

INFORMATION SHEET

PRESIDING: Commissioner Duffley, Presiding; Chair Mitchell and Commissioners Brown-Bland, Clodfelter, Hughes, McKissick, Jr., and Kemerait

PLACE: Raleigh, NC

DATE: Tuesday, May 30, 2023

TIME: 2:15 p.m. – 4:30 p.m.

DOCKET NO.: E-7, Sub 1281

COMPANY: Duke Energy Carolinas, LLC

DESCRIPTION: In the Matter of Application of Duke Energy Carolinas, LLC, for Approval of CPRE Program Compliance Report and CPRE Program Cost Recovery Rider Pursuant to N.C.G.S. § 62-110.8 and Commission Rule R8-71

VOLUME NUMBER:

APPEARANCES

See Attached

WITNESSES

See Attached

EXHIBITS

See Attached

---

REPORTED BY: Tonja Vines  
TRANSCRIBED BY: Tonja Vines  
DATE FILED: June 20, 2023

TRANSCRIPT PAGES: 129  
PREFILED PAGES: 87  
TOTAL PAGES: 216

1 PLACE: Dobbs Building, Raleigh, North Carolina  
2 DATE: Tuesday, May 30, 2023  
3 TIME: 2:15 p.m. - 4:30 p.m.  
4 DOCKET NO: E-7, Sub 1281  
5 BEFORE: Commissioner Kimberly W. Duffley, Presiding  
6 Chair Charlotte A. Mitchell  
7 Commissioner ToNola D. Brown-Bland  
8 Commissioner Daniel G. Clodfelter  
9 Commissioner Jeffrey A. Hughes  
10 Commissioner Floyd B. McKissick, Jr.  
11 Commissioner Karen M. Kemerait

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

IN THE MATTER OF:

Application of Duke Energy Carolinas, LLC,  
for Approval of CPRE Program Compliance Report  
and CPRE Program Cost Recovery Rider Pursuant to  
N.C.G.S. § 62-110.8 and Commission Rule R8-71

1 A P P E A R A N C E S:  
2 FOR DUKE ENERGY CAROLINAS, LLC:

3 Ladawn Toon, Esq.  
4 Associate General Counsel  
5 Duke Energy Corporation  
6 411 Fayetteville Street  
7 Raleigh, North Carolina 27601

8  
9 FOR DUKE ENERGY CAROLINAS, LLC:

10 Brett Breitschwerdt, Esq.  
11 McGuireWoods, LLP  
12 501 Fayetteville Street, Suite 500  
13 Raleigh, North Carolina 27601

14  
15 FOR CAROLINA UTILITY CUSTOMERS ASSOCIATION:

16 Marcus Trathen, Esq.  
17 Brooks, Pierce, McLendon, Humphrey & Leonard, LLP  
18 Wells Fargo Capitol Center  
19 150 Fayetteville Street, Suite 1700  
20 Raleigh, North Carolina 27601

21  
22  
23  
24

1 A P P E A R A N C E S (Cont'd.):  
2 FOR CAROLINA INDUSTRIAL GROUP FOR FAIR UTILITY  
3 RATES III:

4 Christina Cress Esq., Partner  
5 Douglas D.C. Conant, Esq., Associate  
6 Bailey & Dixon, LLP  
7 434 Fayetteville Street, Suite 2500  
8 Raleigh, North Carolina 27601

9  
10 FOR THE USING AND CONSUMING PUBLIC:

11 Robert B. Josey, Esq.  
12 William E.H. Creech, Esq.  
13 Thomas Felling, Esq.  
14 Public Staff - North Carolina Utilities Commission  
15 4326 Mail Service Center  
16 Raleigh, North Carolina 27699-4300

17  
18  
19  
20  
21  
22  
23  
24



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

T A B L E O F C O N T E N T S  
E X A M I N A T I O N S

	PAGE
JAMES MCLAWHORN	
Direct Examination by Mr. Felling .....	12
Examination by Chair Mitchell .....	34
Examination by Commissioner Clodfelter .....	46
Examination by Commissioner McKissick .....	51
Examination by Commissioner Duffley .....	54
Examination by Mr. Breitschwerdt .....	63
Examination by Mr. Felling .....	70
Examination by Commissioner Duffley .....	74
PANEL OF	
ANGELA M. TABOR AND MATTHEW HOLSTEIN	
Direct Examination by Mr. Breitschwerdt .....	107
Examination by Chair Mitchell .....	162
Examination by Commissioner Clodfelter .....	168
Examination by Commissioner McKissick .....	174
Examination by Commissioner Kemerait .....	183
Examination by Commissioner Clodfelter .....	186
Examination by Chair Mitchell .....	190
Examination by Commissioner McKissick .....	190

T A B L E O F C O N T E N T S

(Cont'd):

PAGE

Examination by Commissioner Duffley .....	191
Examination by Mr. Felling .....	204
Examination by Mr. Breitschwerdt .....	206
Examination by Commissioner Clodfelter .....	211
Prefiled Direct Testimony of Christy J. Walker.	87
Prefiled Supplemental Testimony of Christy J. Walker.....	99

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

E X H I B I T S

IDENTIFIED/ADMITTED

McLawhorn Exhibit 1.....	15 / 77
Cofield Exhibit 1.....	/ 77
Walker Exhibits 1-6 and Workpapers 1-6..	/ 86
Walker Supplemental Exhibits 1-6 and Workpapers 1-6.....	/ 86
Tabor Exhibit 1.....	110 / 213
Rebuttal Panel Exhibits 1 - 4.....	132 / 213
Application of Duke Carolinas.....	/ 106

NORTH CAROLINA UTILITIES COMMISSION

APPEARANCE SLIP

DEC Rider Hearings

DATE: 5/30/2023 DOCKET NO.: E-7, Subs 1281, 1282, 1285

ATTORNEY NAME and TITLE: Christina Cress, Partner

Douglas "D.C." Conant

FIRM NAME: Bailey & Dixon, LLP

ADDRESS: 434 Fayetteville St., Ste. 2500

CITY: Raleigh STATE: NC ZIP CODE: 27601

APPEARANCE ON BEHALF OF: CIGUR III

APPLICANT: \_\_\_ COMPLAINANT: \_\_\_ INTERVENOR: X

PROTESTANT: \_\_\_ RESPONDENT: \_\_\_ DEFENDANT: \_\_\_

Non-confidential transcripts are located on the Commission's website. To view and/or print transcripts, go to <https://www.ncuc.net/>, hover over the Dockets tab, select Docket Search, enter the docket number, and click search, select the highlighted docket number and select Documents for a list of all documents filed.

ONLY fill out this portion if you have signed an NDA to receive CONFIDENTIAL transcripts and/or exhibits:

Yes, I have signed the Confidentiality Agreement.

→ as to FUEL

Email: ccress@bdixon.com

SIGNATURE: [Handwritten Signature]

(Signature Required for distribution of CONFIDENTIAL information)

NORTH CAROLINA UTILITIES COMMISSION

APPEARANCE SLIP

DATE: May 30, 2023 DOCKET NO.: 1281 1282

ATTORNEY NAME and TITLE: Ladaun Toon  
AGE

FIRM NAME: Ladaun Toon

ADDRESS: 411 Fayetteville St.

CITY: Raleigh STATE: NC ZIP CODE: 27601

APPEARANCE ON BEHALF OF: Duke Energy Carolinas

APPLICANT:  COMPLAINANT: \_\_\_ INTERVENOR: \_\_\_

PROTESTANT: \_\_\_ RESPONDENT: \_\_\_ DEFENDANT: \_\_\_

Non-confidential transcripts are located on the Commission's website. To view and/or print transcripts, go to <https://www.ncuc.net/>, hover over the Dockets tab, select Docket Search, enter the docket number, and click search, select the highlighted docket number and select Documents for a list of all documents filed.

ONLY fill out this portion if you have signed an NDA to receive CONFIDENTIAL transcripts and/or exhibits:

Yes, I have signed the Confidentiality Agreement.

Email: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

(Signature Required for distribution of CONFIDENTIAL information)

NORTH CAROLINA UTILITIES COMMISSION

APPEARANCE SLIP

E-7, Sub 1282  
E-7, Sub 1285  
E-7, Sub 1281

DATE: 5-30-23 DOCKET NO.: \_\_\_\_\_

ATTORNEY NAME and TITLE: \_\_\_\_\_

Marcus Trathen

FIRM NAME: Brooks Pierce

ADDRESS: Suite 1700, Wells Fargo Bldg

CITY: Raleigh STATE: NC ZIP CODE: 27601

APPEARANCE ON BEHALF OF: CUCA

APPLICANT: \_\_\_ COMPLAINANT: \_\_\_ INTERVENOR:

PROTESTANT: \_\_\_ RESPONDENT: \_\_\_ DEFENDANT: \_\_\_

Non-confidential transcripts are located on the Commission's website. To view and/or print transcripts, go to <https://www.ncuc.net/>, hover over the Dockets tab, select Docket Search, enter the docket number, and click search, select the highlighted docket number and select Documents for a list of all documents filed.

ONLY fill out this portion if you have signed an NDA to receive CONFIDENTIAL transcripts and/or exhibits:

Yes, I have signed the Confidentiality Agreement.

Email: MTrathen@brooks-pierce.com

SIGNATURE: [Signature]

(Signature Required for distribution of CONFIDENTIAL information)

NORTH CAROLINA UTILITIES COMMISSION  
APPEARANCE SLIP

DATE: May 30, 2023 DOCKET NO.: E-7 Sub 1281

ATTORNEY NAME and TITLE: Brett Reichwerdt

Kristin Athens

FIRM NAME: McGuirewoods LLP

ADDRESS: 501 Fayetteville Street, Suite 500

CITY: Raleigh STATE: NC ZIP CODE: 27601

APPEARANCE ON BEHALF OF: Duke Energy Carolinas, LLC

APPLICANT:  COMPLAINANT: \_\_\_ INTERVENOR: \_\_\_

PROTESTANT: \_\_\_ RESPONDENT: \_\_\_ DEFENDANT: \_\_\_

Non-confidential transcripts are located on the Commission's website. To view and/or print transcripts, go to <https://www.ncuc.net/>, hover over the Dockets tab, select Docket Search, enter the docket number, and click search, select the highlighted docket number and select Documents for a list of all documents filed.

**ONLY** fill out this portion if you have signed an NDA to receive **CONFIDENTIAL** transcripts and/or exhibits:

Yes, I have signed the Confidentiality Agreement.

Email: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

(Signature Required for distribution of **CONFIDENTIAL** information)

- CPRE ONLY -

**NORTH CAROLINA UTILITIES COMMISSION**  
**PUBLIC STAFF - APPEARANCE SLIP**

DATE: May 30, 2023

DOCKET #: E-7, Sub 1281  
DEC CPRE 2023

PUBLIC STAFF ATTORNEYS: Robert Josey & Zeke Creech

TO REQUEST A **CONFIDENTIAL** TRANSCRIPT, PLEASE PROVIDE YOUR EMAIL ADDRESS BELOW:

ACCOUNTING \_\_\_\_\_  
CONSUMER SERVICES \_\_\_\_\_  
COMMUNICATIONS \_\_\_\_\_  
ENERGY \_\_\_\_\_  
ECONOMICS \_\_\_\_\_  
LEGAL robert.josey@psncuc.nc.gov; zeke.creech@psnc.nc.gov  
TRANSPORTATION \_\_\_\_\_  
WATER \_\_\_\_\_

Non-confidential transcripts are located on the Commission's website. To view and/or print, please access <https://ncuc.net>.

COUNSEL/MEMBER(S) REQUESTING A **CONFIDENTIAL** TRANSCRIPT WHO HAS SIGNED A CONFIDENTIALITY AGREEMENT WILL NEED TO SIGN BELOW.

/s/ Robert Josey  
/s/ William Creech



**NORTH CAROLINA UTILITIES COMMISSION**  
**PUBLIC STAFF - APPEARANCE SLIP**

DATE: May 30, 2023

DOCKET #: E-7, Sub 1281  
DEC CPRE 2023

PUBLIC STAFF ATTORNEYS: Robert Josey & Thomas Felling

TO REQUEST A **CONFIDENTIAL** TRANSCRIPT, PLEASE PROVIDE YOUR  
EMAIL ADDRESS BELOW:

ACCOUNTING \_\_\_\_\_  
CONSUMER SERVICES \_\_\_\_\_  
COMMUNICATIONS \_\_\_\_\_  
ENERGY \_\_\_\_\_  
ECONOMICS \_\_\_\_\_  
LEGAL robert.josey@psncuc.nc.gov;thomas.felling@psncuc.nc.gov  
TRANSPORTATION \_\_\_\_\_  
WATER \_\_\_\_\_

Non-confidential transcripts are located on the  
Commission's website. To view and/or print, please access  
<https://ncuc.net>.

COUNSEL/MEMBER(S) REQUESTING A **CONFIDENTIAL** TRANSCRIPT  
WHO HAS SIGNED A CONFIDENTIALITY AGREEMENT WILL NEED TO  
SIGN BELOW.

/s/ Robert Josey  
/s/ Thomas Felling

**REQUEST FOR PROPOSALS  
FOR THE  
COMPETITIVE PROCUREMENT OF  
RENEWABLE ENERGY PROGRAM  
TRANCHE 2**

**DUKE ENERGY CAROLINAS, LLC  
DUKE ENERGY PROGRESS, LLC**

**Dated: October 15, 2019  
Proposals Due: December 15, 2019**

**TABLE OF CONTENTS**

**TABLE OF CONTENTS** ..... i

I. PROGRAM OVERVIEW ..... 2

    A. INDEPENDENT ADMINISTRATOR..... 4

    B. RFP ACCESS AND INSTRUCTIONS..... 3

    C. TRANCHE 1 RFP SCHEDULE..... 3

    D. SEPARATION PROTOCOLS .....5

    E. CONFIDENTIALITY.....5

II. GENERAL TERMS..... 5

    A. PROPOSAL CATEGORIES ..... 5

    B. PROPOSAL ALTERNATIVES AND SIZE FLEXIBILITY.....6

    C. MARKET PARTICIPANTS AND PROPOSAL SPONSORS ..... 6

    D. PROPOSAL FEES..... 6

    E. WINNERS’ FEE..... 7

    F. STEP 2 PROPOSAL SECURITY ..... 7

III. ADDITIONAL PROPOSAL REQUIREMENTS..... 8

    A. SELF-DEVELOPED, SUBSIDIARY, AND AFFILIATE PROPOSALS..... 8

    B. PPA PROPOSALS..... 8

    C. ASSET ACQUISITION PROPOSALS ..... 9

IV. AVOIDED COST THRESHOLD AND PROPOSAL PRICING ..... 11

V. PROPOSAL EVALUATION ..... 14

    A. OVERVIEW .....15

    B. NON ECONOMIC SCORING CRITERIA ..... 16

VI. ADDITIONAL INFORMATION..... 18

    A. INTERCONNECTION TIMELINE AND PPA TERM.....18

    B. ADVANCED STAGE PROPOSALS.....18

    C. TRANSMISSION GRID LOCATIONAL GUIDANCE .....19

    D. PRODUCTION ESTIMATES.....19

    E. STORAGE .....20

    F. CONTROL INSTRUCTIONS.....20

VII. RESERVATION OF RIGHTS ..... 20

**APPENDICES**

- Appendix A – FORM OF RENEWABLE POWER PURCHASE AGREEMENT
- Appendix B – HISTORICALLY UNDERUTILIZED BUSINESSES
- Appendix C – FORM OF LETTER OF CREDIT
- Appendix D – FORM OF SURETY BOND
- Appendix E – REQUIRED FINANCIAL INFORMATION
- Appendix F – SAMPLE SCORING SHEET
- Appendix G – RECOMMENDATIONS FOR ESTABLISHING NATIVE POLLINATOR HABITAT ON SOLAR FARMS IN NORTH CAROLINA

## I. PROGRAM OVERVIEW

Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) and, together with DEC, the “Companies”) are soliciting proposals for new renewable energy projects in support of the Companies’ Competitive Procurement of Renewable Energy (“CPRE”) Program (“Program”).<sup>1</sup> The CPRE Program is being implemented in accordance with N.C. Gen. Stat. § 62-110.8, as enacted by North Carolina Session Law 2017-192 (“HB 589”), the North Carolina Utilities Commission’s (“Commission” or “NCUC”) Rule R8-71 (“CPRE Rule”), and the Commission’s Order Modifying and Accepting CPRE Program Plan dated July 2, 2019, in Docket Nos. E-2, Sub 1159 and E-7, Sub 1156 (“Tranche 2 Order”). Capitalized terms not otherwise defined herein shall have the meaning set forth in the NCUC Rule R8-71(b).

This Tranche 2 Request for Proposals (“RFP”) is soliciting approximately 600 megawatts (“MW”) of new renewable energy resources in DEC and approximately 80 MW of new renewable energy resources in DEP.<sup>2</sup> Eligible Market Participants (“MPs”) for this RFP include third-party renewable developers (“Third-Party MPs”), the DEC/DEP Proposal Team (as further described herein), and any affiliate of DEC or DEP that elects to submit a Proposal. Proposals submitted into the RFP (“Proposals”) must be submitted in one of the following Proposal categories (as further described herein): (1) a Power Purchase Agreement (“PPA”), (2) Utility Self-Developed Facility (as further described herein), or (3) Asset Acquisition (as further described herein).

Tranche 2 is soliciting Proposals for electric generating facilities (each a “Facility”) that meet all of the following requirements:

1. (i) In the case of Proposals submitted into the DEC portion of the RFP, are located in the DEC North Carolina or South Carolina<sup>3</sup> service territory and have requested to physically interconnect with the DEC transmission or distribution systems; and (ii) in the case of Proposals submitted into the DEP portion of the RFP, are located in the

---

<sup>1</sup> For the avoidance of doubt, the DEC and DEP portions of this RFP will be separately administered for purposes of ranking and selection.

<sup>2</sup> Given that the optimal portfolio may not align exactly with the MW target for DEC or DEP, the IA may recommend a portfolio within a range of +/- 10%. This approach will avoid the potential for foregoing an attractive Proposal that because it is the next-best ranked Proposal, would cause the portfolio to exceed the solicitation goal. In addition, the IA may consider any project size range provided by MPs in designing a portfolio that most closely meets the Tranche 2 target (see Section II(B)). In the event the IA determines a Proposal will be recommended for the final portfolio in an amount less than the maximum size proposed by an MP, the IA will confirm the MP’s commitment to proceed with the Proposal at the size identified by the IA.

<sup>3</sup> The South Carolina Public Service Commission (“SCPSC”) is currently considering a waiver to the SC GIP to allow for the System Impact Grouping Study to be utilized in Tranche 2 for Facilities located in South Carolina. In the event that the SCPSC rejects use of the System Impact Grouping Study for Facilities located in South Carolina, facilities located in South Carolina will only be eligible to participate in Tranche 2 as Advanced Stage Proposals.

- DEP North Carolina or South Carolina service territory and have requested to physically interconnect with the DEP transmission or distribution systems.
2. Placed in service after July 10, 2018 and be capable of completing Facility construction (not completion of interconnection) by January 1, 2023.<sup>4</sup>
  3. Are sized between 1 MW and 80 MW (based on the inverter nameplate rating)). A Facility must have a single point of interconnection (“POI”).
  4. Use a renewable energy resource identified in G.S. 62-133.8(a)(8) and have demonstrated an adequate fuel supply from a qualifying resource.<sup>5</sup>
  5. Commit to sell 100% of its renewable electrical energy, capacity, and environmental and renewable attributes to DEC or DEP (as applicable).
  6. In the case of PPA Proposals and Asset Acquisition Proposals, have submitted Form 556 to the Federal Energy Regulatory Commission on or before the date of submission of the Proposal to obtain qualifying facility (“QF”) certification.
  7. In the case of PPA Proposals and Asset Acquisition Proposals, have either (i) obtained a queue number under the North Carolina Interconnection Procedures (“NCIP”) or the South Carolina Generator Interconnection Procedures (“SC GIP”) to interconnect to the DEC transmission or distribution systems in the case of Proposals submitted into the DEC portion of the RFP or the DEP transmission or distribution system in the case of Proposals submitted into the DEP portion of the RFP; or (ii) where a Facility has previously submitted a FERC-jurisdictional interconnection request has submitted a Jurisdictional Interconnection Transition Request Form.<sup>6</sup>
  8. In the case of Facilities that include energy storage, have all storage located on the DC side of the inverter and charged solely from the applicable Facility.

---

<sup>4</sup> For the avoidance of doubt, an MP is not required to obtain a certificate of public convenience and necessity (“CPCN”) to construct the facility prior to submitting a PPA Proposal, but will be required to establish a reasonable plan for obtaining all necessary permits and certificates (including a CPCN) in a timely manner. Also for the avoidance of doubt, an MP may not submit a Proposal for a Facility that has an existing off-take agreement.

<sup>5</sup> "Renewable energy resource" means a solar electric, solar thermal, wind, hydropower, geothermal, or ocean current or wave energy resource; a biomass resource, including agricultural waste, animal waste, wood waste, spent pulping liquors, combustible residues, combustible liquids, combustible gases, energy crops, or landfill methane; waste heat derived from a renewable energy resource and used to produce electricity or useful, measurable thermal energy at a retail electric customer's facility; or hydrogen derived from a renewable energy resource. "Renewable energy resource" does not include peat, a fossil fuel, or nuclear energy resource.

<sup>6</sup> Interconnection requests for Facilities where the MP plans to contractually commit to sell the full output of the Facility to the interconnected utility, as required under the CPRE Program, are subject to the jurisdiction of, and interconnection procedures and agreements established by either the NCUC and South Carolina Public Service Commission. MPs with generating facilities that have previously submitted interconnection requests pursuant the Companies' Joint Open Access Transmission Tariff shall be allowed to retain their queue position while transitioning to become state jurisdictional interconnection customers of DEC or DEP (as applicable) prior to the CPRE RFP Solicitation bid due date. The Jurisdictional Interconnection Request Form has been made available on the IA RFP Website and contains further details regarding the transition process.

## A. INDEPENDENT ADMINISTRATOR

This RFP will be administered by an Independent Administrator, the Accion Group, LLC (“Accion” or the “IA”). Accion is responsible for developing and utilizing the CPRE Program Methodology to evaluate all Proposals in accordance with the evaluation process established under NCUC Rule R8-71(f)(3)(iii), as further described herein, and ensuring that all Proposals are treated equitably throughout the RFP.

## B. RFP ACCESS AND INSTRUCTIONS

Accion hosts a website (“IA RFP Website”) that serves as the required vehicle for all RFP communications. Respondents and interested parties must be registered on the IA RFP Website to access further information related to the RFP. The IA RFP Website may be accessed at <https://decprerfp2019.accionpower.com>.

The IA RFP Website will also be used for registered parties to provide comments on or before August 30, 2019 regarding this RFP document, the pro forma PPA, and the various Asset Acquisition agreements. In addition, registered parties may submit questions concerning the RFP on the “Q&A” page of IA RFP Website. The questions and responses will be posted for viewing by all persons registered on the IA RFP Website. Finally, the IA RFP Website also has a confidential “message board” available to registered MPs to facilitate project-specific questions to the IA that should not be disclosed to all MPs. The IA will review all questions and messages and solicit information from the Evaluation Team, as necessary, without disclosing the identity of the MP posing the request. Questions and responses that the IA determines are appropriate for disclosure to all registered MPs will be posted in the Q&A page. After the Proposal submission date, the confidential message board will be used should the IA need clarification concerning any Proposal.

Proposals and all associated documentation must be submitted to the IA through the IA RFP Website on or before **12:00 pm EDT (Noon) on December 15, 2019.**

## C. TRANCHE 2 RFP SCHEDULE

The table below presents the planned Tranche 2 RFP schedule. As provided in the CPRE Rule, the Tranche 2 RFP schedule may be modified after consultation with and approval by the IA. MPs will receive notification of any schedule changes through the IA RFP Website.



Milestone	Date
August Stakeholder Meeting	08/07/2019
Draft RFP documents posted to IA RFP Website	08/15/2019
Comment period on draft RFP documents closes	08/30/2019
Bidder Conference and September Stakeholder Meeting	09/12/2019
PPA filed with NCUC	09/15/2019
IA report re: RFP documents	09/25/2019
October Stakeholder Meeting	10/10/2019
Final RFP documents posted to IA RFP Website and RFP Opens	10/15/2019
November Stakeholder Meeting	11/13/2019
December Stakeholder Meeting	12/12/2019
Deadline for submission of Proposals	12/15/2019 <sup>7</sup>
Projected Conclusion of Step 1 of the Evaluation Process	03/01/2020
Projected Conclusion of Step 2 and winning bids notified	06/30/2020
Projected Conclusion of Contracting period	08/28/2020

**D. SEPARATION PROTOCOLS**

The IA will ensure compliance with the communication restrictions and other requirements set forth in NCUC Rule R8-71(e) (the “Separation Protocols”). Pursuant to such CPRE Rule, DEC and DEP have collectively established a team that is responsible for preparing bids on behalf of DEC/DEP (such team, the “DEC/DEP Proposal Team”), and Duke Energy Renewables, Inc. (“DER”) has established a separate team that is responsible for preparing bids on behalf of DER (such team, the “DER Proposal Team” and together with the DEC/DEP Proposal Team, the “Proposal Teams”). In addition, DEC and DEP have established a team that is responsible for assisting the IA in developing the RFP and evaluating Proposals (the “Evaluation Team”). Finally, the Evaluation Team has a sub-team responsible for assessing and assigning System Upgrade costs to Proposals (the “T&D Sub-Team”). All members of the Proposal Team(s) and the Evaluation Team have been separately identified in writing to the IA and physically segregated for purposes of all activities that are part of the Tranche 2 RFP solicitation process. All Proposal Team and Evaluation Team members have also been required to execute acknowledgements regarding compliance with the Separation Protocols, which have been provided to the IA. As shown in the Tranche 2 RFP Schedule above, the IA will require that the Proposal Teams submit any Proposals no less than 24 hours before the RFP window closes.

**E. CONFIDENTIALITY**

The IA will not publicly disclose the identity of all MPs during the Step 1 and Step 2 evaluation process. However, at the conclusion of the Step 2 evaluation, upon selection of winning MPs,

<sup>7</sup> This date is subject to modification in accordance with the Commission’s Tranche 2 Order.



the IA and/or Duke shall be permitted to publicly identify all CPRE participants that submit Proposals in response to any Commission-directed reporting requirements.

## II. GENERAL TERMS

### A. PROPOSAL CATEGORIES

Proposals may be structured using one of the three proposal categories (“Proposal Categories”) defined in the following table:

Proposal Type	Proposal Cost Structure
<b>PPA</b>	Levelized (non-escalating) payments for capacity, energy, and environmental and renewable attributes in \$/MWh terms for 20 years from the commercial operation date. The pro forma PPA is attached as <b>Appendix A</b> .
<b>Utility Self-Developed Facilities</b>	Utility owns or controls the property and offers Renewable Resource facility(s) into the CPRE RFP in \$/MWh terms for 20 years from the commercial operation date.
<b>Asset Acquisition</b>	<p><b>Asset Transfer plus EPC</b> – The Facility is submitted into the RFP for purchase by DEC/DEP along with an offer to build the site under an Engineering Procurement and Construction Agreement (“EPC”) for purchase by DEC or DEP. Facility is developed by the MP and ownership transfers to DEC or DEP before the start of construction.</p> <p><b>Build Own Transfer (“BOT”)</b> – Facility is fully developed and constructed by the MP and submitted as a “turn-key” offer into the RFP by MP. Facility ownership will be transferred to DEC or DEP prior to commercial operation.</p> <p><b>Asset Transfer</b> – Facility siting, land control, design, permitting, and interconnect studies completed by the MP and fully-developed project offered into the RFP. Facility ownership will be transferred to DEC or DEP prior to construction and DEC or DEP will be responsible for construction.</p>

### B. PROPOSAL ALTERNATIVES AND SIZE FLEXIBILITY

MPs may submit Proposals for the same Facility proffering different sizing, pricing or technology. (e.g., a Facility that is proposed both with and without energy storage must submit separate Proposals for each Facility configuration). Each Proposal will be a separate submission subject to a separate Proposal Fee. A MP may submit the same Facility as both an Asset Acquisition Proposal



and as a PPA Proposal, and that would constitute two separate Proposals. If the Asset Acquisition Proposal is sponsored by the DEC/DEP Proposal Team, the Acquisition Proposal will be converted to PPA pricing as more specifically discussed below. In such case, the highest ranking of all Proposals for the Facility, based on the IA's evaluation, will be considered the "best" or controlling proposal for such Facility and the IA shall eliminate the other Proposal from further consideration in the RFP.

MPs will be permitted to identify the minimum size of the Facility (up to a 10% maximum reduction)<sup>8</sup> that the MP is willing to provide at the same \$/MWh price. For example, for a 50 MW Proposal, the MP could indicate that it is willing to deliver a Facility sized anywhere between 45-50 MW for the same \$/MWh price.

### C. MARKET PARTICIPANTS AND PROPOSAL SPONSORS

DEC and DEP recognize that MPs may utilize partners or sponsors ("Proposal Sponsors") for Proposal development. Proposals that rely on Proposal Sponsors to meet RFP requirements must provide evidence that is satisfactory to the IA of a binding legal partnership or similar relationship with such Proposal Sponsor.

Historically underutilized businesses are encouraged to participate in the RFP. The definitions to be employed for such purposes are set forth in **Appendix B** to this RFP. MPs shall not discriminate based upon race, religion, color, national origin, age, sex, or handicap.

### D. PROPOSAL FEES

Each MP is required to submit with each Proposal a non-refundable "Proposal Fee" of \$500/MW, based on the Facility's nameplate capacity, up to a maximum of ten thousand dollars (\$10,000). In addition, successful MPs will be responsible for a pro-rata share of the Winners' Fee (as hereinafter defined).

Proposal Fees are non-refundable and for the avoidance of doubt, will not be refunded in the case of any modification of this RFP schedule, rejection of any Proposal, or failure by a winning MP to execute a PPA. Proposal Fees must be paid via electronic payments through Accion's website: <https://decprerfp2019.accionpower.com>. Payment is due at the time of Proposal submission and must be received no later than 12:00 PM EDT (Noon) on the Proposal due date. Failure to submit the Proposal Fee will result in automatic disqualification of the Proposal from further consideration.

---

<sup>8</sup> The maximum reduction percentage is based on Section 1.5.1.6 of the NCIP and Attachment 1 of the SC GIP.

## E. WINNERS' FEE

The "Winners' Fee" is the amount to be determined as described below in order to recover any remaining IA costs not covered by the Proposal Fee. The Winners' Fee will be determined upon conclusion of the RFP. Any such Winners' Fee costs will be allocated among all winning Proposals selected by both DEC and DEP on a pro-rata basis on a per MW basis. The total of the Winners' Fees shall not exceed one million dollars (\$1,000,000.00).

## F. STEP 2 PROPOSAL SECURITY

### 1. Third-Party MPs and DER Proposal Team

Security in the amount of \$20/kW, based on the Facility's inverter nameplate capacity, must be posted by all Third-Party MPs and the DER Proposal Team submitting PPA Proposal that are selected to move into Step 2 of the evaluation process ("Step 2 Proposal Security"). This Step 2 Proposal Security can be in the form of (i) cash; (ii) a Surety Bond; or (iii) a Letter of Credit ("LOC"), in each case, in a form acceptable to the Companies and issued by an entity that meets the Companies' issuer requirements and naming DEC or DEP (as applicable) as the sole beneficiary. An issuing bank for the LOC must have a minimum credit rating of A- from S&P and A3 from Moody's and a surety must be rated A.M. Best "A- VII" or higher. Surety bonds must be irrevocable and require payment by the surety within ten days of demand. Interest will not be paid on cash deposits. An example of acceptable LOC is provided in **Appendix C** and an acceptable surety bond is provided in **Appendix D**.

