmont, and other affiliates, and nonpublic utility operations of DEC, DEP and Piedmont as they may affect North Carolina retail ratepayers.

Regulatory Condition No. 10.1 provides that DEC, DEP and Piedmont are required to file notice with the Commission 30 days prior to the initial transfer or any subsequent transfer of any services, functions, departments, employees, rights, obligations, assets; or liabilities from DEC, DEP or Piedmont to Duke Energy Business Services, LLC (DEBS), Duke Energy, another affiliate, or a nonpublic utility operation that (a) involves services, functions, departments, employees, rights, obligations, assets; or liabilities other than those of a governance or corporate nature that traditionally have been provided by a service company, or (b) potentially would have a significant effect on DEC's, DEP's or Piedmont's public utility operations.

Regulatory Condition No. 10.2 provides that, upon request, DEC, DEP and Piedmont shall meet and consult with, and provide requested relevant data to, the Public Staff regarding plans for significant changes in DEC's, DEP's, Piedmont's or Duke Energy's organization, structure and activities; the expected or potential impact of such changes on DEC's, DEP's or Piedmont's retail rates, operations and service; and proposals for assuring that such plans do not adversely affect DEC's, DEP's or Piedmont's retail customers. To the extent that proposed significant changes are planned for the organization, structure, or activities of an affiliate or nonpublic utility operation and such proposed changes are likely to have an adverse impact on DEC's, DEP's or Piedmont's retail customers, then DEC's, DEP's and Piedmont's plans and proposals for assuring that those plans do not adversely affect those customers must be included in these meetings. DEC, DEP and Piedmont shall inform the Public Staff promptly of any such events and changes.

The Commission finds and concludes that the Regulatory Conditions effectively address risks and concerns related to structure and organization arising from the merger as much as reasonably possible by ensuring that the Commission will receive adequate notice of, and an opportunity to review and take such lawful action as is necessary and appropriate with respect to, changes to the structure and organization of Duke Energy, DEC, DEP, Piedmont, and other affiliates, and nonpublic utility operations of DEC, DEP and Piedmont as they may affect North Carolina retail ratepayers.

The Applicants state in the application that the proposed merger in no way diminishes the Commission's authority to regulate the service quality of Piedmont. Section XI of the Regulatory Conditions attached to the Stipulation contains ten separate provisions that are intended to ensure that Piedmont continues to implement and further their commitment to providing superior utility service by meeting recognized service quality indices and implementing the best practices of each other and their utility affiliates to the extent reasonably practicable. As applicable to Piedmont, these provisions include overall service quality, best practices, right-of-way maintenance expenditures and clearance practices, customer access to service representatives and other services, call center operations, customer surveys, and regular meetings with the Public Staff on matters related to service quality.

In addition, Applicant witness Yoho testified that Piedmont is committed to continuing to maintain a high level of reliable and quality service to its customers after the merger.

The Commission finds and concludes that the Commission's continuing regulatory authority and procedures and the Regulatory Conditions will effectively ensure that Piedmont maintains a strong commitment to customer service after the merger.

Section XII of the Regulatory Conditions is intended to ensure that DEC's, DEP's and Piedmont's North Carolina retail ratepayers do not bear any additional tax costs as a result of the merger and that they receive an appropriate share of any tax benefits associated with the service company affiliates, as defined in Section I of the Regulatory Conditions.

Regulatory Condition No. 12.1 provides that under any tax sharing agreement DEC, DEP and Piedmont will not seek to recover from their North Carolina retail ratepayers any tax cost that exceeds DEC's, DEP's or Piedmont's tax liability calculated as if DEC, DEP and Piedmont were stand-alone taxable entities for tax purposes.

Regulatory Condition No. 12.2 provides that the appropriate portion of any income tax benefits associated with DEBS will accrue to the North Carolina retail operations of DEC, DEP and Piedmont for regulatory accounting, reporting, and ratemaking purposes.

The Commission finds and concludes that Regulatory Condition Nos. 12.1 and 12.2 will effectively ensure as much as reasonably possible that DEC's, DEP's and Piedmont's North Carolina retail ratepayers (a) are protected from any adverse effects of a tax sharing agreement, and (b) will receive an appropriate portion of income tax benefits associated with DEBS.

Section XIII of the Regulatory Conditions provides procedures for the implementation of conditions requiring advance notices and other filings arising from the merger. In particular, Regulatory Condition No. 13.1 provides detailed procedures and designated Sub dockets for filings pursuant to the Regulatory Conditions that are not subject to the advance notice provisions of Regulatory Condition No. 13.2. This Regulatory Condition provides that filings related to (a) affiliate matters required by Regulatory Condition Nos. 5.4, 5.5, 5.6, 5.7, and 5.23 and the filing permitted by Regulatory Condition No. 5.3 shall be made by DEC, DEP and Piedmont in Sub 986A and Sub 998A, respectively; (b) financings required by Regulatory Condition No. 7.6, and the filings required by Regulatory Condition Nos. 8.5, 8.6, 8.9, 8.10 and 8.11 shall be made by DEC, DEP and Piedmont in Sub 986B and Sub 998B, respectively; (c) compliance filings required by Regulatory Condition Nos. 3.1(d) and 14.4 and filings required by Sections III.A.2(l), III.A.3(e), (f), and (g), III.D.5, and III.D.8 of the Code of Conduct shall be made in Sub 986C and Sub 998C; (d) the independent audits required by Regulatory Condition No. 5.8 shall be made in Sub 986D; and (e) orders and filings with the FERC, as required by Regulatory Condition Nos. 3.1(d), 3.11 and 5.13 shall be made by DEC, DEP and Piedmont in Sub 986E and Sub 998E, respectively.

Regulatory Condition No. 13.2 provides that advance notices filed pursuant to Regulatory Condition Nos. 3.1(c), 3.3(b), 3.7(c), 3.10(c), 4.2, 5.3, 8.8, and 10.1 shall be assigned a new, separate Sub docket and imposes detailed requirements and procedures for processing such notices.

The Commission, therefore, finds and concludes that Section XIII of the Regulatory Conditions provides appropriate and effective procedures for the implementation of conditions requiring advance notices and other filings arising from the merger.

The purpose of Section XIV of the Regulatory Conditions is to ensure that Duke Energy, DEC, DEP, Piedmont, and all other affiliates establish and maintain the structures and processes necessary to fulfill the commitments expressed in the Regulatory Conditions and the Code of Conduct in a timely, consistent and effective manner.

Regulatory Condition No. 14.1 requires Duke Energy, DEC, DEP, Piedmont and all other affiliates to devote sufficient resources to the creation, monitoring and ongoing improvement of effective internal compliance programs to ensure compliance with the Regulatory Conditions and the Code of Conduct. It further requires them to take a proactive approach toward correcting any violations and reporting them to the Commission, including the implementation of systems and protocols for monitoring, identifying, and correcting possible violations, a management culture that encourages compliance among all personnel, and the tools and training sufficient to enable employees to comply with Commission requirements.

Regulatory Condition No. 14.2 requires DEC, DEP and Piedmont to designate a chief compliance officer who will be responsible for compliance with the Regulatory Conditions and Code of Conduct. This person's name and contact information must be posted on DEC's, DEP's and Piedmont's Internet Website. Regulatory Condition No. 14.3 requires that annual training be provided by DEC, DEP and Piedmont on the requirements and standards contained within the Regulatory Conditions and Code of Conduct to all of their employees, including service company employees, whose duties in any way may be affected by such requirements and standards.

Regulatory Condition No. 14.4 states that if DEC, DEP or Piedmont discover that a violation of the requirements or standards contained within the Regulatory Conditions and Code of Conduct has occurred, then they are required to file a statement with the Commission describing the circumstances leading to that violation and the mitigating and other steps taken to address the current or any future potential violation.

The Commission, therefore, finds and concludes that the Regulatory Conditions will effectively ensure monitoring and compliance with the Regulatory Conditions and the Code of Conduct by requiring Duke Energy, DEC, DEP, Piedmont, and all other affiliates to establish and maintain the structures and processes necessary to fulfill the commitments expressed in the Regulatory Conditions and the Code of Conduct in a timely, consistent and effective manner. With regard to Findings of Fact Nos. 48-57, the Regulatory Conditions provide the protections noted in each such finding of fact. These protections

include risks related to agreements and transactions between and among DEC, DEP, Piedmont and their affiliates; corporate governance and ring-fencing; financing transactions involving Duke Energy, DEC, DEP or Piedmont, and any other affiliate; the ownership, use, and disposition of assets by DEC, DEP or Piedmont; participation in the secondary transactions market by DEC, DEP and Piedmont; the jurisdiction of the Commission; and filings with federal regulatory agencies. No party has offered evidence contesting these provisions of the Regulatory Conditions or the testimony of the witnesses in support thereof. As a result, the Commission determines that the evidence is sufficient to support these findings of fact and need not be repeated here.

Finally, the purpose of Regulatory Condition XV is to preserve the integrity of utility specific acquisitions of upstream supply and capacity. Section 15.1 requires DEC, DEP and Piedmont to determine the appropriate sources for their interstate pipeline capacity and supply on the basis of the benefits and costs to their respective customers. Section 15.2 specifies that Piedmont shall retain ownership and control of all gas contracts necessary to maintain reliable service to Piedmont’s customers consistent with its best cost gas and capacity procurement methodology.

The Commission, therefore, finds and concludes that these Regulatory Conditions will effectively ensure the continuation of DEC’s DEP’s and Piedmont’s current practices for determining their long-term sources of interstate pipeline capacity and supply.

With regard to all of the Regulatory Conditions approved herein, the Regulatory Conditions are essentially identical to those approved by the Commission in the 2006 merger of Duke Energy and Cinergy Corporation and the 2012 merger of Duke Energy and Progress Energy, Inc. Indeed, in response to questions on cross-examination, Applicants witness Barkley testified that many, if not all, of the Regulatory Conditions are the product of negotiations by various utilities with the Public Staff in prior merger proceedings. Witness Barkley also agreed that for the most part the Regulatory Conditions were adopted to provide protection to the utilities' ratepayers. Thus, the Commission and the Public Staff have 10 years of experience with the application and enforcement of these Regulatory Conditions. The Commission has found them to be effective in protecting ratepayers as much as reasonably possible from the real and potential risks of those mergers. The Commission is, therefore, confident in the ongoing strength of the Regulatory Conditions and their ability to protect Piedmont's ratepayers as much as reasonably possible from the real and potential risks of Piedmont's merger with Duke Energy.

In its post-hearing Brief, NC WARN discusses Carolina Power & Light Company's (CP&L's) prior purchase and sale of North Carolina Natural Gas Company (NCNG), and Duke Energy's prior purchase and sale of Westcoast Energy (Westcoast). NC WARN asserts that Duke Energy might likewise buy Piedmont and sell it a few years later. However, in response to questions on cross-examination, Applicants witness Good explained that Duke Energy's decision to divest Westcoast was based on less convergence in electricity and natural gas by 2006 than had been anticipated. She testified, however, that current changes in market conditions occasioned by shale gas, early retirement of coal

plants, and environmental measures such as the Clean Power Plan have resulted in more convergence of electricity and gas.

With regard to NCNG, NC WARN attempted through cross-examination to present some evidence as to the circumstances surrounding CP&L's purchase and sale of NCNG. However, as NC WARN acknowledges in its Brief, those transactions occurred in 1999 and 2002, respectively. This was long before Duke Energy acquired CP&L (now DEP) in 2012. Therefore, NC WARN's argument has no merit.

In addition, the Commission finds and concludes that witness Good's testimony regarding Duke Energy's divestiture of Westcoast is credible and a reasonable explanation for that transaction. As a result, NC WARN's argument has no merit.

Based on the testimony provided by Public Staff witness Hoard and for the reasons discussed above, the Commission concludes that the Regulatory Conditions safeguard customers as much as reasonably possible from potential adverse impacts of the merger on rates, services and other aspects of the public utility operations of DEC, DEP and Piedmont. Further, even if such adverse impacts are not effectively mitigated by these commitments, the Commission retains full power and authority to address any potential impact from the merger on the ratepayers of DEC, DEP, and Piedmont.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 58-63

The evidence supporting these findings of fact is set forth in the Application, the Public Staff Settlement, including the Regulatory Conditions and Code of Conduct, the testimony of Public Staff witness Hoard, and the Commission's statutory authority over public utilities.

With the merger Application, the Companies filed proposed revisions to the existing DEC/DEP regulatory conditions.[3] Among the proposed changes is a revised Code of Conduct. Applicants proposed that the Code would govern the relationships, activities and transactions between and among the public utility operations of DEC, DEP, and Piedmont, as well as Duke Energy, other affiliates, and the nonpublic utility operations of DEC, DEP and Piedmont.

Public Staff witness Hoard testified that the Code of Conduct, together with the Regulatory Conditions, were developed in order to allocate the cost of goods and services among affiliates in a fair manner, protect ratepayers from overcharges paid by a regulated utility to a non-regulated affiliate, and to prevent cross-subsidization of a non-regulated affiliate by a regulated utility. He testified further that DEC and DEP have developed a cost

[3] The current DEC/DEP Regulatory Conditions were modified by the Commission's Order Approving Revisions to Regulatory Conditions Nos. 7.7 *and* 7.8 issued March 24, 2015, in Docket Nos. E-7, Subs 986 and 986A, and E-2, Subs 998 and 998A, and Order Approving Transfer of Employees and Amendment to Regulatory Condition [No. 5.3] issued November 25, 2015, in Docket Nos. E-7, Sub 986, and E-2, Sub 998.

allocation manual to allocate the costs of common goods and services from Duke Energy's services company to the affiliates, and between or among its utilities. As filed with the Application, the Code of Conduct is organized into seven sections. The Public Staff Settlement would add an eighth section to address competition between gas and electricity.

Section A of the Code discusses Independence and Information Sharing. This section requires Duke Energy, DEC, PEC, Piedmont and other affiliates to operate independently of each other, and sets guidelines and restrictions on the exchange of customer information and confidential systems operation information[4]. The Applicants propose to amend this provision to acknowledge that the Commission has allowed Duke Energy's regulated utilities to purchase services from its own shared services affiliate, Duke Energy Business Services, LLC (DEBS). The merging utilities propose to add a provision stating that they may disclose customer information to state or federal regulatory agencies or courts "to the extent the state or federal regulatory agency or court requires the disclosure and requests the disclosure in writing or by electronic means." This provision is codified as A.2.(f)(iii) in the version of the Code that was agreed to as part of the Settlement with the Public Staff.

The Public Staff Settlement adds new language such that DEC and DEP may provide Customer Information to their respective Nonpublic Utility Operations under the same terms and conditions that apply to the provision of such information to non-affiliates. Customers must authorize the disclosure of their information to third parties. The Settlement version of the Code provides that:

> DEC and DEP may disclose Customer Information to their Nonpublic Utility Operations with Customer consent to the extent necessary for the Nonpublic Utility Operations to provide goods and services to DEC and DEP and upon the written agreement of the Nonpublic Utility Operations to protect the confidentiality of such Customer Information. [Code provision III.2(f)(ii)]

The Commission notes that Piedmont was not included in provision lll.A.2.(d), which requires DEC and DEP to post on their websites some of the Code's provisions that address disclosure of customer information between DEC, DEP and their Nonpublic Utility Operations. This was likely an inadvertent error. In addition, the posting requirement applies to some, but not all, of the disclosure provisions, and it excludes the exceptions that are listed in lll.A.2.(f). The Commission believes that full disclosure of all of the provisions is appropriate and thus will require provision lll.A.2.(d) to be further revised as follows:

> Section lll.A.2~~(a), 2.(b), and 2.(c)~~ shall be permanently posted on DEC's, ~~and~~ DEP's and Piedmont's website(s).

[4] Confidential Systems Operation Information (CSOI) includes DEC and DEP nonpublic information concerning electric generation, transmission, distribution or sales. The merging companies would add to the CSOI definition "information that pertains to Natural Gas Services provided by Piedmont, including but not limited to information concerning transportation, storage, distribution, gas supply, or other similar information."

Section B of the Code addresses "Nondiscrimination." It prohibits the Applicants from giving any preference in pricing or service priority to an affiliate, or requiring the purchase of any goods or services in return for receiving electric service. The version of the Code that was submitted pursuant to the Settlement with the Public Staff adds two provisions to this section of the Code. New provision 10 states that "unless otherwise directed by order [of] the Commission, electric generation shall not receive a priority of use from Piedmont that would supersede or diminish Piedmont's provision of service to its human needs firm residential and commercial customers." New provision 11 provides that Piedmont shall file an annual report with the Commission summarizing all requests for natural gas services made by a non-utility generator, Piedmont's response to the request, and the status of the inquiry.

Section C of the Code addresses "Marketing." It allows joint sales and joint advertising by Duke Energy affiliates subject to restrictions imposed by the Commission, but requires the three utilities to make any such joint marketing opportunities available to third parties. This section of the Code also prohibits the use by an affiliate of the utilities' names and logos unless disclaimers accompany such use. The disclaimers clarify that the utilities/affiliates are separate companies and that the Commission does not regulate Duke Energy.

Section D of the Code address "Transfers of Goods and Services, Transfer Pricing and Cost Allocation." This section sets guidelines for the pricing of goods and services exchanged between affiliates. Provision D.3.(d) allows DEC, DEP and Piedmont to transfer untariffed non-power, non-generation and non-fuel goods to each other or to other Duke Energy affiliates, and to receive transfers of such goods and services from affiliates, at the supplier's "fully distributed cost."[5] The Applicants proposed to add a new provision (e) to specify that "for gas supply transactions, transportation transactions, or both, between DEC and Piedmont or DEP and Piedmont, Piedmont shall provide service to DEC or DEP at the same price and terms that are made available to other similarly situated shippers." In the version of the Code of Conduct that was stipulated among the Applicants and the Public Staff, provision (e) was amended to read:

> All Piedmont deliveries to DEC and DEP pursuant to intrastate negotiated sales or transportation arrangements and combinations of sales and transportation transactions shall be at the same price and terms that are made available to other Shippers having comparable characteristics, such as nature of service (firm or interruptible, sales or transportation), pressure requirements, nature of load (process/heating/electric) [sic] generation, size of load, profile of load (daily, monthly, seasonal, annual), location on Piedmont's system, and costs to serve and rates. Piedmont shall maintain records in sufficient detail to demonstrate compliance with this requirement.

[5] "Fully Distributed Cost" is defined to include all direct and indirect costs, including overheads, and capital costs, incurred in providing goods and services. The definition provides that the cost of capital from the supplying utility's most recent general rate case shall be used to calculate the fully distributed cost of a good or service.

In addition, the Settlement version of the Code of Conduct contains new provisions (f) and (g) that read:

> (f) All gas supply transactions, interstate transportation and storage transactions, and combinations of these transactions, between DEC or DEP and Piedmont shall be at the fair market value for similar transactions between non-affiliated third parties. DEC, DEP, and Piedmont shall maintain records, such as published market price indices, in sufficient detail to demonstrate compliance with this requirement.
>
> (g) All of the margins, also referred to as net compensation, received by Piedmont on secondary market sales to DEC and DEP shall be recorded in Piedmont's Deferred Gas Cost Accounts and shall flow through those accounts for the benefit of ratepayers. None of the margins ... shall be included in the secondary market transactions subject to the sharing mechanism ... approved by the Commission in its Order Approving Stipulation, dated December 22, 1985, in Docket No. G-100, Sub 67.[6]

Provision D.4 and D.6 provide that charges for shared services and all permitted transactions among the affiliates shall be allocated to the affiliated utilities in accordance with cost allocation manuals that are filed with the Commission.

Provision D.5 provides that Duke Energy's affiliated utilities may "capture economies-of-scale in joint purchases of goods and services" as well as coal and natural gas if the joint purchases result in cost savings for customers. The Applicants propose a new provision in this section so that joint purchases of electricity or ancillary services can be made pursuant "to a Commission-approved contract or service agreement."

Provision D.8 provides that trade secrets shall not be transferred from the three North Carolina utilities to Duke Energy or other affiliates without just compensation and notice to the Commission. Pursuant to the Code, trade secrets may be transferred among the three North Carolina utilities without advance notice. However, Provision D.9 provides that DEC, DEP and Piedmont shall receive compensation from Duke Energy or other affiliates for intangible benefits, if appropriate.

Section E, "Regulatory Oversight," reiterates that G.S. 62-153 will continue to apply to all transactions between DEC, DEP, Piedmont, Duke Energy and other affiliates. This statute requires all public utilities to file with the Commission any contract with any affiliate, and the Commission may disapprove such a contract if it is found to be unjust or unreasonable. Further, the books and records of the Applicants and their affiliates will be open for examination by the Commission or the Public Staff. The Applicants propose to add a new provision E(3) which provides that DEC or DEP shall file a report with their

[6] In the Matter of Accounting for Secondary Market Transactions By Natural Gas Local Distribution Companies.

annual fuel cost recovery rider demonstrating that any gas services purchased from Piedmont (except those provided under Commission-approved contracts) were prudent and reasonably priced.

Section F is entitled “Utility Billing Format” and provides that if customers receive bills for a variety of services such bills shall clearly separate the electric service charges from the gas service charges. In addition, the bill shall clearly state that a customer’s failure to pay for one utility service will not cause termination of their other utility service.

Section G of the Code provides a “Complaint Procedure” for resolving complaints that arise due to the relationship of the three utilities with Duke Energy and other affiliates.

The Settlement with the Public Staff would add a new Section H entitled “Natural Gas/Electricity Competition.” In part, it states as follows:

> DEC, DEP and Piedmont shall continue to compete against all energy providers, including each other, to serve those retail customer energy needs that can be legally and profitably served by both electricity and natural gas. The competition between DEC or DEP and Piedmont shall be at a level that is no less than that which existed prior to the Merger. Without limitation as to the full range of potential competitive activity, DEC, DEP and Piedmont shall maintain the following minimum standards:

Further, as fully discussed earlier, Section III.H. includes specific provisions that require Piedmont to make all reasonable efforts to extend the availability of natural gas to as many new customers as possible, at a minimum applying the same standards and criteria as it applied before the merger. Moreover, in determining where and when to extend natural gas service, Piedmont will be required to make decisions in accordance with the best interests of Piedmont, rather than the best interests of DEC or DEP.

In the Public Staff Settlement, the Applicants and the Public Staff agreed that the Regulatory Conditions, including the Code of Conduct, represent commitments by the Applicants as a precondition of approval by the Commission of the Application for merger. The stipulated version of these documents, as described above, were attached to the Public Staff Settlement with a statement that they are intended to be incorporated into any order by the Commission approving the merger.

The Commission has reviewed the Regulatory Conditions, including the Code of Conduct, and finds and concludes that they are significant commitments by the Applicants to provide ongoing protection to ratepayers from possible costs and risks of the proposed merger.

Also applicable is G.S. 62-138, the requirement to obtain Commission approval over service contracts; G.S. 62-140, the prohibition against discrimination; and, as discussed previously, G.S. 62-153, which requires the Applicants to file affiliated contracts

and to obtain approval for affiliated service contracts. Each of these statutory provisions either prohibits or mandates utility conduct for the purpose of assuring that rates charged to customers for utility services are just and reasonable.

The Commission has carefully reviewed and considered all of the evidence set forth above and finds it to be credible.

In its post-hearing Brief, NC WARN contends that the provisions of the Regulatory Conditions and Code of Conduct governing affiliate transactions are vague and without enforcement mechanisms. In particular, NC WARN questions how the Commission will determine the "fair market value" of natural gas sold by Piedmont to DEC and DEP. It asserts that the competitiveness of the natural gas market will become a vague notion when there are only two main large local distribution companies (LDCs) in North Carolina, and Duke Energy owns one of them.

The Commission notes that the Code of Conduct defines "market value" as "The price at which property, goods, or services would change hands in an arm's length transaction between a buyer and a seller without any compulsion to engage in a transaction, and both having reasonable knowledge of the relevant facts." See Code of Conduct, Sec. I, at 2. This is a very standard definition of market value, one that the courts and the Commission have worked with for many years. In addition, it appears that NC WARN has a misconception as to how the market for natural gas operates and the choices that electric generating plants have in acquiring gas. Although DEC and DEP will need the services of Piedmont and Public Service of North Carolina, Inc. (PSNC) to transport their gas, DEC and DEP can purchase their gas from any source they choose. Moreover, there are many marketers and sellers operating in the natural gas sales market. Thus, the Commission will not be restricted to the gas prices being charged by Piedmont and PSNC if the Commission needs to determine what the market value of a quantity of gas was at the time that it was sold by Piedmont to DEC or DEP. With respect to the enforcement mechanism, pursuant to G.S. 62-153, the Commission can use its authority to disapprove any proposed affiliate contract that it determines to be unjust or unreasonable. As a result, NC WARN's arguments have no merit.

