

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-2, SUB 1300**

In the Matter of:)
)
Application of Duke Energy Progress, LLC)
For Adjustment of Rates and Charges)
Applicable to Electric Service in North)
Carolina and Performance-Based Regulation)

**AGREEMENT AND STIPULATION
OF PARTIAL SETTLEMENT**

Duke Energy Progress, LLC (“DEP”), the Carolina Industrial Group for Fair Utility Rates II (“CIGFUR II”), the Public Staff – North Carolina Utilities Commission (the “Public Staff”), the North Carolina Justice Center, North Carolina Housing Coalition, Southern Alliance for Clean Energy, Natural Resources Defense Council, and Vote Solar (collectively, “NCJC et al.”), and the Sierra Club, collectively referred to herein as the “Stipulating Parties,” through counsel, respectfully file the following Agreement and Stipulation of Partial Settlement (“Partial Stipulation”) with the North Carolina Utilities Commission (“Commission”) in the above-captioned dockets.

I. BACKGROUND

A. On October 6, 2022, DEP filed its *Application to Adjust Retail Base Rates and for Performance-Based Regulation, and Request for an Accounting Order*, in Docket No. E-2, Sub 1300, along with supporting direct testimony and exhibits, and Commission Form E-1, Rate Case Information Report – Electric Companies (“DEP Application”). On October 31, 2022, the Commission declared a general rate case, suspended the proposed new rates, and established the test year period as ending December 31, 2021 (such proceeding, the “DEP Rate Case”). On December 16, 2022,

- the Commission entered an order scheduling hearings, establishing due dates for intervention, discovery, and testimony, and requiring public notice of the DEP Application.
- B. On March 27, 2023, various intervenors filed direct testimony in the DEP Rate Case.
 - C. On May 4, 2023, DEP, Duke Energy Carolinas, LLC (“DEC”), the Sierra Club, NCJC et al., and the Public Staff filed the *Affordability Stipulation* in the DEP Rate Case and in Docket No. E-7, Sub 1276. Among other things, the *Affordability Stipulation* supports the Customer Assistance Program (“CAP”) as a three-year pilot program and requires DEP and DEC to convene a stakeholder engagement process to consider CAP data, metrics, and potential future CAP program features, should the Commission decide to continue the CAP—or to approve some future iteration thereof—at the conclusion of the three-year pilot period.
 - D. Between May 4, 2023, and May 16, 2023, the Commission conducted the DEP Rate Case hearing for the purpose of receiving expert witness testimony regarding the DEP Application. Such hearing was reconvened on July 24, 2023.
 - E. On June 9, 2023, DEP and various intervenors filed post-hearing filings in the DEP Rate Case.
 - F. On August 18, 2023, the Commission issued its *Order Accepting Stipulations, Granting Partial Rate Increase, and Requiring Public Notice* in the DEP Rate Case (“DEP Rate Case Order”). In pertinent part, the DEP Rate Case Order approved the CAP as a three-year, limited-term pilot program, “which will allow the Commission, the Public Staff, DEP, and other parties, over time, to examine whether the CAP credit meets the public policy objectives and whether the CAP results in rates that are

- unreasonably discriminatory or preferential to certain customer classes.” DEP Rate Case Order, at pp. 111-112.
- G. On October 17, 2023, CIGFUR II filed its *Notice of Appeal and Exceptions* and its *Motion for Stay Pending Appeal* in the DEP Rate Case.
- H. On October 19, 2023, NCJC et al. filed its *Reply in Opposition to CIGFUR II’s Motion for a Stay Pending Appeal* in the DEP Rate Case.
- I. On October 24, 2023, the Sierra Club filed its *Response in Support of NCJC et al.’s Reply in Opposition to CIGFUR II’s Motion for Stay Pending Appeal*.
- J. On October 25, 2023, the Public Staff filed its *Letter in Response to Motion to Stay Pending Appeal*.
- K. On October 26, 2023, DEP filed its *Response to CIGFUR II’s Motion for Stay Pending Appeal*.
- L. On November 1, 2023, CIGFUR II filed its *Reply to Responses to Motion for Stay Pending Appeal*.
- M. The parties to the DEP Rate Case, including the Stipulating Parties, conducted substantial discovery on the issues raised in the DEP Application, as well as on the direct, supplemental, and rebuttal testimonies of DEP, and conducted substantial discovery of the direct testimonies of the Public Staff and intervenors.
- N. The Stipulating Parties now desire to resolve and settle certain issues that will narrow the number of issues in controversy (a) in the DEP Rate Case related to CIGFUR II’s *Motion for Stay Pending Appeal*; and (b) on CIGFUR II’s appeal stemming from the DEP Rate Case.