The IA will provide notification to an MP when the IA determines it will likely select the Proposal to move into the Step 2 evaluation. Within 14 days of such initial notification, MPs are required to provide draft forms of Proposal Security, if not posting cash, to allow sufficient time for the IA and the Companies to review and confirm the Proposal Security materially conform to the forms provided in **Appendix C** and **Appendix D**, respectively. The IA will then notify the MP when the Proposal is formally moved into the Step 2 Evaluation, at which point, the MP must post the Step 2 Proposal Security within ten business days<sup>9</sup>.

### 2. DEC/DEP Proposal Team

In the case of Asset Acquisition Proposal sponsored by the DEC/DEP Proposal Team, Step 2 Proposal Security will be required from the Third-Party MP as further described in Section III(C).

In the case of Utility Self-Developed Facilities, the DEC/DEP Proposal Team will be required to acknowledge that in the event such Proposal is selected as a winner and fails to execute the

---

<sup>9</sup> As indicated in the schedule in Section I(c), the IA currently expects that Step 1 of the evaluation process will be completed on or around March 1, 2020.

Acknowledgment Form, an amount equal to \$20/kW will be disallowed from the applicable CPRE Rider recovery.

### 3. Step 2 Proposal Security Administration

The Step 2 Proposal Security will be released (i) if the Proposal is eliminated by the IA due to failure to meet any required RFP criteria or action; (ii) if the Proposal is not selected as a winning proposal, upon closure of the contracting period; or (iii) if the Proposal is selected as a winning Proposal, upon completion of the contracting phase of the RFP, including execution of the applicable contract (PPA or definitive agreement for Asset Acquisition Proposals) and posting of security as required in the applicable agreement. DEC or DEP (as applicable) will be entitled to draw on the full amount of the Step 2 Proposal Security in the event that the MP (a) withdraws its Proposal during Step 2 of the Evaluation Process; or (b) if the Proposal is selected as a winning Proposal but the MP fails to complete the contracting phase.

## III. ADDITIONAL PROPOSAL REQUIREMENTS

### A. SELF-DEVELOPED, SUBSIDIARY, AND AFFILIATE PROPOSALS

Utility Self-Developed Proposals and conversions of Asset Acquisition Proposals will be bid using the same templates, forms, and pricing requirements applicable to PPA Proposals. Proposals submitted by the DER Proposal Team will be made via the IA RFP Website and meet the same requirements as Proposals from Third-Party MPs. In accordance with G.S. 62-110.8(b)(4), no more than thirty percent (30%) of the total CPRE procurement requirements can be awarded to Facilities in which DEC, DEP, or any subsidiary or affiliate holds an ownership interest at the time of Proposal submission.

Utility Self-Developed Proposals and conversions of Asset Acquisition Proposals will be priced based on the assumption that these facilities will continue to receive market-based revenues based on a pricing mechanism to be established by the Commission at the conclusion of the initial 20-year term of the PPA.

### B. PPA PROPOSALS

All PPA Proposals must meet the technical specifications set forth in the PPA, as determined by the IA (in consultation with the Evaluation Team, as necessary). The pro forma PPA is provided as Appendix A. After closure of the RFP comment period, and subsequent filing of the PPA with the NCUC, the pro forma PPA is not subject to negotiation or adjustment for purpose of Tranche 2.

### C. ASSET ACQUISITION PROPOSALS

Third-Party MPs are permitted to submit Asset Acquisition Proposals for DEC/DEP to consider acquiring a proposed Facility. In Tranche 2, only solar photovoltaic Facilities that are 20 MWac or greater will be accepted for consideration as Asset Acquisitions. As discussed above, Third-Party MPs may submit PPA Proposals as well as Asset Acquisitions for the same Facility, but each Proposal Category must be submitted as a separate Proposal.

Asset Acquisition Proposals must be priced on a \$/kw nameplate capacity basis to be paid according to payment milestones set forth under each type of Asset Acquisition Proposal. All Proposals must meet the DEC/DEP Proposal Team's technical design specifications, as provided in definitive agreements, including complying with the DEC/DEP Proposal Team's list of approved vendors/suppliers (provided on the IA RFP Website for review). After submission of an Asset Acquisition Proposal by an MP, the DEC/DEP Proposal Team will consider all aspects of the Proposal, including location, size, viability, technology, and price to determine if the DEC/DEP Proposal Team will sponsor the Asset Acquisition Proposal. Should the DEC/DEP Proposal Team elect to sponsor an Asset Acquisition Proposal, the DEC/DEP Proposal Team will coordinate with the MP and submit a Proposal into the CPRE RFP in on a \$/MWh basis utilizing the percentage decrement structure described in Section IV below. All Asset Acquisition contracts (definitive agreements under which the MP and DEC/DEP will transact) and exhibits related thereto (including the DEC/DEP Proposal Team's technical design specifications), will be available on the IA RFP website for review and comment by MPs. The DEC/DEP Proposal Team will review and consider any proposed changes (in the form of redlines) to its Asset Acquisition contracts that are submitted at the time an Asset Acquisition Proposal is submitted. The DEC/DEP Proposal Team will not, in any event, consider any proposed changes to the Asset Acquisition contracts, or exhibits related thereto (including the DEC/DEP Proposal Team's technical design specifications), from an MP that are not submitted along with Asset Acquisition Proposal. If the DEC/DEP Proposal Team decides to sponsor one or more Asset Acquisition Proposal(s), the DEC/DEP Proposal Team will require the applicable MP execute a term sheet relating to the principal commercial terms of the Asset Acquisition Proposal and acknowledging that no further changes to the Asset Acquisition Contracts (other than those noted at the time of Proposal Submission) will be accepted, and the DEC/DEP Proposal Team will then submit to the IA the Proposal, for consideration in Step 1 of the evaluation process on a \$/MWh basis utilizing the percentage decrement structure described in Section IV below. Any such Proposals would then be evaluated by the IA along with all other PPA and Utility Self-Developed Proposals submitted. At no time during this process will the DEC/DEP Proposal team have access to any information from the IA RFP Website, including pricing, for PPA Proposals submitted by any Third-Party MPs.

For solar photovoltaic Facilities, additional guidance relating to the DEC/DEP Proposal Team's PV facility design and Proposal criteria will be provided on the portion of the IA RFP Website section dedicated to Asset Acquisition Proposals.

MPs will be required to complete a proposal form that includes detailed information for each Facility, including a list of all major equipment included in the Asset Acquisition Proposal, including manufacturer name and equipment type for all panels, inverters, and racking supply. All Asset Acquisition Proposals should include product data sheets, product warranty information, and the design criteria that forms the basis of the pricing proposal. The DEC/DEP Proposal Team will review project design criteria to properly evaluate the quality of the project design and scope of work included in the proposal price and conformance with the design specifications.

For MPs submitting Asset Acquisition Proposals that do not wish to construct the Facility, the DEC/DEP Proposal Team will only consider Facilities that have completed System Impact Studies, secured long-term site control, initiated or obtained requisite project permits, completed a Phase I Environmental Site Assessment, conducted site analysis (including wetland delineation, preliminary geotechnical analysis, and boundary surveys), prepared a preliminary site layout, obtained CPCN approval (if applicable), and provided all additional required information as identified on the IA RFP Website to allow for full and proper evaluation of the project attributes.

For all Asset Acquisition Proposals, MPs must identify which portion of the capital costs are ITC eligible and provide details of any property tax abatement or exemption or fee in lieu of tax (FILOT) arrangements or eligibility for other grants or tax credits. MPs must identify the portion of capital costs that belong to each federal tax depreciation class.

Interconnection Facilities (as defined herein) cost estimates must be included as an additional project cost and documented in the Proposal.

MPs submitting Asset Transfer plus EPC or a BOT (but not if proposing an Asset Transfer only) must have completed or directly managed the completion of the development, engineering, equipment procurement, and construction of at least 50 MW of solar facilities within the United States or Canada. For all Asset Acquisitions, MPs must provide sufficient financial assurances, as set forth in the form EPC and BOT agreements, as necessary for the Facility to meet schedule and proposed performance milestones. In addition, MPs must provide evidence of at least one recent successful construction financing completed by the MP of comparable size to the submitted proposal.

The Third-Party MP that submitted the Asset Acquisition Proposal will be required to provide Step 2 Proposal Security in accordance with the notification and timing requirements described in Section II(F)(1). For Asset Transfer plus EPC and BOT proposals, the Step 2 Proposal Security is \$20/kWac. For Asset Transfer proposals, the Step 2 Proposal Security shall be an amount equal to twenty percent (20%) of the purchase price of the Proposal. Such Step 2 Proposal Security must conform with the requirements of Section II(F)(1) and will administered in accordance with Section II(F)(3).



**IV. AVOIDED COST THRESHOLD AND PROPOSAL PRICING**

All PPA and Utility Self-Developed Facility Proposals must be submitted using levelized 20-year dollar per megawatt-hour (\$/MWh) pricing, and, as discussed above, the DEC/DEP Proposal Team will convert any Asset Acquisition Proposals selected into levelized 20-year dollar per megawatt-hour (\$/MWh) pricing.

All Proposals (including the cost of System Upgrades as described herein) must be at or below the applicable 20-year dollar per megawatt-hour (\$/MWh) avoided cost rates specified in the tables below.

**Avoided Costs Threshold for Tranche 2**

**Note: The Commission has requested briefing in Docket Nos. E-2, Sub 1159 and E-7, Sub 1156 regarding application of the Solar Integration Services Charge (“SISC”). Applicability of the SISC to Tranche 2 CPRE PPAs will be determined by the Commission after completion of such comment process.**

DEP 20 Year CPRE												
CAPACITY PRICING			ENERGY PRICING									
Summer Months PM	Winter Months AM	Winter Months PM	Summer Prem Pk	Summer On-Peak	Summer Off-Peak	Winter Prem Pk	Winter On-Peak AM	Winter On-Peak PM	Winter Off-Peak	Shoulder On-Peak AM/PM	Shoulder Off-Peak	
\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	
Distribution	\$ -	\$ 135.59	\$ 58.11	\$ 42.58	\$ 44.10	\$ 38.21	\$ 60.21	\$ 46.41	\$ 53.84	\$ 42.71	\$ 38.15	\$ 33.28
Transmission	\$ -	\$ 133.00	\$ 57.00	\$ 41.43	\$ 42.96	\$ 37.68	\$ 58.78	\$ 45.62	\$ 52.82	\$ 42.13	\$ 37.67	\$ 32.97

DEC 20 Year CPRE												
CAPACITY PRICING			ENERGY PRICING									
Summer Months PM	Winter Months AM	Winter Months PM	Summer Prem Pk	Summer On-Peak	Summer Off-Peak	Winter Prem Pk	Winter On-Peak AM	Winter On-Peak PM	Winter Off-Peak	Shoulder On-Peak AM/PM	Shoulder Off-Peak	
\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	
Distribution	\$ 43.49	\$ 83.48	\$ 28.30	\$ 59.47	\$ 58.11	\$ 34.86	\$ 73.42	\$ 54.03	\$ 66.48	\$ 42.44	\$ 46.92	\$ 31.26
Transmission	\$ 42.33	\$ 81.25	\$ 27.54	\$ 57.28	\$ 56.15	\$ 34.18	\$ 71.14	\$ 52.66	\$ 64.80	\$ 41.62	\$ 46.01	\$ 30.80

**For Energy Credit purposes in DEP:**

Summer months are defined as calendar months June through September, Winter months are defined as calendar months December through February, and Shoulder months are defined as March through May and October through November. Summer on-peak hours shall be Monday through Friday from 1:00 p.m. to 4:00 p.m. and 8:00 p.m. to 9:00 p.m. Winter on-peak hours shall be Monday through Friday with morning hours from 4:00 a.m. to 6:00 a.m. and 9:00 a.m. to 11:00 a.m., plus evening hours from 6:00 p.m. to 10:00 p.m. Shoulder on-peak hours shall be Monday through Friday with morning hours from 5:00 a.m. to 10:00 a.m. plus evening hours from 5:00 p.m. to 11:00 p.m. Summer premium peak hours shall be Monday through Friday from 4:00 p.m.

to 8:00 p.m. Winter premium peak hours shall be Monday through Friday from 6:00 a.m. to 9:00 a.m. There are no premium peak hours for Shoulder months. All other hours, plus the following holidays, shall be off-peak: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after, and Christmas Day. When a holiday falls on a Saturday, the Friday before the holiday will be considered off-peak; when the holiday falls on a Sunday, the following Monday will be considered off-peak.

**For Capacity Credit purposes in DEP:**

Capacity Credit shall only be applicable in Summer months defined as the calendar months of July and August and Winter months defined as calendar months of December through March. Summer on-peak hours shall be 4:00 p.m. to 8:00 p.m. during all Summer days. During Winter months, the morning on-peak hours shall be all Winter days from 6:00 a.m. to 9:00 a.m. and evening on-peak hours shall be all Winter days from 6:00 p.m. to 9:00 p.m. Capacity credits are not applicable in all other months.

**For Energy Credit purposes in DEC:**

Summer months are defined as calendar months June through September, Winter months are defined as calendar months December through February, and Shoulder months are defined as March through May and October through November. Summer on-peak hours shall be Monday through Friday from 12:00 p.m. noon to 4:00 p.m. and 8:00 p.m. to 10:00 p.m. Winter on-peak hours shall be Monday through Friday with morning hours from 5:00 a.m. to 6:00 a.m. and 9:00 a.m. to 10:00 a.m., plus evening hours from 5:00 p.m. to 10:00 p.m. Shoulder on-peak hours shall be Monday through Friday with morning hours from 6:00 a.m. to 10:00 a.m. plus evening hours from 4:00 p.m. to 11:00 p.m. Summer premium peak hours shall be Monday through Friday from 4:00 p.m. to 8:00 p.m.. Winter premium peak hours shall be Monday through Friday from 6:00 a.m. to 9:00 a.m. There are no premium peak hours for Shoulder months. All other hours, plus the following holidays, shall be off-peak: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after, and Christmas Day. When a holiday falls on a Saturday, the Friday before the holiday will be considered off-peak; when the holiday falls on a Sunday, the following Monday will be considered off-peak.

**For Capacity Credit purposes in DEC:**

Capacity Credit shall only be applicable in Summer months defined as the calendar months of July and August and Winter months defined as calendar months of December through March. Summer on-peak hours shall be 4:00 p.m. to 8:00 p.m. during all Summer days. During Winter months, the morning on-peak hours shall be all Winter days from 6:00 a.m. to 9:00 a.m. and evening on-peak hours shall be all Winter days from 6:00 p.m. to 9:00 p.m. Capacity credits are not applicable in all other months.

Proposal pricing must be in the same format of 20-year avoided cost pricing periods as shown in the tables above. Proposal pricing must be stated as a fixed dollar per MWh decrement that is



applied equally to all energy pricing periods. For example, an MP could propose pricing that is \$2.00/MWh less than the avoided cost in each energy pricing period (for clarity, the decrement does not apply to capacity pricing periods). This format for pricing will be required for the bid entry on the IA RFP Website and will be the basis for the pricing in the PPA. Translating this \$2.00/MWh proposed pricing decrement example into a levelized form of pricing, the following would be the result for a Transmission connected project in DEC:

DEC 20 Year CPRE with proposed \$2/MWh pricing decrement												
CAPACITY PRICING			ENERGY PRICING									
Summer Months	Winter Months	Winter Months	Summer Prem Pk	Summer On-Peak	Summer Off-Peak	Winter Prem Pk	Winter On-Peak	Winter On-Peak	Winter Off-Peak	Shoulder On-Peak	Shoulder Off-Peak	
PM	AM	PM					AM	PM		AM/PM		
\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	
Transmission proposal	\$ 42.33	\$ 81.25	\$ 27.54	\$ 57.28	\$ 56.15	\$ 34.18	\$ 71.14	\$ 52.66	\$ 64.80	\$ 41.62	\$ 46.01	\$ 30.80
			\$ 55.28	\$ 54.15	\$ 32.18	\$ 69.14	\$ 50.66	\$ 62.80	\$ 39.62	\$ 44.01	\$ 28.80	

PPA pricing must include all project costs to the Point of Interconnection (“POI”), including the cost to directly connect to the existing DEC or DEP transmission/distribution system (“Interconnection Facilities”). Interconnection Facilities costs at the POI will include all DEC’s or DEP’s (as applicable) costs to connect the Facility to the existing transmission/distribution system delivery point, but shall not include the costs of upgrades to the transmission or distribution system beyond the POI. For transmission interconnections in DEC, evaluation will assume the most cost-effective communication method that meets the Transmission Provider’s requirements in their transfer trip scheme. The MP has cost responsibility for the transfer trip scheme. MP-owned equipment up to the POI often includes equipment such as the generator step-up transformer (for conversion up to the interconnecting voltage level), facility side generator breaker (as needed), and all station service equipment. Utility-owned equipment typically includes metering, protective equipment, relays, and other new electrical infrastructure and specific configurations for transmission connections as discussed in more detail below.

MPs with successful Proposals will be responsible for all Interconnection Facilities costs, even if the actual costs exceed the amount estimated by the MP. The IA will review the estimated Interconnection Facilities costs included in each proposal for reasonableness and reserves the right to impute a larger amount of Interconnection Facilities Costs where it determines that the Interconnection Costs assumed by the MP are unreasonably low. Should the IA determine imputed Interconnection Facilities Costs should be used, the MP will be advised and provided the opportunity to review the revised cost estimates with the IA and advise the IA of whether the imputed estimate is accepted by the MP.

The costs of transmission/distribution grid improvements and upgrades (“System Upgrades”) should not be incorporated in the MP’s PPA price, unless the MP elects to be treated as an Advanced Stage Proposal, as further defined below. System Upgrade costs for all non-Advanced Stage Proposals will be identified during Step 2 of the evaluation process as set forth in NCUC



Rule R8-71(f)(3)(iii). For the avoidance of doubt, for purposes of determining the satisfaction of the avoided cost threshold, the System Upgrade costs determined by the T&D Sub-Team shall be converted to 20-year \$/MWh pricing and incorporated into the Proposal price by the IA.

## V. PROPOSAL EVALUATION

### A. OVERVIEW

Proposals will be evaluated by the IA in accordance with the evaluation process set forth in NCUC Rule R8-71(f)(3). A copy of the CPRE Rule is provided on the IA RFP Website. As specified in NCUC Rule R8-71(f)(3), in Step 1 of the evaluation process, the IA will perform the initial ranking of Proposals based on a combination of economic and non-economic criteria. As a part of the Step 1 evaluation, the IA may allow a market participant an opportunity to modify or clarify its proposal to cure a non-conformance or non-substantive deficiency that would otherwise require elimination of the Proposal. The IA will provide the MP with written notice of the deficiency and the MP shall then have five (5) business days after receiving the written notice to cure the deficiency, where failure to cure the deficiency shall result in withdrawal of the Proposal from further consideration. Proposal Fees for a Proposal that fails to timely cure any deficiency identified by the IA shall not be returned.

Each Proposal will be evaluated on its benefit to the DEC/DEP system over the twenty-year analysis period on a \$/MWh basis (accumulated net present value). Although an MP may enjoy economies of scale with respect to the owner's and development cost of a Facility, the evaluation will be conducted on a \$/MWh (benefit to DEP/DEC) basis and therefore will not favor a Proposal based on Facility size. In order to assess a Proposal's net benefit, the evaluation must determine both the Proposal's cost and the Proposal's benefit to the DEC/DEP system. The cost of the Proposal is determined by taking the MP submitted \$/MWh rate and applying the rate to the Facility's projected output (8760 hours x 20 years). The benefit to the DEC/DEP system is determined using two metrics: (1) the Proposal's output contributes toward the ability to defer future DEC/DEP generating unit capacity and (2) the Proposal's energy output replaces energy that would have been supplied at DEC/DEP system cost for that particular hour.

Proposals must include a set of 8760 hour output projections each of the 20 years of the term. Proposals must be accompanied by PVSyst inputs/outputs and supporting workpapers and calculations demonstrating the basis for the energy profiles proposed. Proposals that include storage must submit two sets of 8760 hour output projections (for the twenty years) for the facility design. The first set is the output projection assuming that the storage capability is not utilized (i.e., turned off) and the second set of output projections is the Facility output after utilizing the storage capability. It is assumed that the post-storage output projections reflect that the MP has optimized the use of the storage capability. The IA will review both the pre-storage and post-storage Facility output in order to determine that the post-storage projections are reasonable.

Note that under the terms of the PPA, DEP/DEC has the right to curtail energy from the Facility up to 10% of the Facility's annual energy production in the DEP jurisdiction and 5% in the DEC jurisdiction, without compensation to the Facility owner. For purposes of the evaluation, it will be assumed that DEP/DEC fully exercises the energy curtailment to the respective 5% and 10% limits. Note that the energy curtailment reduces the Facility's revenue (in that less energy is sold to the DEP/DEC grid).

In the Proposal evaluation, the curtailment methodology will optimize energy costs for DEP/DEC. In other words, the methodology will begin curtailing the Facility's output when the cost of the Facility's energy is most costly when measured against the DEP/DEC system cost for that hour. This methodology will continue (as the cost difference is reduced) until the full allotment of curtailment is reached (either 5% or 10%).

With Facilities that include storage, it is recognized that some of the Facility's energy that is "lost" during curtailment can be stored and sold into the DEP/DEC system several hours later. For purpose of the evaluation, the following limitations will be taken into account: the overall roundtrip efficiency of energy storage, the MW capability of the storage system (which may be smaller than the facility output), and the MWh (energy) capability of the storage system.

The non-economic criteria specified below will also be evaluated by the IA and scored in accordance with the scoring sheet attached hereto as **Appendix F**, which has been developed by the IA and sets forth the weighting the IA will use in determining the Step 1 ranking of all Proposals. The Step 1 evaluation ranked Proposals into an initial Competitive Tier ("Competitive Tier"), Competitive Tier Reserve ("Competitive Tier Reserve" or "Reserve List"), and released Proposals. For those Proposals that do not advance to Step 2 of the evaluation process, the IA will notify the relevant MP on or before the milestone for concluding Step 1 of the Evaluation Process identified in the Tranche 2 RFP schedule.

In Step 2 of the evaluation process, the T&D Sub-Team shall assess the system impact of the Proposals in the order ranked by the IA and assign any System Upgrade costs attributable to each such Proposal. The IA will utilize such information to re-rank the Proposals (as necessary), and this process will continue in an iterative manner until the optimal portfolio of Proposals has been identified.

Step 2 of the evaluation process shall utilize the System Impact Grouping Study<sup>10</sup> and all Proposals will be required to be studied based on the Queue Number established by the Companies for purposes of the System Impact Grouping Study.

---

<sup>10</sup> As that term is utilized in the NCIP.

## B. NON-ECONOMIC SCORING CRITERIA

The following non-economic criteria will be evaluated for each Proposal and scored in accordance with the scoring sheet.

### 1. Facility Permitting

MPs should disclose all permits that will have to be obtained and the status of each permit along with a timeline for the completion of all permits that relate to the Proposal. The site evaluation and studies conducted to date, as well as a timeline for completion of these studies, should be included in the Proposal.<sup>11</sup>

### 2. Financing Experience

Each Proposal should describe the plans for acquiring the necessary funds for developing, constructing, and operating the Facility. Such plans should include a discussion of the Facility's legal ownership structure and the expected sources and types of capital that the MP has committed to secure. If available, letters of interest or letters of commitment from such financial partners or key sources of funding should be provided.

For PPA proposals, MPs must be able to provide evidence of at least one recent successful facility financing completed of comparable size to the Proposal submitted within the last five years.

MPs must provide the financial and credit information set forth in **Appendix E**.

### 3. Technical Development and Operational Experience

In general, MP must show experience in developing and operating renewable facilities of comparable size and technology as the Facility submitted in the Proposal. More specifically, MP must:

- In the case of PPA proposals, have operated a renewable energy project or portfolio of projects >50 MW AC or 3x the nameplate capacity of the Proposal, whichever is less;
- In the case of solar Proposals, have completed or directly managed the completion of the development, engineering, equipment procurement, and construction of >50 MW or 3x the nameplate capacity of the Proposal, whichever is greater, of solar facilities, including at least one project of comparable size to the proposed facility within the United States or Canada; and

---

<sup>11</sup> MPs should take reasonable steps to develop projects in a manner that protects the environment and the communities served by the Companies. According to the North Carolina Wildlife Resources Commission, increasing the availability of native plants at solar facilities can help support pollinators, including birds, bees, and other wildlife, benefiting nearby agricultural fields and community growers. Please consider following the "Solar Site Pollinator Habitat Planning & Assessment Form" provided in **Appendix G**.

- In the case of non-solar Proposals, have completed or directly managed the completion of the development, engineering, equipment procurement, and construction of at least 10 MW of relevant renewable energy facilities within the United States or Canada.
4. Historically Underutilized Businesses

Historically underutilized businesses meeting the requirements set forth in **Appendix B** will be scored in accordance with the score sheet.

## VI. ADDITIONAL INFORMATION

### A. INTERCONNECTION TIMELINE AND PPA TERM

Typically, execution of an Interconnection Agreement is achieved approximately 4 – 6 months after completion of a System Impact Study. For transmission-connected projects, commercial operation of the Interconnection Facilities is achieved 18 – 24 months after execution of an Interconnection Agreement. However, it is important to note that the amount of time required for construction of Interconnection Facilities for transmission-connected projects can be substantially impacted by the number of non-CPRE projects that execute Interconnection Agreements prior to CPRE Tranche 2 winning Proposals.

The amount of time required to construct System Upgrades varies significantly depending the scope of the System Upgrade.

For the avoidance of doubt, the term of all PPAs shall be 20 years from the Commercial Operation Date (as that term is defined in the PPA).

### B. ADVANCED STAGE PROPOSALS

A MP that has a fully executed Interconnection Agreement with the Companies as of the Proposal submission date (whether under the NCIP, SC GIP or the Companies' Joint Open Access Transmission Tariff) and is not in default under the Interconnection Agreement shall have the option to elect to participate as an "Advanced Stage Proposal" by so designating in its Proposal form. An Advanced Stage Proposal will not be evaluated as part of the System Impact Grouping Study. Instead, the MP submitting such Advanced Stage Proposal shall be solely responsible for the cost of any System Upgrades assigned to it under its Interconnection Agreement and should bid accordingly. A MP sponsoring an Advanced Stage Proposal must perform all obligations (including satisfying any applicable payment or financial security obligations) arising under the Interconnection Agreement. Participation in CPRE as an Advanced Stage Proposal will not entitle such MP to delay, defer or avoid any such obligations under the Interconnection Agreement nor will such participation alter any term or condition of the applicable Interconnection Agreement, including the MP's obligation to pay the actual cost of the System Upgrade in the manner required under the applicable Interconnection Agreement. In the event that, during the Tranche 2 evaluation

process, a default on the part of the Interconnection Customer occurs under the relevant Interconnection Agreement or the relevant Interconnection Agreement is terminated, the Advanced Stage Proposal shall be removed from the evaluation process and, if applicable, forfeit the Step 2 Proposal Security.

For the avoidance of doubt: (1) an Advanced Stage Proposal does not forfeit its queue position by participating in CPRE Tranche 2 and (2) the outcome of CPRE Tranche 2 shall have no impact on the applicable Interconnection Agreement, which shall continue to be administered in accordance with the terms thereof both during and after CPRE Tranche 2. If a Facility satisfies the eligibility criteria for an Advanced Stage Proposal, but elects not to participate in CPRE as an Advanced Stage Proposal, then: (1) such Facility will be included in the System Impact Grouping Study and studied based on the Queue Number established by the Companies and (2) the applicable Interconnection Agreement will be terminated by the Companies.

### **C. TRANSMISSION GRID LOCATIONAL GUIDANCE**

For purposes of the Tranche 2 CPRE RFP, the Companies have provided grid locational guidance on the IA RFP Website indicating known transmission and distribution limitations resulting from the amount of existing or proposed renewable energy facilities in a particular area. This grid locational guidance is intended to provide MPs with information regarding areas on the transmission system where System Upgrade costs are likely based upon recent transmission system studies. The Documents Page of the IA RFP Website includes a map and supporting documentation, including tables of constrained circuits and substations to indicate areas of known transmission constraints in which System Upgrade costs will likely be required. Studies will be required to determine the extent and cost, if any, of these System Upgrades.

Transmission areas not identified as zones of known transmission constraints may still require System Upgrades, and transmission studies will be required to determine the extent and cost, if any, of these System Upgrades.

### **D. PRODUCTION ESTIMATES**

MPs shall include an 8760 production profile for the first year of operation as part of their Proposal. In the case of solar facilities, the required production profile shall be generated in PVSyst. Production profiles should be based on energy delivered at the POI and taking into account all transformation losses to the POI, including final GSU transformation. For example, transmission interconnected projects should include any transformational losses incurred through the GSU to the high-side of the interconnect. For transmission-connected Facilities, utility power factor

requirements should also be included in determination of energy delivered to the POI.<sup>12</sup> The production profile provided with the Proposal should not be adjusted for Daylight Standard Time.

All Proposals including on-site storage must submit two production profiles for the facility: one profile with the storage option and one profile without the storage option.

#### **E. STORAGE**

Energy storage devices must be on the DC side of the inverter and charged exclusively by the Facility. Storage devices must be controlled by the Seller in accordance with the Energy Storage Protocols specified in the pro forma PPA, including in Exhibit 10 thereof.

#### **F. CONTROL INSTRUCTIONS**

Section 8.6 to 8.10 of the pro forma PPA addresses DEC and DEP system operators' rights to issue instructions to control the renewable generating facilities procured through the CPRE Program in the same manner as DEC's and DEP's control of the Companies' own generating facilities.<sup>13</sup> CPRE Facilities must be designed with control equipment that will facilitate full or incremental instantaneous control over the Facility<sup>14</sup> in order to take any action directed by the Companies' system operators to implement or otherwise effectuate system operator instruction.

The CPRE dispatch control entitlements are in addition to otherwise applicable system emergency condition instructions and force majeure instructions, as defined in the PPA,<sup>15</sup> and may be issued by the system operator for any reason, including planning its security-constrained unit commitment and dispatch for operational efficiency (*e.g.*, avoid taking a large unit off-line for short intra-day durations to avoid operationally excess energy) or to provide for operational flexibility for anticipated operational challenges (*e.g.*, dispatching down facilities to reduce extreme evening ramp rates).

Section 8.9 of the pro forma PPA specifies that the uncompensated, non-force majeure/emergency conditions CPRE dispatch control entitlement is limited to 5% of the facility's annual expected output in DEC and 10% of the facility's annual expected output in DEP. Compensation at the full contract price will be provided for each MWh of energy that could have been generated but was not due to dispatch down control instruction(s) exceeding the contracted-for percentage CPRE

---

<sup>12</sup> DEC requires each transmission-connected Facility to be capable of delivering power to the POI within the power factor range of 0.93 lagging to 0.97 leading. DEP requires the Facility to be capable of delivering power to the POI within the power factor range of 0.95 lagging to 0.95 leading.

<sup>13</sup> See N.C. Gen. Stat. § 62-110.8(b).

<sup>14</sup> As specified in the Energy Storage Protocols in Exhibit 10 of the PPA, DEC/DEP will not have control of the storage resource.

<sup>15</sup> The Companies will manage dispatch control instructions of CPRE resources and system emergency curtailments in accordance with the Operating Procedures filed January 30, 2018, in Docket No. E-100, Sub 148.

dispatch control entitlement. Section 8.9 and Exhibit 9 to the pro forma PPA also describe the methodology that will determine whether the CPRE dispatch control entitlement was exceeded during a given year and will be used to calculate any compensation owed to the seller under the PPA.

## VII. RESERVATION OF RIGHTS

In submitting a Proposal into this RFP, an MP agrees and accepts that nothing contained in this RFP will be construed to require or obligate the Companies to select any Proposal. Per the Commission's CPRE Order, MPs retain the right to initiate a complaint proceeding before the Commission. MPs should be aware that submittals, even if marked "Confidential," may be subject to discovery and disclosure in regulatory or judicial proceedings. The Companies will notify the MP in advance of any required disclosure of confidential information.