No party has offered evidence contesting the provisions of the Code of Conduct or the testimony of the witnesses in support thereof, other than the previously discussed concerns expressed by NC WARN, and those of FPWC with regard to Code of Conduct Section III.D.3.(e). FPWC's concerns are addressed later in this Order. As a result, the Commission determines that there is substantial credible evidence to support the findings of fact regarding the Code of Conduct.

Further, the Code of Conduct is essentially identical to the Code approved by the Commission in the 2006 merger of Duke Energy and Cinergy Corporation and the 2012 merger of Duke Energy and Progress Energy, Inc. Thus, the Commission and the Public Staff have 10 years of experience with the application and enforcement of the Code of Conduct. The Commission has found the Code of Conduct to be effective in protecting ratepayers as much as reasonably possible from the real and potential risks of those

mergers. The Commission is, therefore, confident in the ongoing strength of the Code of Conduct and its ability to protect Piedmont's ratepayers as much as reasonably possible from the real and potential risks of Piedmont's merger with Duke Energy.

Based on the foregoing, the Commission finds and concludes that potential risks of the merger to ratepayers have been effectively mitigated as much as reasonably possible by the commitments of the Applicants in the Application, as well as the testimony of Applicants witnesses and the Public Staff Settlement, including the Regulatory Conditions and Code of Conduct. Further, even if such risks are not effectively mitigated by these commitments, the Commission retains full power and authority to address any potential impact from the merger on the ratepayers of DEC, DEP, and Piedmont.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 64

The evidence supporting this finding of fact is contained in the Market Power Analysis, the testimony of Applicants witnesses Reitzes and Barkley, the testimony of Public Staff witness Hoard, and the Public Staff Settlement, including the stipulated Regulatory Conditions and Code of Conduct, and the Commission's statutory and inherent regulatory authority over public utilities.

In the M-100, Sub 129 Order, the Commission required natural gas and electric utilities proposing to engage in a merger to file a market power analysis with their merger approval petitions. The purpose of this requirement was to allow the Commission to evaluate the impact of the proposed merger on competitive and regulated markets and to assess whether any potential anticompetitive effects might flow from the proposed merger transaction.

Some of the public witness testimony and consumer statements of position filed in this proceeding reflect concerns about the possibility of enhanced “monopoly” market power resulting from the proposed merger and the potential for self-dealing or anticompetitive behavior by the merged companies.

The Commission has carefully reviewed the record in this proceeding related to these issues and finds no substantial evidence that would support the conclusion that the proposed merger will result in materially increased market or monopoly power, particularly when viewed in the light of the restrictions and requirements set forth in the stipulated Regulatory Conditions and Code of Conduct.

In this regard, the Commission has reviewed the HHI study performed by the Brattle Group, which indicates only a slightly increased concentration in market power of the combined Duke Energy entities as a result of the merger. Market Power Analysis, Technical Appendix B, Table 4. Further, the Market Power Analysis found that “Duke and Piedmont lack both the ability and the incentive to raise prices or restrict output as a result of the Transaction, due to economic and regulatory conditions in the electric and gas markets in North Carolina. . . [and] that the Transaction raises no basis for competitive concerns” with regard to the three areas studied, which were “(i) ‘inter-fuel’ competition

between gas and electricity as alternative sources of energy; (ii) ownership of gas transmission rights by each of the merging parties and any potential effect of the Transaction on the price of released gas transportation capacity and/or delivered gas in North Carolina; and (iii) the potential effects of the Transaction on third-party generation." Market Power Analysis at p. 1. These findings are supported, as the Brattle Group notes, by the Federal Trade Commission's early termination of its 30-day preliminary antitrust review of this merger. Market Power Analysis at p. 1. Significantly, the Market Power Analysis constitutes the only substantive evidence in the record of this proceeding on the issue of market or monopoly power, and the Commission finds the analysis contained in the Market Power Analysis credible and convincing.

With respect to the slightly different and more speculative concern voiced by some public witnesses (or consumer statements of position) to the effect that the merger will result in a "mega-monopoly," the Commission notes that each of DEC, DEP and Piedmont is currently a monopoly provider of utility services operating within its exclusive service area. This model for the provision of electric and natural gas service by public utilities is the long-standing norm both in North Carolina and nationally and is premised on the notion that the capital intensive nature of providing public utility services makes a regulated monopoly the preferred form of service rather than competing providers operating in a free market with a risk of duplicative costs and higher rates. In this case, the status of DEC, DEP, and Piedmont as separate and distinct regulated monopoly providers of utility services will not change as a result of the merger. The most that can be said is that the family of Duke Energy subsidiary utilities will increase in size as a result of the merger, but there is no evidence that this will translate into enhanced power to charge higher rates or force customers to accept lower standards of service – both of which are entirely within the jurisdictional authority of this Commission to regulate. In short, the manner in which DEC, DEP, and Piedmont provide service to the public – at least insofar as it relates to the exercise of "monopoly" service rights and regulation by this Commission – will not change as a result of the merger.

With respect to the possibility of self-dealing or anti-competitive conduct by and among DEC, DEP, and Piedmont after the merger, that risk is effectively mitigated by the stipulated Regulatory Conditions and Code of Conduct attached to the Public Staff Settlement and by the ongoing authority of this Commission over the rates, terms, and conditions of service offered by each of these utilities. In this regard, the Commission notes that the stipulated Regulatory Conditions and Code of Conduct are updated versions of documents approved in prior merger proceedings involving Duke Energy, DEC, and DEP, and, for the most part, simply add Piedmont to the commitments made by the merging entities and adjust the provisions thereof to account for the addition of a natural gas distribution company to the Duke Energy family of regulated utilities. The Commission's experience with these conditions and Code of Conduct provisions is that they have functioned effectively to protect ratepayers in prior Duke Energy merger transactions, and the Commission is confident they will operate just as effectively in this instance.

The Regulatory Conditions and Code of Conduct, as set forth in the Public Staff Settlement and as explained by Public Staff witness Hoard in his testimony, address

several areas in which self-dealing or anticompetitive behavior by DEC, DEP, and Piedmont could arise. First, the affiliated transaction rules set forth in the stipulated Regulatory Conditions and Code of Conduct are designed to "(1) fairly allocate the cost of common goods and services among affiliates, (2) protect the ratepayers of utilities from overcharges by non-regulated affiliates, and (3) prevent cross-subsidization of non-regulated affiliates by utility affiliates." (T Vol. 3, pp. 83-84) In addition, provisions have been added to the stipulated Regulatory Conditions and Code of Conduct to address priority of natural gas services to electric generation facilities in order to protect natural gas customers, separation of gas and electric operations, potential discrimination against gas-fired non-utility generators, the provision of services/sales of natural gas to DEC and DEP by Piedmont, and the preservation of competition between Piedmont as a natural gas provider and DEC/DEP as electric providers. According to witness Hoard, the Public Staff believes that these provisions appropriately address concerns raised by the proposed merger. At the hearing of this matter, counsel for FPWC asked several witnesses about the potential for future discrimination against FPWC by Piedmont in the provision of natural gas transportation services which could impact its ability to compete in the wholesale generation market.[7] As the Commission understands it, FPWC is currently served under an interruptible transportation service special contract arrangement which was agreed to by FPWC and North Carolina Natural Gas (predecessor to Piedmont) and has no current issues with service under that contract. It is also the Commission's understanding that FPWC's Butler Warner generation facilities are currently dispatched by DEP under a tolling agreement that extends until at least 2019. Market Power Analysis, Table 10. FPWC's concern appears to be that at some future point in time, as a consequence of the merger, Piedmont could be incentivized to unduly discriminate against FPWC in the provision of natural gas transportation service.

The Commission has fully considered this potential risk of the merger but notes that FPWC does not assert, and the evidence does not support, current discriminatory treatment by Piedmont as to FPWC. Further, the following mitigating factors would provide protection to FPWC if it were to find itself competing with DEC or DEP in the wholesale generation market at some point in the future. First, as has been noted previously, the Commission has full jurisdiction and supervisory authority over the rates, terms, and conditions of service provided by Piedmont, including any service provided to FPWC. As such, any proposed rate for natural gas sales or transportation service to be provided to FPWC would be subject to the direct scrutiny and review of the Commission and the Public Staff. Second, under the provisions of G.S. 62-140(a):

> No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service.

62-140(a) (2015).

[7] FPWC presented no witness, however.

Third, under Section III.B.1. of the stipulated Code of Conduct attached to the Public Staff Settlement, Piedmont and its employees are prohibited from unduly discriminating against non-affiliated entities in the provision of utility services. Each of these factors mitigates against the likelihood that FPWC's concerns will be manifested.

At the hearing and in its prior Motion to Compel, FPWC raised the issue of whether its facilities would be considered to be "similarly situated"[8] with those of DEC or DEP. This issue was addressed at the hearing by reference to Section III.D.3.(e) of the stipulated Code of Conduct, which does not use the term "similarly situated" and provides as follows:

> All Piedmont deliveries to DEC and DEP pursuant to intrastate negotiated sales or transportation arrangements and combinations of sales and transportation transactions shall be at the same price and terms that are made available to other Shippers having comparable characteristics, such as nature of service (firm or interruptible, sales or transportation), pressure requirements, nature of load (process/heating/electric generation), size of load, profile of load (daily, monthly, seasonal, annual), location on Piedmont's system, and costs to serve and rates. Piedmont shall maintain records in sufficient detail to demonstrate compliance with this requirement.

FPWC, however, raised the further issue of whether it would be considered a "Shipper," which the Code of Conduct defines as "[a] Non-affiliated Gas Market, a municipal gas customer, or an end user of gas. FPWC then raised the issue of whether the Butler- Warner facilities would be considered to have characteristics comparable to those of DEC and DEP.

On August 25, 2016, FPWC filed a post-hearing Brief. In summary, FPWC contends that after the proposed merger with Duke Energy, DEC, DEP and Piedmont will have a financial incentive to discriminate against FPWC in favor of DEP and DEC because such discrimination will allow DEP and DEC to succeed in competing with FPWC in the wholesale electric market. According to FPWC, the discrimination will be effectuated by increasing the gas delivery costs of FPWC's gas-fired generation in relation to the costs charged to DEP and DEC. FPWC notes that the Applicants have revised Code of Conduct Section III.D.3(e), but FPWC submits that the revised version is deficient for four primary reasons: (1) The standard is applicable to Shippers rather than generating units of Shippers; (2) even with the articulation of several "factors," the legal standard set forth in the Code of Conduct is overly vague; (3) since the negotiated rate agreement with each shipper and any supporting documents are filed confidentially, shippers have no knowledge of the negotiated rates made available to other shippers; and (4) reliance on the Code of Conduct (or, in the alternative, G.S. 62-140) to prevent undue discrimination will shift the burden of proof to FPWC or any other shipper that may receive unfair treatment by

[8] Section III.D3(e) of the proposed Code of Conduct filed as Exhibit D to the Application provides:

> For gas supply transactions, transportation transactions, or both, between DEC and Piedmont or DEP and Piedmont, Piedmont shall provide service to DEC or DEP at the same price and terms that are made available to other similarly situated shippers.

Piedmont. See State ex rel. Utilities Comm. v. Edmisten, 314 N.C. 122, 151, 333 S.E.2d 453, 471 (1985), vacated Nantahala Power & Light Co. v. Thornburg, 477 U.S. 902, 106 S.Ct. 3268, 91 L.Ed.2d 559 (1986).

In addition, FPWC asserts that witness Reitzes' conclusions about the risk of anti-competitive conduct are both: (1) inadequate because he failed to assess the potential anti-competitive impact of the merger when the Butler-Warner facility is no longer subject to a "Duke tolling agreement," which is scheduled to occur in a few years according to his own report; and (2) inaccurate because he ignored the fact that Butler-Warner's combined cycle capacity is capable of serving as an intermediate generating unit rather than peaking unit, which therefore provides a material incentive to increase the cost of gas delivered to FPWC's Butler-Warner facility.

Therefore, FPWC contends that Section III.D.3(e) of the Code of Conduct should be modified (1) by clarifying the definition of "Shipper" to allow the determination of comparability and discrimination to be made at the generating unit level for the Shippers and the Applicants; (2) to require Piedmont to utilize a uniform model to develop negotiated rates; and (3) to require Piedmont to prepare a comprehensive narrative report and quantification for each negotiated rate for which Commission approval is sought.

FPWC contends that the foregoing modifications would provide a viable enforcement mechanism if: (1) Piedmont is required to certify to the Commission whether the uniform model was used to set negotiated rates rather than simply maintain confidential supporting documentation; and (2) before any negotiated rate is approved, the Public Staff is required to certify to the Commission that the Public Staff has reviewed the Piedmont report and supporting information and confirmed the use of the uniform model and the same rate of return on common equity and the validity of the incremental cost inputs and their derivation and the output of the model. If Piedmont and the Public Staff publicly file the requisite certifications, FPWC believes it would be reasonable to impose the burden of proof on a shipper that wishes to challenge a negotiated rate as inconsistent with Section III.D.3(e) or unduly discriminatory pursuant to G.S. 62-140. However, if Piedmont deviates from the use of the uniform model or the derivation of incremental costs, or the Public Staff fails to provide the requisite comprehensive certification, FPWC or another shipper should be entitled to bring an action challenging the proposed negotiated rates as prohibited by the Code of Conduct or G.S. 62-140 in which Piedmont should bear the burden of proving that the negotiated rate is not unduly discriminatory.

With regard to FPWC's proposal that the definition of Shipper be modified, questions were raised by FPWC as to whether the Code of Conduct's provisions would be applicable just to FPWC as the Shipper, or whether an FPWC generating plant, such as the Butler-Warner facility, would be protected by Section III.D.3(e). Applicants witness Barkley made clear that "Shipper" under the Code of Conduct, does apply to a generating unit. Therefore, the Code of Conduct would apply to negotiated rates provided to a FPWC generating unit compared to those provided to DEC and DEP, and differences in rates

would have to be supported. Therefore, the Commission finds that no modification of the definition is necessary to address FPWC's concerns.

The FPWC's second request was to require Piedmont to utilize a uniform model to develop negotiated rates. Applicants witness Barkley testified that a negotiated rate, "would be based on a cost of service base model," (T Vol. 3, p. 26) He discussed generally the factors that Piedmont considers in the model that it uses to establish a negotiated rate. He also discussed factors that could cause costs to vary between customers, including both costs and load characteristics. Witness Barkley testified that Piedmont's evaluation of a negotiated rate for an individual customer was a "mini version of what happens in a general rate case," with Piedmont seeking to earn a return on investment after recovering costs that the customer causes Piedmont to incur. He agreed that Piedmont's model is, "common to all negotiated rate agreements, but the inputs are specific to the customer or the generating station," adding, "It's a consistent process, but two dissimilar customers would have very dissimilar inputs." (T Vol. 3, p. 30) FPWC was not explicit in what it meant by a "uniform model," or how such a model would differ from the cost of service model that witness Barkley testified that Piedmont uses. The Commission finds that Piedmont's use of a cost of service model as described by witness Barkley is appropriate to fairly determine a negotiated rate.

Witness Barkley was asked how a customer would know that it was being discriminated against. He responded that

> the customer is not going to be given all the details on another customer's arrangement because then the entire process is open to the entire world and the confidential discussions you had with that counterparty can't be shared with the customer that you're representing in your question. (T Vol. 3, p. 32)

Witness Barkley added that a customer, "will have to obtain the best deal that it can get for itself using its negotiating abilities, and then if it feels like it's being discriminated against, it's going to have to raise it, I believe, here at this Commission." (T Vol. 3, p. 32) The Commission notes that any future dispute in this regard would be subject to an examination of the factors set forth in the Code of Conduct, the Public Staff's review of a proposed service contract, and the Commission's ultimate scrutiny in a complaint proceeding. The Commission is confident that its complaint authority and procedures are adequate to address future discrimination claims, if and when they are asserted by FPWC and other shippers. As a result, the Commission declines to revise its procedures and burden of proof guidelines in the manner requested by FPWC. With regard to FPWC's request for a narrative report, witness Barkley testified that, while Piedmont did not produce a report, it would maintain the documentation to support the rate for the duration of the contract, and that documentation would be subject to review by the Public Staff and approval by the Commission. Whether a formal report is produced, or Piedmont simply maintains documentation, the Commission expects Piedmont to be able to fully explain and support the derivation of negotiated rates.

The Commission has carefully reviewed and considered all of the evidence set forth above describing the potential of the proposed merger to result in increased market or monopoly power and finds it to be credible.

Based on the foregoing evidence, the Commission concludes that the proposed merger will not result in materially increased market or monopoly power to the detriment of customers. The Commission's conclusion is further supported by the restrictions and requirements set forth in the Regulatory Conditions and Code of Conduct designed to deter and prohibit self-dealing and anti-competitive behavior as well as the Commission's continuing regulatory jurisdiction over Piedmont, DEC and DEP.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 65-66

The evidence supporting these findings of fact is set forth in the Application, the Cost-Benefit Analysis, the Public Staff Settlement, the CUCA Agreement, the testimony of public witnesses, the testimony of Applicants witnesses Good, Skains, Young, Yoho, and Barkley, the testimony of Public Staff witness Hoard, and the Commission's statutory and inherent supervisory authority.

The following is a summary of the testimony provided by each of the public witnesses in this docket.

Ruth Zalph, from Chapel Hill, testified regarding her concerns for additional gas plants that Duke would need to build; that the spirit and reality of marketplace competition would be stifled; the impact on our environment, and the creation of a mega-monopoly with tremendous power benefiting only Duke and its shareholders. She would not like to see this merger go forward.

John Wagner, from Pittsboro, expressed concerns regarding Duke becoming an even larger monopoly of electrical energy; the impact that eminent domain will have on some citizens; and that fossil fuels threaten global climate disruptions. He would like for the Commission to rule against this merger.

Dr. Steven Norris, from Fairview, testified that not only is it the law, but the responsibility of the Commission to operate in the public interest. He stated that seven years ago climate change was not as bad as it is today. Carbon emissions have increased and continue to rise, and greenhouse gases largely due to methane being released from fracking have increased, all of which are causing out of control climate change.

Beth Henry, from Charlotte, testified that the Commission's three-prong test is not met by the merger. The merger does not result in sufficient benefits to offset the potential costs and risks. She testified that our climate is getting hotter and more extreme and Duke should not be allowed to double down on dangerous fossil fuels. Due to Duke's size and financial status, giving them more power by approving the merger risks severe harm to North Carolinians.

Catherine Chandler, from Durham, testified that the citizens of North Carolina are already held accountable for uncontrolled decisions and expenses of a runaway monopoly. The public of North Carolina needs the Commission to represent it and not indebt us to two monopolies with the merger of Duke and Piedmont. Consideration should be given to the state's environmental, economic health, and long-term future.

Andrew Hernandez, from Cary, testified that the merging of two enormous monopolies in such a radically streamlined fashion is unheard of. His concern is when the well runs dry, fracking is ushered out as obsolete, pipes leak and maintenance is required, or in the next 10 years when the actual greenhouse gas is being emitted through methane and affects the coast, who is paying for the externality cost of all these different developments.

Clint McSherry, from Durham, testified that he had no intentions to attack Duke or Piedmont for attempting to act in their own best interest, increased profits. He does feel it is borderline negligent of the future of the people of this state, himself as a recent college graduate fighting for his own future, for children and future children; that it is foolish in a sense, negligent in a sense and perhaps even irrational to move forward with a merger that we know will only result in billions of dollars spent furthering a dying industry.

Hope Taylor, from Stem, testified that she objects to the merger as it would intensify the profitability of Duke in an unjustified way and accelerate the construction of gas pipelines, thwart investment in transition to cleaner, more cost-effective and more job creating renewable energies and efficiency. She testified that future pipeline construction, especially in Eastern North Carolina, would have disproportionate impacts on lower income communities, some of them long-time residents, the elderly, people of color including African Americans, Native Americans and the Latino population.

Richard Fireman, from Mars Hill, testified that when the merger is approved by the Commission, Duke Energy will derive most of its profit from building out a natural gas infrastructure that will help feed our state and planet to dangerous and inhospitable levels destroying the society to which human culture is ill adapted. He stated that the Public Staff has failed its mandate to protect the public welfare for both current ratepayers and future generations.

Dr. Steven Sanborn English, from Charlotte, testified that of all the many devastations that earth has suffered, the biggest causes are poor land use and the burning of fossil fuels. For the sake of future generations, the Commission should say no to this merger.

Emily Wilkins, from Durham, testified that maybe other natural sources of energy might be used that are less polluting.

The Commission is cognizant of the risks expressed by public witnesses regarding the size of Duke Energy and the challenges that its increased size creates for the Commission in its duty to regulate the public utility subsidiaries of Duke Energy. In

particular, Duke Energy's increased size makes it more difficult for the Commission and Public Staff to audit and regulate affiliate transactions, cost allocations and financial arrangements. As a result, the Commission gives significant weight to the public witness testimony regarding these concerns.

However, to the extent that the public witnesses' concerns about monopolies revolve around the monopoly status of DEC, DEP and Piedmont, North Carolina has long chosen to serve the electricity and natural gas needs of its residents by authorizing regulated monopoly public utilities to provide those services. The merger of Piedmont with Duke Energy will not change anything about that public policy.

In addition, as previously discussed with regard to NC WARN's testimony, the risks cited by several of the public witnesses – such as methane emissions, climate change and potential gas shortages - are risks that DEC, DEP and Piedmont face today and will continue to face irrespective of whether the merger is consummated. Thus, the testimony regarding these risks is not relevant to the provisions of G.S. 62-111 at issue in this case and, therefore, is not entitled to be given any weight.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 67-69

The evidence supporting these findings of fact is set forth in the Application, the Cost-Benefit Analysis, the Public Staff Settlement, the CUCA Agreement, the EDF Agreement, the testimony of Applicants witnesses Good, Skains, Young, Yoho, and Barkley, the testimony of Public Staff witness Hoard, the Commission's statutory and inherent supervisory authority, and the entire record in this proceeding.

As fully discussed in Findings of Fact and Conclusions Nos. 18-28 and 37-47, the provisions of the Settlement are the product of the give-and-take of settlement negotiations between the Applicants and the Public Staff. As a result, the Settlement reflects the fact that the Applicants agreed to certain provisions that advanced the Public Staff's interests and the Public Staff agreed to other provisions that advanced the Applicants' interests. The end result is that the Settlement strikes a fair balance between the interests of the Applicants and their customers.

In his pre-filed supplemental and rebuttal testimony, Applicants witness Barkley testified that the Settlement provides additional economic benefits and certainty beyond that identified by the Applicants in the Application. Further, he states that the Settlement provides non-economic benefits as part of the Regulatory Conditions and Code of Conduct.

In response to questions on cross-examination, Applicants witness Barkley testified that the settlement negotiations between the Applicants and Public Staff involved numerous face-to-face meetings held in the Wells Conference Room in the Dobbs Building.[9] Witness Barkley testified that the negotiations were extensive because the

[9] The Commission notes that the Dobbs Building, with the Wells Conference Room located on the fifth floor, is a public building used by North Carolina government agencies, including the Public Staff.

parties had very divergent views. He stated that the Public Staff negotiators were tough negotiators, they were effective, and conducted themselves with a great deal of integrity. In addition, witness Barkley testified that he would not find it appropriate to characterize the Settlement as a "backroom deal." Further, he stated that the Commission did not have any involvement in the negotiations between the Applicants and the Public Staff, and that the parties did not inform the Commission on any aspect of the negotiations until the Settlement was filed with the Commission on June 10, 2016.

Many of the benefits to be derived from the merger have been established as a result of the settlements filed in this proceeding. Indeed, many of the requirements of the settlement agreements are requirements that the Commission does not have the authority to impose on Duke Energy, DEC, DEP or Piedmont under the Public Utilities Act. For example, the Commission could not require Piedmont to withdraw its application for deferral of integrity management costs, which costs might total $18.03 million for North Carolina over the next five years. Further, the Commission could not require Piedmont to give its customers a $10 million one-time bill credit by the end of 2016. In addition, the Commission could not require the Applicants to make substantial donations to The Duke Energy Foundation and Piedmont Natural Gas Foundation for four years after the merger, and a substantial contribution to workforce development and low-income energy assistance.

Although no other intervenors joined the Settlement, the only party that expressed opposition to the Settlement is NC WARN. The Commission addressed NC WARN witness Gunter's testimony regarding the funds committed by the Settlement for workforce development and low-income energy assistance in an earlier section of this Order. In addition, the Commission struck the substantive portions of the testimony of NC WARN's witnesses Howard and Hughes as irrelevant to the provisions of G.S. 62-111 at issue in this case, and struck NC WARN's cross-examination on the same subjects for the same reason.