O. The Stipulating Parties agree and stipulate as provided herein, what follows being the product of give-and-take settlement negotiations between the Stipulating Parties:

II. RESOLVED ISSUES

The Stipulating Parties have reached an agreement regarding the Customer Assistance Program (“CAP”), the terms of which are not inconsistent with the Commission’s decision in the DEP Rate Case Order to approve the CAP as a limited-term pilot program and the Commission’s directive that DEP shall convene a stakeholder process for the purpose of considering CAP data, metrics, and potential future CAP (or similar) program features, should the Commission decide to continue the CAP—or some future or similar iteration thereof—at the conclusion of the three-year pilot period. All parties to this Partial Stipulation agree that the primary purpose of the CAP is to assist low-income customers in paying their utility bills. In exchange for all of the terms immediately following, CIGFUR II agrees to withdraw its *Motion for Stay Pending Appeal* filed in the DEP Rate Case docket on October 17, 2023, limited solely to the extent such motion sought a stay of the CAP pending appeal; and CIGFUR II further agrees to waive its Exceptions 1 and 2 contained in its *Notice of Appeal and Exceptions* filed in the DEP Rate Case docket on October 17, 2023.¹ Because this Partial Stipulation does not modify the CAP as approved by the Commission or require any action that is inconsistent with the DEP Rate Case Order, the Stipulating Parties agree that it is not necessary for the Partial Stipulation to be approved by the Commission and are filing the Partial Stipulation for

¹ By “further agrees to waive its Exceptions 1 and 2 contained in its *Notice of Appeal and Exceptions* filed in the DEP Rate Case docket on October 17, 2023,” the Stipulating Parties mean that CIGFUR II will (1) not include its Exceptions 1 and 2 in Appellant’s Proposed Issues on Appeal; (2) not pursue Exceptions 1 and 2 in Appellant’s Briefs; (3) include a copy of this Agreement and Stipulation of Partial Settlement in the Record on Appeal; and (4) include a footnote in Appellant’s Brief that CIGFUR II has entered into this Partial Stipulation with relevant parties to this proceeding through which CIGFUR II agreed to affirmatively waive arguments related to Exceptions 1 and 2 in the instant appeal, referencing this Partial Stipulation.

informational purposes only. The Stipulating Parties agree that any disputes regarding this Partial Stipulation shall be subject to the Commission’s exclusive jurisdiction, unless the Commission determines that it does not have subject matter jurisdiction over such a dispute, in which case any disputes or issues regarding this Partial Stipulation shall be subject to the exclusive jurisdiction of the state and federal courts of North Carolina. The Stipulating Parties further agree that this Partial Stipulation is fully enforceable in every respect and that such enforceability does not require, and is not dependent upon, Commission approval.

Reporting Obligations

- A. DEP agrees to track and report to the Commission the extent to which actual CAP costs and benefits—broken down by residential and non-residential customers—exceeded, equaled, or fell below estimates provided to the Commission by DEP in the DEP Rate Case. Such report shall be submitted on the earlier of (1) the date on which the second annual CAP report is filed or (ii) the date on which DEP requests an extension of CAP (or implementation of a similar program), whether as part of future rate case or otherwise. The Stipulating Parties agree to discuss, as part of the Affordability Stakeholder Group (“ASG”), how to identify impacts of CAP on arrearages and disconnections for CAP customers for purposes of such report.
- B. In addition to reporting the Monthly Residential Payments Ratio in Docket No. M-100, Sub 179 as part of the *Affordability Stipulation* and DEP Rate Case Order, DEP also agrees to report the number of payments remitted to CAP customer accounts divided by the number of active CAP customer accounts.

- C. The Stipulating Parties agree to explore, as part of the ASG, how to identify and implement programs that maximize the deployment of federal funding available for weatherization and energy efficiency programs or services for low-income customers, and further to explore the feasibility of tracking referral outcomes of such programs to CAP participants.