**APPENDIX A**  
**FORM OF RENEWABLE POWER PURCHASE AGREEMENT**

[See attached document]



## APPENDIX B HISTORICALLY UNDERUTILIZED BUSINESSES

As an advocate for corporate responsibility, Duke Energy excels among our utility peers in seeking and developing local and diverse businesses, as well as those with environmentally sustainable practices, through our supply chain sourcing strategy. Including Corporate Responsibility as a standard component of the sourcing process creates a standardized approach when evaluating suppliers, while maintaining flexibility based on opportunity and risk avoidance.

### **Diverse Supplier Designations**

The following designations will be utilized in the CPRE program to qualify a Market Participant as a Historically Underutilized Business:

Designation	Description	Requirement
WBE	Women Owned Business Enterprise	At least 51% owned
MBE	Minority Owned Business	At least 51% owned
VBE	Veteran Owned Business	At least 51% owned
SDVBE	Service Disabled Veteran Owned Business	At least 51% owned

Above business concerns must be at least 51% owned by one or more of individuals in the diverse categories or, in the case of any publicly owned business, at least 51% of the stock is owned by individuals within the groups. In addition, the owners must control the management and daily business operations. In case of a permanent or sever disability, the spouse or caregiver of such a service-disabled veteran may control the management and daily operations.

### **Certification**

MP's that meet one or more of the diverse supplier designations above will be required to complete a self-certification form on the website and will be provided the opportunity to upload third party certifications.

**APPENDIX C  
FORM OF LETTER OF CREDIT**

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit No.: \_\_\_\_\_

Date: \_\_\_\_\_

Beneficiary:

[Duke Energy legal entity name] \_\_\_\_\_

550 South Tryon Street, DEC40C

Charlotte, NC 28202

Attention: Chief Risk Officer

Ladies and Gentlemen:

By the order of:

Applicant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

We hereby issue in your favor our irrevocable letter of credit No.: \_\_\_\_\_ (“Letter of Credit”) for the account of \_\_\_\_\_ (the “Applicant”) for an amount or amounts not to exceed \_\_\_\_\_ US Dollars in the aggregate (US\$ \_\_\_\_\_) available by your drafts at sight drawn on [Issuing Bank] effective \_\_\_\_\_ and expiring at our office on [*insert date which is one year from issuance*] (the “Expiration Date”), unless terminated earlier in accordance with the provisions hereof or otherwise extended.

Funds under this Letter of Credit are available against your draft(s), in the form of attached Annex 1, mentioning our letter of credit number and presented at our office located at [Issuing Bank’s address must be in US] and accompanied by a certificate in the form of attached Annex 2 with appropriate blanks completed, purportedly signed by an authorized representative of the Beneficiary, on or before the Expiration Date in accordance with the terms and conditions of this Letter of Credit. Partial drawings under this Letter of Credit are permitted.

We hereby undertake to promptly honor your drawing(s) presented in compliance with the terms of this Letter of Credit, up to the amount then available herein, in no event will payment exceed the amount then available to be drawn under this Letter of Credit.

We engage with you that drafts drawn under and in conformity with the terms of this Letter of Credit will be duly honored on presentation if presented on or before the Expiration Date. Presentation at our office includes presentation in person, by certified, registered, or overnight mail.

This Letter of Credit shall automatically terminate on the earliest of the following to occur: (i) the making by you and payment by us of the drawings in an amount equal to the maximum amount available to be made hereunder; (ii) the date we receive from you a Certificate of Expiration in the form of Annex 3 attached hereto; or (iii) the above stated Expiration Date.

Except as stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of [Issuing Bank] under this Letter of Credit is the individual obligation of [Issuing Bank] and is in no way contingent upon reimbursement with respect hereto.

This Letter of Credit is subject to the International Standby Practices 1998, International Chamber Of Commerce Publication No. 590 (“ISP98”). Matters not addressed by ISP98 shall be governed by the laws of the state of New York.

We shall have a reasonable amount of time, not to exceed three (3) business days following the date of our receipt of drawing documents, to examine the documents and determine whether to take up or refuse the documents and to inform you accordingly.

Kindly address all communications with respect to this Letter of Credit to [Issuing Bank’s contact information], specifically referring to the number of this Letter of Credit.

All banking charges are for the account of the Applicant.

This Letter of Credit may not be amended, changed or modified without our express written consent and the consent of the Beneficiary.

Very truly yours  
[Issuing Bank]

\_\_\_\_\_  
Authorized Signer

\_\_\_\_\_  
Authorized Signer

This is an integral part of letter of credit number: *[irrevocable standby letter of credit number]*

**ANNEX 1**

**FORM OF SIGHT DRAFT**

[Insert date of sight draft]

To: *[Issuing Bank's name and address]*

For the value received, pay to the order of \_\_\_\_\_ by wire transfer of immediately available funds to the following account:

*[name of account]*  
*[account number]*  
*[name and address of bank at which account is maintained]*  
*[aba number]*  
*[reference]*

The following amount:

*[insert number of dollars in writing]* United States Dollars  
(US\$ *[insert number of dollars in figures]*)

Drawn upon your irrevocable letter of credit No. *[irrevocable standby letter of credit number]*  
dated *[effective date]*

*[Beneficiary]*

By: \_\_\_\_\_  
Title: \_\_\_\_\_

This is an integral part of letter of credit number: *[irrevocable standby letter of credit number]*

## ANNEX 2

### FORM OF CERTIFICATE

[Insert date of certificate]

To: *[issuing bank's name and address]*

Duke Energy \_\_\_\_\_ (the "Beneficiary") is drawing the funds requested under this draft based on the below specified draw condition:

*[check appropriate draw condition]*

[\_\_\_\_\_] [Legal name of bidding entity] (the "Bidder") has withdrawn its proposal in violation of the bidding rules under the Request for Proposals for the Competitive Procurement of Renewable Energy ("RFP") which was issued by [Insert Beneficiary's name] on [insert date of RFP]; or

[\_\_\_\_\_] A proposal submitted by [Legal name of bidding entity] (the "Bidder") has been selected as a winning proposal in the Request for Proposals for the Competitive Procurement of Renewable Energy ("RFP") which was issued by [Insert Beneficiary's name] on [insert date of RFP] and Bidder has failed to execute the *[insert name of required contract]* (the "Agreement") within 60 days of the closing of the RFP; or

[Legal name of bidding entity] (the "Bidder") has received a winning proposal in the Request for Proposals for the Competitive Procurement of Renewable Energy ("RFP") which was issued by [Insert Beneficiary's name] on [insert date of RFP] and has failed to meet the creditworthiness requirements under the *[insert name of required contract]* ("Agreement") or to post performance security as required under the Agreement within 5 business days of the execution of the Agreement.

Duke Energy \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_



ANNEX 3

FORM OF CERTIFICATE OF EXPIRATION

[Insert date of certificate]

To: *[issuing bank's name and address]*

Attention Standby Letter of Credit Unit

Re: irrevocable letter of credit No. *[irrevocable standby letter of credit number]* dated *[effective date]* the "Letter of Credit."

Ladies and Gentlemen:

The undersigned hereby certifies to you that the above referenced Letter of Credit may be cancelled without payment. Attached hereto is the referenced Letter of Credit, marked cancelled.

Duke Energy \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Cc: \_\_\_\_\_ [Bidder]

**APPENDIX D  
 FORM OF SURETY BOND**

**SURETY BOND – COMPETITIVE PROCUREMENT OF  
 RENEWABLE ENERGY**

COLLATERAL SECURITY PAYABLE UPON DEMAND

\* \* \* \* \*

**PRINCIPAL / BIDDER** (Legal Name and Business Address)

<b>SURETY</b> (Legal Name and Business Address)	<b>CONTRACT NO.</b>	<b>CONTRACT DATE</b>
<b>OBLIGEE</b> [Duke Energy Carolinas, LLC][Duke Energy Progress, LLC] ---- add address -----	<b>SURETY BOND EFFECTIVE DATE</b>	
<b>PROPOSAL SECURITY AMOUNT</b>	<b>PENAL SUM OF BOND</b>	

**KNOW ALL PERSONS BY THESE PRESENTS THAT:** PRINCIPAL (herein, “Bidder”) and SURETY are held and firmly bound to [Duke Energy Carolinas, LLC] [Duke Energy Progress, LLC] (“Duke Energy”), a limited liability company organized and existing under the laws of the state of North Carolina, its successors and assigns in the amount of \$[insert Bond Amount] (“Proposal Security Amount”), for the payment of which the Bidder and Surety, their heirs, executors, administrators, successors and assigns are hereby jointly and severally bound.

**WHEREAS,** Bidder has submitted a bid proposal into Duke Energy’s Request for Proposals for the Competitive Procurement of Renewable Energy (“RFP”), which was issued by Duke Energy on [\_\_\_\_\_];

**WHEREAS,** Duke Energy has selected Bidder’s proposal (the “Bid”) for further evaluation in Step 2 of the RFP process (such evaluation referred to herein as the “Step 2 Evaluation Process”) pursuant to the RFP;

**WHEREAS,** Bidder and Surety acknowledge that the RFP process will be delayed and Duke Energy will be harmed if Bidder withdraws the Bid, or if the Bid is selected as a Bid for the Step 2 Evaluation Process and the Bidder does not execute the RENEWABLE POWER PURCHASE AGREEMENT or the ASSET PURCHASE AND SALE AGREEMENT (as applicable, the “Agreement”) associated with the RFP as requested by Duke Energy and/or fails to provide Performance Assurance as required under and as defined in the Agreement; and

**WHEREAS**, Bidder desires to furnish this Bond pursuant to the requirement in Section III of the RFP to provide Proposal Security for a bid selected to continue forward into the Step 2 Evaluation Process;

**NOW THEREFORE**, the condition of this obligation is such that if (i) Duke Energy or the Independent Administrator acting on its behalf notifies Bidder that the Bid has been eliminated from consideration in the RFP, or (ii) Duke Energy subsequently selects the Proposal as a winning Proposal under the RFP and Bidder has executed the Agreement and posted Performance Assurance as required in such Agreement, then this obligation will be null and void; otherwise it will remain in full force and effect, subject to the following additional conditions:

1. Capitalized terms undefined herein will take the meaning or definition provided in the RFP or where indicated, the Agreement. In the event of any conflict between this Bond and the RFP, the terms of this Bond will control.
2. If Bidder withdraws the Bid, or if Duke Energy selects the Bid as a winning Proposal and the Bidder does not execute the Agreement with Duke Energy for the Bid within 90 days of the closing of the RFP or fails to meet the creditworthiness requirements or to post the performance security as required under the Agreement within 5 business days of the execution of the Agreement, then Duke Energy will issue a demand for payment of the Proposal Security Amount to the Surety (“Demand for Payment”).
3. Surety will, not later than ten (10) days after delivery of a Demand for Payment to the Surety at the address provided below, pay the Proposal Security Amount to Duke Energy. Surety’s obligation for payment of the Proposal Security Amount will be deemed established regardless of the underlying causes for Bidder’s withdrawal of the Bid and irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of the Surety.
4. Bidder and Surety acknowledge that the Proposal Security Amount represents a fair and reasonable pre-estimation of the damages due to Duke Energy under the circumstances existing as of the Surety Bond Effective Date and that such amount represents a reasonable estimate of Duke Energy’s losses in the event of (i) Bidder’s withdrawal of the Bid following its selection for further evaluation in the Step 2 Evaluation Process, or (ii) Bidder’s failure to execute the Agreement with Duke Energy for the Bid if selected as a winning Proposal or failure to provide Performance Assurance as required under the Agreement. The Proposal Security Amount will not be deemed a penalty, and the Bidder and Surety hereby waive and forfeit any right to contest the reasonableness or validity of the liquidated Proposal Security Amount. Duke Energy’s right to recover the Proposal Security Amount will in no way limit its entitlement to other non-monetary remedies to which Duke Energy may be entitled pursuant to the terms of the RFP, the Bond, or applicable law.
5. It is hereby agreed that this obligation is effective beginning on the Surety Bond Effective Date, above, provided that, if this Bond remains in effect after one (1) year following the Surety Bond Effective Date, Bidder may cancel this Bond after such one (1) year period by giving Duke Energy at least forty-five (45) days prior written notice of the cancellation date. Such cancellation notice will be sent by certified mail or by overnight courier with tracking service to:

{Add notice info}

with copy to  
[Duke Energy Carolinas, LLC] [Duke Energy Progress, LLC]  
Attn: Credit Risk Manager  
550 South Tryon Street (DEC40C)  
Charlotte, NC 28202

Any obligations of the Bidder prior to any such cancellation will survive such cancellation and continue to be a liability of the Surety until paid in full by the Bidder.

This Bond is irrevocable by Surety.

6. Within thirty (30) days following the date of any notice of cancellation of this Bond that is provided to Duke Energy under Paragraph 6, Bidder will provide to Duke Energy a replacement Bond that satisfies the requirements of Section III of the RFP in the amount of the Performance Security required for the pre-COD period. Bidder's failure to provide such replacement Bond in the required timeframe will constitute a default under this Bond and will entitle Duke Energy to issue a Demand for Payment to the Surety for the payment of the Proposal Security Amount.
7. The Surety's liability is limited to the Proposal Security Amount ("Penal Sum of Bond"), unless suit must be brought for enforcement of the within obligations and in which case the Surety will also be liable for all costs in connection therewith, interest and reasonable attorneys' fees, including costs of and fees for appeals.
8. Failure of the Surety to pay the Proposal Security Amount within ten (10) days of Demand for Payment will constitute default of the Surety's obligation under the Bond and Duke Energy will be entitled to enforce against the Surety any remedy available to it.
9. Surety, for value received, hereby stipulates and agrees that no change, modification, omission, addition or change in or to the RFP or the Agreement, and no action or failure to act by Duke Energy will in any way affect the Surety's obligation on this Bond; and Surety hereby waives notice of any and all such modifications, omissions, alterations, and additions to the terms of the RFP or the Agreement.
10. If any part or provision of this Bond will be declared unenforceable or invalid by a court of competent jurisdiction, such determination in no way will affect the validity or enforceability of the other parts or provisions of this Bond.
11. The undersigned Surety and Bidder are held and firmly bound for the payment of all legal costs, including reasonable attorney's fees, incurred in all or any actions or proceedings taken to enforce

this Bond or the obligations created herein, or payment of any award of judgment rendered against the undersigned Surety. Nothing contained herein will be construed to obligate Duke Energy to pay any fees or expenses incurred in connection with the issuance of this Bond.

12. All disputes relating to the execution, interpretation, construction, performance, or enforcement of the Bond and the rights and obligations thereto will be governed by the laws of, and resolved in the State and Federal courts in North Carolina. The rights and remedies of Duke Energy herein are cumulative and in addition to any and all rights and remedies that may be provided by law or equity.

13. The undersigned Surety agent(s) represent that he/she is a true and lawful attorney-in-fact for the Surety and authorized to bind the Surety hereto and to affix the Surety's corporate seal hereunder, as evidenced by the attached power of attorney.

IN WITNESS WHEREOF, this instrument is SIGNED AND SEALED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**PRINCIPAL/BIDDER:**

For Bidder: \_\_\_\_\_

Signature: \_\_\_\_\_

(SEAL)

Name and Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SURETY:**

Attorney in Fact: \_\_\_\_\_

Signature: \_\_\_\_\_



(SEAL)

Name and Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I hereby certify that I am the attorney-in-fact of \_\_\_\_\_, a [*insert entity type*], which is the surety in the foregoing bond, and that I am authorized to execute on the above Surety's behalf the foregoing bond pursuant to the Power of Attorney dated \_\_\_\_\_ and attached hereto, and on behalf of the Surety, acknowledge the foregoing bond before me as the above Surety's act and deed.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
*ATTORNEY-IN-FACT*

\_\_\_\_\_  
*PRINT NAME*

(NOTARY SEAL)

**APPENDIX E**  
**REQUIRED FINANCIAL INFORMATION**

- A. Description of ownership and proposed financing arrangements, including the expected percentage of debt and equity capital that the bidder has committed to secure.
- B. Annual reports for the past three (3) years and any Form 10-K and 10-Q filings since the period covered in the last annual report. If these documents are not available, then audited financial statements for the last three (3) years will be accepted. All financial statements, annual reports, and other large documents may be referenced via a website address. If a bidder has not been in operation for three (3) years, please provide the above information, as applicable, since the commencement of operation.
- C. Dunn and Bradstreet identification number.
- D. Documentation of the bidder's (or parent's if applicable) credit ratings from S&P, Moody's, or Fitch rating services, if rated.
- E. Details related to its banking relationships or liquidity.
- F. Description of plans for acquiring the necessary funds for developing and operating the Facility, including a discussion of the Facility's legal ownership structure, the expected percentage of debt and equity capital that the bidder has committed to secure, and the identity and credit rating or other financial information indicative of the financial strength of firms that are likely to provide such financing.
- G. Any additional documentation needed to determine the bidder's financial strength and the strength of any corporate parents.

**APPENDIX F  
 SAMPLE SCORING SHEET**

Bid Scoring Categories	Bid Score	% of Bid Score	Description	Individual Categories	Maximum Scoring	Section Score
1. Price Score		60%	Includes fixed and variable bid costs	The price score will be calculated on the basis of the bid's projected total cost per MWH	600	600
2. Project Development Criteria		15%	Respondent must show sufficient evidence of ability to provide services included in proposal for the contract term  Evidence of operational capability to provide proposed services	-Demonstrate that permitting will be complete to meet COD  -Experience of project team  -Project Site control for full term  -Site control to POI for full term	30 30 50 50	160
3a. Facility Project Characteristics		15%	Evidence of equipment designed to meet specifications	-Equipment to be used  -Required control equipment (TBD)  -Quality of project design	30 30 30	90
3b. Transmission Project Characteristics			Interconnection Transmission Rights	-Submitted completed interconnected request and obtained a queue number	50	50
4. Project Characteristics		4.5%	Value of Project Characteristics	Demonstrates ability to meet performance guarantee and liquidated damages pursuant to the PPA	45	45
5. Historically Underutilized Businesses		.5%	Ownership by Minorities (to be defined)	Ascertain that at least 51% of venture is owned by eligible minority	5	5
6. Credit Worthiness		5%	Financial assurances to meet schedule and milestones in PPA	-Confirms meeting all Duke credit requirements  -Pass: MP provides acceptable Proposal Security  - Fail: MP does not provide acceptable Proposal Security	50 50 0	50
Total Score	1,000	100%			1,000	

OFFICIAL COPY

JULY 28 2023

**APPENDIX G**  
**RECOMMENDATIONS FOR ESTABLISHING NATIVE POLLINATOR HABITAT ON**  
**SOLAR FARMS IN NORTH CAROLINA**

[See attached document]

Duke Energy Carolinas, LLC  
Docket No. E-7, Sub 1281

<u>Line</u> <u>No.</u>	<u>Description</u>	<u>Residential</u> (a)	<u>General Service and Lighting</u> (b)	<u>Industrial</u> (c)	<u>Total</u> (d)
1	CPRE (Over)/Under Collection	\$ (1,294,215)	\$ (1,688,066)	\$ (475,919)	\$ (3,458,200)
2	CPRE Contract Fees by Customer Class	(2,086,470)	(1,991,138)	(948,278)	(5,025,887)
3	Total over collection	(3,380,686)	(3,679,203)	(1,424,197)	(8,484,086)
4	NC Projected Billing Period MWh Sales	23,477,265	24,077,007	13,270,457	60,824,729
5	<b>EMF Rider Amount before interest ¢/kWh (L3/</b>	<b>(0.0144)</b>	<b>(0.0153)</b>	<b>(0.0107)</b>	<b>(0.0139)</b>
6	Interest on over collection	(215,702)	(281,344)	(79,320)	(576,366)
7	NC Projected Billing Period MWh Sales:	23,477,265	24,077,007	13,270,457	60,824,729
8	<b>EMF Interest on Over Collection ¢/kWh (L6/L7/</b>	<b>(0.0009)</b>	<b>(0.0012)</b>	<b>(0.0006)</b>	<b>(0.0009)</b>
9	<b>Total EMF rates ¢/kWh</b>	<b>(0.0153)</b>	<b>(0.0165)</b>	<b>(0.0113)</b>	<b>(0.0148)</b>

CONFIDENTIAL INFORMATION REDACTED

Duke Energy Carolinas, LLC  
 Docket No. E-7, Sub 1281  
 CPRE Purchased and Generated Power Costs in the Experience Modification Factor (EMF) and Prospective Billing Periods

Walker Exhibit No. 1

Line No.	Market Participant	Facility Name	Location	Tranche No.	Nameplate Capacity (MW)	EMF Period			Billing Period			
						January 1, 2022 - December 31, 2022			September 1, 2023 - August 31, 2024			
									Capacity Factor	Energy Factor	Reference	
									17%	83%	Input	
						Purchased and Generated Power <sup>1</sup>			Purchased and Generated Power <sup>1</sup>			
						Capacity	Energy	Total	Capacity	Energy	Total	
1				1								
2				1								
3				1								
4				1								
5				1								
6				1								
7				1								
8				1								
9				1								
10	Sub-Total Tranche 1 Facilities					394.5	\$ 7,765,354	\$ 11,395,934	\$ 19,161,288	\$ 4,546,858	\$ 22,199,367	\$ 26,746,226
11									Capacity Factor	Energy Factor		
12									7%	93%		
13						Purchased and Generated Power <sup>1</sup>			Purchased and Generated Power <sup>1</sup>			
14						Capacity	Energy	Total	Capacity	Energy	Total	
15				2								
16				2								
17				2								
18				2								
19				2								
20				2								
21				2								
22				2								
23				2								
24				2								
25				2								
26				2								
27	Sub-Total Tranche 2 Facilities					514.5	\$ 35,530	\$ 707,496	\$ 743,026	\$ 735,594	\$ 9,772,890	\$ 10,508,484
28	Total of Tranche 1 and Tranche 2						\$ 7,800,884	\$ 12,103,430	\$ 19,904,314	\$ 5,282,452	\$ 31,972,258	\$ 37,254,710

Workpaper 1 (Totals Only)

Workpaper 2 (Totals Only)

Workpaper 1 (Totals Only)

Workpaper 2 (Totals Only)

Note: Rounding differences may occur

<sup>1</sup> Duke-owned facilities are considered generated power rather than purchased power. The cost for Duke owned facilities is authorized revenue as provided by G.S. 62-110.8(g).



Line No.	Implementation Cost / Activity	Reference	EMF Period	Billing Period
			January 1, 2022 - December 31, 2022	September 1, 2023 - August 31, 2024
1	[REDACTED]		[REDACTED]	\$ -
2				\$ -
3				\$ -
4				\$ -
5				\$ -
6				\$ -
7	<b>Total Internal Labor and Labor-Related Taxes and Benefits</b>		\$ 316,903	\$ 332,748 *
8	[REDACTED]	Company Records	[REDACTED]	\$ -
9				\$ -
10				\$ -
11				\$ -
12				\$ -
13				\$ -
14				\$ -
15				\$ -
16				\$ -
17	<b>Total Outside Services</b>		\$ 123,819	\$ 55,000 *
18				
19	<b>Total Employee-Related Expenses</b>		\$ 822	\$ 900 *
20				
21	<b>Adjustment Related to Independent Administrator Fees</b>		\$ (75,767) **	\$ -
22				
23	<b>Total Implementation Costs</b>	<b>L7 + L17 + L19 + L21</b>	<b>\$ 365,777</b>	<b>\$ 388,648 *</b>

Note: Rounding differences may occur

\* Represents an estimate of implementation charges expected to be incurred in the prospective Billing Period.

\*\* Represents correction of error related to Independent Administrator Fees reported in the last proceeding on Walker Confidential Exhibit 2 in Docket E-7, Sub 1262

## Allocation of Prospective Billing Period CPRE Charges to Customer Classes

Line No.	Description	Reference	General Service and			Total
			Residential	Lighting	Industrial	
<u>Allocation of CPRE Purchased and Generated Power by Customer Class (Prospective Billing Period)</u>						
1	CPRE Purchased and Generated Power - Capacity	Exhibit 1, L29				\$ 5,282,452
2	NC Retail Jurisdictional % Based on 2021 Production Plant	Input				66.68%
3	NC Retail Portion - CPRE Purchased and Generated Power - Capacity	L1 * L2				\$ 3,522,407
4						
5	NC Retail 2021 Production Plant Allocation Factors	Input	47.04%	37.14%	15.81%	100.00%
6						
7	NC CPRE Purchased and Generated Power - Capacity Allocated Based on 2021 Production Plant	L3 * L5	\$ 1,657,105	\$ 1,308,266	\$ 557,036	\$ 3,522,407
8						
9	CPRE Purchased and Generated Power - Energy	Exhibit 1, L29				\$ 31,972,258
10	NC Retail Jurisdictional % Based on Projected Billing Period Sales	Workpaper 3				66.83%
11	NC Retail Portion - CPRE Purchased and Generated Power - Energy	L9 * L10 [Total Only]				\$ 21,367,665
12						
13	Allocation Factor- MWh Sales	Workpaper 3	38.60%	39.58%	21.82%	100.00%
14						
15	NC CPRE Purchased and Generated Power - Energy Allocated on MWh Sales	L11 * L13	\$ 8,247,539	\$ 8,458,228	\$ 4,661,898	\$ 21,367,665
16						
17	Total of NC CPRE Purchased and Generated Power - Capacity and Energy	L7 + L15	\$ 9,904,644	\$ 9,766,494	\$ 5,218,934	\$ 24,890,072
18						
19	% of NC CPRE Purchased and Generated Power - Capacity and Energy		39.79%	39.24%	20.97%	100.00%
<u>Allocation of CPRE Implementation Costs by Customer Class (Prospective Billing Period)</u>						
		<b>Reference</b>	<b>Residential</b>	<b>General Service and Lighting</b>	<b>Industrial</b>	<b>Total</b>
20	CPRE Implementation Costs - Total	Exhibit 2, L23				\$ 388,648
21	NC Retail Jurisdictional % Based on Composite of Energy and Capacity	(L3 + L11) ÷ (L1 + L9) [Total Only]				66.81%
22	CPRE Implementation Costs - NC Retail Portion	L20 * L21				\$ 259,658
23						
24	Total of NC CPRE Purchased and Generated Power - Capacity and Energy	L19	39.79%	39.24%	20.97%	100.00%
25						
26	CPRE Implementation Costs by Customer Class	L22 * L24	\$ 103,327	\$ 101,886	\$ 54,445	\$ 259,658
27						
28	Total of NC CPRE Purchased and Generated Capacity and Energy + Implementation Cost	L17 + L26	\$ 10,007,971	\$ 9,868,380	\$ 5,273,379	\$ 25,149,730
29						
30	NC Projected Billing Period MWh Sales	Workpaper 3	23,477,265	24,077,007	13,270,457	60,824,729
31						
32	<b>NC CPRE Implementation Cost CPRE Charge ¢/kWh</b>	<b>L28 ÷ L30 ÷ 10</b>	<b>0.0426</b>	<b>0.041</b>	<b>0.0397</b>	<b>0.041</b>

Note: Rounding differences may occur

Allocation of Experience Modification Factor (EMF) Period Charges to Customer Classes:

Line No.	Description	Reference	Residential	General Service and Lighting	Industrial	Total
<u>Allocation of CPRE Purchased and Generated Power by Customer Class (EMF Period)</u>						
1	CPRE Purchased and Generated Power - Capacity	Exhibit 1, L29				\$ 7,800,884
2	NC Retail Jurisdictional % Based on 2021 Production Plant	Exhibit 3, L 2				66.68%
3	NC Retail Portion - CPRE Purchased and Generated Power - Capacity	L1 * L2				\$ 5,201,729
4						
5	NC Retail 2021 Production Plant Allocation Factors	Exhibit 3, L 5	47.04%	37.14%	15.81%	100.00%
6						
7	NC CPRE Purchased and Generated Power - Capacity Allocated Based on 2021 Production Plant	L3 * L5	\$ 2,447,136	\$ 1,931,988	\$ 822,605	\$ 5,201,729
8						
9	CPRE Purchased and Generated Power - Energy	Exhibit 1, L29				\$ 12,103,430
10	NC Retail Jurisdictional % Based on EMF Period Sales	Workpaper 4				66.90%
11	NC Retail Portion - CPRE Purchased and Generated Power - Energy					\$ 8,096,796
12						
13	NC Retail Portion - CPRE Purchased and Generated Power - Energy	L15 * L11 [Total Only]	\$ 3,073,677	\$ 3,336,575	\$ 1,686,545	\$ 8,096,796
14						
15	NC EMF Period MWh Sales	Workpaper 4	22,419,810	24,337,422	12,301,885	59,059,117
16						
17	Total of NC CPRE Purchased and Generated Power - Capacity and Energy	L7 + L13	\$ 5,520,813	\$ 5,268,562	\$ 2,509,150	\$ 13,298,526
18						
19	% of NC CPRE Purchased and Generated Power - Capacity and Energy		41.51%	39.62%	18.87%	100%
<u>Allocation of CPRE Implementation Costs by Customer Class (EMF Period)</u>						
20	CPRE Implementation Costs - Total	Exhibit 2, L23				\$ 365,777
21	NC Retail Jurisdictional % Based on Composite of Energy and Capacity	(L3 + L13) ÷ (L1 + L9) [Total Only]				66.81%
22	CPRE Implementation Costs - NC Retail Portion	L20 * L21				\$ 244,384
23						
24	Total of NC CPRE Purchased and Generated Power - Capacity and Energy	L19	41.51%	39.62%	18.87%	100.00%
25						
26	CPRE Implementation Costs by Customer Class	L22 * L24	\$ 101,455	\$ 96,819	\$ 46,110	\$ 244,384
27						
28	Total of NC CPRE Purchased and Generated Power - Capacity and Energy and Implementation costs	L17 + L26	\$ 5,622,268	\$ 5,365,381	\$ 2,555,260	\$ 13,542,909
29						
30						
31	CPRE Revenues Realized During the Test Period	Input	\$ 6,079,375	\$ 6,172,133	\$ 3,082,438	\$ 15,333,946
32						
33	CPRE (Over)/Under Collection	L28 - L31	\$ (457,107)	\$ (806,752)	\$ (527,178)	\$ (1,791,037)
34						
35	Contract Fees Being Credited in CPRE Rider	Workpaper 5				\$ (5,397,400)
36	NC Retail Jurisdictional % Based on Composite of Energy and Capacity	L21				66.81%
37	CPRE Contract Fees - NC Retail Portion	L35 * L36				\$ (3,606,126)
38						
39	CPRE Contract Fees by Customer Class	L37 * L24	\$ (1,497,064)	\$ (1,428,662)	\$ (680,400)	\$ (3,606,126)
40						
41	Total CPRE EMF Amount including Contract Fees	L33 + L39	\$ (1,954,172)	\$ (2,235,414)	\$ (1,207,577)	\$ (5,397,163)
42						
43	NC Projected Billing Period MWh Sales	Exhibit 3, L 30	23,477,265	24,077,007	13,270,457	60,824,729
44						
45	<b>NC CPRE EMF Rider Amount €/kWh</b>	<b>L41 ÷ L43 + 10</b>	<b>(0.0083)</b>	<b>(0.0093)</b>	<b>(0.0091)</b>	<b>(0.0089)</b>
46						
47	Annual Interest Rate		10%	10%	10%	10%
48						
49	Monthly Interest Rate	L47 ÷ 12	0.83%	0.83%	0.83%	0.83%
50						
51	Number of Months (July 1, 2022 - February 28, 2024)		20	20	20	20
52						
53	Interest	L33 * L49 * L51	\$ (76,185)	\$ (134,459)	\$ (87,863)	\$ (298,506)
54						
55	<b>EMF Interest on Over Collection</b>	<b>L53 ÷ L43 + 10</b>	<b>(0.0003)</b>	<b>(0.0006)</b>	<b>(0.0007)</b>	<b>(0.0005)</b>

Duke Energy Carolinas, LLC  
Docket No. E-7, Sub 1281  
Summary of CPRE Proposed Rider Components

Walker Exhibit No. 5

Line No.	Description	Reference	Residential ¢/kWh	General Service and Lighting ¢/kWh	Industrial ¢/kWh	Composite ¢/kWh
1	<b>Prospective Billing Period Rider Charge</b>					
2	NC CPRE Implementation Cost CPRE Charge ¢/kWh	Exhibit 3, L32	0.0426	0.0410	0.0397	0.0413
3						
4	<b>Experience Modification Factor Period Rider Charge</b>					
5	EMF Increment/(Decrement) ¢/kWh	Exhibit 4, L45	(0.0083)	(0.0093)	(0.0091)	(0.0089)
6	EMF Interest Decrement ¢/kWh	Exhibit 4, L55	(0.0003)	(0.0006)	(0.0007)	(0.0005)
7						
8	<b>Total Proposed CPRE Rider Charge ¢/kWh</b>	L2+ L5+ L6	<b>0.0340</b>	<b>0.0311</b>	<b>0.0299</b>	<b>0.0319</b>

Note: This exhibit excludes the impact of the regulatory fee

Duke Energy Carolinas, LLC  
 Docket No. E-7, Sub 1281  
 Proposed Rider CPRE (NC)

Walker Exhibit No. 6

Duke Energy Carolinas, LLC

Electricity No. 4  
 North Carolina Third Revised (Proposed) Leaf No. 127  
 Superseding North Carolina Original Leaf No. 127

RIDER CPRE (NC)  
 COMPETITIVE PROCUREMENT OF RENEWABLE ENERGY RIDER

APPLICABILITY (North Carolina Only)

Service supplied under the Company's rate schedules is subject to approved adjustments to recover costs associated with implementation of the Company's Competitive Procurement of Renewable Energy (CPRE) Program. Adjustments are made pursuant to North Carolina General Statute 62-110.8(g) and North Carolina Utilities Commission Rule R8-71 as ordered by the North Carolina Utilities Commission.