In its post-hearing Brief, NC WARN contends that the Settlement contains a number of provisions that are vague or unreasonable, and lack enforcement mechanisms. First, NC WARN argues that "Duke Energy promises to guarantee North Carolina retail customers will receive their allocable shares of $650 million in total projected fuel and fuel-related cost savings." See NC WARN's Brief, at 19. However, there is no guarantee of $650 million in fuel savings in the Settlement. Rather, the CUCA Agreement guarantees an additional $35 million in fuel savings over and above the fuel savings guaranteed in the Duke/Progress Merger Order. In addition, NC WARN contends that there is no mechanism for calculating fuel savings and ensuring that they are received by ratepayers. This argument has no merit. Applicants witness Barkley testified that for purposes of the CUCA Agreement the amount of fuel savings achieved by DEC and DEP will be measured using the same methodology arising from the JDA and the Duke/Progress Merger Order, as approved by the Commission. In addition, he testified that the mechanism has been used for approximately four years.

NC WARN also complains that Paragraph No.12 of the Settlement stipulates, in essence, that the terms of the Settlement satisfy the requirements for meeting the public

convenience and necessity standard under G.S. 62-111, and should not, by itself, provide the basis for such a conclusion. The Commission agrees and has given the conclusory statement in Paragraph No. 12 of the Settlement no weight.

Further, NC WARN asserts that the Commission should not endorse the "take it or leave it" provision in Paragraph No. 16 of the Settlement. The Commission agrees and has given the statement in Paragraph No. 16 of the Settlement no weight. Indeed, the Commission does not feel the least constrained by such a provision, and has demonstrated that by adding conditions of its own, or rejecting proposed provisions, in prior proceedings. See Order Approving Merger Subject to Regulatory Conditions and Code of Conduct, Docket No. E-7, Sub 795 (2006); and Order Granting General Rate Increase, Docket No. E-7, Sub 989 (2012).

Public witness Fireman's testimony centered on the environmental consequences of what he asserted would be an increase in the use of natural gas by DEC, DEP and Piedmont. In this context, he maintained that the Public Staff failed its mandate to protect the public welfare for both current ratepayers and future generations. Tangentially, this could be construed as questioning the efficacy of the Settlement and the effort of the Public Staff. However, as the Commission has previously concluded, there is no evidence that the merger will cause DEC, DEP or Piedmont to increase their use of natural gas. In addition, the Commission gives significant weight to the benefits and risk protections included in the Settlement, as well as witness Barkley's testimony that the Public Staff was thorough and effective in its role as ratepayer advocate.

The Commission finds and concludes that the Settlement is a reasoned and balanced resolution of the matters that might otherwise be in dispute between the Stipulating Parties in this docket. Further, the Settlement is just and reasonable to all parties in light of the evidence presented and serves the public interest. Therefore, the Commission approves the Settlement in its entirety, with the minor modifications to Code of Conduct Sec. III.A.2.(d) noted earlier herein. Further, based on the substantial ratepayer benefits and protections provided by the Settlement, the Commission concludes that the Settlement is material evidence that is entitled to substantial weight.

With regard to the CUCA Agreement, it too secures a benefit for ratepayers that the Commission does not have the authority to require DEC and DEP to provide, that being a guarantee to their customers that they will receive an additional $35 million in fuel savings. Further, in response to questions during cross-examination, Applicants witness Barkley testified that the merger will not result in quantified fuel cost savings for DEC and DEP. He stated that the guarantee is not linked to any merger efficiencies. As previously noted, witness Barkley also testified that the amount of fuel savings achieved by DEC and DEP will be measured using the same methodology arising from the JDA and the Duke/Progress Merger Order.

To be clear, DEC's and DEP's customers are entitled to all fuel savings that result from the co-ordination of DEC's and DEP's electric generating facilities under the JDA. Further, they are entitled to the guaranteed level of savings approved in the

Duke/Progress Merger Order. However, the CUCA Agreement adds $35 million to that guaranteed amount.

The Commission finds the CUCA Agreement to be a reasoned and balanced resolution that avoids litigation of matters that might otherwise be in dispute between the Applicants and CUCA. Further, the Commission notes the absence of any testimony challenging the benefits provided by the CUCA Agreement. Therefore, the Commission finds and concludes that the CUCA Agreement is just and reasonable to all parties in light of the evidence presented and serves the public interest. As a result, the Commission approves the Agreement in its entirety. Further, based on the substantial ratepayer benefits provided by the Agreement, the Commission concludes that the CUCA Agreement is material evidence that is entitled to substantial weight.

With regard to the EDF Agreement, it requires DEC and DEP to conduct studies of the effectiveness of Integrated Volt Var technology on certain of their operations. These studies will contribute to the potential for both DEC and DEP to utilize voltage reduction technology to reduce peak and non-peak demand on their respective systems, which could potentially reduce costs to customers and emissions associated with peak demand generation, and delay or avoid construction of future generation facilities.

However, unlike the Public Staff Settlement and the CUCA Agreement, the EDF Agreement does not require anything of DEC and DEP beyond that which the Commission can require. Indeed, as referenced in the EDF Agreement, DEP already has in operation a voltage reduction program, Distribution System Demand Response (DSDR) that DEP uses to reduce demand during peak times. The DSDR program was approved by the Commission in June 2009 in Docket No. E-2, Sub 926. Further, in Docket No. E-100, Sub 141, the Commission's ongoing investigation regarding smart grid technology plans, DEC discusses its Integrated Voltage/Volt-Ampere Reactive Control (IVVC) Pre-Scale Deployment pilot project. DEC describes the IVVC as an advanced distribution management system that can reduce system demand by optimizing voltage and reactive power across the distribution grid. DEC states that it is demonstrating the IVVC at seven substations. Further, in the Commission's November 5, 2015 Order Approving Smart Grid Technology Plans, in Ordering Paragraph No. 4, the Commission directed “That DEC, DEP and Dominion shall include in their 2016 SMGTs [Smart Grid Technology Plans] a discussion of the variety of technologies for controlling voltage on the distribution grid as discussed in this Order.” Thus, DEP and DEC already have a significant level of voltage reduction programs in operation.

The Commission finds the EDF Agreement to be a reasoned and balanced resolution that avoids litigation of matters that might otherwise be in dispute between DEC, DEP and EDF. Further, the Commission notes the absence of any testimony challenging the benefits provided by the EDF Agreement. Therefore, the Commission finds and concludes that the EDF Agreement is just and reasonable to all parties in light of the evidence presented and serves the public interest. As a result, the Commission approves the Agreement in its entirety and accepts it as material evidence in this proceeding. However, the Commission also concludes that the EDF Agreement has little

to do with merger savings and ratepayer protection from merger risks. Therefore, based on the limited ratepayer benefits provided by the Agreement, the Commission concludes that the EDF Agreement is entitled to less weight and consideration than other evidence.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 70

The evidence supporting this finding of fact is contained in the Application, the Public Staff Settlement, the Regulatory Conditions and Code of Conduct, the testimony of Applicants witness Yoho and Public Staff witness Hoard, and the Commission's supervisory authority under Chapter 62 of the General Statutes over the rates, terms and conditions of service provided to the public by DEC, DEP and Piedmont. The Commission has carefully reviewed and considered all of the evidence set forth above describing the known and potential benefits of the proposed merger and finds it to be credible.

The legal standard applicable to this proceeding is set forth in G.S. 62-111(a) and requires the Commission to determine whether the proposed merger is "justified by the public convenience and necessity." Upon such finding, the statute instructs that approval of the proposed merger "shall be given."

In prior merger proceedings the Commission has established a three-part test for determining whether a proposed utility merger is justified by the public convenience and necessity. That test is (1) whether the merger would have an adverse impact on the rates and services provided by the merging utilities; (2) whether ratepayers would be protected as much as possible from potential costs and risks of the merger; and (3) whether the merger would result in sufficient benefits to offset potential costs and risks. See Order Approving Merger Subject to Regulatory Conditions and Code of Conduct (Duke/Progress Merger Order), issued June 29, 2012, in Docket Nos. E-2, Sub 998 and E-7, Sub 986, aff'd, In re Duke Energy Corp., 232 N.C. App. 573, 755 S.E.2d 382 (2014). These questions are related to one another and together establish a reasoned framework upon which utility mergers may be evaluated. In making these assessments, the Commission has also examined factors such as whether service quality will be maintained or improved, the extent to which costs can be lowered and rates can be maintained or reduced, and whether effective regulation of the merging utilities will be maintained. See Order Approving Merger and Issuance of Securities, issued April 22, 1997, in Docket No. E-7, Sub 596.

The Commission has made findings of fact regarding the substantial economic and non-economic benefits to be received by ratepayers as a result of the merger. In addition, the Commission notes the absence of any proposal to change rates, terms, or conditions of service for any customer of DEC, DEP, or Piedmont in conjunction with or as a direct result of the proposed merger. This is confirmed in the testimony of Applicants witness Yoho that "the Merger will not cause an increase to customer rates because Piedmont will not be seeking rate relief for the Merger transaction costs," and that "there will be no adverse rate or operational consequence to our customers as a result of this Merger." (T Vol. 2, p. 60) It is also confirmed by Paragraph No. 21 of the Application, which provides that the merger "will not have a net adverse impact on the rates and services of DEC, DEP and Piedmont." Finally, the Cost-Benefit Analysis filed with the Application

indicates that ratepayers will not be charged for merger costs such as the acquisition premium and transaction fees, which, instead, will be absorbed by Duke Energy and Piedmont.

Further, the Commission has made findings of fact that there are a significant number of additional actual and potential benefits that will accrue to the State of North Carolina, to DEC, DEP, and Piedmont, and most importantly, to the ratepayers of DEC, DEP and Piedmont as a result of the proposed merger of Piedmont with Duke Energy. These benefits more than offset any potential risks or costs attendant to the proposed merger, which are amply mitigated in any event by the Applicants' commitments concerning absorption of merger costs and acquisition premiums and by the restrictions imposed on the Applicants' conduct by the Public Staff Settlement, the Regulatory Conditions and Code of Conduct, and by this Commission's continuing jurisdiction and authority over the rates, terms and conditions of service provided by DEC, DEP and Piedmont. On balance, the Commission concludes that the merger will have no adverse impact on the rates and services provided by DEC, DEP and Piedmont to their North Carolina ratepayers and that the known and potential benefits of the merger are sufficient to offset the potential costs and risks.

In addition, the Commission has made findings of fact that the Regulatory Conditions, Code of Conduct and other provisions of the Settlement, as approved herein, will protect DEC's, DEP's and Piedmont's North Carolina retail ratepayers as much as reasonably possible from known and potential costs and risks of the merger.

Therefore, the Commission concludes that the proposed merger of Duke Energy and Piedmont is justified by the public convenience and necessity, serves the public interest, and should be approved pursuant to G.S. 62-111.

CONCLUSION

Based on the Commission's findings of fact and the whole record, the Commission concludes that the Applicants' commitments in their testimony, the Public Staff Settlement, the Regulatory Conditions and Code of Conduct, and the CUCA Agreement are sufficient to ensure that: (1) the merger will have no adverse impact on the rates and services provided by DEC, DEP, and Piedmont to their North Carolina ratepayers; (2) DEC's, DEP's, and Piedmont's ratepayers are protected as much as reasonably possible from potential costs and risks resulting from the merger; and (3) the known and potential benefits of the merger are sufficient to offset the potential costs and risks. Therefore, the Commission concludes that the proposed business combination between Duke Energy and Piedmont is justified by the public convenience and necessity and serves the public interest.

Accordingly, the Commission finds good cause to approve the proposed merger between Duke Energy and Piedmont subject to all of the terms, conditions, and provisions of this Order, and, further, provided that Duke Energy and Piedmont file a statement in these dockets notifying the Commission that they accept and agree to all the terms,

conditions and provisions of this Order, as well as the Regulatory Conditions and Code of Conduct.

IT IS, THEREFORE, ORDERED as follows:

1. That the application of Duke Energy and Piedmont pursuant to G.S. 62-111(a) to engage in a business combination transaction shall be, and is hereby, approved subject to compliance with the provisions of this Order, the Public Staff Settlement, the CUCA Agreement, the EDF Agreement, and the Regulatory Conditions and Code of Conduct attached hereto and incorporated herein, with the minor modifications to Code of Conduct, Sec. III.A.2.(d) noted earlier herein.

2. That subject to the merger being consummated and the Regulatory Conditions and Code of Conduct approved herein becoming effective, the Regulatory Conditions and Code of Conduct approved by the Commission in the Duke/Progress Merger Order shall be nullified.

3. That upon closing of the merger, Piedmont shall withdraw its DIMP Deferral Application.

4. That Piedmont shall credit $10 million to its North Carolina customers through a one-time bill credit to be completed by December 31, 2016. The bill credit shall be allocated to the rate schedules using the apportionment percentages set forth in Piedmont's Integrity Management Rider (Appendix E of Piedmont's North Carolina Service Regulations). Within 30 days after the bill credit is completed, Piedmont shall file a report with the Commission detailing the amount of the bill credit. In the event of a Piedmont general rate case with rates effective no more than two years from the merger close, Piedmont shall retain the right to reflect an adjustment in the general rate case that would increase its revenue requirement for a portion of the $10 million in savings that Piedmont credited to its North Carolina customers. Should Piedmont exercise its right to reflect such an adjustment, the Public Staff shall retain the right to incorporate the effect of additional merger-related savings in its proposed revenue requirement calculation.

5. That beginning January 1, 2017, DEC, DEP and Piedmont shall fund The Duke Energy Foundation and Piedmont Natural Gas Foundation for four years from the close of the merger at annual levels of no less than $9.65 million, $6.375 million, and $1.5 million, for community support and charitable contributions in the North Carolina service territories of DEC, DEP and Piedmont, respectively.

6. That in support of The Duke Energy Foundation's and Piedmont Natural Gas Foundation's North Carolina workforce development and low-income energy assistance in the North Carolina service territories of DEC, DEP, and Piedmont as may be agreed upon with the Public Staff, within twelve months of the close of the merger, DEC, DEP, and Piedmont shall contribute a total of $7.5 million to The Duke Energy Foundation and Piedmont Natural Gas Foundation. The $7.5 million shall be allocated

among the North Carolina service territories of DEC, DEP, and Piedmont in proportion to the number of North Carolina jurisdictional customers served by each.

7. That merger and merger-related costs shall be treated as follows:

(a) Direct expenses associated with costs to achieve the merger, including change-in-control payments made to terminated executives, regulatory process costs, and transaction costs, such as investment banker and legal fees for transaction structuring, financial market analysis, and fairness opinions based on formal agreements with investment bankers, shall be excluded from the regulated expenses of Piedmont, DEC, and DEP for North Carolina Utilities Commission financial reporting and ratemaking purposes. Piedmont, DEC, and DEP shall file a summary report of their final accounting for merger-related direct expenses within 60 days after the close of the merger, and supplemental reports within 60 days after each quarter, as necessary.

(b) DEC, DEP, and Piedmont may request recovery through depreciation or amortization, and inclusion in rate base, as appropriate and in accordance with normal ratemaking practices, their respective shares of capital costs associated with achieving merger savings, such as system integration costs and the adoption of best practices, including information technology, provided that such costs are incurred no later than three years from the close of the merger and result in quantifiable cost savings that offset the revenue requirement effect of including the costs in rate base. Only the net depreciated costs of such system integration projects at the time the request is made may be included, and no request for deferrals of these costs may be made.

(c) DEC's, DEP's, and Piedmont's merger-related severance costs shall be excluded from DEC's, DEP's, and Piedmont's cost of service for ratemaking purposes.

(d) Piedmont, DEC, and DEP shall exclude from their regulated expense and plant accounts the effects of all Piedmont long-term incentive plan (performance shares and restricted stock units/shares) costs that result from the increase in the Piedmont stock price above the $42.22 per share closing price on October 23, 2015, adjusted for changes in the stock price that would have occurred absent the merger. The adjusted stock prices shall be based upon percentage changes in the average stock price experienced by a peer group of twelve natural gas utilities.

8. That effective upon the close of the merger, Piedmont shall begin utilizing a revised NCUC GS-1 Earnings Surveillance Report format that is similar to the format of

the ES-1 Earnings Surveillance Report that is submitted to the Commission by the electric utilities.

9. That beginning with the month in which the merger closes, Piedmont shall use the net-of-tax overall rate of return from its last general rate case as the applicable interest rate on all amounts over-collected or under-collected from customers reflected in its Sales Customers Only, All Customers, and Hedging Deferred Gas Cost Accounts. The methods and procedures used by Piedmont for the accrual of interest on the Deferred Gas Cost Accounts shall remain unchanged.

10. That within 180 days after the close of the merger, Piedmont shall begin to implement procedures to ensure that project unitization and plant retirements are finalized within 180 days of project completion. Piedmont shall file semi-annual status reports with the Commission detailing its progress in implementing these practices, with the first report due twelve months from the close of the merger.

11. That DEC's and DEP's North Carolina retail ratepayers shall be guaranteed receipt of their allocable shares of an additional $35 million in fuel and fuel-related cost savings under the mechanism implemented in the Duke/Progress Merger Order.

12. That DEC and DEP shall conduct Integrated Volt Var studies as provided by the EDF Agreement.

13. That the Applicants are authorized to take such other and further actions as are reasonable and necessary to consummate the merger transaction set forth in the Merger Agreement subject to the terms hereof.

14. That the Applicants are precluded from recovering from their respective ratepayers any portion of the goodwill or acquisition premium associated with the acquisition of Piedmont by Duke Energy.

15. That Applicants shall file a written notice in this docket within ten (10) days of the consummation of the merger approved herein.

16. That the following cross-examination questions by NC WARN to witnesses Good, Skains and Yoho and the witnesses' testimony in response thereto shall be, and are hereby, stricken from the record: Transcript, Vol. 1, p. 111, line 24 through p. 114, line 14; p. 116, line 17 through p. 121, line 21; p. 122, line 13 through p. 132, line 3; p. 138, line 8 through p. 141, line 21; and Transcript Vol. 2, p. 74, line 7 through p. 78, line 3.

17. That NC WARN's Motion for Reconsideration of the Commission's Motion to Strike Order shall be, and is hereby, denied.

18. That these dockets shall remain open pending the filing by the Applicants of notice of the closing of the merger, and other actions by the Commission that may be required.

ISSUED BY ORDER OF THE COMMISSION.

This the __29th__ day of September, 2016.

NORTH CAROLINA UTILITIES COMMISSION

Janice H. Fulmore

Janice H. Fulmore, Deputy Clerk

APPENDIX A

DOCKET NO. E-2, SUB 1095

DOCKET NO. E-7, SUB 1100

DOCKET NO. G-9, SUB 682

REGULATORY CONDITIONS AND CODE OF CONDUCT

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REGULATORY CONDITIONS

These Regulatory Conditions set forth commitments made by Duke Energy Corporation (Duke Energy) and its public utility subsidiaries, Duke Energy Carolinas, LLC (DEC), Duke Energy Progress, LLC (DEP), and Piedmont Natural Gas Company, Inc. (Piedmont), as a precondition of approval of the application by Duke Energy and Piedmont pursuant to G.S. 62-111(a) for authority to engage in their proposed business combination transaction. These Regulatory Conditions, which become effective only upon closing of the Merger, shall apply jointly and severally to Duke Energy, DEC, DEP, and Piedmont, and shall be interpreted in the manner that most effectively fulfills the Commission's purposes as set forth in the preamble to Section II of these Regulatory Conditions.

SECTION I
DEFINITIONS

For the purposes of these Regulatory Conditions, capitalized terms shall have the meanings set forth below. If a capitalized term is not defined below, it shall have the meaning provided elsewhere in this document or as commonly used in the electric or natural gas utility industry.

Affiliate: Duke Energy and any business entity of which ten percent (10%) or more is owned or controlled, directly or indirectly, by Duke Energy. For purposes of these Regulatory Conditions, Duke Energy and each business entity so controlled by it are considered to be Affiliates of DEC, DEP, and Piedmont, and DEC, DEP, and Piedmont are considered to be Affiliates of each other.

Affiliate Contract: (a) Any contract or agreement between or among DEC, DEP, and Piedmont or between or among DEC, DEP, or Piedmont and any other Affiliate or proposed Affiliate, and (b) any contract or agreement between such other Affiliate or proposed Affiliate and another Affiliate that is related to the same subject matter and is reasonably likely to have an Effect on DEC's, DEP's, or Piedmont's Rates or Service. Such contracts and agreements include, but are not limited to, service, operating, interchange, pooling, wholesale power sales agreements and agreements involving financings and asset transfers and sales, and the Joint Dispatch Agreement.

Catawba Joint Owners: The North Carolina Electric Membership Corporation, North Carolina Municipal Power Agency No. 1, and Piedmont Municipal Power Agency. For purposes of these Regulatory Conditions, DEC is not included in the definition of Catawba Joint Owners.

Code of Conduct: The minimum guidelines and rules approved by the Commission that govern the relationships, activities, and transactions between and among the public utility operations of DEC, DEP, and Piedmont, Duke Energy, the other Affiliates of DEC, DEP, and Piedmont, and the Nonpublic Utility Operations of DEC, DEP, and Piedmont, as those guidelines and rules may be amended by the Commission from time to time.

Commission: The North Carolina Utilities Commission.

Customer: Any retail electric customer of DEC or DEP in North Carolina and any Commission-regulated natural gas sales or natural gas transportation customer of Piedmont located in North Carolina.

DEBS: Duke Energy Business Services, LLC, and its successors, which is a service company Affiliate that provides Shared Services to DEC, DEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations of DEC, DEP or Piedmont, singly or in any combination.

DEC: Duke Energy Carolinas, LLC, the business entity, wholly owned by Duke Energy, that holds the franchise granted by the Commission to provide Electric Services within DEC's North Carolina service territory and that engages in public utility operations, as defined in G.S. 62-3(23), within the State of North Carolina.

DEP: Duke Energy Progress. LLC, the business entity, wholly owned by Duke Energy, that holds the franchises granted by the Commission to provide Electric Services within the DEP's North Carolina service territory and that engages in public utility operations, as defined in G.S. 62-3(23), within the State of North Carolina.

Duke Energy: Duke Energy Corporation, which is the current holding company parent of DEC, DEP, and Piedmont, and any successor company.

Effect on DEC's, DEP's, or Piedmont's Rates or Service: When used with reference to the consequences to DEC, DEP, or Piedmont of actions or transactions involving an Affiliate or Nonpublic Utility Operation, this phrase has the same meaning that it has when the Commission interprets G.S. 62-3(23)(c) with respect to the affiliation covered therein.

Electric Services: Commission-regulated electric power generation, transmission, distribution, delivery, and sales, and other related services, including, but not limited to, administration of Customer accounts and rate schedules, metering, billing, standby service, backups, and changeovers of service to other suppliers.

Federal Law: Any federal statute or legislation, or any regulation, order, decision, rule or requirement promulgated or issued by an agency or department of the federal government.

FERC: The Federal Energy Regulatory Commission.

Fully Distributed Cost: All direct and indirect costs, including overheads and an appropriate cost of capital, incurred in providing goods or services to another business entity; provided, however, that (a) for each good or service supplied by or from DEC, DEP, or Piedmont, the return on common equity utilized in determining the appropriate cost of capital shall equal the return on common equity authorized by the Commission in the supplying utility's most recent general rate case proceeding, (b) for each good or service supplied to DEC, DEP, or Piedmont, the appropriate cost of capital shall not exceed the overall cost of capital authorized in the supplying utility's most recent general rate case proceeding; and (c) for each good or service supplied by or from DEC, DEP, or Piedmont to each other, the return on common equity utilized in determining the appropriate cost of capital shall not exceed the lower of the returns on common equity authorized by the Commission in DEC's, DEP's, or Piedmont's most recent general rate case proceeding, as applicable.

JDA: Joint Dispatch Agreement, which is the agreement as filed with the Commission in Docket Nos. E-7, Sub 986, and E-2, Sub 998, on June 22, 2011, and as amended and refiled on June 12, 2012.

Market Value: The price at which property, goods, or services would change hands in an arm's length transaction between a buyer and a seller without any compulsion to engage in a transaction, and both having reasonable knowledge of the relevant facts.

Merger: All transactions contemplated by the Agreement and Plan of Merger between Duke Energy and Piedmont.

Native Load Priority: Power supply service being provided or electricity otherwise being sold with a priority of service equivalent to that planned for and provided by DEC or DEP to their respective Retail Native Load Customers.

Natural Gas Services: Commission-regulated natural gas sales and natural gas transportation, and other related services, including, but not limited to, administration of Customer accounts and rate schedules, metering and billing, and standby service.

Non-Native Load Sales: DEC's or DEP's sales of energy at wholesale, not including transactions between DEC and DEP pursuant to the JDA and not including service to customers served at Native Load Priority.

Nonpublic Utility Operations: All business operations engaged in by DEC, DEP, or Piedmont involving activities (including the sales of goods or services) that are not regulated by the Commission or otherwise subject to public utility regulation at the state or federal level.

Non-Utility Affiliate: Any Affiliate, including DEBS, other than a Utility Affiliate, DEC, DEP, or Piedmont.

Piedmont: Piedmont Natural Gas Company, Inc., the business entity, wholly owned by Duke Energy, that holds the franchise granted by the Commission to provide Natural Gas Services within its North Carolina service territory and that engages in public utility operations, as defined in G.S. 62-3(23), within the State of North Carolina.