Possible Extension of or Successor (Permanent or Similar) to CAP Pilot Program

- D. The Stipulating Parties agree not to propose or support a modification to the CAP during the three-year pilot period that would seek to recover a volumetric (i.e., cents-per-kWh, demand block, or otherwise) contribution of any kind from non-residential customers to fund any portion of the CAP and/or the CAP's cost recovery mechanisms approved by the Commission in the DEP Rate Case Order.
- E. The Stipulating Parties agree not to propose or support in DEP or its successor's next base rate case (or DEP and Duke Energy Carolinas, LLC's hypothetically merged entity's next base rate case, as the case may be)—or in any other Commission docket or proceeding at any time within four (4) years from the date this Partial Stipulation is filed with the Commission—an extension of or successor (permanent or similar, including a potential tiered program) to the CAP that includes a volumetric (i.e., cents-per-kWh, demand block, or otherwise) contribution of any kind from non-residential customers to fund all or any portion of such program and/or its cost recovery mechanism(s).
- F. The Stipulating Parties agree that any request or proposal they may, individually or collectively, file with the Commission to extend the CAP beyond the three-year pilot term and/or any application or petition for approval of a successor program (permanent

or similar, including a potential tiered program) to CAP will not be filed in either Docket No. E-2, Sub 1300 or Docket No. E-7, Sub 1276.

Miscellaneous

- G. CIGFUR II expressly reserves any and all rights to challenge, on any and all grounds, before the Commission or any court with appellate or subject matter jurisdiction, any extension of or successor (permanent or similar) program to the CAP at the end of the three-year limited-term CAP pilot program.
- H. In the event the Commission approves an extension of or successor (permanent or similar) program to the CAP at the end of the three-year limited-term pilot program approved by the Commission in the DEP Rate Case Order, and if at that time CIGFUR II decides to appeal the approval of such extension of or successor (permanent or similar) program to the CAP, the Stipulating Parties agree the right to such an appeal will not have been waived, estopped, or precluded; and further agree that such an appeal would not be untimely as a result of this Partial Stipulation.
- I. In the event DEP and DEC merge to form a new entity regulated by the Commission as an electric public utility, the rights and obligations of this Partial Stipulation in their entirety shall also bind any such merged entity.

III. AGREEMENT IN SUPPORT OF SETTLEMENT; NON-WAIVER

- A. The Stipulating Parties agree that this Partial Stipulation is in the public interest. The Stipulating Parties will support the reasonableness of this Partial Stipulation in any hearing or docket before the Commission, and in any filing to the Commission.
- B. Neither this Partial Stipulation nor any of the terms shall be admissible in any court or Commission proceeding except insofar as such court or Commission is addressing

litigation arising out of the implementation and/or enforcement of the terms herein.

This Partial Stipulation shall not be cited as precedent by any of the Stipulating Parties regarding any issue in any other proceeding or docket before this Commission or in any court, except as expressly provided for herein.

- C. The provisions of this Partial Stipulation do not reflect any position asserted by any of the Stipulating Parties but reflect instead the compromise and settlement among the Stipulating Parties as to all the issues covered herein. No Party waives any right to assert any position in any future proceeding or docket before the Commission or in any court, except as expressly provided for herein.
- D. This Partial Stipulation is a product of negotiation among the Stipulating Parties, and no provision of this Partial Stipulation shall be strictly construed in favor of or against any Party.

IV. COUNTERPARTS

This Partial Stipulation may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Execution by electronic signature shall be deemed to be, and shall have the same effect as, execution by original signature.

IX. MERGER CLAUSE

This Partial Stipulation supersedes all prior agreements and understandings between the Stipulating Parties as to the issues discussed herein and may not be changed or terminated orally, and no attempted change, termination, or waiver of any of the provisions hereof shall be binding unless in writing and signed by the parties hereto.

The foregoing is agreed upon and stipulated to this the 9th day of November, 2023.

[SIGNATURE PAGE FOLLOWS]

DUKE ENERGY PROGRESS, LLC

By: _____
Kendal Bowman, North Carolina President

PUBLIC STAFF – NORTH CAROLINA UTILITIES COMMISSION

By: _____
Christopher J. Ayers, Executive Director

CAROLINA INDUSTRIAL GROUP FOR FAIR UTILITY RATES II

By: Christina Cress
Christina D. Cress, Partner, Bailey & Dixon, LLP


**THE NORTH CAROLINA JUSTICE CENTER
THE NORTH CAROLINA HOUSING COALITION
THE NATURAL RESOURCES DEFENSE COUNCIL
THE SOUTHERN ALLIANCE FOR CLEAN ENERGY
VOTE SOLAR**

By: _____
David L. Neal, Senior Attorney, Southern Environmental Law Center

SIERRA CLUB

By: _____
Andrea C. Bonvecchio, Attorney, Law Offices of F. Bryan Brice, Jr.

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Kendal Bowman, North Carolina President

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Kendal Bowman, North Carolina President

PUBLIC STAFF – NORTH CAROLINA UTILITIES COMMISSION

By:  _____
Robert B. Josey, Manager Electric Section, Legal Division

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By: _____
Christina D. Cress, Partner, Bailey & Dixon, LLP

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