CPRE PROSPECTIVE COMPONENT AND EXPERIENCE MODIFICATION FACTOR

All service supplied under the Company's rate schedules is subject to an increment per kilowatt hour as set forth below. This adjustment is not included in the Rate Schedules of the Company and therefore, must be applied to the bill as calculated under the applicable rate.

## RESIDENTIAL SERVICE

Prospective Component of CPRE	0.0426 ¢/kWh
Experience Modification Factor	<u>(0.0086) ¢/kWh</u>
Net CPRE Rider Factor	0.0340 ¢/kWh
Regulatory Fee Multiplier	x <u>1.0014</u>
CPRE Factor	0.0340 ¢/kWh

## GENERAL SERVICE AND LIGHTING

Prospective Component of CPRE	0.0410 ¢/kWh
Experience Modification Factor	<u>(0.0099) ¢/kWh</u>
Net CPRE Rider Factor	0.0311 ¢/kWh
Regulatory Fee Multiplier	x <u>1.0014</u>
CPRE Factor	0.0311 ¢/kWh

## INDUSTRIAL SERVICE

Prospective Component of CPRE	0.0397 ¢/kWh
Experience Modification Factor	<u>(0.0098) ¢/kWh</u>
Net CPRE Rider Factor	0.0299 ¢/kWh
Regulatory Fee Multiplier	x <u>1.0014</u>
CPRE Factor	0.0299 ¢/kWh

North Carolina Third Revised (Proposed) Leaf No. 127  
 Effective for service rendered on and after September 1, 2023  
 NCUC Docket No. E-7, Sub 1281, Order dated \_\_\_\_\_

CONFIDENTIAL INFORMATION REDACTED

Duke Energy Carolinas, LLC  
Docket No. E-7, Sub 1281  
CPRE MWh Generated During the Experience Modification Factor (EMF) Period

Walker Workpaper No. 1

Line No.	CPRE Generation (MWh)	Tranche No.	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22	Total
1		1													
2		1													
3		1													
4		1													
5		2													
6		1													
7		1													
8		1													
9		1													
10		1													
11		1													
12		1													
13	Total DEC		22,663	28,478	44,999	53,999	54,666	52,128	52,391	55,451	60,200	54,538	38,063	8,053	525,629
14															
Line No.	CPRE Generation (\$)	Tranche No.	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22	Total
15		1													
16		1													
17		1													
18		1													
19		1													
20		1													
21		2													
22		1													
23		1													
24		1													
25		1													
26		1													
27		1													
28	Total DEC		\$961,700	\$1,146,562	\$1,783,486	\$2,084,458	\$2,162,640	\$1,823,710	\$1,807,366	\$2,019,603	\$2,183,372	\$2,083,414	\$1,539,443	\$308,560	\$19,904,314
29															
30															
Line No.	CPRE Capacity (\$)	Tranche No.	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22	Total
31		1													
32		1													
33		1													
34		1													
35		1													
36		1													
37		2													
38		1													
39		1													
40		1													
41		1													
42		1													
43		1													
44	Total DEC		\$389,502	\$345,840	\$742,852	\$855,786	\$952,545	\$702,314	\$637,696	\$772,310	\$783,297	\$846,464	\$695,819	\$76,457	\$7,800,884
45															
46															
Line No.	CPRE Energy (\$)	Tranche No.	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22	Total
47		1													
48		1													
49		1													
50		1													
51		1													
52		1													
53		2													
54		1													
55		1													
56		1													
57		1													
58		1													
59		1													
60	Total DEC		\$572,198	\$800,722	\$1,040,635	\$1,228,672	\$1,210,095	\$1,121,395	\$1,169,670	\$1,247,293	\$1,400,075	\$1,236,949	\$843,624	\$232,103	\$12,103,430



CONFIDENTIAL INFORMATION REDACTED

Duke Energy Carolinas, LLC  
Docket No. E-7, Sub 1281  
CPRE Forecast for the Prospective Billing Period

Line No.	CPRE Generation (MWh)	Sep-23	Oct-23	Nov-23	Dec-23	Jan-24	Feb-24	Mar-24	Apr-24	May-24	Jun-24	Jul-24	Aug-24	Total
<b>Tranche No. 1</b>														
1														
2														
3														
4														
5														
6														
7														
8														
10														
11														
<b>Tranche No. 2</b>														
12														
13														
14														
15														
16														
17														
19														
20														
21														
22														
<b>Total DEC</b>		<b>69,244</b>	<b>62,463</b>	<b>51,697</b>	<b>49,998</b>	<b>58,219</b>	<b>63,622</b>	<b>83,507</b>	<b>96,684</b>	<b>106,088</b>	<b>104,947</b>	<b>104,956</b>	<b>111,535</b>	<b>962,960</b>
<b>CPRE Generation (\$)</b>														
		<b>Sep-23</b>	<b>Oct-23</b>	<b>Nov-23</b>	<b>Dec-23</b>	<b>Jan-24</b>	<b>Feb-24</b>	<b>Mar-24</b>	<b>Apr-24</b>	<b>May-24</b>	<b>Jun-24</b>	<b>Jul-24</b>	<b>Aug-24</b>	<b>Total</b>
<b>Tranche No. 1</b>														
28														
29														
30														
31														
32														
33														
34														
35														
36														
38														
39														
<b>Tranche No. 2</b>														
41														
42														
43														
44														
45														
47														
48														
49														
50														
<b>Total DEC</b>		<b>\$2,360,141</b>	<b>\$2,292,382</b>	<b>\$2,046,671</b>	<b>\$2,179,605</b>	<b>\$2,514,942</b>	<b>\$2,744,094</b>	<b>\$3,281,229</b>	<b>\$3,842,841</b>	<b>\$4,166,252</b>	<b>\$3,726,995</b>	<b>\$3,898,305</b>	<b>\$4,201,254</b>	<b>\$37,254,710</b>

Duke Energy Carolinas, LLC  
Docket No. E-7, Sub 1281  
Projected Sales for the Prospective Billing Period

Walker Workpaper No. 3

Fall 2022 Forecast  
Billed Sales Forecast  
Sales Forecast - MWhs (000)

	Reference	Remove Impact of SC		
		Projected Sales for the Billing Period	DERP Net Metered Generation	Adjusted Sales
<b>North Carolina</b>				
Residential		23,477,265	-	23,477,265
General		23,838,527	-	23,838,527
Industrial		13,270,457	-	13,270,457
Lighting		238,480	-	238,480
North Carolina Retail		60,824,729	-	60,824,729
<b>South Carolina</b>				
Residential		7,223,610	136,728	7,360,338
General		5,371,691	42,584	5,414,275
Industrial		9,133,136	429	9,133,565
Lighting		51,014	-	51,014
South Carolina Retail	Company Records	21,779,451	179,741	21,959,192
<b>Total Retail</b>				
Residential		30,700,875	136,728	30,837,603
General		29,210,218	42,584	29,252,802
Industrial		22,403,593	429	22,404,022
Lighting		289,494	-	289,494
Total Retail Sales		82,604,180	179,741	82,783,921
<b>Wholesale</b>		8,227,610.00	-	8,227,610
<b>Projected System MWh Sales for Fuel Factor</b>		90,831,790	179,741	91,011,531
NC as a percentage of total		<b>66.96%</b>		<b>66.83%</b>
SC as a percentage of total		23.98%		24.13%
Wholesale as a percentage of total		9.06%		9.04%
		100.00%		100.00%

Note: Rounding differences may occur

Residential	38.60%
General Service and Lighting	39.58%
Industrial	21.82%
Total NC Retail	100.00%

Duke Energy Carolinas, LLC  
Docket No. E-7, Sub 1281  
North Carolina Retail Actual MWh Sales in the Experience Modification Factor (EMF) Period

Walker Workpaper No. 4

Line No.	Description	Reference	Total Company (MWh)	North Carolina Retail (MWh)	North Carolina Residential (MWh)	North Carolina General Service/Lighting (MWh)	North Carolina Industrial (MWh)
1	Test Period MWh Sales (excluding inter system sales)	Company Records	<b>88,284,042</b>	<b>59,059,117</b>	<b>22,419,810</b>	<b>24,337,422</b>	<b>12,301,885</b>
2							
3	NC Percentage of Total Company Unadjusted Sales	66.90%					
4	SC Percentage of Total Company Unadjusted Sales	23.74%					
5	Wholesale Percentage of Total Company Unadjusted Sales	9.37%					
		100.00%					

Note: Rounding differences may occur

Duke Energy Carolinas, LLC  
Docket No. E-7, Sub 1281  
Contract Fees Being Credited in CPRE Rider

CONFIDENTIAL INFORMATION REDACTED

Walker Workpaper No. 5

Line No.	Facility Name	Type of Fee	Date Paid	Amount Collected
1				
2				
3				
4	Total			\$ 5,397,400

Note: Rounding differences may occur

Duke Energy Carolinas, LLC  
Docket No. E-7, Sub 1281  
1% Calculation Test

Walker Workpaper No. 6

Per Rule R8-71 (j)(9) "the annual increase in the aggregate amount of costs recovered under G.S. 62-110.8(g) in any recovery period from its North Carolina retail customers shall not exceed one percent (1%) of the electric public utility's total North Carolina retail jurisdictional gross revenues for the preceding calendar year determined as of December 31 of the previous calendar year. Any amount in excess of that limit shall be carried over and recovered in the next recovery period when the annual increase in the aggregate amount of costs to be recovered is less than one percent (1%)."

Line No.	Description	EMF Period (Exhibit 4, L41)	Billing Period (Exhibit 3, L11 + L22)	Total	NC Retail Gross Revenues
1	Amount Approved in 2021 Docket E-7, Sub 1262	\$ (2,262,968)	\$ 23,271,430	\$ 21,008,462	
2	Amount Proposed in current Docket	\$ (5,397,163)	\$ 25,149,730	\$ 19,752,567	
3	Annual Increase			\$ (1,255,895)	
4					
5	1% of 2022 NC Retail Gross Revenues			\$ 49,443,391	\$ 4,944,339,147
6					
7	Excess of Current Docket over 1% NC Retail Gross Revenues			N/A	

Note: Rounding differences may occur

Duke Energy Carolinas, LLC  
 Docket No. E-7, Sub 1281  
 CPRE Purchased and Generated Power Costs in the Experience Modification Factor (EMF) and Prospective Billing Periods

Walker Exhibit No. 1

CONFIDENTIAL DATA REDACTED

Line No.	Market Participant	Facility Name	Location	Tranche No.	Nameplate Capacity (MW)	EMF Period			Billing Period		
						January 1, 2022 - December 31, 2022	Reference	September 1, 2023 - August 31, 2024	Reference		
						Purchased and Generated Power <sup>1</sup>			Capacity Factor	Energy Factor	Input
									17%	83%	
						Purchased and Generated Power <sup>1</sup>			Purchased and Generated Power <sup>1</sup>		
						Capacity	Energy	Total	Capacity	Energy	Total
						[REDACTED]			[REDACTED]		
10	Sub-Total Tranche 1 Facilities				394.5	\$ 7,765,354	\$ 11,395,934	\$ 19,161,288	\$ 4,546,858	\$ 22,199,367	\$ 26,746,226
11									Capacity Factor	Energy Factor	
12									7%	93%	
13						Purchased and Generated Power <sup>1</sup>			Purchased and Generated Power <sup>1</sup>		
14						Capacity	Energy	Total	Capacity	Energy	Total
15						[REDACTED]			[REDACTED]		
16											
17											
27	Sub-Total Tranche 2 Facilities				514.5	\$ 35,530	\$ 707,496	\$ 743,026	\$ 735,594	\$ 9,772,890	\$ 10,508,484
28											
29	Total of Tranche 1 and Tranche 2					\$ 7,800,884	\$ 12,103,430	\$ 19,904,314	\$ 5,282,452	\$ 31,972,258	\$ 37,254,710

Note: Rounding differences may occur

<sup>1</sup> Duke-owned facilities are considered generated power rather than purchased power. The cost for Duke owned facilities is authorized revenue as provided by G.S. 62-110.8(g).



Duke Energy Carolinas, LLC  
 Docket No. E-7, Sub 1281  
 CPRE Implementation Costs in the EMF and Prospective Billing Periods

Walker Exhibit No. 2

CONFIDENTIAL DATA REDACTED

Line No.	Implementation Cost / Activity	Reference	EMF Period	Billing Period
			January 1, 2022 - December 31, 2022	September 1, 2023 - August 31, 2024
1	[REDACTED]		[REDACTED]	\$ -
2				\$ -
3				\$ -
4				\$ -
5				\$ -
6				\$ -
7	<b>Total Internal Labor and Labor-Related Taxes and Benefits</b>		\$ 316,903	\$ 332,748 *
8	[REDACTED]	Company Records	[REDACTED]	\$ -
9				\$ -
10				\$ -
11				\$ -
12				\$ -
13				\$ -
14				\$ -
15				\$ -
16				\$ -
17	<b>Total Outside Services</b>		\$ 123,819	\$ 55,000 *
18				
19	<b>Total Employee-Related Expenses</b>		\$ 822	\$ 900 *
20				
21	<b>Adjustment Related to Independent Administrator Fees</b>		\$ (75,767) **	\$ -
22				
23	<b>Total Implementation Costs</b>	<b>L7 + L17 + L19 + L21</b>	<b>\$ 365,777</b>	<b>\$ 388,648 *</b>

Note: Rounding differences may occur

\* Represents an estimate of implementation charges expected to be incurred in the prospective Billing Period.

\*\* Represents correction of error related to Independent Administrator Fees reported in the last proceeding on Walker Confidential Exhibit 2 in Docket E-7, Sub 1262

Duke Energy Carolinas, LLC  
Docket No. E-7, Sub 1281

Walker Revised Exhibit No. 3

Allocation of Prospective Billing Period CPRE Charges to Customer Classes

Line No.	Description	Reference	Residential	General Service and Lighting	Industrial	Total
<u>Allocation of CPRE Purchased and Generated Power by Customer Class (Prospective Billing Period)</u>						
1	CPRE Purchased and Generated Power - Capacity	Exhibit 1, L29				\$ 5,282,452
2	NC Retail Jurisdictional % Based on 2021 Production Plant	Input				66.68%
3	NC Retail Portion - CPRE Purchased and Generated Power - Capacity	L1 * L2				\$ 3,522,407
4						
5	NC Retail 2021 Production Plant Allocation Factors	Input	47.04%	37.14%	15.81%	100.00%
6						
7	NC CPRE Purchased and Generated Power - Capacity Allocated Based on 2021 Production Plant	L3 * L5	\$ 1,657,105	\$ 1,308,266	\$ 557,036	\$ 3,522,407
8						
9	CPRE Purchased and Generated Power - Energy	Exhibit 1, L29				\$ 31,972,258
10	NC Retail Jurisdictional % Based on Projected Billing Period Sales	Workpaper 3				66.83%
11	NC Retail Portion - CPRE Purchased and Generated Power - Energy	L9 * L10 [Total Only]				\$ 21,367,665
12						
13	Allocation Factor- MWh Sales	Workpaper 3	38.60%	39.58%	21.82%	100.00%
14						
15	NC CPRE Purchased and Generated Power - Energy Allocated on MWh Sales	L11 * L13	\$ 8,247,539	\$ 8,458,228	\$ 4,661,898	\$ 21,367,665
16						
17	Total of NC CPRE Purchased and Generated Power - Capacity and Energy	L7 + L15	\$ 9,904,644	\$ 9,766,494	\$ 5,218,934	\$ 24,890,072
18						
19	% of NC CPRE Purchased and Generated Power - Capacity and Energy		39.79%	39.24%	20.97%	100.00%
20						
21	Contract Fees Being Credited in CPRE Rider	Workpaper 5				\$ (13,710,000)
22	NC Retail Jurisdictional % Based on Composite of Energy and Capacity	L21				66.81%
23	CPRE Contract Fees - NC Retail Portion	L21 * L22				\$ (9,159,725)
24						
25	CPRE Contract Fees by Customer Class	L23 * L19	\$ (3,644,980)	\$ (3,594,140)	\$ (1,920,605)	\$ (9,159,725)
<u>Allocation of CPRE Implementation Costs by Customer Class (Prospective Billing Period)</u>						
		<u>Reference</u>	<u>Residential</u>	<u>General Service and Lighting</u>	<u>Industrial</u>	<u>Total</u>
26	CPRE Implementation Costs - Total	Exhibit 2, L23				\$ 388,648
27	NC Retail Jurisdictional % Based on Composite of Energy and Capacity	(L3 + L11) ÷ (L1 + L9) [Total Only]				66.81%
28	CPRE Implementation Costs - NC Retail Portion	L26 * L27				\$ 259,658
29						
30	Total of NC CPRE Purchased and Generated Power - Capacity and Energy	L19	39.79%	39.24%	20.97%	100.00%
31						
32	CPRE Implementation Costs by Customer Class	L28 * L30	\$ 103,327	\$ 101,886	\$ 54,445	\$ 259,658
33						
34	Total of NC CPRE Purchased and Generated Capacity and Energy + Implementation Cost + Contract Fees Credit	L17 + L25 + L32	\$ 6,362,991	\$ 6,274,240	\$ 3,352,774	\$ 15,990,005
35						
36	NC Projected Billing Period MWh Sales	Workpaper 3	23,477,265	24,077,007	13,270,457	60,824,729
37						
38	<b>NC CPRE Implementation Cost CPRE Charge ¢/kWh</b>	<b>L28 ÷ L30 ÷ 10</b>	<b>0.0271</b>	<b>0.0261</b>	<b>0.0253</b>	<b>0.026</b>

Note: Rounding differences may occur

Supplemental Exhibits

Duke Energy Carolinas, LLC  
Docket No. E-7, Sub 1281

Walker Revised Exhibit No. 4

Allocation of Experience Modification Factor (EMF) Period Charges to Customer Classes

Line No.	Description	Reference	Residential	General Service and Lighting	Industrial	Total
<b>Allocation of CPRE Purchased and Generated Power by Customer Class (EMF Period)</b>						
1	CPRE Purchased and Generated Power - Capacity	Exhibit 1, L29				\$ 7,800,884
2	NC Retail Jurisdictional % Based on 2021 Production Plant	Exhibit 3, L 2				66.68%
3	NC Retail Portion - CPRE Purchased and Generated Power - Capacity	L1 * L2				\$ 5,201,729
4						
5	NC Retail 2021 Production Plant Allocation Factors	Exhibit 3, L 5	47.04%	37.14%	15.81%	100.00%
6						
7	NC CPRE Purchased and Generated Power - Capacity Allocated Based on 2021 Production Plant	L3 * L5	\$ 2,447,136	\$ 1,931,988	\$ 822,605	\$ 5,201,729
8						
9	CPRE Purchased and Generated Power - Energy	Exhibit 1, L29				\$ 12,103,430
10	NC Retail Jurisdictional % Based on EMF Period Sales	Workpaper 4				66.90%
11	NC Retail Portion - CPRE Purchased and Generated Power - Energy					\$ 8,096,796
12						
13	NC Retail Portion - CPRE Purchased and Generated Power - Energy	L15 * L11 [Total Only]	\$ 3,073,677	\$ 3,336,575	\$ 1,686,545	\$ 8,096,796
14						
15	NC EMF Period MWh Sales	Workpaper 4	22,419,810	24,337,422	12,301,885	59,059,117
16						
17	Total of NC CPRE Purchased and Generated Power - Capacity and Energy	L7 + L13	\$ 5,520,813	\$ 5,268,562	\$ 2,509,150	\$ 13,298,526
18						
19	% of NC CPRE Purchased and Generated Power - Capacity and Energy		41.51%	39.62%	18.87%	100%
<b>Allocation of CPRE Implementation Costs by Customer Class (EMF Period)</b>						
20	CPRE Implementation Costs - Total	Exhibit 2, L23				\$ 365,777
21	NC Retail Jurisdictional % Based on Composite of Energy and Capacity	(L3 + L13) ÷ (L1 + L9) [Total Only]				66.81%
22	CPRE Implementation Costs - NC Retail Portion	L20 * L21				\$ 244,384
23						
24	Total of NC CPRE Purchased and Generated Power - Capacity and Energy	L19	41.51%	39.62%	18.87%	100.00%
25						
26	CPRE Implementation Costs by Customer Class	L22 * L24	\$ 101,455	\$ 96,819	\$ 46,110	\$ 244,384
27						
28	Total of NC CPRE Purchased and Generated Power - Capacity and Energy and Implementation costs	L17 + L26	\$ 5,622,268	\$ 5,365,381	\$ 2,555,260	\$ 13,542,909
29						
30						
31	CPRE Revenues Realized During the Test Period	Input	\$ 6,916,483	\$ 7,053,447	\$ 3,031,179	\$ 17,001,109
32						
33	CPRE (Over)/Under Collection	L28 - L31	\$ (1,294,215)	\$ (1,688,066)	\$ (475,919)	\$ (3,458,200)
34						
35	Contract Fees Being Credited in CPRE Rider	Workpaper 5				\$ (5,397,400)
36	NC Retail Jurisdictional % Based on Composite of Energy and Capacity	L21				66.81%
37	CPRE Contract Fees - NC Retail Portion	L35 * L36				\$ (3,606,126)
38						
39	CPRE Contract Fees by Customer Class	L37 * L24	\$ (1,497,064)	\$ (1,428,662)	\$ (680,400)	\$ (3,606,126)
40						
41	Total CPRE EMF Amount including Contract Fees	L33 + L39	\$ (2,791,280)	\$ (3,116,728)	\$ (1,156,318)	\$ (7,064,326)
42						
43	NC Projected Billing Period MWh Sales	Exhibit 3, L 36	23,477,265	24,077,007	13,270,457	60,824,729
44						
45	<b>NC CPRE EMF Rider Amount €/kWh</b>	<b>L41 ÷ L43 + 10</b>	<b>(0.0119)</b>	<b>(0.0129)</b>	<b>(0.0087)</b>	<b>(0.0116)</b>
46						
47	Annual Interest Rate		10%	10%	10%	10%
48						
49	Monthly Interest Rate	L47 ÷ 12	0.83%	0.83%	0.83%	0.83%
50						
51	Number of Months (July 1, 2022 - February 28, 2024)		20	20	20	20
52						
53	Interest	L33 * L49 * L51	\$ (215,702)	\$ (281,344)	\$ (79,320)	\$ (576,366)
54						
55	<b>EMF Interest on Over Collection</b>	<b>L53 ÷ L43 + 10</b>	<b>(0.0009)</b>	<b>(0.0012)</b>	<b>(0.0006)</b>	<b>(0.0009)</b>

Duke Energy Carolinas, LLC  
Docket No. E-7, Sub 1281  
Summary of CPRE Proposed Rider Components

Walker Revised Exhibit No. 5

Line No.	Description	Reference	Residential ¢/kWh	General Service and Lighting ¢/kWh	Industrial ¢/kWh	Composite ¢/kWh
1	<b>Prospective Billing Period Rider Charge</b>					
2	NC CPRE Implementation Cost CPRE Charge ¢/kWh	Exhibit 3, L32	0.0271	0.0261	0.0253	0.0263
3						
4	<b>Experience Modification Factor Period Rider Charge</b>					
5	EMF Increment/(Decrement) ¢/kWh	Exhibit 4, L45	(0.0119)	(0.0129)	(0.0087)	(0.0116)
6	EMF Interest Decrement ¢/kWh	Exhibit 4, L55	(0.0009)	(0.0012)	(0.0006)	(0.0009)
7						
8	<b>Total Proposed CPRE Rider Charge ¢/kWh</b>	L2+ L5+ L6	<b>0.0143</b>	<b>0.0120</b>	<b>0.0160</b>	<b>0.0138</b>

Note: This exhibit excludes the impact of the regulatory fee

Duke Energy Carolinas, LLC  
 Docket No. E-7, Sub 1281  
 Proposed Rider CPRE (NC)

Walker Revised Exhibit No. 6

Duke Energy Carolinas, LLC

Electricity No. 4  
 North Carolina Third Revised (Proposed) Leaf No. 127  
 Superseding North Carolina Original Leaf No. 127

RIDER CPRE (NC)  
 COMPETITIVE PROCUREMENT OF RENEWABLE ENERGY RIDER

APPLICABILITY (North Carolina Only)

Service supplied under the Company's rate schedules is subject to approved adjustments to recover costs associated with implementation of the Company's Competitive Procurement of Renewable Energy (CPRE) Program. Adjustments are made pursuant to North Carolina General Statute 62-110.8(g) and North Carolina Utilities Commission Rule R8-71 as ordered by the North Carolina Utilities Commission.

CPRE PROSPECTIVE COMPONENT AND EXPERIENCE MODIFICATION FACTOR

All service supplied under the Company's rate schedules is subject to an increment per kilowatt hour as set forth below. This adjustment is not included in the Rate Schedules of the Company and therefore, must be applied to the bill as calculated under the applicable rate.

	<b>Supplemental Filing</b>
<b>RESIDENTIAL SERVICE</b>	
Prospective Component of CPRE	0.0271 ¢/kWh
Experience Modification Factor	<u>(0.0128) ¢/kWh</u>
Net CPRE Rider Factor	0.0143 ¢/kWh
Regulatory Fee Multiplier	x 1.0014
CPRE Factor	<u>0.0143 ¢/kWh</u>
<b>GENERAL SERVICE AND LIGHTING</b>	
Prospective Component of CPRE	0.0261 ¢/kWh
Experience Modification Factor	<u>(0.0141) ¢/kWh</u>
Net CPRE Rider Factor	0.0120 ¢/kWh
Regulatory Fee Multiplier	x 1.0014
CPRE Factor	<u>0.0120 ¢/kWh</u>
<b>INDUSTRIAL SERVICE</b>	
Prospective Component of CPRE	0.0253 ¢/kWh
Experience Modification Factor	<u>(0.0093) ¢/kWh</u>
Net CPRE Rider Factor	0.0160 ¢/kWh
Regulatory Fee Multiplier	x 1.0014
CPRE Factor	<u>0.0160 ¢/kWh</u>

North Carolina Third Revised (Proposed) Leaf No. 127  
 Effective for service rendered on and after September 1, 2023  
 NCUC Docket No. E-7, Sub 1281, Order dated \_\_\_\_\_

Duke Energy Carolinas, LLC  
 Docket No. E-7, Sub 1281  
 CPRE MWh Generated During the Experience Modification Factor (EMF) Period

Walker Workpaper No. 1

CONFIDENTIAL DATA REDACTED

Line No.	CPRE Generation (MWh)	Tranche No.	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22	Total
1															
2															
3															
4															
5															
6															
7															
8															
9															
10															
11															
12	Total DEC		22,663	28,478	44,999	53,999	54,666	52,128	52,391	55,451	60,200	54,538	38,063	8,053	525,629
13															
Line No.	CPRE Generation (\$)	Tranche No.	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22	Total
15															
16															
17															
18															
19															
20															
21															
22															
23															
24															
25															
26															
27															
28	Total DEC		\$961,700	\$1,146,562	\$1,783,486	\$2,084,458	\$2,162,640	\$1,823,710	\$1,807,366	\$2,019,603	\$2,183,372	\$2,083,414	\$1,539,443	\$308,560	\$19,904,314
29															
Line No.	CPRE Capacity (\$)	Tranche No.	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22	Total
31															
32															
33															
34															
35															
36															
37															
38															
39															
40															
41															
42															
43															
44	Total DEC		\$389,502	\$345,840	\$742,852	\$855,786	\$952,545	\$702,314	\$637,696	\$772,310	\$783,297	\$846,464	\$695,819	\$76,457	\$7,800,884
45															
Line No.	CPRE Energy (\$)	Tranche No.	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22	Total
47															
48															
49															
50															
51															
52															
53															
54															
55															
56															
57															
58															
59															
60	Total DEC		\$572,198	\$800,722	\$1,040,635	\$1,228,672	\$1,210,095	\$1,121,395	\$1,169,670	\$1,247,293	\$1,400,075	\$1,236,949	\$843,624	\$232,103	\$12,103,430

Duke Energy Carolinas, LLC  
Docket No. E-7, Sub 1281  
CPRE Forecast for the Prospective Billing Period

Walker Workpaper No. 2

CONFIDENTIAL DATA REDACTED

Line No.	CPRE Generation (MWh)	Sep-23	Oct-23	Nov-23	Dec-23	Jan-24	Feb-24	Mar-24	Apr-24	May-24	Jun-24	Jul-24	Aug-24	Total
----------	-----------------------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	-------

Tranche No. 1														
1														
2														
3														
4														
5														
6														
7														
8														
10														
11														

Tranche No. 2														
12														
13														
14														
15														
16														
17														
18														
19														
20														
21														
22														

23	Total DEC	69,244	62,463	51,697	49,998	58,219	63,622	83,507	96,684	106,088	104,947	104,956	111,535	962,960
----	-----------	--------	--------	--------	--------	--------	--------	--------	--------	---------	---------	---------	---------	---------

Line No.	CPRE Generation (\$)	Sep-23	Oct-23	Nov-23	Dec-23	Jan-24	Feb-24	Mar-24	Apr-24	May-24	Jun-24	Jul-24	Aug-24	Total
----------	----------------------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	-------

Tranche No. 1														
28														
29														
30														
31														
32														
33														
34														
35														
36														
38														
39														

Tranche No. 2														
40														
41														
42														
43														
44														
45														
47														
48														
49														
50														

51	Total DEC	\$2,360,141	\$2,292,382	\$2,046,671	\$2,179,605	\$2,514,942	\$2,744,094	\$3,281,229	\$3,842,841	\$4,166,252	\$3,726,995	\$3,898,305	\$4,201,254	\$37,254,710
----	-----------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	--------------



Duke Energy Carolinas, LLC  
 Docket No. E-7, Sub 1281  
 Projected Sales for the Prospective Billing Period

Walker Workpaper No. 3

Fall 2022 Forecast  
 Billed Sales Forecast  
 Sales Forecast - MWhs (000)

	Reference	Remove Impact of SC		
		Projected Sales for the Billing Period	DERP Net Metered Generation	Adjusted Sales
<b>North Carolina</b>				
Residential	Company Records	23,477,265	-	23,477,265
General		23,838,527	-	23,838,527
Industrial		13,270,457	-	13,270,457
Lighting		238,480	-	238,480
North Carolina Retail		60,824,729	-	60,824,729
<b>South Carolina</b>				
Residential	Company Records	7,223,610	136,728	7,360,338
General		5,371,691	42,584	5,414,275
Industrial		9,133,136	429	9,133,565
Lighting		51,014	-	51,014
South Carolina Retail		21,779,451	179,741	21,959,192
<b>Total Retail</b>				
Residential	Company Records	30,700,875	136,728	30,837,603
General		29,210,218	42,584	29,252,802
Industrial		22,403,593	429	22,404,022
Lighting		289,494	-	289,494
Total Retail Sales		82,604,180	179,741	82,783,921
<b>Wholesale</b>				
		8,227,610.00	-	8,227,610
<b>Projected System MWh Sales for Fuel Factor</b>		90,831,790	179,741	91,011,531
NC as a percentage of total		66.96%		66.83%
SC as a percentage of total		23.98%		24.13%
Wholesale as a percentage of total		9.06%		9.04%
		100.00%		100.00%

Note: Rounding differences may occur

Residential	38.60%
General Service and Lighting	39.58%
Industrial	21.82%
Total NC Retail	100.00%

Duke Energy Carolinas, LLC

Docket No. E-7, Sub 1281

North Carolina Retail Actual MWh Sales in the Experience Modification Factor (EMF) Period

Walker Workpaper No. 4

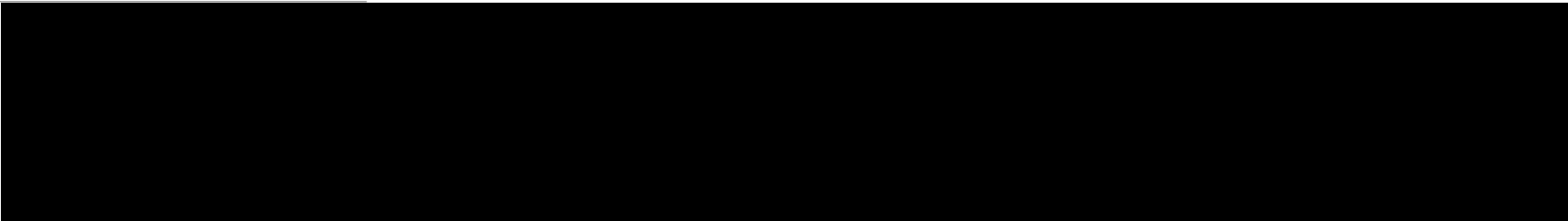
Line No.	Description	Reference	Total Company (MWh)	North Carolina Retail (MWh)	North Carolina Residential (MWh)	North Carolina General Service/Lighting (MWh)	North Carolina Industrial (MWh)
1	Test Period MWh Sales (excluding inter system sales)	Company Records	<b>88,284,042</b>	<b>59,059,117</b>	<b>22,419,810</b>	<b>24,337,422</b>	<b>12,301,885</b>
2							
3	NC Percentage of Total Company Unadjusted Sales	66.90%					
4	SC Percentage of Total Company Unadjusted Sales	23.74%					
5	Wholesale Percentage of Total Company Unadjusted Sales	9.37%					
		100.00%					

Note: Rounding differences may occur

Duke Energy Carolinas, LLC  
Docket No. E-7, Sub 1281  
Contract Fees Being Credited in CPRE Rider

Walker Revised Workpaper No. 5

**CONFIDENTIAL DATA REDACTED**

Line No.	Facility Name	Type of Fee	Date Paid	Amount Collected EMF Period	Amount Collected Subsequent to EMF Period <sup>1</sup>
1					
2					
3					
4					
5					
6					
7					
8	Total			<u>\$ 5,397,400</u>	<u>\$ 13,710,000</u>

<sup>1</sup> These amounts were received after the EMF period but are being applied in the Prospective Billing Period.