Progress Energy: Progress Energy, Inc., which is the former holding company parent of DEP and is a subsidiary of Duke Energy, and any successors.

Public Staff: The Public Staff of the North Carolina Utilities Commission.

PUHCA 2005: The Public Utility Holding Company Act of 2005.

Purchased Power Resources: Purchases of energy by DEC or DEP at wholesale from sellers other than each other, the contract terms for which are one year or longer.

Retail Native Load Customers: The captive retail Customers of DEC and DEP in North Carolina for which DEC and DEP have the obligation under North Carolina law to engage in long-term planning and to supply all Electric Services, including installing or contracting for capacity, if needed, to reliably meet their electricity needs.

Retained Earnings: The retained earnings currently required to be listed on page 112, line 11, of the pre-Merger DEC FERC Form 1, the pre-Merger DEP FERC Form 1, and page 112, line 11 of the pre-Merger Piedmont FERC Form 2.

Shared Services: The services that meet the requirements of these Regulatory Conditions and that the Commission has explicitly authorized DEC, DEP, and Piedmont to take from DEBS pursuant to a service agreement (a) filed with the Commission pursuant to G.S. 62-153(b), thus requiring acceptance and authorization by the Commission, and (b) subject to all other applicable provisions of North Carolina law, the rules and orders of the Commission, and these Regulatory Conditions.

Utility Affiliates: The regulated public utility operations of Duke Energy Indiana, LLC (Duke Indiana), Duke Energy Kentucky, Inc. (Duke Kentucky), Florida Power Corporation, d/b/a Duke Energy Florida, LLC (DEF), and Duke Energy Ohio, Inc. (Duke Ohio).

SECTION II
AUTHORITY, SCOPE, AND EFFECT

These Regulatory Conditions are based on the general power and authority granted to the Commission in Chapter 62 of the North Carolina General Statutes to control and supervise the public utilities of the State. The Regulatory Conditions (a) constitute specific exercises of the Commission's authority, (b) provide mechanisms that enable the Commission to determine in advance the extent of its authority and jurisdiction over proposed activities of, and transactions involving, DEC, DEP,

Piedmont, Duke Energy, other Affiliates or Nonpublic Utility Operations, and (c) protect the Commission's jurisdiction from federal preemption and its effects. The purpose of these Regulatory Conditions is to ensure that DEC's and DEP's Retail Native Load Customers and Piedmont's Customers (a) are protected from any known adverse effects from the Merger, (b) are protected as much as possible from potential costs and risks resulting from the Merger, and (c) receive sufficient known and expected benefits to offset any potential costs and risks resulting from the Merger. These Regulatory Conditions are not intended to impose legal obligations on entities in which Duke Energy does not directly or indirectly have a controlling voting interest, or to affect any rights of any party to participate in subsequent proceedings.

2.1 Waiver of Certain Federal Rights. Pursuant to these conditions, DEC, DEP, Piedmont, Duke Energy, and other Affiliates waive certain of their federal rights as specified in these Regulatory Conditions, but do not otherwise agree that the Commission has authority other than as provided for in Chapter 62.

2.2 Limited Right to Challenge Commission Orders. Other than as provided for, or explicitly prohibited, in these conditions, Duke Energy, DEC, DEP, Piedmont, and other Affiliates retain the right to challenge the lawfulness of any Commission order issued pursuant to or relating to these Regulatory Conditions on the basis that such order exceeds the Commission's statutory authority under North Carolina law or the other grounds listed in G.S. 62-94(b).

2.3 Waiver Request. DEC, DEP, Piedmont, Duke Energy, and other Affiliates may seek a waiver of any aspect of these Regulatory Conditions in a particular case or circumstance for good cause shown by filing a such request with the Commission.

SECTION III
PROTECTION FROM PREEMPTION

The following Regulatory Conditions are intended to protect the jurisdiction of the Commission against the risk of federal preemption as a result of the Merger, including risks related to agreements and transactions between and among DEC, DEP, Piedmont, and any of their Affiliates; financing transactions involving Duke Energy, DEC, DEP, or Piedmont, and any other Affiliate; the ownership, use, and disposition of assets by DEC, DEP, or Piedmont; participation in the wholesale market by DEC or DEP; and filings with federal regulatory agencies.

3.1 Transactions between DEC, DEP, Piedmont, and Other Affiliates; Affiliate Contract Provisions; Advance Notice of Affiliate Contracts to be Filed with the FERC; Annual Certification.

(a) DEC, DEP, and Piedmont shall not engage in any transactions with Affiliates or proposed Affiliates without first filing the proposed contracts or agreements memorializing such transactions pursuant to G.S. 62-153 and taking such actions and obtaining from the Commission such

determinations and authorizations as may be required under North Carolina law. DEC, DEP, or Piedmont, as applicable, shall submit each proposed Affiliate Contract or substantive amendment to an existing Affiliate Contract to the Public Staff for informal review at least 15 days before filing it with the Commission. If DEC, DEP, or Piedmont and the Public Staff agree within the 15-day period that the proposed Affiliate Contract or substantive amendment to an existing Affiliate Contract does not require any action by the Commission, DEC, DEP, or Piedmont may proceed to execute the agreement subject to later disapproval and voidance by the Commission pursuant to G.S. 62-153(a). Otherwise, the proposed Affiliate Contract or substantive amendment to an existing Affiliate Contract shall not be executed until the agreement has been filed and payment of compensation has been approved by the Commission pursuant to G.S. 62-153(b). No formal advance notice pursuant to Regulatory Condition 13.2 is required for such agreements unless the agreements are to be filed with the FERC, in which case subsection (c) applies.

(b) All Affiliate Contracts to which DEC, DEP, or Piedmont is a party shall contain the following provisions:

(i) DEC's, DEP's, or Piedmont's participation in the agreement is voluntary, DEC, DEP, or Piedmont is not obligated to take or provide services or make any purchases or sales pursuant the agreement, and DEC, DEP, or Piedmont may elect to discontinue its participation in the agreement at its election after giving any required notice;

(ii) DEC, DEP, or Piedmont may not make or incur a charge under the agreement except in accordance with North Carolina law and the rules, regulations and orders of the Commission promulgated thereunder;

(iii) DEC, DEP, or Piedmont may not seek to reflect in rates any (A) costs incurred under the agreement exceeding the amount allowed by the Commission or (B) revenue level earned under the agreement less than the amount imputed by the Commission; and

(iv) DEC, DEP, or Piedmont shall not assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of another entity's assertions, that the Commission's authority to assign, allocate, impute, make pro-forma adjustments to, or disallow revenues and costs for retail ratemaking and regulatory accounting and reporting purposes is, in whole or in part, (A) preempted by Federal Law or (B) not within the Commission's power, authority or jurisdiction; DEC, DEP, and

Piedmont will bear the full risk of any preemptive effects of Federal Law with respect to the agreement.

(c) To enable the Commission to determine and exercise its lawful authority and jurisdiction over a proposed Affiliate Contract or amendment to an existing Affiliate Contract that involves costs that will be assigned to DEC, DEP, or Piedmont and that is required or intended to be filed with the FERC, the following procedures shall apply:

(i) DEC DEP, or Piedmont shall file advance notice and a copy of the proposed Affiliate Contract, a contract with a proposed Affiliate, or an amendment to an existing Affiliate Contract with the Commission at least 30 days prior to a filing with the FERC. All Affiliate Contracts, contracts with a proposed Affiliate, or amendments to existing Affiliate Contracts filed with the advance notice under Regulatory Condition 3.1(c) shall be unexecuted at the time of filing and remain unexecuted for the duration of the advance notice period. If, consistent with Regulatory Condition 13.2(h), the Commission extends the advance notice period, the Affiliate Contract, contract with a Proposed Affiliate, or amendments to existing Affiliate Contracts shall remain unexecuted until the Commission issues an order on the advance notice or the extension of the advance notice period expires without a Commission order, procedural or substantive, being issued. A copy shall be provided to the Public Staff at the time of the filing. The provisions of Regulatory Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition.

(ii) If an objection to DEC, DEP, or Piedmont proceeding with the filing with the FERC is filed pursuant this Regulatory Condition, the proposed filing shall not be executed and made with the FERC until the Commission issues an order resolving the objection.

(iii) Filings of advance notices and copies of proposed Affiliate Contracts, a contract with a proposed Affiliate, and amendments to existing Affiliate Contracts pursuant to this subsection shall be in addition to filings required by G.S. 62-153, and the burden of proof as to those filings shall be as provided by statute.

(d) DEC, DEP, and Piedmont shall each certify in a filing with the Commission that (i) it has not made any filing with the FERC or any other federal regulatory agency inconsistent with the foregoing and (ii) Duke Energy, any other Affiliate and any Nonpublic Utility Operation has not made any such filing. Such certification shall be repeated annually on the anniversary of the first certification.

(e) In the event the FERC or any other federal regulatory agency requires modification of a proposed Affiliate Contract to omit any of the provisions of Regulatory Condition 3.1(b) as a condition of acceptance or approval by that agency, DEC, DEP or Piedmont shall remain bound by those provisions for state regulatory purposes.

3.2 Financing Transactions Involving DEC, DEP, Piedmont, Duke Energy, or Other Affiliates.

(a) With respect to any financing transaction between or among DEC, DEP, or Piedmont and Duke Energy or any one or more other Affiliates, any contract memorializing such transaction shall expressly provide that DEC, DEP, or Piedmont shall not enter into any such financing transaction except in accordance with North Carolina law and the rules, regulations and orders of the Commission promulgated thereunder; and

(b) With respect to any financing transaction (i) between or among any of the Affiliates if such contracts are reasonably likely to have an Effect on DEC's, DEP's, or Piedmont's Rates or Service, or (ii) between or among DEC, DEP, and Piedmont or between DEC, DEP, or Piedmont and any other Affiliate, any contract memorializing such transaction shall expressly provide that DEC, DEP, or Piedmont shall not include the effects of any capital structure or debt or equity costs associated with such financing transaction in its North Carolina retail cost of service or rates except as allowed by the Commission.

3.3 Ownership and Control of Assets Used by DEC, DEP, and Piedmont to Supply Electric Power or Natural Gas Services to North Carolina Customers; Transfer of Ownership or Control.

(a) DEC, DEP, and Piedmont shall own and control all assets or portions of assets used for the generation, transmission, and distribution of electric power or the transmission, storage, or distribution of natural gas to their respective Customers (with the exception of assets solely used to provide power purchased by DEC or DEP at wholesale).

(b) With respect to the transfer by DEC, DEP, or Piedmont to any entity, affiliated or not, of the control of, operational responsibility for, or ownership of generation, transmission, or distribution assets with a gross book value in excess of ten million dollars ($10 million), DEC, DEP, or Piedmont shall provide written notice to the Commission at least 30 days in advance of the proposed transfer. The provisions of Regulatory Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition.

(c) Any contract memorializing such a transfer shall include the following language:

(i) DEC, DEP, or Piedmont may not commit to or carry out the transfer except in accordance with applicable law, and the rules, regulations and orders of the Commission promulgated thereunder; and

(ii) DEC, DEP, or Piedmont may not include in its North Carolina cost of service or rates the value of the transfer, whether or not subject to federal law, except as allowed by the Commission in accordance with North Carolina law.

(d) Any application filed with the FERC in connection with any transfer of control, operational responsibility, or ownership that involves or potentially affects DEC, DEP, or Piedmont shall include the language set forth in subdivisions (c)(i) and (ii), above.

3.4 Purchases and Sales of Electricity and Natural Gas between DEC, DEP, Piedmont, and Duke Energy, Other Affiliates, or Nonpublic Utility Operations. Subject to additional restrictions set forth in the Code of Conduct, neither DEC, DEP, nor Piedmont shall purchase electricity (or related ancillary services) or natural gas from Duke Energy, another Affiliate, or a Nonpublic Utility Operation under circumstances where the total all-in costs, including generation, transmission, ancillary costs, distribution, taxes and fees, and delivery point costs, incurred (whether directly or through allocation), based on information known, anticipated, or reasonably available at the time of purchase, exceed fair Market Value for comparable service, nor shall DEC, DEP, or Piedmont sell electricity (or related ancillary services) or natural gas to Duke Energy, another Affiliate, or a Nonpublic Utility Operation for less than fair Market Value; provided, however, that such restrictions shall not apply to emergency transactions. This condition shall not apply to transactions between DEC and DEP that are governed by the JDA.

3.5 Least Cost Integrated Resource Planning and Resource Adequacy. This Regulatory Condition does not apply to Piedmont. DEC and DEP shall retain the obligation to pursue least cost integrated resource planning for their respective Retail Native Load Customers and remain responsible for their own resource adequacy subject to Commission oversight in accordance with North Carolina law. DEC and DEP shall determine the appropriate self-built or purchased power resources to be used to provide future generating capacity and energy to their respective Retail Native Load Customers, including the siting considered appropriate for such resources, on the basis of the benefits and costs of such siting and resources to those Retail Native Load Customers.

3.6 Priority of Service.

(a) This Regulatory Condition does not apply to Piedmont.

(b) The planning and joint dispatch of DEC's system generation and Purchased Power Resources shall ensure that DEC's Retail Native Load Customers receive the benefits of that generation and those resources, including priority of service, to meet their electricity needs consistent with the JDA. DEC shall continue to serve its Retail Native Load Customers with the lowest-cost power it can reasonably generate or obtain as Purchase Power Resources before making power available for sales to customers that are not entitled to the same level of priority as Retail Native Load Customers.

(c) The planning and joint dispatch of DEP's system generation and Purchase Power Resources shall ensure that DEP's Retail Native Load Customers receive the benefits of that generation and those resources, including priority of service, to meet their electricity needs consistent with the JDA. DEP shall continue to serve its Retail Native Load Customers with the lowest-cost power it can reasonably generate or obtain as Purchase Power Resources before making power available for sales to customers that are not entitled to the same level of priority as Retail Native Load Customers.

3.7 Wholesale Power Contracts Granting Native Load Priority.

(a) This Regulatory Condition does not apply to Piedmont.

(b) DEC is not required to file an advance notice with the Commission or receive its approval prior to entering into wholesale power contracts that grant Native Load Priority to the following historically served customers: the City of Concord, North Carolina; the City of Kings Mountain, North Carolina; the Town of Dallas, North Carolina; the Town of Forest City, North Carolina; Lockhart Power Company; the Public Works Commission of the Town of Due West, South Carolina; the Town of Prosperity, South Carolina; the City of Greenwood, South Carolina; the Town of Highlands; North Carolina; Western Carolina University (WCU); the electric membership cooperatives (EMCs) within DEC's control area; North Carolina Municipal Power Agency No. 1; Piedmont Municipal Power Agency; New River Light & Power Company; and the South Carolina distribution cooperatives historically served by Saluda River Electric Cooperative, Inc., and currently served by Central Electric Power Cooperative, Inc. (which are Blue Ridge Electric Cooperative, Inc., Broad River Electric Cooperative Inc., Laurens Electric Cooperative, Inc., Little River Electric Cooperative, Inc., and York Electric Cooperative, Inc.). Subject to the conditions set out in Regulatory Condition 3.8, the retail

native loads of these historically served wholesale customers shall be considered DEC's Retail Native Load Customers for purposes of Regulatory Conditions 3.5, 3.6, and 4.5; provided, however, that this subsection applies only to the same types of supplemental load and backstand requirements services that were historically provided to the Catawba Joint Owners under the Catawba Interconnection Agreements between DEC and the Catawba Joint Owners prior to 2001, which, for the North Carolina Electric Membership Corporation, only includes the EMCs within DEC's control area.

(c) DEP is not required to file an advance notice with the Commission or receive its approval prior to entering into wholesale power contracts that grant Native Load Priority to the Public Works Commission of the City of Fayetteville, North Carolina; the Town of Waynesville, North Carolina; the City of Camden, South Carolina; the French Broad Electric Membership Corporation; the North Carolina Eastern Municipal Power Agency; the electric membership cooperatives (EMCs) within DEP's control area, whether served through the North Carolina Electric Membership Corporation (NCEMC) or individually; the Town of Black Creek, North Carolina; the Town of Lucama, North Carolina; the Town of Stantonsburg, North Carolina; the Town of Sharpsburg, North Carolina; and the Town of Winterville, North Carolina. Subject to the conditions set out in Regulatory Condition 3.8, the retail native loads of these historically served wholesale customers shall be considered DEP's Retail Native Load Customers for purposes of Regulatory Conditions 3.5, 3.6, and 4.5.

(d) Before either DEC or DEP executes any contract that grants Native Load Priority to a wholesale customer (other than as set forth in subdivisions (a) and (b) above) or to one or more retail customers of another entity, it must provide the Commission with at least 30 days' written advance notice of its intent to grant Native Load Priority and to treat the retail native load of a proposed wholesale customer as if it were DEC's or DEP's retail native load pursuant to Regulatory Conditions 3.5, 3.6, and 4.5. The provisions set forth in Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition.

3.8 Additional Provisions Regarding Wholesale Contracts Entered into by DEC or DEP as Sellers.

(a) This Regulatory Condition does not apply to Piedmont.

(b) The Commission retains the right to assign, allocate, impute, and make pro-forma adjustments with respect to the revenues and costs associated with both DEC's or DEP's wholesale contracts for retail ratemaking and regulatory accounting and reporting purposes.

(c) Entry into wholesale contracts that grant Native Load Priority or otherwise obligate DEC or DEP to construct generating facilities or make commitments to purchase capacity and energy to meet those contractual commitments constitutes acceptance by DEC, DEP, Duke Energy, and other Affiliates or Nonpublic Utility Operations thereof of the risks that investments in generating facilities or commitments to purchase capacity and energy to meet such contractual commitments and maintain an adequate reserve margin throughout the term of such contracts may become uneconomic sunk costs that are not recoverable from DEC's or DEP's respective Retail Native Load Customers. In a future Commission retail proceeding in which cost recovery is at issue, neither DEC nor DEP shall claim that it does not bear this risk, and both DEC and DEP shall acknowledge that the Commission retains full authority under Chapter 62 to disallow such costs as not used and useful and to allocate, impute, or assign such costs away from Retail Native Load Customers. For purposes of this condition, capacity will be considered used and useful and not excess capacity to the extent the Commission determines such capacity is needed by DEC or DEP to meet the expected peak loads of DEC's or DEP's respective Retail Native Load Customers in the near term future plus a reserve margin comparable to that currently being used or otherwise considered appropriate by the Commission. Neither DEC, DEP, Duke Energy, nor any other Affiliate shall assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of any other entity's assertions that the Commission is preempted from taking the actions contemplated in this subsection.

(d) Neither DEC, nor DEP, nor Duke Energy, nor other Affiliate shall assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of any other entity's assertions that (i) transactions entered into pursuant to DEC's or DEP's cost- or market-based rate authority or (ii) the filing with, or acceptance for filing by, the FERC of any wholesale power contract to which either is a party establishes or implies a cost allocation methodology that is binding on the Commission, requires the pass-through of any costs or revenues under the filed rate doctrine, or preempts the Commission's authority to assign, allocate, impute, make pro-forma adjustments to, or disallow the revenues and costs associated with, DEC's or DEP's wholesale contracts for retail ratemaking and regulatory accounting and reporting purposes.

(e) Neither DEC, nor DEP, nor Duke Energy, nor other Affiliate shall assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of any other entity's assertions that the exercise of authority by the Commission to assign, allocate, impute, make pro-forma adjustments to, or disallow the costs and revenues associated with DEC's or DEP's wholesale contracts for

retail ratemaking and regulatory accounting and reporting purposes in itself constitutes an undue burden on interstate commerce or otherwise violates the Commerce Clause of the United States Constitution. DEC and DEP, however, retain the right to argue that a specific exercise of authority by the Commission violates the Commerce Clause based upon specific evidence of undue interference with interstate commerce.

(f) Except as provided in the foregoing conditions, DEC and DEP retain the right to challenge the lawfulness of any order issued by the Commission in connection with the assignment, allocation, imputation, pro-forma adjustments to, or disallowances of the revenues and costs associated with DEC's or DEP's wholesale contracts for retail ratemaking and regulatory accounting and reporting purposes on any other grounds, including but not limited to the right outlined in G.S. 62-94(b).

3.9 Other Protections.

(a) DEC, DEP, Piedmont, Duke Energy, another Affiliate, and a Nonpublic Utility Operation shall not assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of any other entity's assertions that approval by the FERC of market-based rates, transfers of generating facilities, or any matter that involves Affiliates in any way preempts the Commission's authority to determine the reasonableness or prudence of DEC's, DEP's, or Piedmont's decisions with respect to supply-side resources, demand-side management, or any other aspect of resource adequacy.

(b) No agreement shall be entered into, nor shall any filing be made with the FERC, by or on behalf of DEC or DEP, that (i) commits DEC or DEP to, or involves either of them in, joint planning, coordination, dispatch or operation of generation, transmission, or distribution facilities with each other or with one or more other Affiliates, or (ii) otherwise alters DEC's or DEP's obligations with respect to these Regulatory Conditions, absent explicit approval of the Commission.

(c) DEC, DEP, Duke Energy, the other Affiliates, and the Nonpublic Utility Operations shall file notice with the Commission at least 30 days prior to filing with the FERC any agreement, tariff, or other document or any proposed amendments, modifications, or supplements to any such document that has the potential to (i) affect DEC's or DEP's retail cost of service for system power supply resources or transmission system; (ii) reduce the Commission's jurisdiction with respect to transmission planning or any other aspect of the Commission's planning authority; (iii) be interpreted as involving DEC or DEP in joint planning, coordination, dispatch, or operation of generation or transmission facilities with one or more Affiliates; or (iv) otherwise have an Effect on DEC's or DEP's Rates

or Service. The provisions set forth in Regulatory Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition; provided, however, that, to the extent the filing with the FERC is not to be made by DEC or DEP, the advance notice procedures shall be for the purpose of a determination by the Commission as to whether the filing is reasonably likely to have an Effect on DEC's or DEP's Rates or Service.

(d) Any contract or filing regarding DEC's or DEP's membership in or withdrawal from an RTO or comparable entity must be contingent upon state regulatory approval. This Regulatory Condition does not apply to Piedmont.

(e) DEC, DEP, and Piedmont shall obtain Commission approval before DEBS is sold, transferred, merged with any other entities, has any ownership interest therein changed, or otherwise changed so that a change of control could occur. This requirement does not apply to any movement of DEBS within the Duke Energy holding company system that does not constitute a change of control.

(f) DEC, DEP, and Piedmont may participate in joint comments and other joint filings with Affiliates only when such participation fully complies with both the letter and the spirit of the Regulatory Conditions. Any filing made by DEBS on behalf of DEC, DEP, or Piedmont must clearly identify DEBS as an agent of DEC, DEP, or Piedmont for purposes of making the filing.

(g) Neither DEC, DEP, Piedmont, Duke Energy, another Affiliate, nor a Nonpublic Utility Operation shall make any assertion or argument either on its own initiative or in support of any other entity's assertions in any forum – whether judicial, administrative, federal, state, or otherwise – with respect to any contract, transaction, or other matter in which DEC, DEP, or Piedmont is involved or proposes to be involved or any contract, transaction, or matter involving or proposed to involve Duke Energy, any other Affiliate, or any Nonpublic Utility Operation that may have an Effect on DEC's, DEP's, or Piedmont's Rates or Service, that any of the following actions by the Commission are preempted, in whole or in part, by Federal Law or exceed the Commission's power, authority or jurisdiction under North Carolina law:

(i) reviewing the reasonableness of any Affiliate commitment entered into or proposed to be entered into by DEC, DEP, or Piedmont, or disallowing the costs of, or imputing revenues related to such commitment to, DEC, DEP, or Piedmont;

(ii) exercising its authority over financings or setting rates based on the capital structure, corporate structure, debt costs, or equity costs that it finds to be appropriate for retail ratemaking purposes;

(iii) reviewing the reasonableness of any commitment entered into or proposed to be entered into by DEC, DEP, or Piedmont to transfer an asset;

(iv) mandating, approving, or otherwise regulating a transfer of assets;

(v) scrutinizing and establishing the value of any asset transfers for the purpose of determining the rates for services rendered to DEC's or DEP's Retail Native Load Customers or Piedmont's Customers; or

(vi) exercising any other lawful authority it may have.

Should any other entity so assert, neither DEC, DEP, Piedmont, Duke Energy, other Affiliates, nor the Nonpublic Utility Operations shall support any such assertion and shall, promptly upon learning of such assertion, advise and consult with the Commission and the Public Staff regarding such assertion.

(vii) DEC, DEP, Piedmont, Duke Energy, other Affiliates, and the Nonpublic Utility Operations shall (A) bear the full risk of any preemptive effects of Federal Law with respect to any contract, transaction, or commitment entered into or made or proposed to be entered into or made by DEC, DEP, or Piedmont, or which may otherwise affect DEC's, DEP's, or Piedmont's operations, service, or rates and (B) shall take all actions as may be reasonably necessary and appropriate to hold North Carolina ratepayers harmless from rate increases, foregone opportunities for rate decreases or any other adverse effects of such preemption. Such actions include, but are not limited to, filing with and making reasonable efforts to obtain approval from the FERC or other applicable federal entity of such commitments as the Commission deems reasonably necessary to prevent such preemptive effects.

3.10 FERC Filings and Orders. In addition to the filing requirements of Commission Rule R8-27 and all other applicable statutes and rules, DEC and DEP shall, on a quarterly basis, file with the Commission the following: (a) a list of all active dockets at the FERC, including a sufficient description to identify the type of proceeding, in which DEC, DEP, Duke Energy, or DEBS is a party, with new information in each quarterly filing tracked; and (b) a list of the periodic reports filed by DEC, DEP, Duke Energy, or DEBS with the FERC, including sufficient information to identify the subject matter of each report and how each report can be accessed. These filings shall be made in Docket Nos. E-7, Sub 1100E, and E-2, Sub 1095E, as appropriate, and updated regularly. In addition, DEC and DEP shall serve on the Public Staff all filed cost-based and market-based wholesale agreements and amendments; all filings related to their

Joint Open Access Transmission Tariff; interconnection agreements and amendments; and any other filings made with the FERC, to the extent these other filings are reasonably likely to have an Effect on DEC's or DEP's Rates or Service. This Regulatory Condition does not apply to Piedmont, as relevant FERC-related information is required to be filed with the Commission in annual gas cost prudence reviews.

SECTION IV
JOINT DISPATCH

The Regulatory Conditions in Section IV do not apply to Piedmont. They are intended to prevent the jurisdiction and authority of the Commission from being preempted as a result of the JDA, to ensure that DEC's and DEP's Retail Native Load Customers receive adequate benefits from the JDA, and to ensure that both joint dispatch costs and the sharing of cost savings can be appropriately audited. The Regulatory Conditions set forth in Section III and the Regulatory Conditions in Section V to the extent they are relevant to Affiliate Contracts also apply to the JDA.

4.1 Conditional Approval and Notification Requirement. DEC and DEP acknowledge that the Commission's approval of the merger between Duke Energy and Progress Energy, and the transfer of dispatch control from DEP to DEC for purposes of implementing the JDA and any successor document is conditioned upon the JDA or successor document never being interpreted as providing for or requiring: (a) a single integrated electric system, (b) a single BAA, control area or transmission system, (c) joint planning or joint development of generation or transmission, (d) DEC or DEP to construct generation or transmission facilities for the benefit of the other, (e) the transfer of any rights to generation or transmission facilities from DEC or DEP to the other, or (f) any equalization of DEC's and DEP's production costs or rates. If, at any time, DEC, DEP or any other Affiliate learns that any of the foregoing interpretations are being considered, in whatever forum, they shall promptly notify and consult with the Commission and the Public Staff regarding appropriate action.

4.2 Advance Notice Required. To the extent that DEC and DEP desire to engage in any of items (a) through (f) listed in Regulatory Condition 4.1, above, DEC and DEP shall file advance notice with the Commission at least 30 days prior to taking any action to amend the JDA or a successor document or to enter into a separate agreement. The provisions of Regulatory Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition.

4.3 Function in DEC or DEP. The joint dispatch function, as provided in the JDA or in a successor document, shall be performed by employees of either DEC or DEP.

4.4 No Limitation on Obligations. DEC and DEP acknowledge that nothing in the JDA or any successor document is intended to alter DEC's and DEP's public utility obligations under North Carolina law or to provide for joint dispatch in a fashion that is inconsistent with those obligations, including, without limitation, the following: (a) DEC's obligation to plan for and provide least cost electric service to its Retail Native

Load Customers and DEP's obligation to plan for and provide least cost electric service to its Retail Native Load Customers; (b) DEC's obligation to serve its Retail Native Load Customers with the lowest cost power it can reasonably generate or purchase from other sources, before making power available for Non-Native Load Sales; and (c) DEP's obligation to serve its Retail Native Load Customers with the lowest cost power it can reasonably generate or purchase from other sources, before making power available for Non-Native Load Sales.

4.5 Protection of Retail Native Load Customers. All joint dispatch and other activities pursuant to the JDA or successor document shall be performed in such a manner as to (a) ensure the reliable fulfillment of DEC's and DEP's respective service obligations to their Retail Native Load Customers, (b) fulfill each utility's obligation to serve its own Retail Native Load Customers with its lowest cost generation; and (c) minimize the total costs incurred by DEC and DEP to fulfill their respective obligations to their Retail Native Load Customers. In no event shall any Non-Native Load Sales be made if, based upon information known, anticipated, or reasonably available at the time a sale is made, any such sale results in higher fuel and fuel-related costs or non-fuel O&M costs, on a replacement cost basis, than would otherwise have been incurred unless the revenues credited from each such sale more than offset the higher costs.

4.6 Treatment of Costs and Savings. DEC's and DEP's respective fuel and fuel-related costs and non-fuel O&M costs, and the treatment of savings for retail ratemaking purposes, shall be calculated as provided in the JDA, unless explicitly changed by order of the Commission.

4.7 Required Records. DEC and DEP shall keep records related to the JDA or any successor document as prescribed by the Commission and in such detail as may be necessary to enable the Commission and the Public Staff to audit both the actual joint dispatch costs and the sharing of cost savings.

4.8 Auditing of Negative Margins. DEC and DEP also shall keep records that provide such detail as may be necessary to enable the Commission and the Public Staff to audit the circumstances that cause any negative margin on a Non-Native Load Sale or a negative transfer payment made pursuant to Section 7.5(a)(ii) of the JDA.

4.9 Protection of Commission's Authority. Neither DEC, DEP, nor any Affiliate shall assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of any other entity's assertions that any aspect of the JDA or successor document is intended to diminish or alter the jurisdiction or authority of the Commission over DEC or DEP, including, among other things, the jurisdiction and authority of the Commission to do the following: (a) establish the retail rates on a bundled basis for DEC or DEP, (b) to impose regulatory accounting and reporting requirements, (c) impose service quality standards, (d) require DEC and DEP to engage separately in least cost integrated resource planning, and (e) issue

certificates of public convenience and necessity for new generating and transmission resources.

4.10 Preventive Action Required. DEC, DEP, Duke Energy, and other Affiliates shall take all necessary actions to prevent the generating facilities owned or controlled by DEC or DEP from being considered by the FERC to be (a) part, or all, of a power pool, (b) sufficiently integrated to be one integrated system, or (c) otherwise fully subject to the FERC's jurisdiction, as the result of DEC's and DEP's participation in the JDA or any successor document.

4.11 Modification and Termination. DEC and DEP shall modify or terminate the JDA if at any time following consummation of the Merger the Commission finds, after notice and opportunity to be heard, that the JDA does not produce overall cost savings for, or is otherwise not in the best interests of, the North Carolina ratepayers of both DEC and DEP.

4.12 Hold Harmless Commitment. DEC and DEP shall take all actions as may be reasonably appropriate and necessary to hold North Carolina retail ratepayers harmless from any adverse rate impacts related to the JDA, including any trapped costs resulting from actions taken or required by the FERC with respect to the JDA.

SECTION V
TREATMENT OF AFFILIATE COSTS AND RATEMAKING

The following Regulatory Conditions are intended to ensure that the costs incurred by DEC, DEP, and Piedmont are properly incurred, accounted for, and directly charged, directly assigned, or allocated to their respective North Carolina retail operations and that only costs that produce benefits for DEC's and DEP's respective Retail Native Load Customers and Piedmont's Customers are included in DEC's, DEP's, and Piedmont's North Carolina cost of service for ratemaking purposes. The procedures set forth in Regulatory Condition 13.2 do not apply to an advance notice filed pursuant to this section.

5.1 Access to Books and Records. In accordance with North Carolina law, the Commission and the Public Staff shall continue to have access to the books and records of DEC, DEP, Piedmont, Duke Energy, other Affiliates, and the Nonpublic Utility Operations.

5.2 Procurement or Provision of Goods and Services by DEC, DEP, or Piedmont from or to Affiliates or Nonpublic Utility Operations. Except as to transactions between and among DEC, DEP, and Piedmont pursuant to filed and approved service agreements and lists of services, and subject to additional provisions set forth in the Code of Conduct, DEC, DEP, and Piedmont shall take the following actions in connection with procuring goods and services for their respective utility operations from Affiliates or Nonpublic Utility Operations and providing goods and services to Affiliates or Nonpublic Utility Operations:

(a) DEC, DEP, and Piedmont each shall seek out and buy all goods and services from the lowest cost qualified provider of comparable goods and services, and shall have the burden of proving that any and all goods and services procured from their Utility Affiliates, Non-Utility Affiliates, and Nonpublic Utility Operations have been procured on terms and conditions comparable to the most favorable terms and conditions reasonably available in the relevant market, which shall include a showing that comparable goods or services could not have been procured at a lower price from qualified non-Affiliate sources or that DEC, DEP, or Piedmont could not have provided the services or goods for itself on the same basis at a lower cost. To this end, no less than every four years DEC, DEP, and Piedmont shall perform comprehensive non-solicitation based assessments at a functional level of the market competitiveness of the costs for goods and services they receive from a Utility Affiliate, DEBS, another Non-Utility Affiliate, and a Nonpublic Utility Operation, including periodic testing of services being provided internally or obtained individually through outside providers. To the extent the Commission approves the procurement or provision of goods and services between or among DEC, DEP, Piedmont, and the Utility Affiliates, those goods and services may be provided at the supplier's Fully Distributed Cost.

(b) To the extent they are allowed to provide such goods and services, DEC, DEP, and Piedmont shall have the burden of proving that all goods and services provided by any one of them to Duke Energy, a Non-Utility Affiliate, any other Affiliate, or a Nonpublic Utility Operation have been provided on the terms and conditions comparable to the most favorable terms and conditions reasonably available in the market, which shall include a showing that such goods or services have been provided at the higher of cost or market price. To this end, no less than every four years DEC, DEP, and Piedmont shall perform comprehensive, non-solicitation based assessments at a functional level of the market competitiveness of the costs for goods and services provided by either of them to a Utility Affiliate, DEBS, another Non-Utility Affiliate, any other Affiliate, and a Nonpublic Utility Operation.

(c) The periodic assessments required by subdivisions (a) and (b) of this subsection may take into consideration qualitative as well as quantitative factors. To the extent that comparable goods or services provided to DEC, DEP or Piedmont, or by DEC, DEP or Piedmont are not commercially available, this Regulatory Condition shall not apply.

5.3 Location of Core Utility Functions.

(a) This Regulatory Condition does not apply to Piedmont.

(b) Core utility functions are those functions related to Electric Services. The employees performing these core utility functions will be DEC or DEP employees and not service company employees of DEBS. Core utility functions do not include services of a governance or corporate type nature that have been traditionally provided by a service company, the specific services listed on the service company agreement services list for DEC and DEP filed with the Commission pursuant to Regulatory Condition 5.4(a), and roles that provide oversight to the enterprise and are not jurisdiction-specific (Excluded Functions).

(c) All core utility functions employees charging 50% or more of their time to DEC and DEP (separately or combined) should be in the payroll company of either DEC or DEP and not on the payroll of an Affiliate such as DEBS. If it is not readily determinable that a particular function is related to the provision of Electric Services or is an Excluded Function, the appropriate payroll company decision will be governed by whether 50% or more of the affected group or individual employee's time is charged to DEC or DEP.

(d) DEC and DEP shall annually review core utility function employees charging more than 50% of their time to DEC and DEP (separately or combined) over a six-month period from January 1 to June 30. If DEC and DEP determine that an employee performing a core utility function is direct charging 50% or more of his or her time to DEC or DEP, that employee should be transferred to DEC or DEP (if not already on the DEC or DEP payroll). Conversely, if a DEC or DEP employee is charging less than 50% of his or her time to DEC or DEP (separately or combined), and the employee is not otherwise charging the larger portion of their time to DEC or DEP, that employee should not be on the payroll of DEC or DEP.

(e) DEC and DEP shall annually file, at least 90 days prior to January 1, a report containing the results of the annual review and advance notice of any transfers from DEC to DEP to another entity based on direct charging results (Employee Payroll Transfer Report). New organizations and reorganizations will be reflected in the Employee Payroll Transfer Reports.

(f) If an employee transfer from DEC or DEP occurs during the middle of the year, and that transfer involves the transfer of a core utility function to the service company, the provisions of Regulatory Condition 10.1 will apply.

(g) DEC and DEP may file a list of employees at the higher levels of management (not including those levels of management that report directly

to the Chief Executive Officer for Duke Energy) for their core utility functions that they propose to be DEBS employees in their annual filing.

5.4 Service Agreements and Lists of Services.

(a) DEC, DEP, and Piedmont shall file pursuant to G.S. 62-153 final proposed service agreements that authorize the provision and receipt of non-power goods or services between and among DEC, DEP, Piedmont, their Affiliates or Nonpublic Utility Operations, the list(s) of goods and services that DEC, DEP, and Piedmont each intend to take from DEBS, the list(s) of goods and services DEC, DEP, and Piedmont intend to take from each other and the Utility Affiliates, and the basis for the determination of such list(s) and the elections of such services. All such lists that involve payment of fees or other compensation by DEC, DEP, or Piedmont shall require acceptance and authorization by the Commission, and shall be subject to any other Commission action required or authorized by North Carolina law and the Rules and orders of the Commission.

(b) DEC, DEP, and Piedmont shall take goods and services from an Affiliate only in accordance with the filed service agreements and approved list(s) of services. DEC, DEP, and Piedmont shall file notice with the Commission in Docket Nos. E-7, Sub 1100A, E-2, Sub 1095A, and G-6, Sub 682A, respectively, at least 15 days prior to making any proposed changes to the service agreements or to the lists of services.

5.5 Charges for and Allocations of the Costs of Affiliate Transactions. To the maximum extent practicable, all costs of Affiliate transactions shall be directly charged. When not practicable, such costs shall be assigned in proportion to the direct charges. If such costs are of a nature that direct charging and direct assignment are not practicable, they shall be allocated in accordance with Commission-approved allocation methods. The following additional provisions shall apply:

(a) DEC, DEP, and Piedmont shall keep on file with the Commission a cost allocation manual (CAM) with respect to goods or services provided by DEC, DEP, or Piedmont, any Utility Affiliate, DEBS, any other Non-Utility Affiliate, Duke Energy, any other Affiliates, or any Nonpublic Utility Operation to DEC, DEP, or Piedmont. Piedmont will adopt DEC's and DEP's CAM.

(b) The CAM shall describe how all directly charged, direct assignment, and other costs for each provider of goods and services will be charged between and among DEC, DEP, Piedmont, their Utility Affiliates, Non-Utility Affiliates, Duke Energy, any other Affiliates, and the Nonpublic Utility Operations, and shall include a detailed review of the common costs to be allocated and the allocation factors to be used.

(c) The CAM shall be updated annually, and the revised CAM shall be filed with the Commission no later than March 31 of the year that the CAM is to be in effect. DEC, DEP, and Piedmont shall review the appropriateness of the allocation bases every two years, and the results of such review shall be filed with the Commission. Interim changes shall be made to the CAM, if and when necessary, and shall be filed with the Commission, in accordance with Regulatory Condition 5.6.

(d) No changes shall be made to the procedures for direct charging, direct assigning, or allocating the costs of Affiliate transactions or to the method of accounting for such transactions associated with goods and services (including Shared Services provided by DEBS) provided to or by Duke Energy, other Affiliates, and the Nonpublic Utility Operations until DEC, DEP, or Piedmont has given 15 days' notice to the Commission of the proposed changes, in accordance with Regulatory Condition 5.6.

5.6 Procedures Regarding Interim Changes to the CAM or Lists of Goods and Services for which 15 Days' Notice Is Required. With respect to interim changes to the CAM or changes to lists of goods and services, for which the 15 day notice to the Commission is required, the following procedures shall apply: the Public Staff shall file a response and make a recommendation as to how the Commission should proceed before the end of the notice period. If the Commission has not issued an order within 30 days of the end of the notice period, DEC, DEP, or Piedmont may proceed with the changes but shall be subject to any fully adjudicated Commission order on the matter. The provisions of Regulatory Condition 13.2 do not apply to advance notices filed pursuant to Regulatory Condition 5.5(c) and (d). Such advance notices shall be filed in Docket Nos. E-7, Sub 1100A, E-2, Sub 1095A, and G-9, Sub 682A.

5.7 Annual Reports of Affiliate Transactions. DEC, DEP, and Piedmont shall file annual reports of affiliated transactions with the Commission in a format to be prescribed by the Commission in Docket Nos. E-7, Sub 1100A, E-2, Sub 1095A, and G-9, Sub 682A. The report shall be filed on or before May 30 of each year, for activity through December 31 of the preceding year. DEC, DEP, Piedmont, and other parties may propose changes to the required affiliated transaction reporting requirements and submit them to the Commission for approval, also in Docket Nos. E-7, Sub 1100A, E-2, Sub 1095A, and G-9, Sub 682A.

5.8 Third-party Independent Audits of Affiliate Transactions.

(a) No less often than every two years, a third-party independent audit shall be conducted related to the affiliate transactions undertaken pursuant to Affiliate agreements filed in accordance with Regulatory Condition 5.4 and of DEC's, DEP's, and Piedmont's compliance with all conditions approved by the Commission concerning Affiliate transactions, including the propriety

of the transfer pricing of goods and services between or among DEC, DEP, Piedmont, other Affiliates, and all of the Nonpublic Utility Operations.

(i) The first audit shall begin two years from the date of the close of the Merger. It shall include whether DEC's, DEP's, and Piedmont's transactions, services, and other Affiliate dealings pursuant to the regulated utility-to-regulated utility service agreement and any other utility to utility agreements are consistent with all of the conditions related to affiliate dealings and the Code of Conduct and whether DEC, DEP, and Piedmont have operated in accordance with those conditions and Code of Conduct.

(ii) The second audit shall begin two years from the date of the Commission's order on the independent auditor's final report on the first audit or, if no such order is issued, two years from the date of such final report. It shall include whether DEC's, DEP's, and Piedmont's transactions, services, and other Affiliate dealings pursuant to the Service Company Utility Service Agreement and other Affiliate transactions other than transactions undertaken pursuant to regulated utility to regulated utility service agreements are consistent with all of the conditions related to affiliate dealings and the Code of Conduct and whether DEC, DEP, and Piedmont have operated in accordance with those conditions and Code of Conduct.

(iii) Thereafter, independent audits shall occur every two years from the date of the Commission's order on the immediately preceding auditor's final report or, if no such order is issued, two years from the date of such final report. The subject matter of these audits shall alternate between the subject matters for the first and second independent audits. DEC, DEP, and Piedmont may request a change in the frequency of the audit reports in future years, subject to approval by the Commission.

(b) The following further requirements apply:

(i) The independent auditor shall have sufficient access to the books and records of DEC, DEP, Piedmont, Duke Energy, other Affiliates, and all of the Nonpublic Utility Operations to perform the audits.

(ii) For each audit, the Public Staff shall propose one or more independent auditor(s). DEC, DEP, Piedmont, and other parties shall have an opportunity to comment and propose additional auditors. Selection of the independent auditor shall be made by the Commission. Any party proposing an independent auditor shall file such auditor's audit proposal with the Commission.

(iii) The independent auditor shall be supervised in its duties by the Public Staff, and the auditor's reports shall be filed with the Commission.

5.9 Ongoing Review by Commission.

(a) The services rendered by DEC, DEP, and Piedmont to their Affiliates and Nonpublic Utility Operations and the services received by DEC, DEP, or Piedmont from their Affiliates and Nonpublic Utility Operations pursuant to the filed service agreements, the costs and benefits assigned or allocated in connection with such services, and the determination or calculation of the bases and factors utilized to assign or allocate such costs and benefits, as well as DEC's, DEP's, and Piedmont's compliance with the Commission-approved Code of Conduct and all Regulatory Conditions, shall remain subject to ongoing review. These agreements shall be subject to any Commission action required or authorized by North Carolina law and the Rules and orders of the Commission.

(b) The service agreements, the CAM(s) and the assignments and allocations of costs pursuant thereto, the biannual allocation factor reviews required by Regulatory Condition 5.5(c), the list(s) and the goods and services provided pursuant thereto, and any changes to these documents shall be subject to ongoing Commission review, and Commission action if appropriate.

5.10 Future Orders. For the purposes of North Carolina retail accounting, reporting, and ratemaking, the Commission may, after appropriate notice and opportunity to be heard, issue future orders relating to DEC's, DEP's, or Piedmont's cost of service as the Commission may determine are necessary to ensure that DEC's, DEP's, and Piedmont's operations and transactions with their Affiliates and Nonpublic Utility Operations are consistent with the Regulatory Conditions and Code of Conduct, and with any other applicable decisions of the Commission.

5.11 Review by the FERC. Notwithstanding any of the provisions contained in these Regulatory Conditions, to the extent the allocations adopted by the Commission when compared to the allocations adopted by the other State commissions with ratemaking authority as to a Utility Affiliate of DEC, DEP, or Piedmont result in significant trapped costs related to "non-power goods or administrative or management services provided by an associate company organized specifically for the purpose of providing such goods or services to any public utility in the same holding company system," including DEC, DEP, and Piedmont, DEC, DEP, or Piedmont may request pursuant to Section 1275(b) of Subtitle F in Title XII of PUHCA 2005 that the FERC "review and authorize the allocation of the costs for such goods and services to the extent relevant to that associate company." Such review and authorization shall have whatever effect it is determined to have under the law. The quoted language in this Regulatory Condition is taken directly from Section 1275(b) of Subtitle F in Title XII of PUHCA 2005. The terms "associate company" and

"holding company system" are defined in Sections 1262(2) and 1262(9), respectively, of Subtitle F in Title XII of PUHCA 2005 and have the same meanings for purposes of this condition.

5.12 Biannual Review of Certain Transactions by Internal Auditors. Transactions between DEC, DEP, or Piedmont and Duke Energy, other Affiliates, or the Nonpublic Utility Operations, transactions between or among DEC, DEP, and Piedmont, and other transactions between or among Affiliates if such transactions are reasonably likely to have a significant Effect on DEC's, DEP's, or Piedmont's Rates or Service, shall be reviewed at least biannually by Duke Energy's internal auditors. To the extent external audits of the transactions are conducted, DEC, DEP, and Piedmont shall make available such audits for review by the Public Staff and the Commission. DEC, DEP, and Piedmont also shall make available for review by the Public Staff and the Commission all workpapers relating to internal audits and all other internal audit workpapers, if any, related to affiliate transactions, and shall not oppose Public Staff and Commission requests to review relevant external audit workpapers. The requirement to make internal audit workpapers available for review is subject to the assertion of the attorney-client privilege by attorneys for DEC, DEP, and Piedmont. Any dispute as to whether the privilege applies in a particular instance shall be resolved by the Commission in accordance with its regulations and North Carolina law, including the rules of the North Carolina State Bar.

5.13 Notice of Service Company and Non-Utility Affiliates FERC Audits. At such time as DEC, DEP, Piedmont, Duke Energy, or DEBS receives notice from the FERC related to an audit of any Affiliate of DEC, DEP, or Piedmont, DEC, DEP, or Piedmont shall promptly file a notice the Commission that such an audit will be commencing. Any initial report of the FERC's audit team shall be provided to the Public Staff, and any final report shall be filed with the Commission in Docket Nos. E-7, Sub 1100E, E-2, Sub 1095E, and G-9, Sub 682E, respectively.

5.14 Acquisition Adjustment. Any acquisition adjustment that results from the Merger shall be excluded from DEC's, DEP's, and Piedmont's utility accounts and treated for regulatory accounting, reporting, and ratemaking purposes so that it does not affect DEC's or DEP's North Carolina retail rates and charges for Electric Services or Piedmont's North Carolina rates and charges for Natural Gas Services.

5.15 Non-Consummation of Merger. If the Merger is not consummated, neither the cost, nor the receipt, of any termination payment between Duke Energy and Piedmont shall be allocated to DEC, DEP, or Piedmont or recorded on their books. DEC's, DEP's, or Piedmont's Customers shall not otherwise bear any direct expenses or costs associated with a failed merger.

5.16 Protection from Commitments to Wholesale Customers.

(a) This Regulatory Condition does not apply to Piedmont.

(b) For North Carolina retail electric cost of service/ratemaking purposes, DEC's and DEP's respective electric system costs shall be assigned or allocated between and among retail and wholesale jurisdictions based on reasonable and appropriate cost causation principles. For cost of service/ratemaking purposes, North Carolina retail ratepayers shall be held harmless from any cost assignment or allocation of costs resulting from agreements between DEC and the Catawba Joint Owners, and between either DEC or DEP and any of their wholesale customers.