Duke Energy Carolinas, LLC  
Docket No. E-7, Sub 1281  
1% Calculation Test

Walker Revised Workpaper No. 6

Per Rule R8-71 (j)(9) "the annual increase in the aggregate amount of costs recovered under G.S. 62-110.8(g) in any recovery period from its North Carolina retail customers shall not exceed one percent (1%) of the electric public utility's total North Carolina retail jurisdictional gross revenues for the preceding calendar year determined as of December 31 of the previous calendar year. Any amount in excess of that limit shall be carried over and recovered in the next recovery period when the annual increase in the aggregate amount of costs to be recovered is less than one percent (1%)."

Line No.	Description	EMF Period (Exhibit 4, L41)	Billing Period (Exhibit 3, L34)	Total	NC Retail Gross Revenues
1	Amount Approved in 2021 Docket E-7, Sub 1262	\$ (2,262,968)	\$ 23,271,430	\$ 21,008,462	
2	Amount Proposed in current Docket	\$ (7,064,326)	\$ 15,990,005	\$ 8,925,679	
3	Annual Increase			\$ (12,082,783)	
4					
5	1% of 2022 NC Retail Gross Revenues			\$ 49,443,391	\$ 4,944,339,147
6					
7	Excess of Current Docket over 1% NC Retail Gross Revenues			N/A	

Note: Rounding differences may occur

**DUKE ENERGY CAROLINAS, LLC**  
**COMPETITIVE PROCUREMENT OF RENEWABLE ENERGY (“CPRE”)**  
**COMPLIANCE REPORT**

On November 6, 2017, the North Carolina Utilities Commission (“NCUC” or “Commission”) issued an order in Docket No. E-100, Sub 150 adopting regulations to implement the Competitive Procurement of Renewable Energy (“CPRE”) Program.<sup>1</sup> Section (h) of NCUC Rule R8-71 (the “CPRE Rule”) requires Duke Energy Carolinas, LLC (“DEC” or the “Company”) to annually file a CPRE Program Compliance Report for the prior calendar year, which for purposes of this Compliance Report is calendar year 2022 (referred to as the “reporting year”). DEC hereby submits this 2022 CPRE Compliance Report for the reporting year.

**I. CPRE Solicitation Overview (R8-71(h)(2)(i))**

As noted in the Company’s initial CPRE Program Plan filed on November 27, 2017, DEC and Duke Energy Progress, LLC (“DEP” and together with DEC, the “Companies”) have elected to jointly issue request for proposal (“RFP”) solicitations to comply with the aggregate procurement requirements of the CPRE Program. The Accion Group, LLC has served as the Independent Administrator (“IA”) of the CPRE Program.

The Commission authorized the Companies to commence the CPRE Program by Order issued February 21, 2018, in Docket Nos. E-2, Sub 1159 and E-7, Sub 1156, modifying and approving the joint CPRE Program.

The Companies issued the CPRE Tranche 1 RFP on July 10, 2018, seeking to procure 600 MW of renewable capacity for DEC and 80 MW of renewable capacity for DEP. The results of CPRE Tranche 1 were presented in the IA’s Tranche 1 Final Report filed with the Commission on July 18, 2019. Tranche 1 was completed in 2019 and was addressed in DEC’s 2019 CPRE compliance report filed with the Commission.

The Companies issued the CPRE Tranche 2 RFP on October 15, 2019, seeking to procure 600 MW of renewable capacity. The results of CPRE Tranche 2 were presented in the IA’s Tranche 2 Final Report filed with the Commission on February 9, 2021. Tranche 2 was completed in 2020 and was addressed in DEC’s 2019 and 2020 CPRE compliance reports filed with the Commission.

In 2021, the Companies continued the CPRE Program. On June 2, 2021, the Commission issued its *Order Requesting Update* on the Companies’ CPRE Program compliance in advance of the conclusion of the CPRE Program’s 45-month compliance period, requesting an update from interested parties regarding (1) the most current status of the Transition MW<sup>2</sup>, (2) the need for and appropriate timing of a CPRE Tranche

<sup>1</sup> *Order Adopting and Amending Rules*, Docket No. E-100, Sub 150 (Nov. 6, 2017). The Commission subsequently also issued an *Order Amending Commission Rule R8-71* in the same docket on April 9, 2018.

<sup>2</sup> “Transition MW” is the term the Companies use to refer to projects that qualify under N.C. Gen. Stat. § 62-110.8(b)(1) as having executed power purchase agreements (“PPA”) and interconnection agreements for renewable energy capacity within the DEC and DEP Balancing Authorities that are not subject to economic dispatch or curtailment and were not procured under

3, and (3) the parties' positions on statutory interpretation regarding what must be completed within the 45-month term and what actions the Commission may properly take beyond the 45-month timeframe to ensure that the final procurement target is met.

Following submission of the Companies' 2021 CPRE Program Plans, DEC and DEP began to work collaboratively with the IA as well as engage with Carolinas Clean Energy Business Association ("CCEBA"), the Public Staff, and other stakeholders to determine feasible paths that would allow the Companies to meet their procurement obligations under the CPRE Program while also ensuring that the Companies can successfully achieve queue reform and transition to annual Cluster Studies in 2022. Through this engagement with stakeholders, the Companies determined that Tranche 3 should be a DEC-only procurement for third-party PPA resources and should not include asset acquisition bids. The Companies and stakeholders also agreed that Duke should utilize a Resource Solicitation Cluster ("RSC") held in spring 2022, and queued after the Transitional Cluster Study, to evaluate grid upgrades of Tranche 3 proposals.

On November 21, 2021, the 45-month CPRE Program Procurement Period ended.

On November 24, 2021, the Companies submitted a joint letter with CCEBA to the Commission in Docket Nos. E-2, Sub 1159 and E-7, Sub 1156 regarding the Companies' plan to administer a DEC Tranche 3 RFP utilizing a RSC to complete Step 2 of the CPRE RFP evaluation process.

On December 3, 2021, the Companies filed a Petition for Determination of Final CPRE Program Procurement Amount in Docket Nos. E-2, Sub 1159 and E-7, Sub 1156, requesting the Commission determine the aggregate number of MW to be competitively procured through the CPRE Program based on the exceedance of Transition MW over the 45-month CPRE Procurement Period, and approve the resulting Tranche 3 target MW amount of 596 MW.

On December 20, 2021, the Commission issued its *Order Determining Adjusted CPRE Program Procurement Target, Requiring Tranche 3 CPRE Program Procurement Solicitation, Approving Resource Solicitation Cluster, and Requiring Responses to Commission Questions Regarding Pro Forma PPA*. The Commission's Order authorized DEC to implement Tranche 3 of the CPRE Program through an RSC, and determined that the current CPRE Program procurement target is 1,782 MW as reduced in accordance with N.C.G.S. § 62-110.8(b)(1).

On January 5, 2022, DEC issued the CPRE Tranche 3 request for proposals (RFP) seeking to procure 596 MW. The bid window for CPRE Tranche 3 closed on February 3, 2022. Eight projects totaling 520 MW bid into CPRE Tranche 3. Following closure of the bid window, 365 MW withdrew from Tranche 3, citing market uncertainty and the rising costs of solar development as the cause of their withdrawal. Ultimately, only two projects totaling 155 MW completed the Tranche 3 bid evaluation process and have signed CPRE

---

the Green Source Advantage program pursuant to N.C. Gen. Stat. § 62-159.2. Pursuant to N.C. Gen. Stat. § 62-110.8, should the level of Transition MW exceed 3,500 MW, then the aggregate targeted competitive procurement aggregate amount (2,660 MW) is to be reduced. If the aggregate capacity of such Transition MW is less than 3,500 MW at the end of the initial 45-month competitive procurement period, the Commission shall also require the Companies to conduct an additional competitive procurement in the amount of such deficit pursuant to the statute.

Program PPAs with DEC. Below follows a timeline regarding CPRE Tranche 3 Milestones completed in 2022:

<b>CPRE Tranche 3 Milestones in 2022</b>	
CPRE Tranche 3 Bid Window open	01/05/2022
CPRE Tranche 3 Bid Window closed	02/03/2022
Step 1 Ranking	03/31/2022
CPRE Tranche 3 Projects Winners Selected	07/29/2022
CPRE Tranche 3 PPAs signed	08/30/2022
Phase 2 RSC Study start	08/31/2022

The IA is now completing the final report for CPRE Tranche 3.

On September 1, 2022, the Companies filed a petition in both the 2022 Solar Procurement Dockets (E-2, Sub 1297 and E-7, Sub 1268) and the CPRE Program Dockets (E-2, Sub 1159 and E-7, Sub 1156) stating that the CPRE Program is 441 MW short of meeting the target established by N.C. Gen. Stat. § 62-110.8 and requesting the Commission's approval to procure the CPRE Program MW shortage through the 2022 Solar Procurement, to extend the CRPE Program PPA term to 25 years, and for waiver of certain provisions of Commission Rule R8-71.

On November 1, 2022, the Commission issued its *Order Permitting Additional CPRE Program Procurement and Establishing Target Procurement Volume for the 2022 Solar Procurement* in Docket Nos. E-2, Subs 1159 and 1297 and E-7, Subs 1156 and 1268, granting the Companies authority to complete a CPRE Program additional procurement through the 2022 Solar Procurement with a target of 441 MW. However, the Commission concluded that regardless of whether the 441 MW of CPRE Program capacity is procured in total through the 2022 Solar Procurement, the CPRE Program will close out upon the conclusion of the 2022 Solar Procurement.

On June 20, 2022 the Companies issued the 2022 Solar Procurement. Below follows a timeline regarding 2022 Solar Procurement completed in 2022:

<b>2022 Solar Procurement Milestones in 2022</b>	
2022 SP Bid Window open	06/20/2022
2022 SP Bid Window closed for Third Party Market Participants	07/22/2022
Step 1 Ranking complete, invitation to Step 2	11/28/2022
Proposal Security due date for Step 2 proposals	12/22/2022
DISIS Phase 2 Study start	12/27/2022

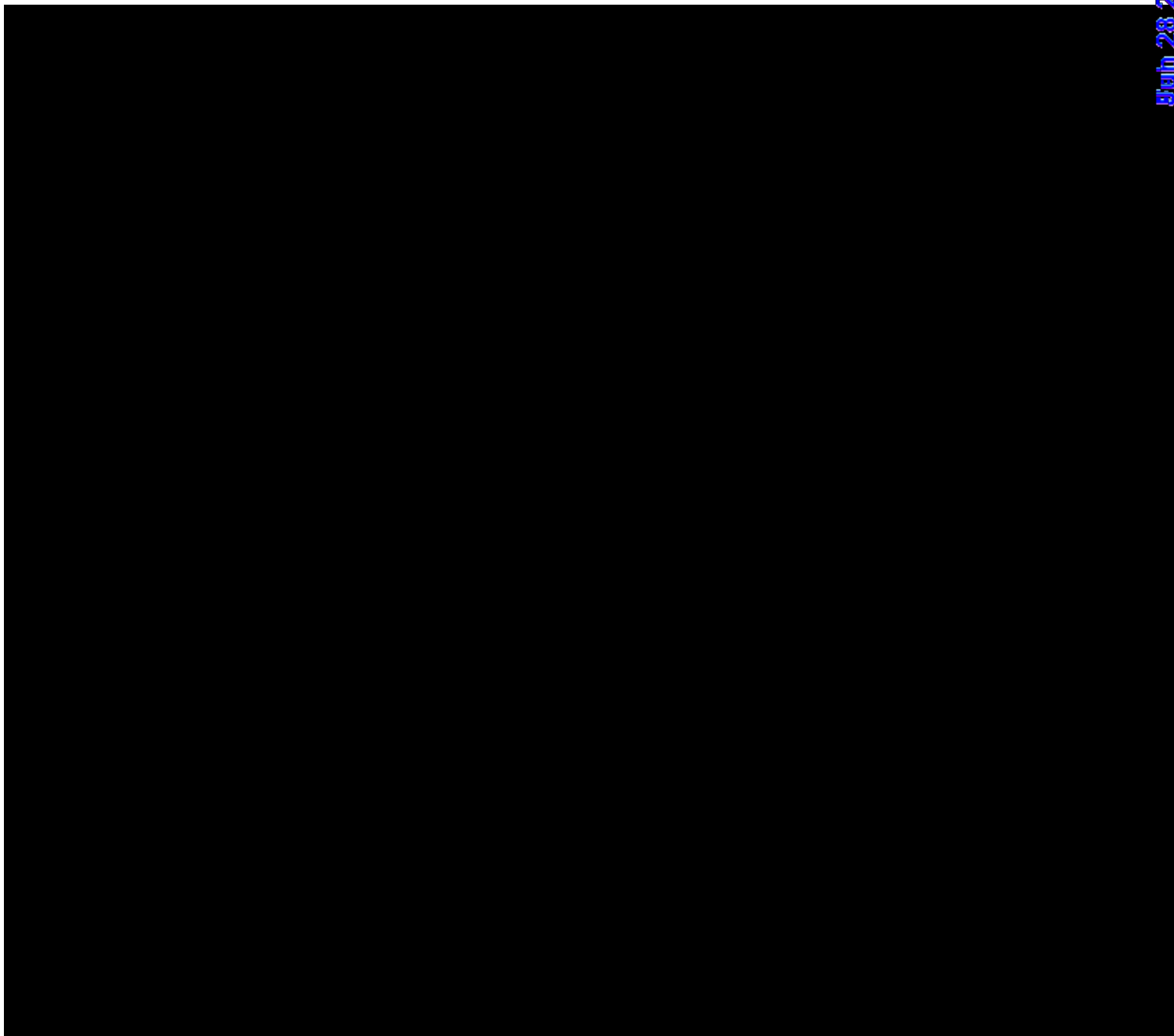
The Phase 2 study is continuing and will be completed in May 2023.



**II. Summary of PPAs and Utility-Owned Assets Procured During the Reporting Year (R8-71(h)(2)(ii))**

Two CPRE Tranche 3 PPAs were executed during the reporting year; however, no utility-owned assets were sought to be procured, or actually procured during the reporting year. Below follows a table identifying all projects procured in CPRE Tranches 1, 2, and 3. The table lists whether such projects are utility-owned assets or third-party owned PPA assets, and provides estimated commercial operation dates as of the date of this filing for each project.

**BEGIN CONFIDENTIAL**



OFFICIAL COPY  
Feb 28 2023

**END CONFIDENTIAL**

**III. Capacity and Energy Obtained through the CPRE Program During the Reporting Year (R8-71(h)(2)(iii))**

The nameplate capacity of the winning proposals in DEC for Tranches 1, 2, and 3 are identified above.

The following Tranche 1 & Tranche 2 winning projects were operational and delivered renewable energy to DEC during the reporting year:

**BEGIN CONFIDENTIAL**

**END CONFIDENTIAL**

#### IV. Duke Owned Facilities Submitted as Proposals in CPRE Solicitation (R8-71(h)(2)(iv))

No proposals sponsored by the Companies or their affiliated subsidiaries of Duke Energy Corp. were submitted as part of the Tranche 3 CPRE RFP.

#### V. Avoided Cost Rates (R8-71(h)(2)(v))

The Company's avoided costs used in the Tranche 3 CPRE solicitation are DEC's levelized 20 year avoided costs developed consistent with the methodology approved by the Commission in Docket No. E-100, Sub 167. Each proposal in Tranche 3 was required to submit their bid price as a positive \$/MWh decrement to the levelized avoided cost rates, as identified in the Tranche 3 RFP solicitation documents. The following is an excerpt from the RFP document describing the proposal pricing approach:

Proposal pricing must be in the same format of 20-year avoided cost pricing periods as shown in the tables above. Proposal pricing must be stated as a fixed dollar per MWh decrement that is applied equally to all energy pricing periods. For example, an MP could propose pricing that is \$2.00/MWh less than the avoided cost in each energy pricing period (for clarity, the decrement does not apply to capacity pricing periods). This format for pricing will be required for the bid entry on the IA RFP Website and will be the basis for the pricing in the PPA.

The bid form on the IA's website allowed only for a single (positive) pricing decrement to be entered, and then presented the resulting \$/MWh pricing for each pricing period based on this decrement. The avoided costs used in Tranche 3 are presented below:

#### **Avoided Costs Threshold for Tranche 3**

DEC 20 Year CPRE - Solar Only												
Capacity Pricing (\$/MWH)			Energy Pricing (\$/MWH)									
Summer Months PM	Winter AM	Winter PM	DEC Summer Prem-Peak	DEC Summer PM-Peak	DEC Summer Off Peak	DEC Winter Prem-Peak	DEC Winter AM-Peak	DEC Winter PM-Peak	DEC Winter Off Peak	DEC Shoulder Peak	DEC Shoulder Off Peak	
Distribution	23.81	110.61	35.79	41.8	41.2	35.9	65.9	50.7	52.1	40.2	38.4	29.3
Transmission	23.15	107.57	34.80	40.2	39.8	35.2	63.8	49.3	50.7	39.4	37.6	28.9

DEC 20 Year CPRE - Non-Solar Renewable Generation												
Capacity Pricing (\$/MWH)			Energy Pricing (\$/MWH)									
Summer Months PM	Winter AM	Winter PM	DEC Summer Prem-Peak	DEC Summer PM-Peak	DEC Summer Off Peak	DEC Winter Prem-Peak	DEC Winter AM-Peak	DEC Winter PM-Peak	DEC Winter Off Peak	DEC Shoulder Peak	DEC Shoulder Off Peak	
Distribution	23.81	110.61	35.79	42.9	42.3	37	67	51.8	53.2	41.3	39.5	30.4
Transmission	23.15	107.57	34.80	41.3	40.9	36.3	64.9	50.4	51.8	40.5	38.7	30

For projects participating in the 2022 Solar Procurement Program, bids were submitted as a single \$/MW amount. The 25-year avoided cost rate was published on the Independent Evaluator's website in December 2022.

As directed by the Commission in its November 1, 2022 *Order Permitting Additional CPRE Program Procurement and Establishing Target Procurement Volume for the 2022 Solar Procurement*, the Companies' avoided energy and capacity cost was determined using the methodology established in the Commission's August 13, 2021 *Order Establishing Standard Rates and Contract Terms for Qualifying*

*Facilities* in Docket No. E-100, Sub 167 (“Sub 167 Order”). Consistent with the avoided cost cap calculated for prior CPRE Program tranches, the avoided energy cost rates are reduced by the solar integration services charge for these solar-only project proposals. The methodology approved in the Sub 167 Order, which expresses avoided energy costs in the form of a multi-pricing period rate design, was converted into a single all-in avoided cost rate (\$/MWh) using a generic solar generation profile.

Avoided Cost Cap table for 25-year term	DEC	DEP
Transmission Interconnected (including SISC deduction)	\$61.88/MWh	\$62.86/MWh

As determined in the *Order Permitting Additional CPRE Program Procurement and Establishing Target Procurement Volume for the 2022 Solar Procurement*, the Companies and the IE will determine the levelized cost of energy (“LCOE”) of the proposals, inclusive of system upgrades, and select the lowest cost proposals at or below the avoided cost cap up to the 441 MW CPRE Program shortfall. Resources meeting these requirements will be procured as a CPRE project and will be offered the CPRE Program Controllable PPA filed with the NCUC on November 8, 2022. This evaluation will occur at the conclusion of Step 2 of the 2022 Solar Procurement Program bid evaluation process.

#### **VI. Total Costs and Authorized Revenues (R8-71(h)(2)(vi))**

During the reporting period, DEC incurred a total of \$441,544 for costs including legal support, outside publishing, and internal company labor. Including the credit to customers regarding the IA fees, that total is reduced to \$365,777.<sup>3</sup> Total purchased power cost and authorized revenues associated with all Tranche 1 and Tranche 2 projects that have achieved commercial operation to date is \$19,904,314.

#### **VII. Status of Compliance with CPRE Program Requirements (R8-71(h)(2)(vii))**

During the CPRE Program Procurement Period, DEC (1,024 MW) and DEP (161 MW) collectively procured 1,185 MW through Tranches 1 and 2 of the CPRE Program. Further, during the CPRE Program Procurement Period, the Companies procured a total of 4,378 Transition MW, an excess of 878 MW. Therefore, pursuant to N.C. Gen. Stat. § 62-110.8(b)(1), the Commission determined that it was appropriate to reduce the CPRE Program procurement target to 1,782 MW.<sup>4</sup> As a result, the Commission concluded that the Companies were 596 MW short of the adjusted CPRE Program procurement target at the end of the CPRE Program Procurement Period and ordered DEC to initiate a CPRE Tranche 3 to procure 596 MW.

On January 5, 2022, DEC issued the CPRE Tranche 3 RFP seeking to procure 596 MW. The bid window for CPRE Tranche 3 closed on February 3, 2022. Only eight projects totaling 520 MW bid into CPRE Tranche 3. Following closure of the bid window, 365 MW withdrew from Tranche 3, citing market uncertainty and the rising costs of solar development as the cause of their withdrawal. Ultimately, only two

<sup>3</sup> See Direct Testimony of Christy Walker, at 8, Docket No. E-2, Sub (filed Feb. 28, 2023).

<sup>4</sup> *Order Determining Adjusted CPRE Program Procurement Target*, Docket Nos. E-2, Sub 1159 and E-2, Sub 1156 (Dec. 20, 2021).

projects totaling 155 MW completed the Tranche 3 bid evaluation process and have signed CPRE Program PPAs with DEC.

On September 1, 2022, the Companies filed a Petition stating that the CPRE Program is 441 MW short of meeting the target established by N.C. Gen. Stat. § 62-110.8 and requesting the Commission's approval to procure the 441 MW shortage through the 2022 Solar Procurement, among other things. On November 1, 2022, the Commission issued an Order authorizing DEC and DEP to procure the remaining 441 MW shortfall under the CPRE Program framework in a "final" CPRE Program additional procurement, issued in conjunction with the 2022 Solar Procurement. However, and as explained elsewhere in this report, the Commission concluded that regardless of whether the CPRE MW shortfall is procured in total through the 2022 Solar Procurement, the CPRE Program will be closed out upon the conclusion of the 2022 Solar Procurement.

### VIII. Independent Administrator and Evaluation Costs (R8-71(h)(2)(viii))

The Independent Administrator was selected in January 2018. A copy of the contract between the Companies and the IA in effect for the 2021 reporting period can be found in DEC's 2019 and 2020 CPRE compliance reports filed previously with the Commission. The Companies note that this contract expired at the end of the 45-month CPRE procurement period, and, as such, the Companies and IA amended the contract to extend the term through January, 2023 in order for the IA to remain engaged through completion of CPRE Tranche 3. During the reporting year, the total costs incurred by the IA to implement the CPRE Program for DEC and DEP were approximately \$170,508.75.

In Tranche 3 of the RFP, DEC elected to structure the Proposal Fees, a non-refundable fee and Winners' Fees as follows:

- 1) Proposal Fees were required of each proposal submitted on the Independent Administrators website, including Asset Acquisition proposals. This fee was set at \$500/MW, based on the facility's nameplate capacity, up to a maximum of ten thousand dollars (\$10,000).
- 2) A non-refundable fee to offset the cost of the IA (set as \$1/kW)
- 3) In addition, Winners' Fee will be collected on a pro-rata basis from each winning proposal. This fee will be calculated on the amount of the IA costs as well as any Duke costs related to proposal evaluation (i.e., costs incurred in the Step 2 evaluation process as described in the RFP) that was not recovered from the Proposal Fees. The Winners' Fee will be determined upon conclusion of the RFP and upon completion of contracting. Any such Winners' Fees will be allocated among all winning proposals selected by both DEC and DEP on a pro-rata basis on a per MW basis. The total of the Winners' Fees shall not exceed one million five hundred thousand dollars (\$1,500,000).

DEC notes that in the Commission's *Order Determining Adjusted CPRE Program Procurement Target, Requiring Tranche 3 CPRE Program Procurement Solicitation, Approving Resource Solicitation Cluster, and Requiring Responses to Commission Questions Regarding Pro Forma PPA*, the Commission granted

the Companies waiver of Commission Rules R8-71(d)(1), R8-71(d)(3)-(8), R8-71(d)(3)-(10), R8-71(e), and R8-71(f), in order for an Independent Evaluator, Charles River Associates, Inc., to oversee the CPRE additional procurement being implemented through the 2022 Solar Procurement.<sup>5</sup>

### IX. Independent Administrator Certification (R8-71(h)(2)(ix))

The Independent Administrator certification required by NCUC Rule R8-71(h)(ix) is provided as Appendix A.

### X. Grid Upgrade Costs<sup>6</sup>

The total estimated Network Upgrades for the two Tranche 3 projects that executed PPAs during the 2022 reporting year is shown in the table below. The Company will continue to refine and update Network Upgrade cost estimates through the Facilities Study phase in the Tranche 3 RSC. =See DEC's 2019 and 2020 CPRE compliance reports for grid Upgrades cost information regarding Tranches 1 and 2.

Bid Number	Total Estimated Network Upgrades – Phase 1 RSC Report 7/28/2022 (\$M)
78-01	2.511
78-02	2.012

<sup>5</sup> *Order Determining Adjusted CPRE Program Procurement Target, Requiring Tranche 3 CPRE Program Procurement Solicitation, Approving Resource Solicitation Cluster, and Requiring Responses to Commission Questions Regarding Pro Forma PPA*, at 7-8, Docket Nos. E-2, Subs 1159 and 1297 and E-7, Subs 1156 and 1268 (Nov. 1, 2022).

<sup>6</sup> *Order Modifying and Approving Joint CPRE Program*, Docket Nos. E-7, Sub 1156, and E-2, Sub 1159 (Feb. 21, 2018) (directing that “[i]n addition to requiring Duke to address grid upgrade costs, as necessary, in its explanation of the elimination of proposals, Duke shall report on grid upgrade costs on a per-proposal basis in its future CPRE compliance reports”).





TO: Angela Tabor  
FROM: Harold T. Judd, Independent Administrator  
DATE: December 19, 2022  
RE: CPRE 2022 Process Certification

In January 2018 Accion Group, LLC, incorporated in the State of New Hampshire, was approved by the North Carolina Utility Commission ("NCUC") to serve as Independent Administrator ("IA") for the Competitive Procurement of Renewable Energy Program ("CPRE"). CPRE was divided into annual "Tranches" as independent solicitations with Tranche 1 being released in 2018 and completed in July 2019. Tranche 2 was released in August 2019 and completed October 15, 2020.

The IA participated in the preparation of Tranche 1, Tranche 2, and the Tranche 3 CPRE documents and provided the Website through which all information about the CPRE Program was available to interested parties.

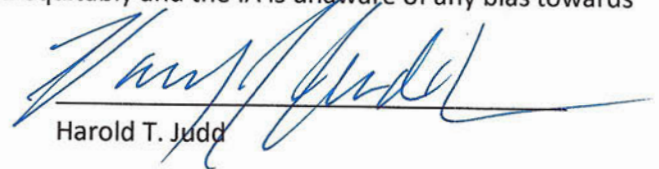
Tranche 3 was released on September 9, 2021. Tranche 3 was designed to avoid delay between the identification of proposals which were eligible to receive an offer of a Purchase Power Agreement ("PPA") and the final determination of system impact costs, by allowing Market Participants to execute a PPA and have it cancelled after the system impact costs were determined, many months later. We await that final reconciliation.

For Tranche 3, the IA conducted four (4) Stakeholder sessions required by the NCUC between September 17 and November 4, 2021. All communications with Market Participants ("MP") were conducted through the IA Website and all Proposals were received on the IA Website.

The IA was responsible for the evaluation of all Proposals (referred to in the CPRE Program as "Step 1") and for reporting a preliminary ranking of Proposals to the Duke Transmission Evaluation Team for determination of what, if any, system improvements would be required to accommodate the associated projects (referred to as the "Step 2" process). The Proposal date for Tranche 3 was February 3, 2022.

The Website remained the host of all CPRE activities through the Step 2 evaluation process and until December 31, 2022.

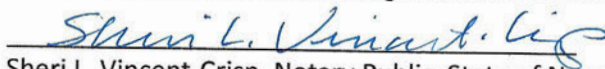
All Proposals were evaluated using the same criteria and evaluation modeling, consistent with the CPRE Program Methodology. All Proposals and all participants were treated equitably and the IA is unaware of any bias towards or against any participant.



Harold T. Judd

President, Accion Group, LLC  
The State of New Hampshire  
County of Merrimack

This instrument was acknowledged before me on the 19 day of December, 2022 by Harold T. Judd.