(c) To the extent commitments to DEC's or DEP's wholesale customers relating to the 2012 merger of Duke Energy and Progress Energy are made by or imposed upon DEC or DEP, the effects of which (i) decrease the bulk power revenues that are assigned or allocated to DEC's or DEP's North Carolina retail operations or credited to DEC's or DEP's jurisdictional fuel expenses, (ii) increase DEC's or DEP's North Carolina retail cost of service, or (iii) increase DEC's or DEP's North Carolina retail fuel costs under reasonable cost assignment and allocation practices approved or allowed by the Commission, those effects shall not be recognized for North Carolina retail cost of service or ratemaking purposes.

(d) To the extent that commitments are made by or imposed upon DEC, DEP, Duke Energy, another Affiliate, or a Nonpublic Utility Operation relating to the Merger, either through an offer, a settlement, or as a result of a regulatory order, the effects of which serve to increase the North Carolina retail cost of service or North Carolina retail fuel costs under reasonable cost allocation practices, the effects of these commitments shall not be recognized for North Carolina retail ratemaking purposes.

5.17 Joint Owner-Specific Issues. Assignment or allocation of costs to the North Carolina retail jurisdiction shall not be adversely affected by the manner and amount of recovery of electric system costs from the Catawba Joint Owners as a result of agreements between DEC and the Catawba Joint Owners. This Regulatory Condition does not apply to Piedmont.

5.18 Inclusion of Cost Savings in Future Rate Proceedings. Neither DEC, DEP, Piedmont, Duke Energy, any other Affiliate, nor a Nonpublic Utility Operation shall assert that any interested party is prohibited from seeking the inclusion in future rate proceedings of cost savings that may be realized as a result of any business combination transaction impacting DEC, DEP, and Piedmont.

5.19 Reporting of Costs to Achieve. The North Carolina portion of costs to achieve any business combination transaction savings shall be reflected in DEC's and DEP's

North Carolina ES-1 Reports and Piedmont's North Carolina GS-1 Report, as recorded on their books and records under generally accepted accounting principles. DEC, DEP, and Piedmont shall include as a footnote in their ES-1 and GS-1 Reports, as applicable, the Merger-related costs to achieve that were expensed during the relevant period.

5.20 Accounting for Costs to Achieve Related to Historical Events Involving DEP. All costs of Carolina Power and Light Company's merger with North Carolina Natural Gas Company, the Formation of Progress Energy, and Progress Energy's merger with Florida Progress Corporation shall be excluded from DEP's utility accounts, and all direct or indirect corporate cost increases, if any, attributable to those three events shall be excluded from utility costs for all purposes that affect DEP's regulated retail rates and charges. For purposes of this condition, the term "corporate cost increases" means costs in excess of the level DEP would have (a) incurred using prudent business judgment, or (b) had allocated to it, had these transactions not occurred. "Corporate cost increases" also includes any payments made under change-of-control agreements, salary continuation agreements, and other severance- or personnel-type arrangements that are reasonably attributable to these transactions. This Regulatory Condition does not apply to DEC and Piedmont.

5.21 Liabilities of Cinergy Corp. and Florida Progress Corporation.

(a) DEC's and DEP's Retail Native Load Customers and Piedmont's Customers shall be held harmless from all liabilities of Cinergy Corp. and its subsidiaries, including those incurred prior to and after Duke Energy's acquisition of Cinergy Corp. in 2006. These liabilities include, but are not limited to, those associated with the following: (i) manufactured gas plant sites, (ii) asbestos claims, (iii) environmental compliance, (iv) pensions and other employee benefits, (v) decommissioning costs, and (vi) taxes.

(b) DEC's and DEP's Retail Native Load Customers and Piedmont's Customers shall be held harmless from all liabilities of Florida Progress Corporation and its subsidiaries, including those incurred prior to and after Progress Energy's acquisition of Florida Progress Corporation in 2000. These liabilities include, but are not limited to, those associated with the following: (i) any outages at and repairs of Crystal River 3, (ii) manufactured gas plant sites, (iii) asbestos claims, (iv) environmental compliance, (v) pensions and other employee benefits, (vi) decommissioning costs, and (vii) taxes.

(c) DEC's Retail Native Load Customers and Piedmont's Customers shall be held harmless from all current and prospective liabilities of DEP, and DEP's Retail Native Load Customers and Piedmont's Customers shall be held harmless from all current and prospective liabilities of DEC.

5.22 Hold Harmless Commitment. DEC, DEP, Piedmont, Duke Energy, the other Affiliates, and all of the Nonpublic Utility Operations shall take all such actions as may be reasonably necessary and appropriate to hold North Carolina Customers harmless from the effects of the Merger, including rate increases or foregone opportunities for rate decreases, and other effects otherwise adversely impacting Customers.

5.23 Cost of Service Manuals. Within six months after the closing date of the Merger, DEC and DEP shall each file with the Commission revisions to its electric cost of service manual to reflect any changes to the cost of service determination process made necessary by the Merger, any subsequent alterations in the organizational structure of DEC, DEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations, or other circumstances that necessitate such changes. These filings shall be made in Docket Nos. E-7, Sub 1100A, and E-2, Sub 1095A, respectively. This Regulatory Condition does not apply to Piedmont.

5.24 Direct Charging and Positive Time Reporting for Piedmont. For purposes of distributing the costs of services provided between and among Affiliates, Piedmont will use direct charging and positive time reporting to at least the same extent as DEC and DEP.

5.25 Piedmont Corporate Cost Allocations Among State Jurisdictions. Piedmont will notify the Commission and Public Staff of any plans to modify its corporate cost allocation procedures at least 90 days prior to implementation of the change.

5.26 Allocation of Fully-distributed Costs to Piedmont's Nonpublic Utility Operations. Piedmont shall direct charge or allocate fully distributed costs to its Nonpublic Utility Operations. The fully distributed costs shall include an overhead component for the cost of shared services provided to these non-regulated businesses and equity investments by Piedmont corporate, DEC, DEP, and DEBS employees.

SECTION VI
CODE OF CONDUCT

These Regulatory Conditions include a Code of Conduct in Appendix A. The Code of Conduct governs the relationships, activities and transactions between or among the public utility operations of DEC, DEP, Piedmont, Duke Energy, the Affiliates of DEC, DEP, and Piedmont, and the Nonpublic Utility Operations of DEC, DEP, and Piedmont.

6.1 Obligation to Comply with Code of Conduct. DEC, DEP, Piedmont, Duke Energy, the other Affiliates, and the Nonpublic Utility Operations shall be bound by the terms of the Code of Conduct set forth in Appendix A and as it may subsequently be amended.

SECTION VII
FINANCINGS

The following Regulatory Conditions are intended to ensure (a) that DEC's, DEP's, and Piedmont's capital structures and cost of capital are not adversely affected through their affiliation with Duke Energy, each other, and other Affiliates and (b) that DEC, DEP, and Piedmont have sufficient access to equity and debt capital at a reasonable cost to adequately fund and maintain their current and future capital needs and otherwise meet their service obligations to their Customers.

These conditions do not supersede any orders or directives of the Commission regarding specific securities issuances by DEC, DEP, Piedmont, or Duke Energy. The approval of the Merger by the Commission does not restrict the Commission's right to review, and by order to adjust, DEC's, DEP's, or Piedmont's cost of capital for ratemaking purposes for the effect(s) of the securities-related transactions associated with the Merger.

7.1 Accounting for Equity Investment in Holding Company Subsidiaries. Duke Energy shall maintain its books and records so that any net equity investment in Cinergy Corp. and Progress Energy, their subsidiaries, or their successors, by Duke Energy or any Affiliates can be identified and made available on an ongoing basis. This information shall be provided to the Public Staff upon its request.

7.2 Accounting for Capital Structure Components and Cost Rates. Duke Energy , DEC, DEP, and Piedmont shall keep their respective accounting books and records in a manner that will allow all capital structure components and cost rates of the cost of capital to be identified easily and clearly for each entity on a separate basis. This information shall be provided to the Public Staff upon its request.

7.3 Accounting for Equity Investment in DEC, DEP, and Piedmont. DEC, DEP, and Piedmont shall keep their respective accounting books and records so that the amount of Duke Energy's equity investment in DEC, DEP, and Piedmont can be identified and made available upon request on an ongoing basis. This information shall be provided to the Public Staff upon request.

7.4 Reporting of Capital Contributions. As part of their Commission ES-1 and GS-1 Reports, DEC, DEP, and Piedmont shall include a schedule of any capital contribution(s) received from Duke Energy in the applicable calendar quarter.

7.5 Identification of Long-term Debt Issued by DEC, DEP, or Piedmont. DEC, DEP, and Piedmont shall each identify as clearly as possible long-term debt (of more than one year's duration) that they issue in connection with their regulated utility operations and capital requirements or to replace existing debt.

7.6 Procedures Regarding Proposed Financings.

(a) For all types of financings for which DEC, DEP, or Piedmont (or their subsidiaries) are the issuers of the respective securities, DEC, DEP, or Piedmont (or their subsidiaries) shall request approval from the Commission to the extent required by G.S. 62-160 through G.S. 62-169 and Commission Rule R1-16. Generally, the format of these filings should be consistent with past practices. A "shelf registration" approach (similar to Docket No. E-7, Sub 727) may be requested.

(b) For all types of financings by Duke Energy, other than short-term debt as described in G.S. 62-167, the following shall apply:

(i) On or before January 15 of each year, Duke Energy shall file with the Commission and serve on the Public Staff an advance confidential plan of all securities issuances that it anticipates to occur during that calendar year. The annual confidential plan shall include a description of all financings that Duke Energy reasonably believes may occur during the applicable calendar year. A description for each financing shall include the best estimates of the following: type of security; estimate of cost rate (e.g., interest rate for debt); amount of proceeds; brief description of the purpose/reason for issue; and amount of proceeds, if any, that may flow to DEC, DEP, or Piedmont.

(ii) If at any time material changes to the financing plans included in the filed plan appear likely, Duke Energy shall file a revised 30-day advance confidential plan that specifically addresses such changes with the Commission and serve such notice on the Public Staff.

(iii) At the time of the confidential plan filings identified above, Duke Energy shall also file a non-confidential notice that states that a confidential plan has been filed in compliance with this Regulatory Condition 7.6(b).

(iv) Duke Energy may proceed with equity issuances upon the filing of the confidential plan. However, actual debt issuances shall not occur until 30 days after the advance confidential plan or revised plans are filed. In the event it is not feasible for Duke Energy to file a revised advance confidential plan for a material change 30 days in advance, such plan shall be filed by a date that allows adequate time for review or a debt issuance shall be delayed to allow such review. Prior to the Commission’s action on the confidential plan for the year in which the plan is filed, Duke Energy may issue securities authorized under the previous year’s plan to the extent such securities were not issued during the previous year.

(v) Within 15 days after the filing of an advance confidential plan or revised plan, the Public Staff shall file a confidential report with the Commission with respect to whether any debt issuances require approval pursuant to G.S. 62-160 through G.S. 62-169 and Commission Rule R1-16 and shall recommend that the Commission issue an order deciding how to proceed. Duke Energy shall have seven days in which to respond to the report. If the Commission determines that any debt issuance requires approval, the Commission shall issue an order requiring the filing of an application and no such issuance shall occur until the Commission approves the application. If the Commission determines that no debt issuance requires approval, the Commission shall issue an order so ruling. At the end of the notice period, Duke Energy may proceed with the debt issuance, but shall be subject to any fully adjudicated Commission order on the matter; provided, however, that nothing herein shall affect the applicability of G.S. 62-170 or other similar provision to such securities or obligations.

(vi) On or before April 15 of each year, Duke Energy shall file with the Commission a report on all financings that were executed for the previous calendar year. The actual reports should include the same information as required above for the advance plans plus the actual issuance costs.

(c) If a filing with the Securities and Exchange Commission or other federal agency will be made in connection with a securities issuance, the notice shall describe such filing(s) and indicate the approximate date on which it would occur.

(d) Securities issuances or financings that are associated with a merger, acquisition, or other business combination shall be filed in conjunction with the information requirements and deadlines stated in Regulatory Conditions 9.1 and 9.2, and this Condition 7.6 shall not apply to such securities issuances or financings.

7.7 Money Pool Agreement. Subject to the limitations imposed in Regulatory Condition 8.5, DEC, DEP, and Piedmont may borrow through Duke Energy's "Utility Money Pool Agreement" (Utility MPA), provided as follows: (a) participation in the Utility MPA is limited to the parties to the Utility MPA filed with the Commission on December 1, 2011, in Docket Nos. E-7, Sub 986A, and E-2, Sub 998A, plus Piedmont and with the exception of the Progress Energy Service Company; and (b) the Utility MPA continues to provide that no loans through the Utility MPA will be made to, and no borrowings through the Utility MPA will be made by, Duke Energy, Progress Energy, and Cinergy Corp.

7.8 Borrowing Arrangements. Subject to the limitations imposed in Regulatory Condition 8.5, DEC, DEP, and Piedmont may borrow short-term funds through one or more joint external debt or credit arrangements (a Credit Facility), provided that the following conditions are met:

(a) No borrowing by DEC, DEP, or Piedmont under a Credit Facility shall exceed one year in duration, absent Commission approval;

(b) No Credit Facility shall include, as a borrower, any party other than Duke Energy, DEC, DEP, Duke Indiana, Duke Kentucky, DEF, Duke Ohio, and Piedmont; and

(c) DEC's, DEP's, and Piedmont's participation in any Credit Facility shall in no way cause either of them to guarantee, assume liability for, or provide collateral for any debt or credit other than its own.

7.9 Long-Term Debt Fund Restrictions. DEC, DEP, and Piedmont shall acquire their respective long-term debt funds through the financial markets, and shall neither borrow from, nor lend to, on a long-term basis, Duke Energy or any of the other Affiliates. To the extent that either DEC, DEP, or Piedmont borrows on short-term or long-term bases in the financial markets and is able to obtain a debt rating, its debt shall be rated under its own name.

SECTION VIII
CORPORATE GOVERNANCE/RING FENCING

The following Regulatory Conditions are intended to ensure the continued viability of DEC, DEP, and Piedmont and to insulate and protect DEC, DEP, and their Retail Native Load Customers and Piedmont and its Customers from the business and financial risks of Duke Energy and the Affiliates within the Duke Energy holding company system, including the protection of utility assets from liabilities of Affiliates.

8.1 Investment Grade Debt Rating. DEC, DEP, and Piedmont shall manage their respective businesses so as to maintain an investment grade debt rating on all of their rated debt issuances with all of the debt rating agencies on all of their rated debt issuances. If DEC's, DEP's, or Piedmont's debt rating falls to the lowest level still considered investment grade at the time, DEC, DEP, or Piedmont shall file written notice to the Commission and the Public Staff within five (5) days of such change and an explanation as to why the downgrade occurred. Within 45 days of such notice, DEC, DEP, or Piedmont shall provide the Commission and the Public Staff with a specific plan for maintaining and improving its debt rating. The Commission, after notice and hearing, may then take whatever action it deems necessary consistent with North Carolina law to protect the interests of DEC's or DEP's Retail Native Load Customers and Piedmont's Customers in the continuation of adequate and reliable service at just and reasonable rates.

8.2 Protection Against Debt Downgrade. To the extent the cost rates of any of DEC's, DEP's, or Piedmont's long-term debt (more than one year) or short-term debt (one year or less) are or have been adversely affected through a ratings downgrade attributable to the Merger, a replacement cost rate to remove the effect shall be used for all purposes affecting any of DEC's North Carolina retail rates and charges, DEP's North Carolina retail rates and charges, and Piedmont's North Carolina rates and charges. This replacement cost rate shall be applicable to all financings, refundings, and refinancings taking place following the change in ratings. This procedure shall be effective through DEC's, DEP's and Piedmont's next respective general rate cases. As part of DEC's, DEP's and Piedmont's next respective general rate cases, any future procedure relating to a replacement cost calculation will be determined. This Regulatory Condition does not indicate a preference for a specific debt rating or preferred stock rating for DEC, DEP, or Piedmont on current or prospective bases.

8.3 Distributions from DEC, DEP, and Piedmont to Holding Company. DEC, DEP, and Piedmont shall limit cumulative distributions paid to Duke Energy subsequent to the Merger to (a) the amount of Retained Earnings on the day prior to the closure of the Merger, plus (b) any future earnings recorded by DEC, DEP, and Piedmont subsequent to the Merger.

8.4 Debt Ratio Restrictions. To the extent any of Duke Energy's external debt or credit arrangements contain covenants restricting the ratio of debt to total capitalization on a consolidated basis to a maximum percentage of debt, Duke Energy shall ensure that the capital structures of both DEC, DEP, and Piedmont individually meet those restrictions.

8.5 Limitation on Continued Participation in Utility Money Pool Agreement and Other Joint Debt and Credit Arrangements with Affiliates. DEC, DEP, and Piedmont may participate in the Utility MPA and any other authorized joint debt or credit arrangement as provided in Regulatory Conditions 7.7 and 7.8 only to the extent such participation is beneficial to DEC's and DEP's respective Retail Native Load Customers and Piedmont's Customers and does not negatively affect DEC's, DEP's, or Piedmont's ability to continue to provide adequate and reliable service at just and reasonable rates.

8.6 Notice of Level of Non-Utility Investment by Holding Company System. In order to enable the Commission to determine whether the cumulative investment by Duke Energy in assets, ventures, or entities other than regulated utilities is reasonably likely to have an Effect on DEC's, DEP's, or Piedmont's Rates or Service so as to warrant Commission action (pursuant to Regulatory Condition 8.8 or other applicable authority) to protect DEC's or DEP's Retail Native Load Customers or Piedmont's Customers, Duke Energy shall notify the Commission within 90 days following the end of any fiscal year for which Duke Energy reports to the Securities and Exchange Commission assets in its operations other than regulated utilities that are in excess of 22% of its consolidated total assets. The following procedures shall apply to such a notice:

(a) Any interested party may file comments within 45 days of the filing of Duke Energy's notice.

(b) If timely comments are filed, the Public Staff shall place the matter on a Commission Staff Conference agenda as soon as possible, but in no event later than 15 days after the comments are filed, and shall make a recommendation as to how the Commission should proceed. If the Commission determines that the percentage of total assets invested in Duke Energy's its operations other than regulated utilities is reasonably likely to have an Effect on DEC's, DEP's, or Piedmont's Rates or Service so as to warrant action by the Commission to protect DEC's and DEP's Retail Native Load Customers and Piedmont's Customers, the Commission shall issue an order setting the matter for further consideration. If the Commission determines that the percentage threshold being exceeded does not warrant action by the Commission, the Commission shall issue an order so ruling.

8.7 Notice by Holding Company of Certain Investments. Duke Energy shall file a notice with the Commission subsequent to Board approval and as soon as practicable following any public announcement of any investment in a regulated utility or a non-regulated business that represents five (5) percent or more of Duke Energy's book capitalization.

8.8 Ongoing Review of Effect of Holding Company Structure. The operation of DEC, DEP, and Piedmont under a holding company structure shall continue to be subject to Commission review. To the extent the Commission has authority under North Carolina law, it may order modifications to the structure or operations of Duke Energy, DEBS, another Affiliate, or a Nonpublic Utility Operation, and may take whatever action it deems necessary in the interest of Retail Native Load Customers and Piedmont's Customers to protect the economic viability of DEC, DEP, and Piedmont, including the protection of DEC's, DEP's, and Piedmont's public utility assets from liabilities of Affiliates.

8.9 Investment by DEC, DEP, or Piedmont in Non-regulated Utility Assets and Non-utility Business Ventures. Neither DEC, DEP, nor Piedmont shall invest in a non-regulated utility asset or any non-utility business venture exceeding $50 million in purchase price or gross book value to DEC, DEP, or Piedmont unless it provides 30 days' advance notice. Regulatory Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition. Purchases of assets, including land that will be held with a definite plan for future use in providing Electric Services in DEC's or DEP's franchise area or Natural Gas Services in Piedmont's franchise area, shall be excluded from this advance notice requirement.

8.10 Investment by Holding Company in Exempt Wholesale Generators. By April 15 of each year, Duke Energy shall provide to the Commission and the Public Staff a report summarizing Duke Energy's investment in exempt wholesale generators

(EWGs) and foreign utility companies (FUCOs) in relation to its level of consolidated retained earnings and consolidated total capitalization at the end of the preceding year. Exempt wholesale generator and foreign utility company are defined in Section 1262(6) of Subtitle F in Title XII of PUHCA 2005 and have the same meanings for purposes of this condition.

8.11 Notice by DEC, DEP, or Piedmont of Default or Bankruptcy of Affiliate. If an Affiliate of DEC, DEP, or Piedmont experiences a default on an obligation that is material to Duke Energy or files for bankruptcy, and such bankruptcy is material to Duke Energy, DEC, DEP, or Piedmont shall notify the Commission in advance, if possible, or as soon as possible, but not later than ten days from such event.

8.12 Annual Report on Corporate Governance. No later than March 31 of each year, DEC, DEP, and Piedmont shall file a report including the following:

(a) A complete, detailed organizational chart (i) identifying DEC, DEP, Piedmont, and each Duke Energy financial reporting segment, and (ii) stating the business purpose of each Duke Energy financial reporting segment. Changes from the report for the immediately preceding year shall be summarized at the beginning of the report.

(b) A list of all Duke Energy financial reporting segment that are considered to constitute non-regulated investments and a statement of each segment's total capitalization and the percentage it represents of Duke Energy's non-regulated investments and total investments. Changes from the report for the immediately preceding year shall be summarized at the beginning of the report.

(c) An assessment of the risks that each unregulated Duke Energy financial reporting segment could pose to DEC, DEP, or Piedmont based upon current business activities of those affiliates and any contemplated significant changes to those activities.

(d) A description of DEC's, DEP's, Piedmont's and each significant Affiliate's actual capital structure. In addition, describe Duke Energy's, DEC's, DEP's, and Piedmont's respective capital structures and plans for achieving such goals.

(e) A list of all protective measures (other than those provided for by the Regulatory Conditions adopted in Docket Nos. E-7, Sub 1100, E-2, Sub 1095, and G-9, Sub 682) in effect between DEC, DEP, Piedmont, and any of their Affiliates, and a description of the goal of each measure and how it achieves that goal, such as mitigation of DEC's, DEP's, and Piedmont's exposure in the event of a bankruptcy proceeding involving any Affiliate(s).

(f) A list of corporate executive officers and other key personnel that are shared between DEC, DEP, Piedmont, and any Affiliate, along with a description of each person's position(s) with, and duties and responsibilities to each entity.

(g) A calculation of Duke Energy's total book and market capitalization as of December 31 of the preceding year for common equity, preferred stock, and debt.

SECTION IX
FUTURE MERGERS AND ACQUISITIONS

The following Regulatory Conditions are intended to ensure that the Commission receives sufficient notice to exercise its lawful authority over proposed mergers, acquisitions, and other business combinations involving Duke Energy, DEC, DEP, Piedmont, other Affiliates, or the Nonpublic Utility Operations. The advance notice provisions set forth in Regulatory Condition 13.2 do not apply to these conditions.

9.1 Mergers and Acquisitions by or Affecting DEC, DEP, or Piedmont. For any proposed merger, acquisition, or other business combination by DEC, DEP, or Piedmont that would have an Effect on DEC's, DEP's, or Piedmont's Rates or Service, DEC, DEP, or Piedmont shall file in a new Sub docket an application for approval pursuant to G S. 62-111(a) at least 180 days before the proposed closing date for such merger, acquisition, or other business combination.

9.2 Mergers and Acquisitions Believed Not to Have an Effect on DEC's, DEP's, or Piedmont's Rates or Service. For any proposed merger, acquisition, or other business combination that is believed not to have an Effect on DEC's, DEP's, or Piedmont's Rates or Service, but which involves Duke Energy, other Affiliates, or the Nonpublic Utility Operations and which has a transaction value exceeding $1.5 billion, the following shall apply:

(a) Advance notification shall be filed with the Commission in a new Sub docket by the merging entities at least 90 days prior to the proposed closing date for such proposed merger, acquisition or other business combination. The advance notification is intended to provide the Commission an opportunity to determine whether the proposed merger, acquisition, or other business combination is reasonably likely to affect DEC, DEP, or Piedmont so as to require approval pursuant to G S. 62-111(a). The notification shall contain sufficient information to enable the Commission to make such a determination. If the Commission determines that such approval is required, the 180-day advance filing requirement in Regulatory Condition 9.1 shall not apply.

(b) Any interested party may file comments within 45 days of the filing of the advance notification.

(c) If timely comments are filed, the Public Staff shall place the matter on a Commission Staff Conference agenda as soon as possible, but in no event later than 15 days after the comments are filed, and shall recommend that the Commission issue an order deciding how to proceed. If the Commission determines that the merger, acquisition, or other business combination requires approval pursuant to G.S. 62-111(a), the Commission shall issue an order requiring the filing of an application, and no closing can occur until and unless the Commission approves the proposed merger, acquisition, or business combination. If the Commission determines that the merger, acquisition, or other business combination does not require approval pursuant to G.S. 62-111(a), the Commission shall issue an order so ruling. At the end of the notice period, if no order has been issued, Duke Energy, any other Affiliate, or the Nonpublic Utility Operation may proceed with the merger, acquisition, or other business combination but shall be subject to any fully-adjudicated Commission order on the matter.