Sheri L. Vincent-Crisp, Notary Public, State of New Hampshire  
My Commission expires April 7, 2026



# Rebuttal Panel Exhibit 1

## Power Purchase Agreement with Wilkes Solar, LLC

Duke Energy Carolinas, LLC  
Docket No. E-7, Sub 1281

**CONFIDENTIAL**

**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2  
MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**



**RENEWABLE POWER PURCHASE AGREEMENT**  
**(CPRE Tranche 2)**

**Buyer:** Duke Energy Carolinas, LLC

Overnight Mail: 400 South Tryon Street  
Mail Code: ST 26A  
Charlotte, North Carolina 28202  
Regular Mail: PO Box 1006  
Mail Code: ST 26A  
Charlotte, NC 28201-1006  
Attn.: Contract Administrator  
[DERContracts@duke-energy.com](mailto:DERContracts@duke-energy.com)

*With Additional Notices of Events of Default  
Or Potential Event of Default to:*

Overnight Mail: 550 S. Tryon St.  
Charlotte, North Carolina 28202  
Regular Mail: P.O. Box 1321, DEC45  
Charlotte, North Carolina 28201-1321  
Attn.: VP Commercial Legal Support

**Seller:** Wilkes Solar, LLC  
c/o D. E. Shaw & Co., L.P.  
1166 Avenue of the Americas, 9th Floor  
New York, NY 10036  
Attn: General Counsel  
Tel: [REDACTED]  
[REDACTED]

This Renewable Power Purchase Agreement, including Exhibits 1-11 hereto, which are incorporated into and made part hereof (collectively, the "Agreement"), is made and entered into by and between Wilkes Solar, LLC (the "Seller") and Duke Energy Carolinas, LLC, LLC (the "Buyer") under the terms specified herein. Buyer and Seller may be referred to individually as a "Party" and collectively as the "Parties." Notwithstanding anything set forth herein, neither this Agreement nor any transaction contemplated hereunder will be effective **unless and until both Parties have executed** and delivered this Agreement, and the later of such date shall be the "Effective Date" of this Agreement.

NOW THEREFORE, IN CONSIDERATION OF THE PROMISES AND MUTUAL COVENANTS SET FORTH HEREIN, FOR GOOD AND VALUABLE CONSIDERATION, THE SUFFICIENCY OF WHICH IS ACKNOWLEDGED, AND INTENDING TO BE BOUND HEREBY, THE PARTIES AGREE AS FOLLOWS:

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY  
MAY 28 2023

1. **Definitions**

Unless defined in the body of the Agreement, any capitalized term herein shall have the meaning set forth below:

- 1.1. "AAA" is defined in Section 23.2.1.
- 1.2. "Abandon(s)" means the relinquishment of control or possession of the Facility and/or cessation of operations of or at the Facility by Seller. "Abandon" excludes cessation of generation to comply with Prudent Utility Practices, Permitted Excuse to Perform, or due to maintenance or repair of the Facility (including Maintenance Outages and Planned Outage), provided that such maintenance or repair activities are being performed in a Commercially Reasonable Manner and with Prudent Utility Practice.
- 1.3. "Account" means a Party's electronic account with the Tracking System.
- 1.4. "Act" means the North Carolina Renewable Energy and Energy Efficiency Portfolio Standard, N.C. Gen. Stat. 62-133.8, including all rules promulgated by the Commission associated therewith, as each may be amended or modified from time-to-time, and any successor renewable energy standards, statutes, regulations, or rules.
- 1.5. "Affiliate" means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with "control" meaning the possession, directly or indirectly, of the power to direct management and policies, or otherwise have control of an entity, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding the foregoing, (i) with respect to Buyer the term Affiliate does not include Seller or any subsidiaries or affiliates whose activities are subject to the oversight or regulation of any state commission(s) and/or federal energy regulatory commission, and (ii) with respect to Seller the term Affiliate does not include Buyer.
- 1.6. "Agreement" is defined in the introductory paragraph hereof.
- 1.7. "Annual Payment Threshold" is defined in Section 8.9.
- 1.8. "Assignment" is defined in Section 24.1.
- 1.9. "Back-Up Tapes" is defined in Section 16.3.
- 1.10. "Bankrupt" means, with respect to a Party or any Affiliate of such Party that is currently acting as its credit support provider, that such Party or Affiliate acting as credit support provider: (a) makes an assignment or any general arrangement for the benefit of creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors; (c) has such a petition filed against it as debtor and such petition is not stayed, withdrawn, or dismissed within sixty (60) Business Days of such filing; (d) seeks or has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; (e) has a distress, execution, attachment, sequestration or other legal process levied, or enforced on or against all or substantially all of its assets; (f) is unable to pay its debts as they fall due or admits in writing of its inability to pay its debts generally as they become due; and/or (g) otherwise becomes bankrupt or insolvent (however evidenced).
- 1.11. "Billing Meter" is defined in Section 10.
- 1.12. "Billing Period" is defined in Section 11.
- 1.13. "Business Day" means any day on which the Federal Reserve member banks in New York City are open for business. A Business Day shall run from 8:00 a.m. to 5:00 p.m. Eastern

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

Prevailing Time.

- 1.14. "Buyer" shall have the meaning specified in the first paragraph of this Agreement
- 1.15. "Capacity" means and includes the electric generation capability and ability of the Facility and all associated characteristics and attributes, inclusive of the ability to contribute to peak system demands, as well as reserve requirements.
- 1.16. "Certificate" means the electronic instrument created and issued by the Tracking System.
- 1.17. "Change of Control" means a transaction or series of related transactions (by way of merger, consolidation, sale of stock or assets, or otherwise) with any person, entity or "group" (within the meaning of Section 13(d)(3) of the U.S. Securities Exchange Act of 1934) of persons pursuant to which such person, entity, or group would directly or indirectly acquire (i) 50% or more of the voting interests in Seller or (ii) substantially all of the assets of Seller. Notwithstanding the foregoing, a Change of Control shall not be deemed to occur based on an internal reorganization where the ultimate parent of the Seller (as of the Effective Date) directly or indirectly retains 50% or more of the voting interests in Seller or substantially all of its assets and provided that Seller has provided Buyer no less than thirty (30) days prior written notice of such reorganization.
- 1.18. "Commercial Operation" means that the Facility is operational and placed into service such that all of the following have occurred and remain simultaneously true and accurate: (a) the Facility has been constructed, tested, and is fully capable of operating for the purpose of generating the Product and delivering as required herein; (b) the Facility has received written authorization from the Transmission Provider for interconnection and synchronization of the Facility with the System; (c) the Facility has obtained all necessary Permits and Required Approvals; and (d) the Facility has met all requirements necessary for safely and reliably generating the Product and delivering the Product to Buyer in accordance with Prudent Utility Practice.
- 1.19. "Commercial Operation Date" means the date on which the Facility achieves or achieved Commercial Operation.
- 1.20. "Commercially Reasonable Manner" or "Commercially Reasonable" means, with respect to a given goal or requirement, the manner, efforts and resources a reasonable person in the position of the promisor would use, in the exercise of its reasonable business discretion and industry practice, so as to achieve that goal or requirement, which in no event shall be less than the level of efforts and resources standard in the industry for comparable companies with respect to comparable products. Factors used to determine whether a goal or requirement has been performed in a "Commercially Reasonable Manner" may include, but shall not be limited to, any specific factors or considerations identified in the Agreement as relevant to such goal or requirement.
- 1.21. "Commission" means the North Carolina Utilities Commission or any successor thereto.
- 1.22. "Contract Price" is defined in Section 4.5.
- 1.23. "Contract Quantity" is defined in Section 4.3.
- 1.24. "Control Compensation" is defined in Section 8.9.1.
- 1.25. "Control Equipment" is defined in Section 8.7.
- 1.26. "Control Instruction" means any System Operator Instruction to dispatch, operate, and/or control the Facility in the same manner and/or for any reason as the System Operator may, in its sole discretion, dispatch, operate, and/or control Buyer's own generating resources and power purchase arrangements used to provide service to Buyer's native load customers.

OFFICIAL COPY

JULY 28 2023

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

- 1.27. "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions, and other similar third party transaction costs and expenses, and other costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the terminated transaction(s), and all reasonable attorneys' fees and other legal expenses incurred by the Non-Defaulting Party in connection with the termination.
- 1.28. "CPRE Program" means the Competitive Procurement of Renewable Energy Program instituted by Buyer pursuant to N.C. Gen. Stat. Section 62-110.8
- 1.29. "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as a corporate or issuer rating.
- 1.30. "Creditworthy" or "Creditworthiness" - means (i) a Person with an investment grade Credit Rating from two (2) of the three (3) Rating Agencies such that its senior unsecured debt (or issuer rating if such Person has no senior unsecured debt rating) is rated at least (A) BBB- by S&P, if rated by S&P, (B) Baa3 by Moody's, if rated by Moody's, and (C) BBB- by Fitch, if rated by Fitch, respectively, or (ii) has satisfactory and verifiable creditworthiness determined in Buyer's reasonable discretion.
- 1.31. "Defaulting Party" is defined in Section 19.
- 1.32. "Delivery Period" is defined in Section 4.1.
- 1.33. "Dispatch Down" means any reduction or cessation of Energy generation by the Facility in response to an order or instruction by or direct action taken by the System Operator.
- 1.34. "Disputes" is defined in Section 23.1.
- 1.35. "Early Termination Date" is defined in Section 20.1.
- 1.36. "Delivery Point" means the point of interconnection between the Facility and the System on the high side (Buyer or Transmission Provider side) of the System.
- 1.37. "Effective Date" is defined in the introductory paragraph hereto.
- 1.38. "Emergency Condition" means, no matter the cause: (a) any urgent, abnormal, operationally unstable, dangerous, or public safety condition that is existing on the System or any portion thereof; (b) any urgent, abnormal, operationally unstable, dangerous, and/or public safety condition that is likely to result in any of the following: (i) loss or damage to the Facility or the System, (ii) disruption of generation by the Facility, (iii) disruption of service or stability on, to or of the System, or (iv) condition that may result in endangerment of human life or public safety; or (c) any circumstance that requires action by the System Operator to comply with standing NERC regulations or standards, including without limitation actions to respond to, prevent, limit, or manage loss or damage to the Facility, loss or damage to the System, disruption of generation by the Facility, disruption of service on the System, an abnormal condition on the System, and/or endangerment to human life or safety. An Emergency Condition will be an excuse to Seller's performance only if such condition is not due to Seller's negligence, willful misconduct, and/or Seller's failure to perform as required under this Agreement.
- 1.39. "Emergency Condition Instruction" means any System Operator Instruction relating to, due to, in response to, or to address an Emergency Condition.
- 1.40. "Energy" means three-phase, 60-cycle alternating current electric power and energy, expressed in either kWh or MWh, as the case may be.

OFFICIAL COPY

NOV 28 2023

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

- 1.41. "EPT" or "Eastern Prevailing Time" means the time in effect in the Eastern Time Zone of the United States of America, whether it be Eastern Standard Time or Eastern Daylight Savings Time.
- 1.42. "Estimation Methodology" is defined in Section 8.9.3.
- 1.43. "Event of Default" is defined in Section 19.
- 1.44. "Expected Annual Output" means the quantity of Energy identified in Exhibit 5 for each calendar year during the Delivery Period of the Facility.
- 1.45. "Facility" means Seller's solar electric generating facility located in ██████ County, ██████ ████████████████████, as further identified in Exhibit 4.
- 1.46. "FERC" means the Federal Energy Regulatory Commission or any successor thereto.
- 1.47. "First COD Date" is defined in Section 20.5.
- 1.48. "Fitch" - means Fitch Ratings Ltd. or its successor.
- 1.49. "Force Majeure" is defined in Section 14.1.
- 1.50. "Force Majeure Instruction" means any System Operator Instruction relating to, due to, in response to, or to address a Force Majeure.
- 1.51. "GAAP" is defined in Section 9.1.
- 1.52. "Gains" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic benefit to the Non-Defaulting Party, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term, determined in a Commercially Reasonable Manner. Factors used in determining the economic benefit may include, without limitation, reference to information available either internally or supplied by third parties, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, or other relevant market data, comparable transactions, settlement prices or market prices for comparable transactions, forward price curves, production by comparable facilities, expected and historical production, all calculated for the remaining Term of the Agreement for the Product (inclusive of all components).
- 1.53. "Governmental Authority" means any federal, state or local government, legislative body, court of competent jurisdiction, administrative agency or commission or other governmental or regulatory authority or instrumentality or authorized arbitral body, including, without limitation, the Commission.
- 1.54. "Guarantor" means any Creditworthy Person having the authority and agreeing to guarantee a Party's obligations under this Agreement and is otherwise acceptable to Buyer in its reasonable discretion.
- 1.55. "Guaranty" means a parent company guaranty, in substantially the form set forth in Exhibit 6 attached hereto, provided by a Guarantor in favor of Buyer guaranteeing the obligations of Seller under this Agreement.
- 1.56. "Interconnection Agreement" means the separate interconnection and transmission service agreement (or agreements) to be negotiated and executed between Seller and the Transmission Provider concerning the interconnection of the Facility with the System, upgrade to the System to accommodate
- 1.57. the Facility's interconnection with and operation in parallel with the System, and the requirements for transmission service.
- 1.58. "Interconnection Facilities and System Upgrades In-Service Date" shall be the later of the Requested Upgraded In-Service Date and Requested Facilities In-Service Date as specified in

OFFICIAL COPY

July 28 2023

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

Appendix 4 (Milestones) of the Interconnection Agreement).

- 1.59. "Interconnection Instruction" means any order, action, signal, requirement, demand, and/or direction, howsoever provided or implemented by the System Operator due to, in response to, or to address any condition relating to any service and/or obligation occurring under the Interconnection Agreement.
- 1.60. "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%); and, (b) the maximum rate permitted by applicable law.
- 1.61. "kW" means kilowatt.
- 1.62. "kWh" means kilowatt-hour.
- 1.63. "Letter(s) of Credit" means one or more irrevocable standby letters of credit substantially in the form of Exhibit 7 attached hereto (with only such changes as the issuing bank may reasonably require and as may be acceptable to Buyer in its reasonable discretion), issued by a U.S. commercial bank or other financial institution reasonably acceptable to Buyer, which is not an Affiliate of Seller, which has and maintains a Credit Rating of at least A- from S&P and A3 from Moody's, for the Security Period, permitting Buyer to draw the entire amount if either such amount is owed or such Letter of Credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date.
- 1.64. "Lien" means any mortgage, deed of trust, lien, pledge, charge, claim, security interest, easement, covenant, right of way, restriction, equity, or encumbrance of any nature whatsoever.
- 1.65. "Losses" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to the Non-Defaulting Party, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term, determined in a Commercially Reasonable Manner. Factors used in determining the economic loss or loss of economic benefit may include, without limitation, reference to information available either internally or supplied by third parties, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, or other relevant market data, comparable transactions, settlement prices or market prices for comparable transactions, forward price curves, production by comparable facilities, expected and historical production, all calculated for the remaining Term of the Agreement for the Product (inclusive of all components).
- 1.66. "Maintenance Outage" means the temporary operational removal of the Facility from service to perform work on specific components of the Facility, at a time when the Facility must be removed from service before the next Planned Outage in the interest of safety or the prevention of injury or damage to or undue wear and tear on the Facility or any component thereof.
- 1.67. "Milestone Deadline" means the deadline for Seller to achieve each Operational Milestone as set forth in Exhibit 3.
- 1.68. "Moody's" means Moody's Investors Service, Inc. or any successor-rating agency thereto.
- 1.69. "MW" means megawatt.
- 1.70. "MWh" means megawatt-hour.
- 1.71. "Nameplate Capacity Rating" means the maximum generating capability of the Facility as measured at the Delivery Point (AC) as set forth in Exhibit 4.

OFFICIAL COPY

MAY 28 2023



**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

- 1.72. "NERC" means the North American Electric Reliability Corporation. For purposes of this Agreement, NERC includes any applicable regional entity with delegated authority from NERC, such as the SERC Reliability Corporation (SERC).
- 1.73. "New Renewable Energy Facility" is defined in the Act.
- 1.74. "Non-Defaulting Party" is defined in Section 20.
- 1.75. "Operational Milestone" means each operational event and result that Seller must achieve as set forth in the Operational Milestone Schedule, with such supporting documentation as may be requested by Buyer from time-to-time in its Commercially Reasonable discretion.
- 1.76. "Operational Milestone Schedule" means the schedule established in Exhibit 3 setting forth each Operational Milestone that Seller must fully complete by the Milestone Deadline.
- 1.77. "Party" or "Parties" is defined in the introductory paragraph hereto.
- 1.78. "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit or a Guaranty that is acceptable to Buyer in its sole discretion, in each case that meets the requirements set forth in this Agreement (including, without limitation, Section 5) provided by Seller to Buyer for the benefit of Buyer pursuant to this Agreement, as credit support, adequate assurances, and security to secure Seller's performance under this Agreement.
- 1.79. "Permit" means any permit, license, registration, filing, certificate of occupancy, certificate of public convenience and necessity, approval, variance or any authorization from or by any Governmental Authority and pursuant to any Requirements of Law.
- 1.80. "Permitted Excuse to Perform" means that Seller's obligation to generate, deliver, and sell and Buyer's obligation to receive and purchase is excused and no damages will be payable by either Party to the other Party, if and to the extent such failure is due to any of the following occurrences: (a) an Emergency Condition Instruction; (b) a Control Instruction; (c) an Interconnection Instruction; or, (d) a Force Majeure Instruction.
- 1.81. "Person" means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or Governmental Authority.
- 1.82. "Planned Outage" means the temporary operational removal of the Facility from service to perform work on specific components in accordance with a pre-planned operations schedule, such as for a planned annual overhaul, inspections, or testing of specific equipment of the Facility.
- 1.83. "Product" means the Capacity of the Facility, Energy generated by the Facility, and the RECs associated with the Energy generated by the Facility.
- 1.84. "Protected Information" is defined in Section 16.1
- 1.85. "Prudent Utility Practice" means those practices, methods, equipment, specifications, standards of safety, and performance, as the same may change from time to time, as are commonly used in the construction, interconnection, operation, and maintenance of electric power facilities similar to the Facility, inclusive of delivery, transmission, and generation facilities and ancillaries, which in the exercise of good judgment and in light of the facts known at the time of the decision being made and activity being performed are considered: (i) good, safe, and prudent practices; (ii) are in accordance with generally accepted standards of safety, performance, dependability, efficiency, and economy in the United States; (iii) are in accordance with generally accepted standards of professional care, skill, diligence, and competence in the United States; and, (iv) are in compliance with applicable regulatory requirements and/or reliability standards. Prudent Utility Practices are not intended to be

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

limited to the optimum practices, methods or acts to the exclusion of others, but rather are intended to include acceptable practices, methods and acts generally accepted in the energy generation and utility industry.

- 1.86. "PSC" means the Public Service Commission of South Carolina, or successor thereto.
- 1.87. "PURPA" means the Public Utility Regulatory Policies Act of 1978, as amended, and as such may be amended from time to time.
- 1.88. "PURPA Fuel Requirements" means the requirements set forth in 18 C.F.R. § 292.204 OR 205, as may be amended and/or restated.
- 1.89. "Qualifying Facility" means an electric generating facility that has been registered and certified by FERC as generator that qualifies for and meets the requirements set forth in PURPA, as it may be amended, and associated rules, regulations, orders.
- 1.90. "Rating Agency" or "Rating Agencies" - means the rating entities of S&P, Moody's or Fitch.
- 1.91. "REA Reporting Rights" means the right of the reporting person or entity to report that it owns the Renewable Energy Attributes to any Governmental Authority or other party under any compliance, voluntary, trading, or reporting program, public or private and to any person, customers, or potential customers for, including without limitation, purposes of compliance, marketing, publicity, advertising, or otherwise.
- 1.92. "Regulatory Event" is defined in Section 15.1.
- 1.93. "Renewable Energy Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation of Energy by the Facility, the use of such Energy, or such Energy's displacement of conventional Energy generation, including any and all renewable or environmental characteristics and benefits of the Energy generated by the Facility. Renewable Energy Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs), ozone depleting substances, ozone, and non-methane volatile organic compounds that have been or may be determined by the United Nations Intergovernmental Panel on Climate Change (UNIPCC), by law, or otherwise by science or in the voluntary markets to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) any credit, allowance or instrument issued or issuable pursuant to a state implementation plan under regulations promulgated by the Environmental Protection Agency under the Clean Air Act and (4) the reporting rights to any of the foregoing, including, without limitation, REA Reporting Rights and any and all renewable and/or environmental characteristics and benefits of the Energy generated by the Facility. Renewable Energy Attributes do not include: (i) any Energy or Capacity of the Facility; (ii) investment tax credits, production tax credits, or other tax credits, cash grants in lieu of tax credits associated with the construction, ownership or operation of the Facility, or (iii) any adverse wildlife or environmental impacts.
- 1.94. "Renewable Energy Certificate(s)" or "REC(s)" means and, notwithstanding anything to the contrary set forth in the Act includes, all of the Renewable Energy Attributes and REA Reporting Rights associated with one (1) megawatt hour (MWh) of Energy generated by the Facility. The REC represents all title to and claim over all of the Renewable Energy Attributes and REA Reporting Rights associated with in any manner with the Energy generated by the Facility.
- 1.95. "Renewable Energy Resource" is defined in the Act.
- 1.96. "Required Approval" is defined in Section 6.

**CONFIDENTIAL**

**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2  
MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

- 1.97. "Requirements of Law" means any applicable federal, state, and local law, statute, regulation, rule, code, ordinance, resolution, order, writ, judgment, decree or Permit enacted, adopted, issued or promulgated by any Governmental Authority, including, without limitation, (i) the Act, (ii) those pertaining to the creation and delivery of the Product, (iii) those pertaining to electrical, building, zoning, occupational safety, health requirements or to pollution or protection of the environment, and (iv) principles of common law under which a person may be held liable for the release or discharge of any hazardous substance into the environment or any other environmental damage.
- 1.98. "Second COD Date" is defined in Section 20.5.1.
- 1.99. "Security Period" is defined in Section 5.6.
- 1.100. "Seller" shall have the meaning specified in the first paragraph of this Agreement.
- 1.101. "S&P" means Standard & Poor's Ratings Services, Inc. or any successor-rating agency thereto.
- 1.102. "SISC Credit" is defined in Section 4.10.
- 1.103. "SISC Meter" is defined in Exhibit 11.
- 1.104. "Station Power" means the Energy generated by the Facility and, whether metered or unmetered, used on-site to supply the Facility's auxiliary load and parasitic load and/or for powering the electric generation equipment. Station Power shall not include any Energy generated by the Facility and stored for later sale or delivery to the Buyer under this Agreement.
- 1.105. "Storage Resource" shall have the meaning specified in Section 8.11.
- 1.106. "System" means the transmission, distribution, and generation facilities that are owned, directed, managed, interconnected, controlled, or operated by Buyer and/or the Transmission Provider, including, without limitation, facilities to provide retail or wholesale service, substations, circuits, reinforcements, meters, extensions, or equipment associated with or connected to any interconnected facility or customer.
- 1.107. "System Operator" means the operators of the System that have the responsibilities for ensuring that the System as a whole or any part thereof operates safely, efficiently, and reliably, including without limitation the responsibilities to comply with any applicable operational or reliability requirements, the responsibilities to balance generation supply with customer load, the responsibilities to comply with any other regulatory obligation including least cost dispatch and System optimization, and the responsibilities to provide dispatch and curtailment instructions to generators supplying Energy to the System. The System Operator includes any person or entity delivering any such instructions or signals to Seller or taking any action relating to, due to, in response to, or to address such instructions.
- 1.108. "System Operator Instruction" for purposes of this Agreement means any order, action, signal, requirement, demand, dispatch decision, and/or direction, howsoever provided or implemented by the System Operator to operate, dispatch, control, manage, or otherwise operate the System in accordance with any applicable obligation and/or regulatory requirement, including, without limitation, those undertaken and implemented by the System Operator, in its sole discretion based on relevant System factors and dispatch considerations, including any and all operating characteristics, maintenance requirements, operational limitations, operational or dispatch planning, reliability (including standing NERC regulations or standards), safety, least cost dispatch, constraints, discharge, emissions limitations, compliance requirements, communications, resource ramp-up and ramp-down constraints and implementation, and any other System considerations, which may include, without limitation, any such instruction to: (i) interconnect, disconnect, integrate, operate in parallel, or

OFFICIAL COPY

JULY 28 2023

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

synchronize with the System, (ii) increase, reduce, or cease generation output to comply with standing NERC regulations or standards or any other regulatory obligation applicable to the dispatch or operation of the System; (iii) respond to any transmission, distribution, or delivery limitations or interruptions; (iv) perform or cease performing any activity so as to operate in accordance with System limitations, including, without limitation, operational constraints that would require the System Operator to force offline or reduce generation output from reliability generators to accommodate generation by the Facility; and, (v) suspend, interrupt, dispatch, increase or decrease any operational and/or generation activity occurring on or into the System pursuant to Control Instructions, Emergency Condition Instructions, and Force Majeure Instructions.

- 1.109. For purposes of this Agreement, a System Operator Instruction shall not include any Interconnection Instruction.
- 1.110. "Taxes" means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, together with any interest and penalties thereon.
- 1.111. "Term" is defined in Section 3.1.
- 1.112. "Testing Period" is defined in Section 4.4.
- 1.113. "Tracking System" means the verification system that accounts for the generation, sale, purchase, and/or retirement of renewable energy and credits, which will be the North Carolina Renewable Energy Tracking System, administered by the Commission pursuant to the Act.
- 1.114. "Transmission Provider" means the entity or division within Duke Energy Carolinas, LLC that will provide interconnection and/or electric distribution or transmission service to enable delivery of Energy generated by the Facility to Buyer, and any such entity or division will include any successor or replacement thereto, including without limitation, a consolidated control area or a regional transmission organization.
- 1.115. "Vintage" means the calendar year when the MWh of Energy is generated by the Facility, and therefore, when the REC associated with that MWh of Energy is generated by the Facility.

## 2. **Interpretation**

- 2.1. **Intent**. Unless a different intention clearly appears, the following terms and phrases shall be interpreted as follows: (a) the singular includes the plural and vice versa; (b) the reference to any Person includes such Person's legal and/or permitted successors and assignees, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually; (c) the reference to any gender includes the other gender and the neuter; (d) reference to any document, including this Agreement, refers to such document as it may be amended, amended and restated, modified, replaced or superseded from time to time in accordance with its terms, or any successor document(s) thereto; (e) reference to any section or exhibit means such section or exhibit of this Agreement unless otherwise indicated; (f) "hereunder", "hereof", "hereto", "herein", and words of similar import shall be deemed references to this Agreement as a whole and not to any particular section or other provision; (g) "including" (and with correlative meaning "include"), means "including without limitation" and when following any statement or term, is not to be construed as limiting the general statement or term to the specific items or matters set forth or to similar items or matters, but rather as permitting the general statement or term to refer to all other items or matters that could reasonably fall within its broadest possible scope; (h) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including"; (i) reference to any Requirements of Law refers to

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

such Requirements of Law as it may be amended, modified, replaced or superseded from time to time, or any successor Requirements of Law thereto; and (j) all exhibits and attachments to this Agreement are hereby incorporated into this Agreement. Other terms used, but not defined in Section 1 or in the body of the Agreement, shall have meanings as commonly used in the English language and, where applicable, in the electric utility industry. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

**3. Term and Termination**

- 3.1. Term. This Agreement shall be effective as of the Effective Date and shall remain in full force and effect until the twentieth (20<sup>th</sup>) anniversary of the Commercial Operation Date (“Term”), unless terminated earlier pursuant to the provisions of this Agreement.
- 3.2. Termination and Survival. This Agreement may be terminated earlier than the expiration of the Term as provided for herein. If this Agreement is terminated earlier than the expiration of the Term for any reason, including, without limitation, whether by its terms, mutual agreement, early termination, and/or event of default, such termination shall not relieve any Party of any obligation accrued or accruing prior to the effectiveness of such termination. Furthermore, any obligations, limitations, exclusions and duties which by their nature or the express terms of this Agreement extend beyond the expiration or termination of this Agreement, including, without limitation, provisions relating to compliance requirements, accounting, billing, billing adjustments, limitations or liabilities, dispute resolution, Performance Assurance, and any other provisions necessary to interpret or enforce the respective rights and obligations of the Parties hereunder, shall survive the expiration or early termination of this Agreement.

**4. Purchase and Sale Obligations**

- 4.1. Delivery Period. The “Delivery Period” for the Product to be generated by the Facility and sold by Seller to Buyer shall be for all hours starting at 12:00:01 AM EPT on the Commercial Operation Date through the end of the Term, unless this Agreement is terminated earlier pursuant to its terms and conditions.
- 4.2. Vintage. The RECs shall be of the same Vintage as the MWh of Energy generated by the Facility, and the RECs shall arise due to the generation of Energy by the Facility.
- 4.3. Contract Quantity. The “Contract Quantity” will be one hundred percent (100%) of the Capacity, output of Energy (including stored Energy), and associated RECs produced by the Facility, less that associated with Station Power.
  - 4.3.1. Seller shall sell and deliver the Contract Quantity of the Product exclusively and solely to Buyer. Seller’s failure to generate, sell, and deliver the Contract Quantity of the Product to Buyer will be excused with no damages payable to Buyer solely to the extent such failure is due to a Permitted Excuse to Perform.
  - 4.3.2. Except as set forth in Section 8.9.1, Buyer shall have no obligation to receive, purchase, pay for, or pay any damages associated with not receiving the Product due to a Permitted Excuse to Perform. Buyer shall have full and exclusive rights to the Product (inclusive of all components), and will be entitled to full and exclusive use of the Product (inclusive of all components) for its purposes and in its sole and exclusive discretion.
  - 4.3.3. The estimated monthly and annual Energy production of the Facility during the Delivery Period is set forth in Exhibit 1 hereto.
- 4.4. Testing Period. Prior to the Facility’s Commercial Operation Date Seller may test the capability

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

of the Facility to operate and generate the Product in accordance with this Agreement (such operational period, the "Testing Period"). Seller shall provide Buyer with written notice of a date certain on which Seller desires to initiate the Testing Period. After the Facility has achieved the Commercial Operation Date, the Buyer shall, expressly subject to the limitations set forth below, purchase the Product produced by the Facility during the Testing Period at the applicable Contract Price set forth in Exhibit 2, but expressly subject to the Buyer fully satisfying the following conditions: (i) the Testing Period shall not exceed sixty (60) days; (ii) the RECs shall meet all of the requirements set forth in this Agreement; and, (iii) Seller shall certify in writing to Buyer, and to Buyer's satisfaction, together with supporting details, that each unit of the Product (including the associated REC) to be sold and purchased during the Testing Period was generated in compliance with the requirements of this Agreement. To the extent Seller is unable to satisfy the foregoing requirements; the Buyer shall purchase the Energy generated by the Facility at the rate for the Energy-only component of the Product set forth in Exhibit 2.

- 4.5. Contract Price. The "Contract Price" for the Product shall be the price corresponding to the relevant portion of the Delivery Period as set forth in Exhibit 2.
- 4.6. Energy Delivery. Seller shall deliver the Contract Quantity of the Energy component of Product at the Delivery Point, and Seller shall be fully responsible for all costs, charges, expenses, and requirements associated with delivering the Energy to the Delivery Point. Except as set forth in Section 8.9.1, Buyer will have no obligation to pay for any Energy not delivered to the Delivery Point.
- 4.7. REC Delivery. Seller shall deliver to Buyer's Account the Contract Quantity of the REC component of the Product in the form of Certificates. Seller agrees that in addition to representing the attributes and characteristics under the Tracking System's operating rules and requirements, the Certificate will also represent the REC, Renewable Energy Attributes, and REA Reporting Rights as defined in this Agreement. No later than fourteen (14) calendar days after the meter data is delivered to Seller's Account, Seller shall review the meter data and complete all acts necessary to create the Certificates in the Tracking System and shall transfer the Certificates into Buyer's Account. Each Party shall establish an Account with the Tracking System for the creation, transfer, and/or receipt of the Certificates. Seller agrees to establish the Account for the Facility no later than fifteen (15) Business Days prior to the Commercial Operation Date.
- 4.8. Payment for Product. Buyer agrees to pay Seller for the Product generated and delivered in accordance with this Agreement by Seller to Buyer in accordance with the pricing set forth in Exhibit 2. Seller agrees that to the extent Buyer has already paid for the Product prior to Seller transferring the REC component of the Product in the manner noted above, Buyer shall have ownership of the REC component of the Product, and Seller shall hold the same in trust for Buyer until the transfer is completed as provided for herein. Buyer shall not be obligated to pay for any RECs for which the Certificates are not delivered to Buyer's Account.
- 4.9. Transfer. In no event shall Seller procure or have the right to procure the Product or any component of the Product from any source other than the Facility for sale and delivery pursuant to this Agreement. Title to and risk of loss to the Product sold and delivered hereunder shall transfer from Seller to Buyer, with respect to Capacity and Energy after completion of delivery at the Delivery Point and, with respect to RECs, after completion of transfer of the REC component of the Product to Buyer. Seller shall be responsible for any costs and charges imposed on or associated with the Product and the delivery of the Product at the Delivery Point and upon completion of transfer of the REC component. Buyer shall be responsible for any costs or charges imposed on or associated with the Product after the Delivery Point and after completion of transfer of the REC.



**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

4.10. SISC Credit. Seller shall be entitled to receive a solar integration service charge credit up to \$1.10/MWh (the "SISC Credit") for each MWh delivered during the Billing Period in which the Facility has reduced the volatility of its output as determined in accordance with Exhibit 11.

**5. Credit and Related Provisions.**

5.1. Pre-COD Performance Assurance Requirements. Subject to Section 5.3 below, no later than five (5) business days after the Effective Date, Seller shall provide and deliver to Buyer Performance Assurance in the amount of [REDACTED], as such Performance Assurance may be adjusted pursuant to Section 20.5.1.

5.2. Post-COD Performance Assurance. Subject to Section 5.3 below, after the Facility achieves Commercial Operation, Seller shall provide Buyer with Performance Assurance in the amount set forth in the below table corresponding to the applicable period during the Term of this Agreement. Post COD Performance Assurance shall be calculated by Buyer in a Commercially Reasonable Manner and shall equal the greater of (i) 2% x total projected revenue under the Agreement during the Term and (ii) the estimated year end overpayment balance for each calendar year of the Term taking into account the contract price relative to Buyer's twenty (20) year projected avoided cost calculated as of the Effective Date. Seller may request and Buyer may, subject to Section 5.2, adjust the amount of such Performance Assurance within fifteen (15) Business Days of Seller's written request to coincide with the amount set forth in the below table. Seller's failure to provide the Performance Assurance and/or to maintain the Performance Assurance in the required amount and in full force and effect throughout the Term of this Agreement will be an Event of Default under this Agreement.

Performance Assurance

Year 1		[REDACTED]
Year 2		[REDACTED]
Year 3		[REDACTED]
Year 4		[REDACTED]
Year 5		[REDACTED]
Year 6		[REDACTED]
Year 7		[REDACTED]
Year 8		[REDACTED]
Year 9		[REDACTED]
Year 10		[REDACTED]
Year 11		[REDACTED]
Year 12		[REDACTED]
Year 13		[REDACTED]
Year 14		[REDACTED]
Year 15		[REDACTED]
Year 16		[REDACTED]
Year 17		[REDACTED]
Year 18		[REDACTED]
Year 19		[REDACTED]
Year 20		[REDACTED]
Year 21		[REDACTED]

5.3. Unsecured Credit For Creditworthy Sellers. If Seller is Creditworthy and is not in default of

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

any provisions under this Agreement the Seller shall be excused from the requirement to post Performance Assurance as required under Sections 5.1 and 5.2 above, as long as it remains Creditworthy. If at any time during the Term of this Agreement, Seller, or its Guarantor, ceases to be Creditworthy due to a change in its Credit Rating, then Seller will notify Buyer of such change in its credit status and shall provide (or replace) Performance Assurance to Buyer in the amounts required under Section 5.1 or 5.2, as applicable, within five (5) Business Days after such change in its Credit Rating.

- 5.4. Financial Disclosures. If requested by Buyer, Seller shall timely provide to Buyer financial information of Seller as follows: (i) a copy of Seller's most recent quarterly report containing unaudited consolidated financial statements for such fiscal quarter signed and verified by an authorized officer of Seller attesting to their accuracy; and, (ii) within 120 days after the end of each fiscal year that this Agreement is effective a copy of Seller's annual report containing audited consolidated financial statements for such fiscal year. If Seller does not have audited financial statements, Seller shall deliver to Buyer financial statements in a form reasonably acceptable to Buyer and certified by a financial officer of Seller. All financial statements required hereunder shall be prepared in accordance with generally accepted accounting principles or other procedures with which Seller is required to comply with under applicable law. If information required under this Section 5.4 is available on a publicly available web site, then the delivery requirement shall be deemed to be satisfied.
- 5.5. Netting. If an Event of Default has not occurred and a Party is required to pay an amount to the other Party under this Agreement, then such amounts shall be netted, and the Party owing the greater aggregate amount shall pay to the other Party any difference between the amounts owed. All outstanding obligations to make payment under this may be netted, offset, set off, or recouped therefrom, and payment shall be owed as set forth above. Unless Buyer notifies Seller in writing (except in connection with a liquidation and termination) all amounts netted pursuant to this section shall not take into account or include any credit support, which may be in effect to secure a Party's performance under this Agreement. The netting set forth above, shall be without prejudice and in addition to any and all rights, liens, setoffs, recoupments, counterclaims and other remedies and defenses (to the extent not expressly herein waived or denied) that such Party has or to which such Party may be entitled arising from or out of this Agreement.
- 5.6. Set-off. In addition to any rights of set-off a Party may have as a matter of law or otherwise and subject to applicable law, upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right (but shall not be obligated to) without prior notice to the Defaulting Party or any other person to set-off any obligation of the Defaulting Party owed to the Non-Defaulting Party under this Agreement (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation) against any obligations of the Non-Defaulting Party owing to the Defaulting Party under this Agreement (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation). If any such obligation is unascertained, the Non-Defaulting Party may in a Commercially Reasonable Manner estimate that obligation and set-off in respect of the estimate, subject to the relevant Party providing an accounting and true-up to the other Party after the amount of the obligation is ascertained.
- 5.7. Performance Assurance Requirements. Seller shall ensure that the Performance Assurance in the required amount remains in full force, and effect, and outstanding for the duration required by this Agreement. All applicable Performance Assurance, in the amount required pursuant to the terms of this Agreement, shall remain in full force, and effect, and outstanding for the



**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY

MAY 28 2023

benefit of Buyer until sixty (60) days following the later of: (a) the end of the Term or (b) the date on which Seller has fully satisfied all obligations to Buyer under this Agreement (the "Security Period"). If at any time any Performance Assurance fails to meet any of the requirements under this Agreement, Seller shall replace such Performance Assurance with alternative Performance Assurance that meets each of the requirements under this Agreement. Seller will be solely responsible for any and all costs incurred with providing and maintaining any Performance Assurance to the full amount required by this Agreement. If Seller fails to replace, renew, or otherwise maintain the required Performance Assurance as and when required by this Agreement, then Buyer: (a) shall be entitled to draw and retain hereunder the full amount of the Performance Assurance; (b) shall not be obligated to make any further payments to Seller until Seller shall have provided Buyer with the replacement Performance Assurance; and, (c) shall be entitled to give Seller notice of an Event of Default and pursue the termination rights and remedies provided for in this Agreement.

- 5.8. **Grant of Security Interest.** To secure its obligations and liabilities under this Agreement to Buyer, Seller hereby grants to Buyer a present and continuing first priority security interest in, and lien on (and right of netting and set-off against), and assignment of, all present and future Performance Assurance, including, without limitation, cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer; and, furthermore Seller agrees to take such actions as Buyer reasonably requires to perfect Buyer's first-priority security interest in, and lien on (and right of netting, recoupment, and set-off against), such Performance Assurance and any and all products and proceeds resulting therefrom or from the liquidation thereof, including without limitation proceeds of insurance. Upon or any time after the occurrence or deemed occurrence of an Event of Default or upon an Early Termination Date, Buyer (if it is the Non-Defaulting Party) may do any one or more of the following with respect to Seller (if it is the Defaulting Party): (i) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of netting, recoupment, and set-off against any and all property of Seller in the possession of Buyer or its agent; (iii) draw on any outstanding applicable forms of Performance Assurance provided for the benefit of Buyer; and, (iv) liquidate all Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

**6. Seller Compliance Requirements.**

- 6.1. **Required Approvals.** Seller shall at its sole cost and expense timely obtain, maintain, and comply with all Required Approvals during the Term of this Agreement. Without limiting the generality of the following, "Required Approvals" means all of the following:
- 6.1.1. Commission approval and certification that the Facility is registered and certified as a New Renewable Energy Facility for Buyer to use the Product, including, without limitation, for use to comply with the Act.
  - 6.1.2. All approvals and certifications that the Facility is a Qualifying Facility.
  - 6.1.3. All required Permits, authorizations, certifications, and/or approvals from any Governmental Authority and under any Requirements of Law, including, without limitation, from the Commission or FERC, for Seller to construct, build, own, operate, and maintain the Facility and sell and deliver the Product to Buyer.
- 6.2. **Seller Covenants.** Seller covenants to Buyer that it shall comply with all of the requirements of the Act and other Requirements of Law applicable to Seller, the Facility, and/or Seller's

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY

JULY 28 2023

obligations under the Agreement. Without limiting the generality of the foregoing Seller represents and warrants to Buyer as of the Effective Date of this Agreement and throughout the Term of this Agreement that: (a) prior to commencement of construction of the Facility Seller shall have obtained an approved and valid report of proposed construction or certificate of public convenience and necessity for the Facility from the Commission; (b) Seller has submitted to the Transmission Provider and the Transmission Provider has accepted the completed interconnection request for the Facility; and (c) Seller has obtained all required approvals and certifications that the Facility is a Qualifying Facility from FERC. Seller agrees and acknowledges that Buyer has entered into this Agreement in reliance upon the representations and warranties set forth in this section, and in the event of a breach or failure of or relating to any of the foregoing covenants and warranties, including without limitation for being false or misleading in any respect, then this Agreement will terminate upon Buyer providing Seller with thirty (30) day's written notice unless such breach or failure has been cured before the end of such thirty (30) day period. Seller will indemnify and hold Buyer harmless for any breach or failure relating to any of the foregoing covenants and warranties, notwithstanding anything else to the contrary in this Agreement.

- 6.3. Seller Requirements. Seller agrees and acknowledges that the Act requires Buyer to make certain filings and/or submissions relating to Buyer's obligations under the Act. Within twenty (20) Business Days of a written request from Buyer, Seller agrees to provide Buyer with all information, documents, and affidavits from a duly authorized representative of Seller certifying that the Facility fully complies with PURPA, including without limitation, the PURPA Fuel Requirements and that the Facility and/or the Product complies with the Act and the requirements of the Tracking System. If Seller fails to promptly provide Buyer with such documentation, and Buyer is unable to use the Product for compliance in the calendar year that Buyer desires to use such Product for compliance purposes, then Seller shall be liable to Buyer for cover cost damages as set forth in Section 21.

**7. Seller's Facility Requirements.**

- 7.1. Seller Requirements. Seller covenants (except to the extent expressly set forth in this Agreement) that: the Facility shall be designed, constructed, operated, controlled, maintained, and tested at Seller's sole cost and expense; the Facility shall be designed, constructed, operated (inclusive, without limitation, of control, metering equipment, and personnel and staffing levels), controlled, maintained, and tested by Seller to perform as required by this Agreement and in compliance with all applicable Requirements of Law and Prudent Utility Practice; the Facility shall be capable of supplying the Product in a safe and reliable manner consistent with the requirements of each applicable Requirements of Law and Prudent Utility Practice; and, that all contracts, agreements, arrangements, and/or Permits (including, without limitation, those necessary or prudent for the construction, ownership and operation of the Facility, such as land use permits, site plan approvals, real property titles and easements, environmental compliance and authorizations, grading and building permits, and contracts and/or licenses to obtain the underlying fuel, install and operate the Facility, and deliver and sell the Product of the Facility) shall be timely obtained and maintained by Seller, at Seller's sole cost and expense. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility. Seller shall construct, interconnect, operate, and maintain the Facility in accordance with Prudent Utility Practice. Seller shall be responsible for all costs, charges, and expenses associated with generating, scheduling, and delivering the Energy to Buyer.

- 7.1.1. Notice Requirement. For each Operational Milestone, Seller shall deliver written notice to Buyer within five (5) Business Days of Seller having met such Operational Milestone. If Seller will be unable to timely meet any Operational Milestone, Seller shall also

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY

JULY 28 2023

deliver written notice to Buyer informing Buyer that Seller will be unable to meet an Operational Milestone, but in any event Seller shall deliver notice to Buyer no later than five (5) Business Day after the due date of the Operational Milestone that Seller failed to achieve. Buyer shall have no obligation or liability to Seller for Buyer failing to advise Seller of any condition, damages, circumstances, infraction, fact, act, omission or disclosure discovered or not discovered by Buyer with respect to any Operational Milestone, the Facility, the System or any contractor.

- 7.2. Seller Responsibilities. Notwithstanding any provision of this Agreement to the contrary, the Seller agrees that: (a) Buyer shall have no responsibility whatsoever for any costs and/or Taxes relating to the design, development, construction, maintenance, ownership, or operation of the Facility (including but not limited to any financing costs, and any costs and/or Taxes imposed by any Governmental Authority on or with respect to emissions from or relating to the Facility, and including but not limited to costs and/or Taxes related to any emissions allowances *inter alia* for oxides for sulfur dioxide or nitrogen, carbon dioxide, and mercury), all of which shall be entirely at Seller's sole cost and expense; and, (b) any risk as to the availability of production tax benefits, investment tax credits, grants or any other incentives relating to the design, development, construction, maintenance, ownership, or operation of the Facility shall be borne entirely by Seller.

- 7.2.1. No Exclusions. If any production or investment tax credit, grants, subsidy, or any other similar incentives or benefit relating, directly or indirectly, to the Facility is unavailable or becomes unavailable at any time during the Term of this Agreement, Seller agrees that such event or circumstance will not: (a) constitute a Force Majeure or Regulatory Event; (b) excuse or otherwise diminish Seller's obligations hereunder in any way; and, (c) give rise to any right by Seller to terminate or avoid performance under this Agreement. Seller agrees that it will solely and fully bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive any such tax treatment or otherwise qualify for any preferential or accelerated depreciation, accounting, reporting, or tax treatment.

- 7.3. Transmission Provider. Seller agrees and acknowledges that the Interconnection Agreement is (and will be) a separate agreement (or agreements) between Seller and Transmission Provider, and will exclusively govern all requirements and obligations between Seller and Transmission Provider. Only the Interconnection Agreement will govern all obligations and liabilities set forth in the Interconnection Agreement, and Seller shall be solely and fully responsible for all costs and expenses for which Seller is responsible for under the Interconnection Agreement. Seller shall comply with all Interconnection Instructions.

- 7.3.1. Nothing in the Interconnection Agreement, nor any other agreement between Seller on the one hand and Transmission Provider on the other hand, nor any alleged event of default thereunder, shall affect, alter, or modify the Parties' rights, duties, obligation, and liabilities under this Agreement. This Agreement shall not be construed to create any rights between Seller and the Transmission Provider, and the terms of this Agreement are not (and will not) be binding upon the Transmission Provider. Seller agrees and acknowledges that Seller's performance under this Agreement depends on Seller's performance under the Interconnection Agreement, and Seller hereby grants Buyer the right and entitlement to obtain information from the Transmission Provider in regard to Seller's performance under the Interconnection Agreement.

- 7.4. System Operations. Seller agrees and acknowledges that the System Operator will be solely responsible for its functions, and that nothing in this Agreement will be construed to create any rights between Seller and the System Operator. Seller agrees that it is obligated to engage

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

in interconnected operations with Buyer and the System, and Seller agrees to fully comply with all System Operator Instructions.

- 7.5. **Insurance Obligations.** Commencing with the initiation of construction activities of the Facility and continuing until the termination of this Agreement, and at no additional cost to Buyer, Seller shall maintain or cause to be maintained by contracted parties at the Facility, occurrence form insurance policies as follows: (a) Workers' Compensation in accordance with the statutory requirements of the state in which the Services are performed and Employer's Liability Insurance of not less than \$500,000 each accident/employee/disease; (b) Commercial General Liability Insurance having a limit of at least \$1,000,000 per occurrence/\$2,000,000 in the aggregate for contractual liability, personal injury, bodily injury to or death of persons, and damage to property, premises and operations liability and explosion, collapse, and underground hazard coverage; (c) Commercial/Business Automobile Liability Insurance (including owned (if any), non-owned or hired autos) having a limit of at least \$1,000,000 each accident for bodily injury, death, property damage and contractual liability; (d) Property Damage insurance on the Facility written on an all risk of loss basis; and, (e) if Seller will be handling or the Facility will have present environmentally regulated or hazardous materials, Pollution Legal Liability, including coverage for sudden/accidental occurrences for bodily injury, property damage, environmental damage, cleanup costs and defense with a minimum of \$1,000,000 per occurrence (claims-made form acceptable with reporting requirements of at least one (1) year). All insurance policies provided and maintained by Seller or applicable party shall: (i) be underwritten by insurers which are rated A.M. Best "A- VII" or higher; (ii) specifically include Buyer as additional insured's, excluding, however, for Worker's Compensation/Employer's Liability and Property Damage insurance; (iii) be endorsed to provide, where permitted by law, waiver of any rights of subrogation against Buyer; and (iv) provide that such policies and additional insured provisions are primary and without right of contribution from any other insurance, self-insurance or coverage available to Buyer. Any deductibles or retentions shall be the sole responsibility of Seller or the applicable party. Seller's compliance with these provisions and the limits of insurance specified herein shall not constitute a limitation of Seller's liability pursuant to this Agreement. Any failure to comply with and these provisions shall not be deemed a waiver of any rights of Buyer under this Agreement or with respect to any insurance coverage required hereunder. Buyer at its sole discretion may request Seller to provide a copy of any or all of its required insurance policies, including endorsements in which Buyer is included as an additional insured for any claims filed relative to the Facility or this Agreement.

**8. Facility Performance Requirements**

- 8.1. **Planned Outages.** No later than fifteen (15) Business Days prior to the end of each year during the Term, Seller shall provide to Buyer a Planned Outage schedule for the upcoming year. Seller shall provide Buyer with reasonable advance notice of any material change in the Planned Outage schedule. Seller shall determine the number and extent of Planned Outages in a Commercially Reasonable Manner recognizing that it is the intent of the Parties to maximize production of the Facility and to such extent Seller shall be excused from providing the Product during such Planned Outage(s). Unless both Parties expressly agree otherwise, any Planned Outage shall only occur during the months of March, April, May, September, October, or November.
- 8.2. **Maintenance Outages.** If Seller needs or desires to schedule a Maintenance Outage of the Facility, Seller shall notify Buyer, as far in advance as reasonable and practicable under the circumstances, of such proposed Maintenance Outage, and the Parties shall plan such outage to mutually accommodate the reasonable requirements of Seller and delivery expectations of Buyer. Notice of a proposed Maintenance Outage shall include the expected start date of the

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

outage, the amount of output of the Facility that will not be available and the expected completion date of the outage. Buyer may request reasonable modifications in the schedule for the outage. Subject to its operational and maintenance needs, Seller shall comply with such requests to reschedule a Maintenance Outage. If rescheduled, Seller shall notify Buyer of any subsequent changes in the output that will not be available to Buyer and any changes in the Maintenance Outage completion date. As soon as practicable, any such notifications given orally shall be confirmed in writing.

- 8.3. Notice. Seller shall promptly provide to Buyer an oral report of all outages, Emergency Conditions, de-ratings, major limitations, or restrictions affecting the Facility, which report shall include the cause of such restriction, amount of generation from the Facility that will not be available because of such restriction, and the expected date that the Facility will return to normal operations. Seller shall update such report as necessary to advise Buyer of any material changed circumstances relating to the aforementioned restrictions. As soon as practicable, all oral reports shall be confirmed in writing. Seller shall promptly dispatch personnel to perform the necessary repairs or corrective action in an expeditious and safe manner in accordance with Prudent Utility Practice.
- 8.4. Performance. Seller shall act in a Commercially Reasonable Manner to maximize the output of the Facility in a safe manner to generate the Product and to minimize the occurrence, extent, and duration of any event adversely affecting the generation of the Product, in each case consistent with Prudent Utility Practice.
- 8.5. Output Requirement. Starting the first full calendar year after the Commercial Operation Date of the Facility, for each year during the Delivery Period, Seller shall deliver to Buyer no less than seventy percent (70%) of the Expected Annual Output averaged over two consecutive calendar years on a rolling basis during the Delivery Period (the "Net Output Requirement"). Where a Permitted Excuse to Perform adversely affects actual generation output of the Facility, the Net Output Requirement shall be reduced by the amount of Energy not generated due to the Permitted Excuse to Perform; provided, however, Seller agrees that it must demonstrate to Buyer, in Buyer's Commercially Reasonable discretion, that the Facility's generation output was actually reduced due to a Permitted Excuse to Perform. Buyer's sole remedy for Seller's failure to deliver the Net Output Requirement for any period of two consecutive years shall be to receive a credit against the Contract Price for each month during the immediately following full calendar year. The foregoing monthly credit to Buyer shall be determined by (a) multiplying (i) the difference between the Net Output Requirement and the actual Energy (expressed in MWh) delivered by Seller and received by Buyer during the applicable period by (ii) 50% of the average Contract Price for Energy delivered to Buyer in the previous 12 months and (b) then dividing the amount calculated by (a) above by twelve (12). If Seller fails to satisfy the Net Output Requirement for any two-year period, to determine compliance with the Net Output Requirement in the next rolling two-year period, then the amount of Energy generated in the first year of such two-year rolling period will be deemed to be the higher of (i) seventy percent (70%) of the Expected Annual Output for such year, or (ii) the actual amount of Energy generated by the Facility in such year.
- 8.6. System Operator Instructions. Seller shall take all steps needed of it to implement and shall cooperate with Buyer in the implementation of all aspects of all System Operator Instructions. Seller shall immediately and fully comply with all System Operator Instructions, including without limitation all Control Instructions, Emergency Condition Instructions, and Force Majeure Instruction. Seller shall also immediately and fully comply with all Interconnection Instructions provided pursuant to the independent and separate Interconnection Agreement with the Transmission Operator.

8.6.1. Seller hereby expressly agrees to and fully authorizes and grants to Buyer the right



**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY

MAY 28 2023

to fully control the Facility in any manner necessary to enable Buyer to directly take all actions required to implement or otherwise effectuate all System Operator Instructions, including Control Instructions, Emergency Condition Instructions, and Force Majeure Instructions. Except for the payments provided by Buyer pursuant to Section 8.9 hereof, Seller hereby releases and holds Buyer harmless from and against all harm to Seller or the Facility in any way arising from or relating to any direct or indirect control of the Facility by Buyer to implement or otherwise effectuate any System Operator Instructions except to the extent resulting from the negligence of Buyer, its agents or Affiliates.

- 8.7. Control Equipment. To implement the control rights Seller has granted Buyer under Section 8.6, Seller shall design and construct the Facility to provide for Buyer and System Operator to have full or incremental and instantaneous control over the Facility to directly implement or otherwise effectuate any System Operator Instructions as currently or hereafter specified by Buyer, including installing automatic generation control with the current requirements further described in Exhibit 4 hereto ("Control Equipment"). Seller shall design the Facility to provide for the inclusion and operation of the Control Equipment and shall install and maintain the Control Equipment so that Buyer and System Operator shall have full or incremental instantaneous control over the Facility to take any action based in any manner to implement or otherwise effectuate any System Operator Instruction.
- 8.8. Control Instructions. The System Operator shall be entitled to and is hereby authorized to require the Facility to take or to directly take all actions to dispatch or otherwise control the generation output and operations of the Facility for any Control Instruction. Except to the extent expressly set forth in Section 8.9, Seller shall not receive any compensation for any losses due to a Dispatch Down. Except as set forth in Section 8.9, all Seller losses for a Dispatch Down shall be borne solely and entirely by Seller, including, without limitation, for any losses arising due to the lost or reduced generation by the Facility, lost tax benefits, lost investment tax credits, grants or any other incentives or monetary opportunity relating to the design, development, generation from, construction, maintenance, ownership, or operation of the Facility.
- 8.9. Limited Payments for Control Instruction Dispatch Down. During any calendar year during the Term hereof, Seller shall not receive any compensation from Buyer for any Dispatch Down until the Dispatch Down of Energy exceeds eight thousand five hundred ninety-seven (8,597) MWh of Energy that the Facility would have generated but did not generate due to compliance with and implementation of Control Instructions (such quantity, the "Annual Payment Threshold"). For any partial calendar year during the Term hereof, the Annual Payment Threshold shall be ratably prorated for the number of days in such partial calendar year.
- 8.9.1. Control Compensation. In any calendar year, except as set forth in Section 8.10, after satisfaction of the Annual Payment Threshold, Seller shall receive compensation from Buyer for the Dispatch Down of Energy that the Facility would have generated but did not generate due to compliance with and implementation of Control Instructions, starting with [REDACTED] MWh of Energy that is not so generated. Buyer shall calculate such amount payable to Seller by multiplying the Contract Price times the amount of Energy that could have been generated but was not generated due to compliance with and implementation of the Control Instruction ("Control Compensation"). The Control Compensation shall be determined using the Estimation Methodology set forth in Section 8.9.3. The Control Compensation shall be included in the invoice for the month of March commencing with the calendar year immediately following the first completed year of service and in each subsequent March invoice thereafter concluding with the calendar year

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY

MAY 28 2023

immediately following the last completed year of service during the Term.

- 8.9.2. Limitations on Control Compensation. Buyer shall pay Seller a Control Compensation for the Dispatch Down of Energy if, and only if: (i) the Facility was generating or would have been generating (absent the Control Instruction) Energy at the time of the Control Instruction and meteorological and Facility operating conditions were such that the Facility would have actually reduced produced Energy at the time of the Dispatch Down instruction; (ii) the actual cumulative reduction of Energy generation by the Facility due to the Dispatch Down exceeds the Annual Payment Threshold for the calendar year; and, (iii) the Dispatch Down was due to a System Operator Instruction that was a Control Instruction, but not due to an Emergency Condition Instruction, Force Majeure Instruction, or Interconnection Instruction. The Control Compensation shall be Seller's sole and exclusive payment and remedy for compliance with the Control Instructions in excess of the Payment Threshold, and any and all other Seller losses or payments are expressly disclaimed and waived. For purposes of determining Control Compensation, the discharge of Energy from a Storage Resource shall not constitute the generation of Energy.
- 8.9.3. Estimation Methodology. Buyer shall determine in a Commercially Reasonable Manner the quantity of Energy that could not be generated due to compliance with and implementation of the Dispatch Down instruction(s) based on: (i) The power plant controller output data points specified in Exhibit 9 attached hereto, which Seller shall provide to Buyer, on a real time basis, during the Term of this Agreement; (ii) the duration of the Dispatch Down; (iii) the amount of the generating capability of the Facility that is curtailed by the applicable Dispatch Down (e.g. 10% generation capability is curtailed); (iv) the solar exposure, irradiance, and meteorological circumstances actually recorded at the Facility during the Dispatch Down period; and (v) the Facility design, performance capability, and historic performance (the "Estimation Methodology"). Seller shall be responsible for installing and maintaining all equipment necessary to provide Buyer with the power plant controller output data points specified in Exhibit 9 on a real time basis. In the event that the real time data specified in 8.9.3(i) is unavailable historical production data required under Section 9.4.5 shall be used in its place. Absent manifest error, Buyer's calculations of the quantity of Energy that could not be generated due to compliance with and implementation of the Dispatch Down instruction(s) shall govern for purposes of determining Control Compensation.
- 8.10. Emergency Condition and Force Majeure Instructions. Notwithstanding any exceedance of the Annual Payment Threshold for any calendar year due to Control Instructions that the System Operator may provide or implement, the System Operator shall be entitled to and is hereby authorized to require the Facility to take or to directly take all actions to dispatch or otherwise control the generation output and operations of the Facility for Emergency Condition Instructions and Force Majeure Instructions. Except to the extent expressly set forth in Sections 8.10.1, Seller shall not receive any compensation for any losses due to a Dispatch Down for Emergency Condition Instructions or Force Majeure Instructions. Except as set forth in Section 8.10.1, all Seller losses for a Dispatch Down for Emergency Condition Instructions and Force Majeure Instructions shall be borne solely and entirely by Seller, including, without limitation, for any losses arising due to the lost or reduced generation by the Facility, production tax benefits, investment tax credits, grants or any other incentives or monetary opportunity relating to the design, development, construction, maintenance, ownership, or operation of the Facility.
- 8.10.1. In the event Seller proves that a Dispatch Down instruction issued by or action taken



**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

by the System Operator does not fall within the definition of an Emergency Condition Instruction or a Force Majeure Instruction and that the Facility actually reduced Energy production pursuant to such Dispatch Down instruction, then such Dispatch Down shall be administered as provided for in Section 8.9 hereof (*Limited Payments for Control Instruction Dispatch Down*).

- 8.11. Energy Storage. If the Facility is to be equipped with battery storage or other energy storage device (the "Storage Resource"), the Storage Resource shall be identified in Exhibit 4 attached to this Agreement, which shall be subject to Buyer's final approval. In all cases the Storage Resource must be charged solely by the Facility and the use of any Storage Resource shall be operated and equipped in accordance with the System Operator's Energy Storage Protocol, a copy of which is attached hereto as Exhibit 10, as may be modified from time to time by the System Operator (the "Energy Storage Protocol").

**9. Information Requirements**

- 9.1. Accounting Information. Generally Accepted Accounting Principles ("GAAP") and SEC rules can require Buyer to evaluate various aspects of its economic relationship with Seller, e.g., whether or not Buyer must consolidate Seller's financial information. To evaluate if certain GAAP requirements are applicable, Buyer may need access to Seller's financial records and personnel in a timely manner. In the event that Buyer determines that consolidation or other incorporation of Seller's financial information is necessary under GAAP, Buyer shall require the following for each calendar quarter during the term of this Agreement, within 90 days after quarter end: (a) complete financial statements, including notes, for such quarter on a GAAP basis; and, (b) financial schedules underlying the financial statements. Seller shall grant Buyer access to records and personnel to enable Buyer's independent auditor to conduct financial audits (in accordance with GAAP standards) and internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002). Any information provided to Buyer pursuant to this section shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed, as required by GAAP, on an aggregate basis with other similar entities for which Buyer has power purchase agreements.
- 9.2. Facility Information. As of Effective Date and continuing for a period of three months after the Commercial Operation Date, Seller shall promptly provide to Buyer reports relating to the progress of the Facility's development and construction, financing, interconnection activities and performance under the Interconnection Agreement, testing, Seller's good faith estimate of the date for occurrence of the Commercial Operation Date, operational activities, and other information that Buyer may request in its Commercially Reasonable discretion to inform Buyer of Seller's performance under this Agreement. Within ten (10) days after the end of each calendar month until the Commercial Operation Date is achieved, Seller shall prepare and submit to Buyer a written status report which shall cover the previous calendar month, shall be prepared in a manner and format (hard copy or electronic) reasonably acceptable to Buyer and shall include (a) a detailed description of the progress of the Facility's construction, (b) a statement of any significant issues which remain unresolved and Seller's recommendations for resolving the same, (c) a summary of any significant events which are scheduled or expected to occur during the following thirty (30) days; and, (d) all additional information reasonably requested by Buyer. If Seller has reason to believe that the Facility is not likely to timely achieve any Milestone Deadline, including the Commercial Operation Date, Seller shall promptly provide written notice to Buyer with all relevant facts, and will provide Buyer with any other information Buyer may request from Seller in respects to such failure of Seller. Seller shall give written notice to Buyer no later than 30 days before Seller projects that the Facility will achieve Commercial Operation. Seller shall provide written notice to Buyer when

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

the Commercial Operation Date has occurred. Following the Commercial Operation Date, Seller shall promptly provide to Buyer information requested by Buyer to verify any amounts of delivered Product, or to otherwise audit the Product delivered to Buyer. Seller shall, within ten (10) Business Days of electronic or written request provide Buyer with any other information germane to this Agreement and/or Seller's performance under and compliance with this Agreement, requested by Buyer in its Commercially Reasonable discretion.