SECTION X
STRUCTURE/ORGANIZATION

The following Regulatory Conditions are intended to ensure that the Commission receives adequate notice of, and opportunity to review and take such lawful action as is necessary and appropriate with respect to, changes to the structure and organization of Duke Energy, DEC, DEP, Piedmont, and other Affiliates, and Nonpublic Utility operations as they may affect Customers.

10.1 Transfer of Services, Functions, Departments, Rights, Assets, or Liabilities. DEC, DEP, and Piedmont shall file notice with the Commission 30 days prior to the initial transfer or any subsequent transfer of any services, functions, departments, rights, obligations, assets, or liabilities from DEC, DEP, or Piedmont to DEBS that (a) involves services, functions, departments, rights, obligations, assets, or liabilities other than those of a governance or corporate type nature that traditionally have been provided by a service company or (b) potentially would have a significant effect on DEC's, DEP's, or Piedmont's public utility operations. The provisions of Regulatory Condition 13.2 apply to an advance notice filed pursuant to this Regulatory Condition.

10.2 Notice and Consultation with Public Staff Regarding Proposed Structural and Organizational Changes. Upon request, DEC, DEP, and Piedmont shall meet and consult with, and provide requested relevant data to, the Public Staff regarding plans for significant changes in DEC's, DEP's, Piedmont's or Duke Energy's organization, structure (including RTO developments), and activities; the expected or potential impact of such changes on Customer rates, operations and service; and proposals for assuring that such plans do not adversely affect DEC's or DEP's Retail Native Load Customers or Piedmont's Customers. To the extent that proposed significant changes are planned for the organization, structure, or activities of an Affiliate or Nonpublic Utility Operation and such proposed changes are likely to have an adverse impact on

DEC's, DEP's, or Piedmont's Customers, then DEC's, DEP's, and Piedmont's plans and proposals for assuring that those plans do not adversely affect their Customers must be included in these meetings. DEC, DEP, and Piedmont shall inform the Public Staff promptly of any such events and changes.

SECTION XI
SERVICE QUALITY

The following Regulatory Conditions are intended to ensure that DEC, DEP, and Piedmont continue to implement and further their commitment to providing superior public utility service by meeting recognized service quality indices and implementing the best practices of each other and their Utility Affiliates, to the extent reasonably practicable.

11.1 Overall Service Quality. Upon consummation of the Merger, DEC, DEP, and Piedmont each shall continue their commitment to providing superior public utility service and shall maintain the overall reliability of Electric Services and Natural Gas Services at levels no less than the overall levels it has achieved in the past decade.

11.2 Best Practices. DEC, DEP, and Piedmont shall make every reasonable effort to incorporate each other's best practices into its own practices to the extent practicable.

11.3 Quarterly Reliability Reports. DEC and DEP shall each provide quarterly service reliability reports to the Public Staff on the following measures: System Average Interruption Duration Index (SAIDI) and System Average Interruption Frequency Index (SAIFI).

11.4 Notice of NERC Audit. This Regulatory Condition does not apply to Piedmont. At such time as either DEC or DEP receives notice that the North American Electric Reliability Corporation (NERC) or the SERC Reliability Corporation will be conducting a non-routine compliance audit with respect to DEC's or DEP's compliance with mandatory reliability standards, DEC or DEP shall notify the Public Staff.

11.5 Right-of-Way Maintenance Expenditures (DEC and DEP). DEC and DEP shall budget and expend sufficient funds to trim and maintain their lower voltage line rights-of-way and their distribution rights-of-way in a manner consistent with their internal right-of-way clearance practices and Commission Rule R8-26. In addition, DEC and DEP shall track annually, on a major category basis, departmental or division budget requests, approved budgets and actual expenditures for right-of-way maintenance.

11.6 Right-of-Way Maintenance Expenditures (Piedmont). Piedmont shall budget and expend sufficient funds to maintain its pipeline rights-of-way so as to allow ready access by personnel and vehicles for the purpose of responding to pipeline damage, conducting leak and corrosion surveys, performing maintenance activities, and ensuring system integrity, safety, and reliability.

11.7 Right-of-Way Clearance Practices (DEC and DEP). DEC and DEP shall each provide a copy of their internal right-of-way clearance practices to the Public Staff, and shall promptly notify the Public Staff of any significant changes or modifications to the practices or maintenance schedules.

11.8 Right-of-Way Clearance Practices (Piedmont). Piedmont shall provide a copy of its Operating and Maintenance Manual to the Public Staff and shall promptly notify the Public Staff in writing of any substantive changes to Section 9, "Right-of-Way Management Program."

11.9 Meetings with Public Staff.

(a) DEC, DEP, and Piedmont shall each meet annually with the Public Staff to discuss service quality initiatives and results, including (i) ways to monitor and improve service quality, (ii) right-of-way maintenance practices, budgets, and actual expenditures, and (iii) plans that could have an effect on customer service, such as changes to call center operations.

(b) DEC, DEP, and Piedmont shall each meet with the Public Staff at least annually to discuss potential new tariffs, programs, and services that enable its customers to appropriately manage their energy bills based on the varied needs of their customers.

11.10 Customer Access to Service Representatives and Other Services. DEC, DEP, and Piedmont shall continue to have knowledgeable and experienced customer service representatives available 24 hours a day to respond to service outage calls and during normal business hours to handle all types of customer inquiries. DEC, DEP, and Piedmont shall also maintain up-to-date and user-friendly online services and automated telephone service 24 hours a day to perform routine customer interactions and to provide general billing and customer information.

11.11 Customer Surveys. DEC, DEP, and Piedmont shall continue to survey their customers regarding their satisfaction with public utility service and shall incorporate this information into their processes, programs, and services.

SECTION XII
TAX MATTERS

The following Regulatory Conditions are intended to ensure that DEC's, DEP's, and Piedmont's North Carolina Customers do not bear any additional tax costs as a result of the Merger and receive an appropriate share of any tax benefits associated with the service company Affiliates.

12.1 Costs under Tax Sharing Agreements. Under any tax sharing agreement, DEC, DEP, and Piedmont shall not seek to recover from North Carolina Customers any tax

costs that exceed DEC's, DEP's, or Piedmont's tax liability calculated as if it were a stand-alone, taxable entity for tax purposes.

12.2 Tax Benefits Associated with Service Companies. The appropriate portion of any income tax benefits associated with DEBS shall accrue to the North Carolina retail operations of DEC, DEP, and Piedmont, respectively, for regulatory accounting, reporting, and ratemaking purposes.

SECTION XIII
PROCEDURES

The following Regulatory Conditions are intended to apply to all filings made pursuant to these Regulatory Conditions unless otherwise expressly provided by, Commission order, rule, or statute.

13.1 Filings that Do Not Involve Advance Notice. Regulatory Condition filings that are not subject to Regulatory Condition 13.2 shall be made in sub dockets of Docket Nos. E-7, Sub 1100, E-2, Sub 1095, and G-9, Sub 682, as follows:

(a) Filings related to affiliate matters required by Regulatory Conditions 5.4, 5.5, 5.6, 5.7, and 5.23 and the filing permitted by Regulatory Condition 5.3 shall be made by DEC, DEP, and Piedmont in Subs 1100A, 1095A, and 682A, respectively;

(b) Filings related to financings required by Regulatory Condition 7.6, and the filings required by Regulatory Conditions 8.6, 8.7, 8.10, 8.11 and 8.12 shall be made by DEC, DEP, and Piedmont in Subs 1100B, 1095B, and 682B, respectively;

(c) Files related to compliance as required by Regulatory Conditions 3.1(d) and 14.4 and filings required by Sections III.A.2(k), III.A.3(e), (f), and (g), III.D.5, and III.D.8 of the Code of Conduct shall be made by DEC, DEP, and Piedmont in Subs 1100C, 1095C, and 682C, respectively;

(d) Filings related to the independent audits required by Regulatory Condition 5.8 shall be made in Subs 1100D, 1095D, and 682D, respectively; and

(e) Filings related to orders and filings with the FERC, as required by Regulatory Condition 3.1(d), 3.10 and 5.13 shall be made by DEC, DEP, and Piedmont in Subs 1100E, 1095E, and 682E, respectively.

13.2 Advance Notice Filings. Advance notices filed pursuant to Regulatory Conditions 3.1(c), 3.3(b), 3.7(c), 3.9(c), 4.2, 5.3, 8.9, and 10.1 shall be assigned a new, separate Sub docket. Such a filing shall identify the condition and notice period involved and state whether other regulatory approvals are required and shall be in the format of a pleading, with a caption, a title, allegations of the activities to be undertaken, and a verification.

Advance notices may be filed under seal if necessary. The following additional procedures apply:

(a) Advance notices of activities to be undertaken shall not be filed until sufficient details have been decided upon to allow for meaningful discovery as to the proposed activities.

(b) The Chief Clerk shall distribute a copy of advance notice filings to each Commissioner and to appropriate members of the Commission Staff and Public Staff.

(c) DEC, DEC, or Piedmont shall serve such advance notices on each party to Docket Nos. E-7, Sub 1100, E-2, Sub 1095, and G-9, Sub 682, respectively, that has filed a request to receive them with the Commission within 30 days of the issuance of an order approving the Merger in this docket. These parties may participate in the advance notice proceedings without petitioning to intervene. Other interested persons shall be required to follow the Commission's usual intervention procedures.

(d) To effectuate this Regulatory Condition, DEC, DEP, or Piedmont shall serve pertinent information on all parties at the time it serves the advance notice. During the advance notice period, a free exchange of information is encouraged, and parties may request additional relevant information. If DEC, DEP, or Piedmont objects to a discovery request, DEC, DEP, or Piedmont and the requesting party shall try to resolve the matter. If the parties are unable to resolve the matter, DEC, DEP, or Piedmont may file a motion for a protective order with the Commission.

(e) The Public Staff shall investigate and file a response with the Commission no later than 15 days before the notice period expires. Any other interested party may also file a response or objection within 15 days before the notice period expires. DEC, DEP, or Piedmont may file a reply to the response(s).

(f) The basis for any objection to the activities to be undertaken shall be stated with specificity. The objection shall allege grounds for a hearing, if such is desired.

(g) If neither the Public Staff nor any other party files an objection to the activities within 15 days before the notice period expires, no Commission order shall be issued, and the Sub docket in which the advance notice was filed may be closed.

(h) If the Public Staff or any other party files a timely objection to the activities to be undertaken by DEC, DEP, or Piedmont, the Public Staff shall place the matter on a Commission Staff Conference agenda as soon as possible, but in no event later than two weeks after the objection is filed, and shall

recommend that the Commission issue an order deciding how to proceed as to the objection. The Commission reserves the right to extend an advance notice period by order should the Commission need additional time to deliberate or investigate any issue. At the end of the notice period, if no objection has been filed by the Public Staff and no order, whether procedural or substantive, has been issued, DEC, DEP, Piedmont, Duke Energy, any other Affiliate, or the Nonpublic Utility Operation may execute the proposed agreement, proceed with the activity to be undertaken, or both, but shall be subject to any fully-adjudicated Commission order on the matter.

(i) If the Commission schedules a hearing on an objection, the party filing the objection shall bear the burden of proof at the hearing.

(j) The precedential effect of advance notice proceedings, like most issues of res judicata, will be decided on a fact-specific basis.

(k) If some other Commission filing or Commission approval is required by statute, notice pursuant to a Regulatory Condition alone does not satisfy the statutory requirement.

SECTION XIV
COMPLIANCE WITH CONDITIONS AND CODE OF CONDUCT

The following Regulatory Conditions are intended to ensure that Duke Energy, DEC, DEP, Piedmont, and all other Affiliates establish and maintain the structures and processes necessary to fulfill the commitments expressed in all of the Regulatory Conditions and the Code of Conduct in a timely, consistent, and effective manner.

14.1 Ensuring Compliance with Regulatory Conditions and Code of Conduct. Duke Energy, DEC, DEP, Piedmont, and all other Affiliates shall devote sufficient resources into the creation, monitoring, and ongoing improvement of effective internal compliance programs to ensure compliance with all Regulatory Conditions and the DEC/DEP/Piedmont Code of Conduct, and shall take a proactive approach toward correcting any violations and reporting them to the Commission. This effort shall include the implementation of systems and protocols for monitoring, identifying, and correcting possible violations, a management culture that encourages compliance among all personnel, and the tools and training sufficient to enable employees to comply with Commission requirements.

14.2 Designation of Chief Compliance Officer. DEC, DEP, and Piedmont shall designate a chief compliance officer who will be responsible for compliance with the Regulatory Conditions and Code of Conduct. This person's name and contact information must be posted on DEC's, DEP's, and Piedmont's Internet Websites.

14.3 Annual Training. DEC, DEP, and Piedmont shall provide annual training on the requirements and standards contained within the Regulatory Conditions and Code of Conduct to all of their employees (including service company employees) whose duties in any way may be affected by such requirements and standards. New employees must receive such training within the first 60 days of their employment. Each employee who has taken the training must certify electronically or in writing that s/he has completed the training.

14.4 Report of Violations. If DEC, DEP, or Piedmont discover that a violation of their requirements or standards contained within the Regulatory Conditions and Code of Conduct has occurred then DEC, DEP, or Piedmont shall file a statement with the Commission in Docket Nos. E-7, Sub 1100C, E-2, Sub 1095C, and G-9, Sub 682C, respectively, describing the circumstances leading to that violation of DEC's, DEP's, or Piedmont's requirements or standards, as contained within the Regulatory Conditions and Code of Conduct, and the mitigating and other steps taken to address the current or any future potential violation.

SECTION XV
PROCEDURES FOR DETERMINING LONG-TERM SOURCES OF PIPELINE CAPACITY AND SUPPLY

The following Regulatory Conditions are intended to ensure the continued practices of DEC, DEP, and Piedmont for determining long-term sources of pipeline capacity and supply.

15.1 Cost-benefit Analysis. The appropriate source(s) for the interstate pipeline capacity and supply shall be determined by DEC and DEP on the basis of the benefits and costs of such source(s) specific to their respective electric customers. The appropriate source(s) for the interstate pipeline capacity and supply shall be determined by Piedmont on the basis of the specific benefits and costs of such source(s) specific to its natural gas customers, including electric power generating customers.

15.2 Ownership and Control of Contracts. Piedmont shall retain title, ownership, and management of all gas contracts necessary to ensure the provision of reliable Natural Gas Services consistent with Piedmont's best cost gas and capacity procurement methodology.

CODE OF CONDUCT

GOVERNING THE RELATIONSHIPS, ACTIVITIES, AND TRANSACTIONS BETWEEN AND AMONG THE PUBLIC UTILITY OPERATIONS OF DEC, THE PUBLIC UTILITY OPERATIONS OF DEP, THE PUBLIC UTILITY OPERATIONS OF PIEDMONT, DUKE ENERGY CORPORATION, OTHER AFFILIATES, AND THE NONPUBLIC UTILITY OPERATIONS OF DEC, DEP, AND PIEDMONT

I. DEFINITIONS

For the purposes of this Code of Conduct, the terms listed below shall have the following definitions:

Affiliate: Duke Energy and any business entity of which ten percent (10%) or more is owned or controlled, directly or indirectly, by Duke Energy. For purposes of this Code of Conduct, Duke Energy and any business entity controlled by it are considered to be Affiliates of DEC, DEP, and Piedmont, and DEC, DEP, and Piedmont are considered to be Affiliates of each other.

Commission: The North Carolina Utilities Commission.

Confidential Systems Operation Information or CSOI: Nonpublic information that pertains to Electric Services provided by DEC or DEP, including but not limited to information concerning electric generation, transmission, distribution, or sales, and nonpublic information that pertains to Natural Gas Services provided by Piedmont, including but not limited to information concerning transportation, storage, distribution, gas supply, or other similar information.

Customer: Any retail electric customer of DEC or DEP in North Carolina and any Commission-regulated natural gas sales or natural gas transportation customer of Piedmont located in North Carolina.

Customer Information: Non-public information or data specific to a Customer or a group of Customers, including, but not limited to, electricity consumption, natural gas consumption, load profile, billing history, or credit history that is or has been obtained or compiled by DEC, DEP, or Piedmont in connection with the supplying of Electric Services or Natural Gas Services to that Customer or group of Customers.

DEBS: Duke Energy Business Services, LLC, and its successors, which is a service company Affiliate that provides Shared Services to DEC, DEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations of DEC, DEP, or Piedmont, singly or in any combination.

DEC: Duke Energy Carolinas, LLC, the business entity, wholly owned by Duke Energy, that holds the franchise granted by the Commission to provide Electric Services within DEC's North Carolina service territory and that engages in public utility operations, as defined in G.S. 62-3(23), within the State of North Carolina.

DEP: Duke Energy Progress. LLC, the business entity, wholly owned by Duke Energy, that holds the franchises granted by the Commission to provide Electric Services within the DEP's North Carolina service territory and that engages in public utility operations, as defined in G.S. 62-3(23), within the State of North Carolina.

Duke Energy: Duke Energy Corporation, which is the current holding company parent of DEC, DEP, and Piedmont, and any successor company.

Electric Services: Commission-regulated electric power generation, transmission, distribution, delivery, and sales, and other related services, including, but not limited to, administration of Customer accounts and rate schedules, metering, billing, standby service, backups, and changeovers of service to other suppliers.

Fuel and Purchased Power Supply Services: All fuel for generating electric power and purchased power obtained by DEC or DEP from sources other than DEC or DEP for the purpose of providing Electric Services.

Fully Distributed Cost: All direct and indirect costs, including overheads and an appropriate cost of capital, incurred in providing goods or services to another business entity; provided, however, that (a) for each good or service supplied by DEC, DEP, or Piedmont, the return on common equity utilized in determining the appropriate cost of capital shall equal the return on common equity authorized by the Commission in the supplying utility's most recent general rate case proceeding; (b) for each good or service supplied to DEC, DEP, or Piedmont, the appropriate cost of capital shall not exceed the overall cost of capital authorized in the supplying utility's most recent general rate case proceeding; and (c) for each good or service supplied by DEC, DEP, or Piedmont to each other, the return on common equity utilized in determining the appropriate cost of capital shall not exceed the lower of the returns on common equity authorized by the Commission in DEC's, DEP's, or Piedmont's most recent general rate case proceeding, as applicable.

JDA: Joint Dispatch Agreement, which is the agreement as filed with the Commission in Docket Nos. E-7, Sub 986, and E-2, Sub 998, on June 22, 2011, and as amended and refiled on June 12, 2012.

Market Value: The price at which property, goods, or services would change hands in an arm's length transaction between a buyer and a seller without any compulsion to engage in a transaction, and both having reasonable knowledge of the relevant facts.

Merger: All transactions contemplated by the Agreement and Plan of Merger between Duke Energy and Piedmont.

Natural Gas Services: Commission-regulated natural gas sales and natural gas transportation, and other related services, including, but not limited to, administration of Customer accounts and rate schedules, metering and billing, and standby service.

Non-affiliated Gas Marketer: An entity, not affiliated with DEC, DEP, or Piedmont, engaged in the unregulated sale, arrangement, brokering or management of gas supply, pipeline capacity, or gas storage.

Nonpublic Utility Operations: All business operations engaged in by DEC, DEP, or Piedmont involving activities (including the sales of goods or services) that are not regulated by the Commission or otherwise subject to public utility regulation at the state or federal level.

Non-Utility Affiliate: Any Affiliate, including DEBS, other than a Utility Affiliate, DEC, DEP, or Piedmont.

Personnel: An employee or other representative of DEC, DEP, Piedmont, Duke Energy, another Affiliate, or a Nonpublic Utility Operation, who is involved in fulfilling the business purpose of that entity.

Piedmont: Piedmont Natural Gas Company, Inc., the business entity, wholly owned by Duke Energy, that holds the franchise granted by the Commission to provide Natural Gas Services within its North Carolina service territory and that engages in public utility operations, as defined in G.S. 62-3(23), within the State of North Carolina.

Progress Energy: Progress Energy, Inc., which is the former holding company parent of DEP and is a subsidiary of Duke Energy, and any successors.

Public Staff: The Public Staff of the North Carolina Utilities Commission.

Regulatory Conditions: The conditions imposed by the Commission in connection with or related to the Merger.

Shared Services: The services that meet the requirements of the Regulatory Conditions approved in Docket Nos. E-2, Sub 1095, E-7, Sub 1100, and G-9, Sub 682, or subsequent orders of the Commission and that the Commission has explicitly authorized DEC, DEP, and Piedmont to take from DEBS pursuant to a service agreement (a) filed with the Commission pursuant to G.S. 62-153(b), thus requiring acceptance and authorization by the Commission, and (b) subject to all other applicable provisions of North Carolina law, the rules and orders of the Commission, and the Regulatory Conditions.

Shipper: A Non-affiliated Gas Marketer, a municipal gas customer, or an end-user of gas.

Utility Affiliates: The regulated public utility operations of Duke Energy Indiana, LLC (Duke Indiana), Duke Energy Kentucky, Inc. (Duke Kentucky), Florida Power Corporation, d/b/a Progress Energy Florida, LLC (DEF), and Duke Energy Ohio, Inc. (Duke Ohio).

II. GENERAL

This Code of Conduct establishes the minimum guidelines and rules that apply to the relationships, transactions, and activities involving the public utility operations of DEC, DEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations of DEC, DEP, and Piedmont, to the extent such relationships, activities, and transactions affect the public utility operations of DEC, DEP, and Piedmont in their respective service areas. DEC, DEP, Piedmont, and the other Affiliates are bound by this Code of Conduct pursuant to Regulatory Condition 6.1 approved by the Commission in Docket Nos. E-2, Sub 1095, E-7, Sub 1100, and G-9, Sub 682. This Code of Conduct is subject to modification by the Commission as the public interest may require, including, but not limited to, addressing changes in the organizational structure of DEC, DEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations; changes in the structure of the electric industry or natural gas industry; or other changes that warrant modification of this Code.

DEC, DEP, or Piedmont may seek a waiver of any aspect of this Code of Conduct by filing a request with the Commission showing that circumstances in a particular case justify such a waiver.

III. STANDARDS OF CONDUCT

A. Independence and Information Sharing

1. Separation - DEC, DEP, Piedmont, Duke Energy, and the other Affiliates shall operate independently of each other and in physically separate locations to the maximum extent practicable; however, to the extent that the Commission has approved or accepted a service company-to-utility or utility-to-utility service agreement or list, DEC, DEP, Piedmont, Duke Energy, and the other Affiliates may operate as described in the agreement or list on file at the Commission. DEC, DEP, Piedmont, Duke Energy, and each of the other Affiliates shall maintain separate books and records. Each of DEC's, DEP's, and Piedmont's Nonpublic Utility Operations shall maintain separate records from those of DEC's, DEP's, and Piedmont's public utility operations to ensure appropriate cost allocations and any arm's-length-transaction requirements.

2. Disclosure of Customer Information:

(a) Upon request, and subject to the restrictions and conditions contained herein, DEC, DEP, and Piedmont may provide Customer Information to Duke Energy or another Affiliate under the same terms and conditions that apply to the provision of such information to non-Affiliates. In addition, DEC and DEP may provide Customer Information to their respective Nonpublic Utility Operations under the same terms and conditions that apply to the provision of such information to non-Affiliates.

(b) Except as provided in Section III.A.2.(f), Customer Information shall not be disclosed to any Affiliate or non-affiliated third party without the Customer's consent, and then only to the extent specified by the Customer. Consent to disclosure of Customer Information to Affiliates of DEC, DEP, and Piedmont or to DEC's or DEP's Nonpublic Utility Operations may be obtained by means of written, electronic, or recorded verbal authorization upon providing the Customer with the information set forth in Attachment A; provided, however, that DEC, DEP, and Piedmont retain such authorization for verification purposes for as long as the authorization remains in effect. Written, electronic, or recorded verbal authorization or consent for the disclosure of Piedmont's Customer Information to Piedmont's Nonpublic Utility Operations is not required.

(c) If the Customer allows or directs DEC, DEP, or Piedmont to provide Customer Information to Duke Energy, another Affiliate, or to DEC's or DEP's Nonpublic Utility Operations, then DEC, DEP, or Piedmont shall ask if the Customer would like the Customer Information to be provided to one or more non-Affiliates. If the Customer directs DEC, DEP, or Piedmont to provide the Customer Information to one or more non-Affiliates, the Customer Information shall be disclosed to all entities designated by the Customer contemporaneously and in the same manner.

(d) Section III.A.2.shall be permanently posted on DEC's, DEP's and Piedmont's website(s).

(e) No DEC, DEP, or Piedmont employee who is transferred to Duke Energy or another Affiliate shall be permitted to copy or otherwise compile any Customer Information for use by such entity except as authorized by the Customer pursuant to a signed Data Disclosure Authorization. DEC, DEP, and Piedmont shall not transfer any employee to Duke Energy or another Affiliate for the

purpose of disclosing or providing Customer Information to such entity.

(f) Notwithstanding the prohibitions in this Section III.A.2.:

(i) DEC, DEP, and Piedmont may disclose Customer Information to DEBS, any other Affiliate, or a non-affiliated third party without Customer consent to the extent necessary for the Affiliate or non-affiliated third party to provide goods or services to DEC, DEP, or Piedmont and upon the written agreement of the other Affiliate or non-affiliated third-party to protect the confidentiality of such Customer Information. To the extent the Commission approves a list of services to be provided and taken pursuant to one or more utility-to-utility service agreements, then Customer Information may be disclosed pursuant to the foregoing exception to the extent necessary for such services to be performed.

(ii) DEC and DEP may disclose Customer Information to their Nonpublic Utility Operations without Customer consent to the extent necessary for the Nonpublic Utility Operations to provide goods and services to DEC or DEP and upon the written agreement of the Nonpublic Utility Operations to protect the confidentiality of such Customer Information.

(iii) DEC, DEP, and Piedmont may disclose Customer Information to a state or federal regulatory agency or court of competent jurisdiction if required in writing to do so by the agency or court.

(g) DEC, DEP, and Piedmont shall take appropriate steps to store Customer Information in such a manner as to limit access to those persons permitted to receive it and shall require all persons with access to such information to protect its confidentiality.

(h) DEC, DEP, and Piedmont shall establish guidelines for its employees and representatives to follow with regard to complying with this Section III.A.2.

(i) No DEBS employee may use Customer Information to market or sell any product or service to DEC's, DEP's, or Piedmont's Customers, except in support of a Commission-approved rate schedule or program or a marketing effort managed and supervised directly by DEC, DEP, or Piedmont.

(j) DEBS employees with access to Customer Information must be prohibited from making any improper indirect use of the data, including directing or encouraging any actions based on the Customer Information by employees of DEBS that do not have access to such information, or by other employees of Duke Energy or other Affiliates or Nonpublic Utility Operations of DEC and DEP.

(k) Should any inappropriate disclosure of DEC, DEP, or Piedmont Customer Information occur at any time, DEC, DEP, or Piedmont shall promptly file a statement with the Commission describing the circumstances of the disclosure, the Customer information disclosed, the results of the disclosure, and the steps taken to mitigate the effects of the disclosure and prevent future occurrences.

3. The disclosure of Confidential Systems Operation Information of DEC, DEP, and Piedmont shall be governed as follows:

(a) Such CSOI shall not be disclosed by DEC, DEP, or Piedmont to an Affiliate or a Nonpublic Utility Operation unless it is disclosed to all competing non-Affiliates contemporaneously and in the same manner. Disclosure to non-Affiliates is not required under the following circumstances:

(i) The CSOI is provided to employees of DEC or DEP for the purpose of implementing, and operating pursuant to, the JDA in accordance with the Regulatory Conditions approved in Docket Nos. E-7, Sub 986, and E-2, Sub 998.

(ii) The CSOI is necessary for the performance of services approved to be performed pursuant to one or more Affiliate utility-to-utility service agreements.

(iii) A state or federal regulatory agency or court of competent jurisdiction over the disclosure of the CSOI requires the disclosure.

(iv) The CSOI is provided to employees of DEBS pursuant to a service agreement filed with the Commission pursuant to G.S. 62-153.

(v) The CSOI is provided to employees of DEC's, DEP's, or Piedmont's Utility Affiliates for the purpose of sharing best practices and otherwise improving the provision of regulated utility service.

(vi) The CSOI is provided to an Affiliate pursuant to an agreement filed with the Commission pursuant to G.S. 62-153, provided that the agreement specifically describes the types of CSOI to be disclosed.

(vii) Disclosure is otherwise essential to enable DEC or DEP to provide Electric Services to their Customers or for Piedmont to provide Natural Gas Services to its Customers.

(viii) Disclosure of the CSOI is necessary for compliance with the Sarbanes-Oxley Act of 2002.

(b) Any CSOI disclosed pursuant Section III.A.3.(a)(i)-(viii) shall be disclosed only to employees that need the CSOI for the purposes covered by those exceptions and in as limited a manner as possible. The employees receiving such CSOI must be prohibited from acting as conduits to pass the CSOI to any Affiliate(s) and must have explicitly agreed to protect the confidentiality of such CSOI.

(c) For disclosures pursuant to Section III.A.3.(a)(vii) and (viii), DEC, DEP, and Piedmont shall include in their annual affiliated transaction reports the following information:

(i) The types of CSOI disclosed and the name(s) of the Affiliate(s) to which it is being, or has been, disclosed;

(ii) The reasons for the disclosure; and

(iii) Whether the disclosure is intended to be a one-time occurrence or an ongoing process.

To the extent a disclosure subject to the reporting requirement is intended to be ongoing, only the initial disclosure and a description of any processes governing subsequent disclosures need to be reported.

(d) DEC, DEP, Piedmont, and DEBS employees with access to CSOI must be prohibited from making any improper indirect use of the data, including directing or encouraging any actions based on the CSOI by employees that do not have access to such information, or by other employees of Duke Energy or other Affiliates or Nonpublic Utility Operations of DEC, DEP, and Piedmont.

(e) Should the handling or disclosure of CSOI by DEBS, or another Affiliate or Nonpublic Utility Operation, or its respective employees, result in (i) a violation of DEC's or DEP's FERC Statement of Policy and Code of Conduct (FERC Code), 18 CFR 358 - Standards of Conduct for Transmission Providers (Transmission Standards), or any other relevant FERC standards or codes of conduct, (ii) the posting of such data on an Open Access Same-Time Information System (OASIS) or other Internet website, or (iii) other public disclosure of the data, DEC or DEP shall promptly file a statement with the Commission in Docket No. E-7, Sub 1100C, and E-2, Sub 1095C, respectively, describing the circumstances leading to such violation, posting, or other public disclosure describing the circumstances leading to such violation, posting, or other public disclosure, any data required to be posted or otherwise publicly disclosed, and the steps taken to mitigate the effects of the current and prevent any future potential violation, posting, or other public disclosure.

(f) Should any inappropriate disclosure of CSOI occur at any time, DEC, DEP, or Piedmont shall promptly file a statement with the Commission in Docket No. E-7, Sub 1100C, E-2, Sub 1095C, or G-9, Sub 682C, respectively, describing the circumstances of the disclosure, the CSOI disclosed, the results of the disclosure, and the steps taken to mitigate the effects of the disclosure and prevent future occurrences.

(g) Unless publicly noticed and generally available, should the FERC Code, the Transmission Standards, or any other relevant FERC standards or codes of conduct be eliminated, amended, superseded, or otherwise replaced, DEC and DEP shall file a letter with the Commission in Docket Nos. E-7, Sub 1100E, and E-2, Sub 1095E, describing such action within 60 days of the action, along with a copy of any amended or replacement document.

B. Nondiscrimination

1. DEC's, DEP's, and Piedmont's employees and representatives shall not unduly discriminate against non-Affiliated entities.

2. In responding to requests for Electric Services, Natural Gas Services, or both, DEC, DEP, and Piedmont shall not provide any preference to Duke Energy, another Affiliate, or a Nonpublic Utility Operation, or to any customers of such an entity, as compared to non-Affiliates or their customers. Moreover, neither DEC, DEP, Piedmont, Duke Energy, nor any other Affiliates shall represent to any person or entity that Duke Energy, another Affiliate, or a Nonpublic Utility Operation will receive any such preference.

3. DEC, DEP, and Piedmont shall apply the provisions of their respective tariffs equally to Duke Energy, the other Affiliates, the Nonpublic Utility Operations, and non-Affiliates.

4. DEC, DEP, and Piedmont shall process all similar requests for Electric Services, Natural Gas Services, or both, in the same timely manner, whether requested on behalf of Duke Energy, another Affiliate, a Nonpublic Utility Operation, or a non-Affiliated entity.

5. No personnel or representatives of DEC, DEP, Piedmont, Duke Energy, or another Affiliate shall indicate, represent, or otherwise give the appearance to another party that Duke Energy or another Affiliate speaks on behalf of DEC, DEP, or Piedmont; provided however, that this prohibition shall not apply to employees of DEBS providing Shared Services or to employees of another Affiliate to the extent explicitly provided for in an affiliate agreement that has been accepted by the Commission. In addition, no personnel or representatives of a Nonpublic Utility Operation shall indicate, represent, or otherwise give the appearance to another party that they speak on behalf of DEC's or DEP's regulated public utility operations.

6. No personnel or representatives of DEC, DEP, Piedmont, Duke Energy, another Affiliate, or a Nonpublic Utility Operation shall indicate, represent, or otherwise give the appearance to another party that any advantage to that party with regard to Electric Services or Natural Gas Services exists as the result of that party dealing with Duke Energy, another Affiliate, or a Nonpublic Utility Operation, as compared with a non-Affiliate.

7. DEC, DEP, and Piedmont shall not condition or otherwise tie the provision or terms of any Electric Services or Natural Gas Services to the purchasing of any goods or services from, or the engagement in business of any kind with, Duke Energy, another Affiliate, or a Nonpublic Utility Operation.

8. When any employee or representative of DEC or DEP receives a request for information from or provides information to a Customer about goods or services available from Duke Energy, another Affiliate, or a Nonpublic Utility Operation, the employee or representative shall advise the Customer that such goods or services may also be available from non-Affiliated suppliers.

9. Disclosure of Customer Information to Duke Energy, another Affiliate, a Nonpublic Utility Operation, or a non-Affiliated entity shall be governed by Section III.A.2. of this Code of Conduct.

10. Unless otherwise directed by order of the Commission, electric generation shall not receive a priority of use from Piedmont that would supersede or diminish Piedmont's provision of service to its human needs firm residential and commercial customers.

11. Piedmont shall file an annual report with the Commission summarizing all requests or inquiries for Natural Gas Services made by a non-utility generator, Piedmont's response to the request, and the status of the inquiry.

C. Marketing

1. The public utility operations of DEC, DEP, and Piedmont may engage in joint sales, joint sales calls, joint proposals, or joint advertising (a joint marketing arrangement) with their Affiliates and with their Nonpublic Utility Operations, subject to compliance with other provisions of this Code of Conduct and any conditions or restrictions that the Commission may hereafter establish. DEC, DEP, and Piedmont shall not otherwise engage in such joint activities without making such opportunities available to comparable third parties.

2. Neither Duke Energy nor any of the other Affiliates shall use the names or logos of DEC, DEP, or Piedmont in any communications without the following disclaimer:

(a) "[Duke Energy Corporation/Affiliate) is not the same company as [DEC/DEP/Piedmont], and [Duke Energy Corporation/Affiliate) has separate management and separate employees";

(b) "[Duke Energy Corporation/Affiliate] is not regulated by the North Carolina Utilities Commission or in any way sanctioned by the Commission";

(c) "Purchasers of products or services from [Duke Energy Corporation/Affiliate] will receive no preference or special treatment from [DEC/DEP/Piedmont]"; and

(d) "A customer does not have to buy products or services from [Duke Energy Corporation/Affiliate] in order to continue to receive the same safe and reliable electric service from [DEC/DEP] or natural gas service from Piedmont."

3. Nonpublic Utility Operations may not use the names or logos of DEC, DEP, or Piedmont in communications without the following disclaimer:

"[Name of product or service being offered by Nonpublic Utility Operation] is not part of the regulated services offered by [DEC/DEP/Piedmont] and is not in any way sanctioned by the North Carolina Utilities Commission."

4. In addition, DEC's and DEP's Nonpublic Utility Operations may not use the names or logos of DEC or DEP in any communications without the following disclaimers:

(a) "Purchasers of [name of product or service being offered by Nonpublic Utility Operation] from [Nonpublic Utility Operation] will receive no preference or special treatment from [DEC/DEP]"; and

(b) "A customer does not have to buy this product or service from [Nonpublic Utility Operation] in order to continue to receive the same safe and reliable electric service from [DEC/DEP]."

The required disclaimers in this Section III.C.4. must be sized and displayed in a way that is commensurate with the name and logo so that the disclaimer is at least the larger of one-half the size of the type that first displays the name and logo or the predominant type used in the communication.

D. Transfers of Goods and Services, Transfer Pricing, and Cost Allocation

1. Cross-subsidies involving DEC, DEP, or Piedmont and Duke Energy, other Affiliates, or the Nonpublic Utility Operations are prohibited.

2. All costs incurred by personnel or representatives of DEC, DEP, or Piedmont for or on behalf of Duke Energy, other Affiliates, or the Nonpublic Utility Operations shall be charged to the entity responsible for the costs.

3. The following conditions shall apply as a general guideline to the transfer prices charged for goods and services, including the use or transfer of personnel, exchanged between and among DEC, DEP, or Piedmont, and Duke Energy, the other Non-Utility Affiliates, and the Nonpublic Utility Operations, to the extent such prices affect DEC's, DEP's, or Piedmont's operations or costs of utility service:

(a) Except as otherwise provided for in this Section III.D., for untariffed goods and services provided by DEC, DEP, or Piedmont to Duke Energy, a Non-Utility Affiliate, or a Nonpublic Utility Operation, the transfer price paid to DEC, DEP, or Piedmont shall be set at the higher of Market Value or DEC's, DEP's, or Piedmont's Fully Distributed Cost.

(b) Except as otherwise provided for in this Section III.D., for goods and services provided, directly or indirectly, by Duke Energy, a Non-Utility Affiliate other than DEBS, or a Nonpublic Utility Operation to DEC, DEP, or Piedmont, the transfer price(s) charged by Duke Energy, the Non-Utility Affiliate, and the Nonpublic Utility Operation to DEC, DEP, or Piedmont shall be set at the lower of Market Value or Duke Energy's, the Non-Utility Affiliate's, or the Nonpublic Utility Operation's Fully Distributed Cost(s). If DEC, DEP, or Piedmont do not engage in competitive solicitation and instead obtain the goods or services from Duke Energy, a Non-

Utility Affiliate, or a Nonpublic Utility Operation, DEC, DEP, and Piedmont shall implement adequate processes to comply with this Code provision and related Regulatory Conditions and ensure that in each case DEC's, DEP's, and Piedmont's Customers receive service at the lowest reasonable cost, unless otherwise directed by order of the Commission. For goods and services provided by DEBS to DEC, DEP, Piedmont, and Utility Affiliates, the transfer price charged shall be set at DEBS' Fully Distributed Cost.

(c) Tariffed goods and services provided by DEC, DEP, and Piedmont to Duke Energy, other Affiliates, or a Nonpublic Utility Operation shall be provided at the same prices and terms that are made available to Customers having similar characteristics with regard to Electric Services or Natural Gas Services under the applicable tariff.

(d) With the exception of gas supply transactions, transportation transactions, or both, between DEC and Piedmont or DEP and Piedmont, untariffed non-power, non-generation, or non-fuel goods and services provided by DEC, DEP, or Piedmont to DEC, DEP, Piedmont, or the Utility Affiliates or by the Utility Affiliates to DEC, DEP, or Piedmont, shall be transferred at the supplier's Fully Distributed Cost, unless otherwise directed by order of the Commission.

(e) All Piedmont deliveries to DEC and DEP pursuant to intrastate negotiated sales or transportation arrangements and combinations of sales and transportation transactions shall be at the same price and terms that are made available to other Shippers having comparable characteristics, such as nature of service (firm or interruptible, sales or transportation), pressure requirements, nature of load (process/heating/electric generation), size of load, profile of load (daily, monthly, seasonal, annual), location on Piedmont's system, and costs to serve and rates. Piedmont shall maintain records in sufficient detail to demonstrate compliance with this requirement.

(f) All gas supply transactions, interstate transportation and storage transactions, and combinations of these transactions, between DEC or DEP and Piedmont shall be at the fair market value for similar transactions between non-affiliated third parties. DEC, DEP, and Piedmont shall maintain records, such as published market price indices, in sufficient detail to demonstrate compliance with this requirement.

(g) All of the margins, also referred to as net compensation, received by Piedmont on secondary market sales to DEC and DEP shall be recorded in Piedmont's Deferred Gas Cost Accounts and shall flow through those accounts for the benefit of ratepayers. None of the margins on secondary market sales by Piedmont to DEC and DEP shall be included in the secondary market transactions subject to the sharing mechanism on secondary market transactions approved by the Commission in its Order Approving Stipulation, dated December 22, 1995, in Docket No. G-100, Sub 67. The sharing percentage on secondary market sales shall not be considered in determining the prudence of such transactions.

4. To the extent that DEC, DEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations receive Shared Services from DEBS (or its successor), these Shared Services may be jointly provided to DEC, DEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations on a fully distributed cost basis, provided that the taking of such Shared Services by DEC, DEP, and Piedmont is cost beneficial on a service-by-service (e.g., accounting management, human resources management, legal services, tax administration, public affairs) basis to DEC, DEP, and Piedmont. Charges for such Shared Services shall be allocated in accordance with the cost allocation manual filed with the Commission pursuant to Regulatory Condition 5.5, subject to any revisions or other adjustments that may be found appropriate by the Commission on an ongoing basis.

5. DEC, DEP, Piedmont, and their Utility Affiliates may capture economies-of-scale in joint purchases of goods and services (excluding the purchase of electricity or ancillary services intended for resale unless such purchase is made pursuant to a Commission-approved contract or service agreement), if such joint purchases result in cost savings to DEC's, DEP's, and Piedmont's Customers. DEC, DEP, Piedmont, and their Utility Affiliates may capture economies-of-scale in joint purchases of coal and natural gas, if such joint purchases result in cost savings to DEC's, DEP's, and Piedmont's Customers. All joint purchases entered into pursuant to this section shall be priced in a manner that permits clear identification of each participant's portion of the purchases and shall be reported in DEC's, DEP's, and Piedmont's affiliated transaction reports filed with the Commission.

6. All permitted transactions between DEC, DEP, Piedmont, Duke Energy, other Affiliates, and the Nonpublic Utility Operations shall be recorded and accounted for in accordance with the cost allocation manual required to be filed with the Commission pursuant to Regulatory Condition 5.5 and with Affiliate agreements accepted by the Commission or otherwise processed in accordance with North Carolina law, the rules and orders of the Commission, and the Regulatory Conditions.

7. Costs that DEC, DEP, and Piedmont incur in assembling, compiling, preparing, or furnishing requested Customer Information or CSOI for or to Duke Energy, other Affiliates, Nonpublic Utility Operations, or non-Affiliates (other than the

Customer or the Customer's designated representative or agent) shall be recovered from the requesting party pursuant to Section III.D.3. of this Code of Conduct.

8. Any technology or trade secrets developed, obtained, or held by DEC, DEP, or Piedmont in the conduct of regulated operations shall not be transferred to Duke Energy, another Affiliate, or a Nonpublic Utility Operation without just compensation and the filing of 60-days prior notification to the Commission. DEC, DEP, and Piedmont are not required to provide advance notice for such transfers to each other and may request a waiver of this requirement from the Commission with respect to such transfers to Duke Energy, a Utility Affiliate, a Non-Utility Affiliate, or a Nonpublic Utility Operation. In no case, however, shall the notice period requested be less than 20 business days.

9. DEC, DEP, and Piedmont shall receive compensation from Duke Energy, other Affiliates, and the Nonpublic Utility Operations for intangible benefits, if appropriate.

E. Regulatory Oversight

1. The requirements regarding affiliate transactions set forth in G.S. 62-153 shall continue to apply to all transactions between DEC, DEP, Piedmont, Duke Energy, and the other Affiliates.

2. The books and records of DEC, DEP, Piedmont, Duke Energy, other Affiliates, and the Nonpublic Utility Operations shall be open for examination by the Commission, its staff, and the Public Staff as provided in G.S. 62-34, 62-37, and 62-51.

3. If Piedmont supplies any Natural Gas Services, with the exception of Natural Gas Services provided pursuant to Commission-approved contracts or service agreements, used by either DEC or DEP to generate electricity, DEC or DEP, as applicable, shall file a report with the Commission in its annual fuel and fuel-related cost recovery case demonstrating that the purchase was prudent and the price was reasonable.

4. To the extent North Carolina law, the orders and rules of the Commission, and the Regulatory Conditions permit Duke Energy, an Affiliate, or a Nonpublic Utility Operation to supply DEC, DEP, or Piedmont with Natural Gas Services or other Fuel and Purchased Power Supply Services used by DEC or DEP to provide Electric Services to Customers, and to the extent such Natural Gas Services or other Fuel and Purchased Power Supply Services are supplied, DEC or DEP, as applicable, shall demonstrate in its annual fuel adjustment clause proceeding that each such acquisition was prudent and the price was reasonable.

F. Utility Billing Format

To the extent any bill issued by DEC, DEP, Piedmont, Duke Energy, another Affiliate, a Nonpublic Utility Operation, or a non-Affiliated third party includes charges to Customers for Electric Services or Natural Gas Services and non-Electric Services, non-Natural Gas Services, or any combination of such services, from Duke Energy, another Affiliate, a Nonpublic Utility Operation, or a non-Affiliated third party, the charges for Electric Services and Natural Gas Services shall be separated from the charges for any other services included on the bill. Each such bill shall contain language stating that the Customer's Electric Services and Natural Gas Services will not be terminated for failure to pay for any other services billed.

G. Complaint Procedure

1. DEC, DEP, and Piedmont shall establish procedures to resolve potential complaints that arise due to the relationship of DEC, DEP, and Piedmont with Duke Energy, the other Affiliates, and the Nonpublic Utility Operations. The complaint procedures shall provide for the following:

   (a) Verbal and written complaints shall be referred to a designated representative of DEC, DEP, or Piedmont.

   (b) The designated representative shall provide written notification to the complainant within 15 days that the complaint has been received.

   (c) DEC, DEP, or Piedmont shall investigate the complaint and communicate the results or status of the investigation to the complainant within 60 days of receiving the complaint.

   (d) DEC, DEP, and Piedmont shall each maintain a log of complaints and related records and permit inspection of documents (other than those protected by the attorney/client privilege) by the Commission, its staff, or the Public Staff.

2. Notwithstanding the provisions of Section III.G.1., any complaints received through Duke Energy's EthicsLine (or successor), which is a confidential mechanism available to the employees of the Duke Energy holding company system, shall be handled in accordance with procedures established for the EthicsLine.

3. These complaint procedures do not affect a complainant's right to file a formal complaint with the Commission or otherwise communicate with the Commission or the Public Staff regarding a complaint.

H. Natural Gas/Electricity Competition

DEC, DEP and Piedmont shall continue to compete against all energy providers, including each other, to serve those retail customer energy needs that can be legally and profitably served by both electricity and natural gas. The competition between DEC or DEP and Piedmont shall be at a level that is no less than that which existed prior to the Merger. Without limitation as to the full range of potential competitive activity, DEC, DEP and Piedmont shall maintain the following minimum standards:

1. Piedmont will make all reasonable efforts to extend the availability of natural gas to as many new customers as possible.

2. In determining where and when to extend the availability of natural gas, Piedmont will at a minimum apply the same standards and criteria that it applied prior to the Merger.

3. In determining where and when to extend the availability of natural gas, Piedmont will make decisions in accordance with the best interests of Piedmont, rather than the best interest of DEC or DEP.

4. To the extent that either the natural gas industry or the electricity industry is further restructured, DEC, DEP, and Piedmont will undertake to maintain the full level of competition intended by this Code of Conduct subject to the right of DEC, DEP, Piedmont or the Public Staff to seek relief from or modifications to this requirement by the Commission.

CODE OF CONDUCT
ATTACHMENT A

DEC/DEP/PIEDMONT CUSTOMER INFORMATION DISCLOSURE AUTHORIZATION

For Disclosure to Affiliates:

DEC's/DEP's/Piedmont's Affiliates offer products and services that are separate from the regulated services provided by DEC/DEP/Piedmont. These services are not regulated by the North Carolina Utilities Commission. These products and services may be available from other competitive sources.

The Customer authorizes DEC/DEP/Piedmont to provide any data associated with the Customer account(s) residing in any DEC/DEP/Piedmont files, systems or databases **[or specify specific types of data]** to the following Affiliate(s) _____. DEC/DEP/Piedmont will provide this data on a non-discriminatory basis to any other person or entity upon the Customer's authorization.

For Disclosure to Nonpublic Utility Operations:

DEC/DEP offers optional, market-based products and services that are separate from the regulated services provided by DEC/DEP. These services are not regulated by the North Carolina Utilities Commission. These products and services may be available from other competitive sources.

The Customer authorizes DEC/DEP to use any data associated with the Customer account(s) residing in any DEC/DEP files, systems or databases **[or specify types of data]** for the purpose of offering and providing energy-related products or services to the Customer. DEC/DEP will provide this data on a non-discriminatory basis to any other person or entity upon the Customer's authorization.