9.3. Other Information. Seller shall provide to Buyer all information, instruments, documents, statements, certificates, and records relating to this Agreement and/or the Facility as reasonably requested by Buyer concerning any administrative, regulatory, compliance, or legal requirements reasonably determined by Buyer to fulfill any Requirements of Law, regulatory reporting requirements or otherwise relating to any request by any Governmental Authority. Seller will, at its own expense, provide Buyer with all information requested by Buyer to register, verify, or otherwise obtain Commission or any other third party recognition of the Product for use by Buyer, and at Buyer's request Seller shall register, verify, or otherwise validate or obtain Commission and/or any other third party recognition of the Product for use by Buyer.

9.3.1. Information Under the Act. Seller agrees and acknowledges that the Act requires Seller to make certain filings and/or submissions, including, without limitation, to maintain registration and certification of the Facility under the Act and to use the Product for compliance under the Act. Seller shall provide Buyer, for informational purposes only, a copy of any report, certification or filing that Seller submits to the Commission, within a reasonable time after making such submission, but in any event no later than five (5) Business Days after such submission. Notwithstanding anything to the contrary, Seller agrees and acknowledges that it shall be solely responsible for timely complying with all requirements under the Act.

9.4. Forecasts. Seller shall prepare and provide Buyer with the Facility's forecasted Energy production by fuel type, if applicable. These non-binding forecasts of production will be determined and prepared in a Commercially Reasonable Manner with the intent of being as accurate as possible. Seller shall update a forecast any time information becomes available indicating a material change in the forecast relative to the most previously provided forecast.

9.4.1. Year-Ahead Forecasts. Seller shall, by December 1 of each year during the Term (except for the last year of the Term), provide Buyer with a forecast of each month's average-day Energy production from the Facility, by hour, for the following calendar year. This forecast shall include an expected range of uncertainty based on historical operating experience. Seller shall update the forecast for each month at least five (5) Business Days before the first Business Day of such month.

9.4.2. Week-Ahead Forecasts. By 0800 EPT on the Friday preceding the immediately upcoming week of delivery, Seller shall provide Buyer with a daily forecast of deliveries for the upcoming week (Monday through Sunday).

9.4.3. Day-Ahead Forecasts. By 0500 EPT on the calendar day immediately preceding the day of delivery, Seller shall provide Buyer with an hourly forecast of deliveries for each hour of the next seven (7) days. In the event that Seller has any information or other Commercially Reasonable basis to believe that the production from the Facility on any day will be materially lower or higher than what would otherwise be expected based on the forecasts provided, then Seller will inform Buyer of such circumstance by 0500 EPT on the preceding Business Day.

9.4.4. Communication. Seller shall communicate forecasts in a form, template, substance, and manner as requested by Buyer (e.g. Excel template), which form, template,

**CONFIDENTIAL**

**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2  
MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

substance, and manner may be modified by Buyer from time to time. Forecasts shall be transmitted by email (to be sent to: [RenewableEnergyForecast@duke-energy.com](mailto:RenewableEnergyForecast@duke-energy.com)) or by other media (e.g. website upload), as Buyer may instruct Seller from time to time. Requested forecast data may include but is not limited to, location, forecast timestamp, site capacity, a flag for actual or forecasted data, available site capacity, energy, reason for any capacity reduction, site plane of array (POA) irradiance, air pressure, and relative humidity for each hour of the next seven days.

9.4.5. History. Seller shall prepare and provide Buyer with the Facility’s historical Energy production by fuel type, if applicable. The historical production will be determined and prepared by Seller in a Commercially Reasonable Manner with the intent of being as accurate as reasonably possible. Seller shall update any correction to the history any time information becomes available.

9.4.5.1. Daily History. By 0500 EPT on the Business Day immediately following the day of delivery, Seller shall provide Buyer with an hourly profile of deliveries for each hour of the previous seven days.

9.4.5.2. History Communication. Seller shall communicate history in a form, template, substance, and manner as requested by Buyer (e.g. Excel template), which form, template, substance, and manner may be modified by Buyer from time to time. The History shall be transmitted by email (to be sent to: [RenewableEnergyForecast@duke-energy.com](mailto:RenewableEnergyForecast@duke-energy.com)) or by other media (e.g. website upload), as Buyer may instruct Seller from time to time. Requested historical data may include but is not limited to, location, site capacity, a flag for actual or forecasted data, available site capacity, energy generated, reason for any capacity reduction, site POA irradiance, air pressure, and relative humidity for each hour of the previous seven days.

## 10. **Metering**

10.1. Billing Meter. In the Interconnection Agreement between Seller and Transmission Provider, Seller shall arrange with the Transmission Provider to construct and install such meters and metering equipment as are necessary to measure the Energy delivered and received in accordance with the terms and conditions of this Agreement (the “Billing Meter”). Buyer shall provide to Seller the reasonable allowable accuracy limits relating to the performance of the Billing Meter, and Seller shall arrange with Transmission Provider to install and operate a Billing Meter that meets the allowable accuracy limits. Seller shall be responsible for paying the Transmission Provider for all costs relating to the Billing Meter, including, without limitation, its procurement, installation, operation, calibration, and maintenance. Seller shall ensure in its arrangement with the Transmission Provider for the Billing Meter to include communication equipment that enables Buyer to access and read the meter from a remote location. Seller hereby grants Buyer with rights to physically access the Billing Meter. Seller shall provide Buyer (at Seller’s cost) with appropriate telephonic/electronic communication to allow Buyer to remotely read the meter. Seller may, at its own expense, install and maintain additional metering equipment for purposes of monitoring, recording or transmitting data relating to its sale of Energy from the Facility, so long as such equipment does not interfere with the Billing Meter. Seller shall arrange with the Transmission Provider to test the Billing Meter at regular intervals. Seller shall also arrange for either Party to have the right to request and obtain, at reasonable intervals and under reasonable circumstances, additional/special tests of the Billing Meter. The Party making such request for the test shall incur the costs associated with such test.

## 11. **Billing Period and Payment**

**CONFIDENTIAL**

**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2  
MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

- 11.1. Billing Period. Subject to Seller authorizing Transmission Provider to provide Buyer with electronic access to the Billing Meter, Buyer shall read/obtain data from the Billing Meter at regular intervals, which shall be not less than twenty-seven (27) consecutive days and not more than thirty-three (33) consecutive days (each, a "Billing Period") except for the initial and final billing periods hereunder which may be shorter to permit the readings to otherwise coincide with calendar months. Within twenty-five (25) days after reading/obtaining data from the Billing Meter, Buyer shall provide Seller with an invoice detailing the amount of Product (Energy and an equal amount of RECs) delivered during the relevant Billing Period and the associated amount owed by Buyer to Seller for the Product, subject to Seller cooperating with Buyer and providing Buyer with such information and/or data that Buyer may request to accurately prepare the invoice. Buyer shall pay Seller the invoiced amounts for each Billing Period, subject to Seller having transferred (or caused to be transferred) the REC Certificates from Seller's Account to Buyer's Account in the Tracking System in accordance with the terms of this Agreement. Payment by Buyer shall be due by the later of thirty (30) days after the invoice date or fifteen (15) days after Buyer receives notification that the Seller has transferred the REC Certificates into Buyer's Account. If such amounts are not paid by the deadline, they shall accrue interest at the Interest Rate from the applicable due date until the date paid. Amounts not paid by such deadline shall accrue interest at the Interest Rate from the original due date until the date paid in accordance with this Agreement.
- 11.2. Meter Malfunction. In the event the Billing Meter fails to register accurately within the allowable accuracy limits as set forth above, then for purposes of preparing (or adjusting) any affected invoice Buyer shall adjust the amount of measured Energy for the period of time the Billing Meter was shown to be in error. If the time the Billing Meter became inaccurate can be determined, then the adjustment to the amount of measured Energy shall be made for the entire time from the time that the Billing Meter became inaccurate until the recalibration of the Billing Meter. If the time the Billing Meter became inaccurate cannot be determined, then the Billing Meter shall be deemed to have failed to register accurately for fifty percent (50%) of the time since the date of the last calibration of the Billing Meter.
- 11.3. Out-of-Service. If the Billing Meter is out of service, then for purposes of preparing any affected invoice, the Parties shall negotiate in good faith to determine an estimate of the amount of Energy delivered during the relevant Billing Period. Seller's meter (if any), may be used to establish such estimate, if both Parties agree. If, within twenty (20) days after the date that the Billing Meter is read as set forth above, the Parties have not reached agreement regarding an estimate of the amount of Energy delivered during the relevant Billing Period, then the amount of Energy delivered during the relevant Billing Period shall be determined using the Estimation Methodology.
- 11.4. Errors. If any overcharge or undercharge in any form whatsoever shall at any time be found for an invoice, and such invoice has been paid, the Party that has been paid the overcharge shall refund the amount of the overcharge to the other Party, and the Party that has been undercharged shall pay the amount of the undercharge to the other Party, within forty-five (45) days after final determination thereof; provided, however, that no retroactive adjustment shall be made for any overcharge or undercharge unless written notice of the same is provided to the other Party within a period of twenty-four (24) months from the date of the invoice in which such overcharge or undercharge was first included. Any such adjustments shall be made with interest calculated at the Interest Rate from the date that the undercharge or overcharge actually occurred.
- 11.5. Invoice/Payment Dispute. If a Party in good faith reasonably disputes the amount set forth in an invoice, charge, statement, or computation, or any adjustment thereto, such Party

OFFICIAL COPY

JULY 28 2023

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY

MAY 28 2023

shall provide to the other Party a written explanation specifying in detail the basis for such dispute. The Party disputing the invoice, if it has not already done so, shall pay the undisputed portion of such amount no later than the applicable due date. If the Parties are thereafter unable to resolve the dispute through the exchange of additional documentation, then the Parties shall pursue resolution of such dispute according to the dispute resolution and remedy provisions set forth in the Agreement. Notwithstanding any other provision of this Agreement to the contrary, if any invoice, statement charge, or computation is found to be inaccurate, then a correction shall be made and payment (with applicable interest) shall be made in accordance with such correction; provided, however, no adjustment shall be made with respect to any invoice, statement, charge, computation or payment hereunder unless a Party provides written notice to the other Party questioning the accuracy thereof within twenty-four (24) months after the date of such invoice, statement, charge, computation, or payment.

**12. Audit Rights**

- 12.1. Process. Buyer shall have the right, at its sole expense and during normal business hours, without Seller requiring any compensation from Buyer, to examine and copy the records of Seller to verify the accuracy of any invoice, statement, charge or computation made hereunder or to otherwise verify Seller's performance under this Agreement, including, without limitation, verifying that the delivered Product complies with the Agreement.
- 12.2. Survival. All audit rights shall survive the expiration or termination of this Agreement for a period of twenty-four (24) months after the expiration or termination. Seller shall retain any and all documents (including, without limitation, paper, written, and electronic) and/or any other records relating to this Agreement and the Facility for a period of twenty-four (24) months after the termination or expiration of this Agreement.

**13. Taxes**

- 13.1. Seller. Seller shall be liable for and shall pay Buyer, or Seller shall reimburse Buyer if Buyer has paid or cause to be paid, all Taxes imposed by a Governmental Authority on or with respect to the Product delivered hereunder and arising prior its delivery to and at the Delivery Point (including ad valorem, franchise or income taxes which are related to the sale of the Product by Seller to Buyer and are, therefore, the responsibility of Seller). Seller shall indemnify, defend, and hold harmless Buyer from any liability for such Taxes, including related audit and litigation expenses.
- 13.2. Buyer. Buyer shall be liable for and shall pay Seller, or Buyer shall reimburse Seller if Seller has paid or caused to be paid, all Taxes imposed by a Governmental Authority on or with respect to the Product delivered hereunder and arising after the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product by Seller to Buyer and are, therefore, the responsibility of Seller). Buyer shall indemnify, defend, and hold harmless Seller from any liability for such Taxes, including related audit and litigation expenses.
- 13.3. Remittances. In the event Seller is required by any Requirements of Law to remit or pay Taxes that are Buyer's responsibility hereunder, Seller may request reimbursement of such payment from Buyer by sending Buyer an invoice, and Buyer shall include such reimbursement in the next monthly invoice and Buyer shall remit payment thereof. Conversely, if Buyer is required by any Requirements of Law to remit or pay Taxes that are Seller's responsibility hereunder; Buyer may deduct the amount of any such Taxes from the sums otherwise due to Seller under this Agreement. Any refunds or remittances associated with such Taxes shall be administered in accordance with Section 11.1.

**CONFIDENTIAL**

**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2  
MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

- 13.4. Documentation. A Party, upon written request of the other Party, shall promptly provide a certificate of exemption or other reasonably satisfactory evidence of exemption if such Party is exempt from any Tax. Nothing herein shall obligate a Party to pay or be liable to pay any Taxes from which it is exempt pursuant to applicable law.

**14. Force Majeure**

- 14.1. Definition. “Force Majeure” means: (A) war, riots, floods, hurricanes, tornadoes, earthquakes, lightning, ice-storms, excessive winds, and other such extreme weather events and natural calamities; (B) explosions or fires arising from lightning or other natural causes unrelated to acts or omissions of the Party; (C) insurrection, rebellion, nationwide strikes; (D) an act of god or other such significant and material event or circumstance which prevents one Party from performing a material and significant obligations hereunder, which such event or circumstance was not anticipated as of the Effective Date, is not within the Commercially Reasonable control of, or the result of the negligence of such claiming Party, and which, by the exercise of Commercially Reasonable Efforts, the claiming Party is unable to overcome or avoid or cause to be avoided and, (E) delays in obtaining goods or services from any subcontractor or supplier to the extent caused by the occurrence of any of the events described in the immediately preceding subparts (A) through (D). The acts, events or conditions listed in subparts (A) through (E) above shall only be deemed a Force Majeure if and to the extent they actually and materially delay or prevent the performance of a Party’s obligations under this Agreement and: (i) are beyond the reasonable control of the Party, (ii) are not the result of the willful misconduct or negligent act or omission of such Party (or any person over whom that Party has control), (iii) are not an act, event or condition that reasonably could have been anticipated, or the risk or consequence of which such Party has assumed under the Agreement; and, (iv) cannot be prevented, avoided, or otherwise overcome by the prompt exercise of Commercially Reasonable diligence by the Party (or any Person over whom that Party has control).

- 14.1.1. Notwithstanding anything to the contrary herein, Force Majeure will not include the following: (a) any strike or labor dispute of the employees of either Party or any subcontractor that is not part of a regional or nationwide strike or labor dispute; (b) any difficulty in obtaining or maintaining sufficient, or appropriately skilled, personnel to perform the work in accordance with the requirements of this Agreement; (c) normal wear and tear or obsolescence of any equipment; (d) Buyer’s inability to economically use or resell the Product delivered and purchased hereunder; (e) Seller’s ability to sell the Product (or any component of the Product) at a more advantageous price; (f) loss by Seller of any contractual arrangement; (g) any Regulatory Event; (h) loss or failure of Seller’s supply of the Product or inability to generate the Product that is not caused by an independent Force Majeure event; (i) the cost or availability or unavailability of fuel, solar energy, wind, or motive force, as applicable, to operate the Facility; (j) economic hardship, including, without limitation, lack of money or financing or Seller’s inability to economically generate the Product or operate the Facility; (k) any breakdown or malfunction of Facility equipment (including any serial equipment defect) that is not directly caused by an independent event of Force Majeure; (l) the imposition upon Seller of costs or taxes allocated to Seller hereunder or Seller’s failure to obtain or qualify for any tax incentive, preference, or credit; (m) delay or failure of Seller to obtain or perform any Permit; (n) any delay, alleged breach of contract, or failure under any other agreement or arrangement between Seller and another entity, including without limitation, an agent or sub-contractor of Seller (except as a direct result of an event of Force Majeure defined in 14.1(E)); (o) Seller’s failure to obtain, or perform under, the



**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

Interconnection Agreement, or its other contracts and obligations to Transmission Provider; or (p) increased cost of electricity, steel, materials, equipment, labor, or transportation.

- 14.2. **Event.** If either Party is rendered unable by Force Majeure to carry out, in whole or in part, any material obligation hereunder, such Party shall provide notice and reasonably full details of the event to the other Party as soon as reasonably practicable after becoming aware of the occurrence of the event (but in no event later than three (3) Business Days of the initial occurrence of the event of Force Majeure). Such notice may be given orally but shall be confirmed in writing as soon as practicable thereafter (and in any event within ten (10) days of the initial occurrence of the event of Force Majeure); provided however, a reasonable delay in providing such notice shall not preclude a Party from claiming Force Majeure but only so long as such delay does not prejudice or adversely affect the other Party.
- 14.3. **Effect.** Subject to the terms and conditions of Section 14, for so long as the event of Force Majeure is continuing, the specific obligations of the Party that are demonstrably and specifically adversely affected by the Force Majeure event, shall be suspended to the extent and for the duration made necessary by the Force Majeure, will not be deemed to be an Event of Default, and performance and termination of this Agreement will be governed exclusively by this Section 14. Notwithstanding anything to the contrary in this Agreement, Force Majeure will *not* be applicable to and will *not* be available as an excuse to Seller's performance of the obligations set forth in Sections 19.3 through and including 19.24.
- 14.4. **Remedy.** The Party claiming Force Majeure shall act in a Commercially Reasonable Manner to remedy the Force Majeure as soon as practicable and shall keep the other Party advised as to the continuance of the Force Majeure event. If a bona fide Force Majeure event persists for a continuous period of one hundred eighty (180) days, then the Party not claiming Force Majeure shall have the right, in its sole and unfettered discretion, to terminate this Agreement upon giving the other Party ten (10) Business Days advance written notice; *provided, however*, that where the Force Majeure event cannot be remedied within one hundred eighty (180) days and the claiming Party can demonstrate to the non-claiming Party its intention and ability to implement a Commercially Reasonable plan to remedy such Force Majeure event within an additional one hundred eighty (180) days after the initial one hundred eighty (180) day period and the claiming Party uses Commercially Reasonable efforts to implement such plan, the non-claiming Party shall not have the right to terminate the Agreement until the expiration of such additional one hundred eighty (180) day period.
- 14.5. **Termination.** Unless otherwise agreed upon by the Parties in writing and in each Party's sole discretion, upon the expiration of the periods set forth above in Sections 14.4, this Agreement may be terminated without any further notice and further opportunity to cure any non-performance. Upon termination becoming effective pursuant to a Force Majeure under Section 14, neither Party will have any liability to the other Party or recourse against the other Party, other than for amounts arising prior to termination. Notwithstanding the claimed existence of a Force Majeure event or any other provisions of this Agreement, nothing herein shall relieve any Party from exercising any right or remedy provided under this Agreement with respect to any liability or obligation of the other Party that is not excused or suspended by the Force Majeure event, including, without limitation, the right to liquidate and early terminate the Agreement for any Event of Default not excused by the Force Majeure event. Nothing herein shall be construed so as to obligate any Party to settle any strike, work stoppage or other labor dispute or disturbance or to make significant capital expenditures, except in the sole discretion of the Party experiencing such difficulty.

15. **Change in Law**

OFFICIAL COPY

JULY 28 2023



**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY

MAY 28 2023

15.1. Regulatory Event. A “Regulatory Event” means one or more of the following events:

15.1.1. Illegality. After the Effective Date, due to the adoption of, or change in, any applicable Requirements of Law or in the interpretation thereof by any Governmental Authority with competent jurisdiction, it becomes unlawful for a Party to perform any material obligation under this Agreement.

15.1.2. Adverse Government Action. After the Effective Date, there occurs any adverse material change in any applicable Requirements of Law (including material change regarding a Party’s obligation to sell, deliver, purchase, or receive the Product) and any such occurrence renders illegal or unenforceable any material performance or requirement under this Agreement.

15.2. Process. Upon the occurrence of a Regulatory Event the Party affected by the Regulatory Event may notify the other Party in writing of the occurrence of a Regulatory Event, together with details and explanation supporting the occurrence of a Regulatory Event. Upon receipt of such notice, the Parties agree to undertake, during the thirty (30) days immediately following receipt of the notice, to negotiate such modifications to reform this Agreement to remedy the Regulatory Event and attempt to give effect to the original intention of the Parties. Upon the expiration of the 30-day period, if the Parties are unable to agree upon modifications to the Agreement that are acceptable to each Party, in each Party’s reasonable discretion, then either Party shall have the right, in such Party’s sole discretion, to terminate this Agreement with a 30-day advance written notice.

**16. Confidentiality**

16.1. Protected Information. Except as otherwise set forth in this Agreement, neither Party (the “Receiving Party”) shall, without the other Party’s (the “Disclosing Party”) prior written consent, disclose any Protected Information (as defined below) of the Disclosing Party to any third person (other than the Party’s employees, affiliates, advisors, counsel, accountants, and current and prospective lenders and investors in the Facility who have a need to know such information, have agreed to keep such terms confidential, and for whom the Party shall be liable in the event of a breach of such confidentiality obligation), at any time during the Term or for five (5) years after the expiration or early termination of this Agreement. As used herein the term “Protected Information” means (a) this Agreement, and (b) any proprietary information of the Disclosing Party disclosed in connection with this Agreement, including without limitation, proposals and negotiations whether disclosed prior to or after the date hereof that have been clearly marked as confidential or proprietary. Notwithstanding anything to the contrary herein: (i) The Seller hereby acknowledges and agrees that its participation in an RFP or award of a contract under the CPRE Program may be disclosed by Buyer or the independent administrator of the RFP in one or more reports issued at the conclusion of the RFP process or as required under the rules of the RFP without the consent of the Seller; and (ii) in no event will Protected Information include the concept of constructing or providing energy from a power plant, using any specific fuel source, in any specific location. Each Party shall be entitled to all remedies available at law or in equity (including but not limited to specific performance and/or injunctive relief,) to enforce, or seek relief in connection with, this confidentiality obligation. Notwithstanding any other provision of this Agreement, any claim related to or arising out of any confidentiality obligations herein may be brought directly in any state or federal court of competent jurisdiction in Mecklenburg County, North Carolina, in accordance with Section 26.5 of this Agreement, and shall not be subject to dispute resolution or arbitration pursuant to Section 23 of this Agreement.

16.2. Non-Confidential Information. Protected Information does not include information: (i) that is

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

or becomes available to the public other than by disclosure of Receiving Party in breach of this Agreement; (ii) known to Receiving Party prior to its disclosure; (iii) available to Receiving Party from a third party who is not bound to keep such information confidential; or, (iv) independently developed by the Receiving Party without reliance upon the Protected Information.

- 16.3. Return of Confidential Information. Upon request of the Disclosing Party, the Receiving Party shall either (i) return the Disclosing Party's Protected Information, including all copies, or (ii) destroy the Disclosing Party's Protected Information, including all copies, and present written assurances of the destruction to Disclosing Party. Notwithstanding the foregoing, both Parties acknowledge that Protected Information transferred and maintained electronically (including e-mails) may be automatically archived and stored by the Receiving Party on electronic devices, magnetic tape, or other media for the purpose of restoring data in the event of a system failure (collectively, "Back-Up Tapes"). Notwithstanding the terms of this Agreement, in no event shall Receiving Party be required to destroy any Protected Information stored on Back-Up Tapes; provided, however, any Protected Information of the Disclosing Party not returned or destroyed pursuant to this Section shall be kept confidential for the duration of its existence. Furthermore, the Receiving Party may retain one (1) copy of such Protected Information in Receiving Party's files solely for audit and compliance purposes for the duration of its existence; provided, however, such Protected Information shall be kept confidential for the duration of its existence in accordance with the terms of this Agreement.
- 16.4. Required Disclosures. Notwithstanding the confidentiality requirements set forth herein, a Party may, subject to the limitations set forth herein, disclose Protected Information to comply with the Act, request of any Governmental Authority, applicable Requirements of Law, or any exchange, control area or System operator rule, in response to a court order, or in connection with any court or regulatory proceeding. Such disclosure shall not terminate the obligations of confidentiality unless the Protected Information falls within one of the exclusions of this Agreement. To the extent the disclosure of Protected Information is requested or compelled as set forth above, the receiving Party agrees to give disclosing Party reasonable notice of any discovery request or order, subpoena, or other legal process requiring disclosure of any Confidential Information. Such notice by the receiving Party shall give disclosing Party an opportunity, at disclosing Party's discretion and sole cost, to seek a protective order or similar relief, and the receiving Party shall not oppose such request or relief. If such protective order or other appropriate remedy is not sought and obtained within at least thirty (30) days of receiving Party's notice, receiving Party shall disclose only that portion of the Protected Information that is required or necessary in the opinion of receiving Party's legal counsel; provided, however, receiving Party shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to any Confidential Information so disclosed.
- 16.5. Regulatory Disclosures by Buyer. This Section 16.5 will apply notwithstanding anything to the contrary in this Agreement. Seller acknowledges that Buyer is regulated by various regulatory and market monitoring entities. Buyer is permitted, in its sole discretion, to disclose or to retain and not destroy (in case of a future disclosure need as determined by Buyer in its sole discretion) any information (including Protected Information) to any regulatory commission (inclusive of the NCUC, SCPSC, FERC), NERC, market monitor, office of regulatory staff, and/or public staff, or any other regulator or legislative body without providing prior notice to the Seller or consent from the Seller, using Buyer's business judgment and the appropriate level of confidentiality Buyer seeks for any such disclosures or retentions in its sole discretion. In the event of the establishment of any docket or proceeding before any regulatory commission, public service commission, public utility commission, or other agency, tribunal, or court having jurisdiction over Buyer, the Protected Information shall automatically be governed solely by

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

the rules and procedures governing such docket or proceeding to the extent such rules or procedures are additional to, different from, or inconsistent with this Agreement. In regulatory proceedings in all state and federal jurisdictions in which Buyer does business, Buyer will from time-to-time be required to produce Protected Information, and Buyer may do so without prior notice to Seller or consent from Seller, using Buyer's business judgment, and the appropriate level of confidentiality Buyer seeks for such disclosures in its sole discretion. When a request for disclosure of information, including Protected Information, is made to Buyer, Buyer may disclose the information, including Protected Information, without prior notice to the Seller or consent from the Seller, using Buyer's business judgment and the appropriate level of confidentiality Duke seeks for such disclosures in its sole discretion. Seller further acknowledges that Buyer is required by law or regulation to report certain information that could embody Protected Information from time-to-time, and Buyer may from time-to-time make such reports, without providing prior notice to Seller or consent from Seller, using Buyer's business judgment and the appropriate level of confidentiality Buyer seeks for such disclosures in its sole discretion.

**17. Mutual Representations and Warranties**

17.1. As of the Effective Date and throughout the Term, each Party represents and warrants to the other Party that:

- 17.1.1. It is duly organized, validly existing and in good standing under the Requirements of Law of the jurisdiction of its organization or formation and has all requisite power and authority to execute and enter into this Agreement;
- 17.1.2. It has all authorizations under the Requirements of Law (including but not limited to the Required Approvals), necessary for it to legally perform its obligations and consummate the transactions contemplated hereunder or will obtain such authorizations in a timely manner prior to the time that performance by such Party becomes due;
- 17.1.3. The execution, delivery, and performance of this Agreement will not conflict with or violate any Requirements of Law or any contract, agreement or arrangement to which it is a party or by which it is otherwise bound;
- 17.1.4. This Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms, and such Party has all rights necessary to perform its obligations to the other Party in accordance with the terms and conditions of this Agreement;
- 17.1.5. It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether or not this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the representations, advice or recommendations of the other Party in so doing, is capable of assessing the merits of this Agreement, and understands and accepts the terms, conditions, and risks of this Agreement for fair consideration on an arm's length basis;
- 17.1.6. No Event of Default or event which with notice or lapse of time, or both, would become an Event of Default, has occurred with respect to such Party, and that such Party is not Bankrupt and there are no proceedings pending or being contemplated by it, or to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- 17.1.7. There is no pending, or to its knowledge, threatened legal proceeding at law or equity against it or any Affiliate, that materially adversely affects its ability to perform its obligations under this Agreement;

**CONFIDENTIAL**

**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2  
MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

- 17.1.8. It is a “forward contract merchant” and this Agreement constitutes a “forward contract” as such terms are defined in the United States Bankruptcy Code;
- 17.1.9. It is an “eligible commercial entity” within the Commodity Exchange Act;
- 17.1.10. It is an “eligible contract participant” within the Commodity Exchange Act; and;
- 17.1.11. Each person who executes this Agreement on behalf of such Party has full and complete authority to do so, and that such Party will be bound by such execution.

**18. Seller Representations and Warranties to Buyer**

- 18.1. For all Product and every aspect thereof, Seller represents, warrants, and reaffirms to Buyer as a continuing warranty and representation that:
  - 18.1.1. No Product (including any REC) has been, or will be, sold (other than to Buyer hereunder), retired, claimed, represented as part of any electricity output, use, or sale, or otherwise used to satisfy any renewable energy, efficiency, emissions, and/or offset obligation under the Act, or under any voluntary or mandatory standard, marketplace, or jurisdiction, or otherwise by Seller;
  - 18.1.2. All Product (including every REC) will meet the specifications and requirements in this Agreement, including without limitation, compliance with the Act;
  - 18.1.3. Each unit of the Product will be and was generated during the applicable Vintage;
  - 18.1.4. Seller has provided and conveyed and will provide and convey to Buyer all Capacity rights associated with the Facility and all Energy produced by the Facility;
  - 18.1.5. Seller has provided and conveyed and will provide and convey to Buyer all Renewable Energy Attributes and REA Reporting Rights associated with all Energy generated by the Facility as part of the Product being delivered to Buyer;
  - 18.1.6. Seller holds all the rights to all the Product from the Facility, Seller has the right to sell the Product to Buyer, and Seller agrees to convey and does convey to Buyer all rights and good title to the Product free and clear of any Liens, encumbrances, or title defects;
  - 18.1.7. Seller has not and will not double sell, double claim or any manner otherwise double count the Product (including, without limitation, any Capacity of the Facility or any REC, Renewable Energy Attributes, or REA Reporting Rights) in any manner (including, for example, by issuing a press release or otherwise claiming that Seller is creating any environmental benefit, using a renewable energy source, or selling renewable energy (in each case inclusive of thermal energy) to any person other than exclusively to and for the benefit of Buyer); Seller will not claim to for itself any of the Renewable Energy Attributes, “green energy”, “clean energy”, “carbon-free energy” or other rights sold to Buyer, in any public communication concerning the output of the Facility, the Facility or the RECs;
  - 18.1.8. Seller shall at all times be fully compliant with the requirements of the Federal Trade Commission’s “Green Guides,” 77 F.R. 62122, 16 C.F.R. Part 260, as amended or restated, and;
  - 18.1.9. Seller has not and will not in any manner interfere with, encumber or otherwise impede Buyer’s use, transfer, and sale of any Product.

**19. Events of Default**

- 19.1. An “Event of Default” means with respect to the non-performing Party (such Party, the “Defaulting Party”), the occurrence of any one or more of the following, each of which,

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY

MAY 28 2023

- individually, shall constitute a separate Event of Default:
- 19.2. The failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after the Defaulting Party's receipt of written notice; *provided, however*, a Party will have two (2) Business Days to remedy any failure to make payment required under Section 21;
  - 19.3. Any covenant or warranty made by Seller under Section 6.2 (Seller Covenant) is false or misleading in any respect when made or when deemed made or repeated.
  - 19.4. Any representation or warranty made by a Party under Section 17 and elsewhere in this Agreement (except Section 18 which is a separate Event of Default) is false or misleading in any material respect when made or when deemed made or repeated;
  - 19.5. Seller fails to comply with Section 7.1.1 and such failure is not remedied within three Business Days after Seller's receipt of written notice from Buyer.
  - 19.6. Any representation or warranty made by Seller under Section 18 (Seller Representations and Warranties to Buyer) is false or misleading in any respect when made or when deemed made or repeated;
  - 19.7. If Seller prior to the Commercial Operation Date ceases construction of the Facility for more than sixty (60) consecutive days; *provided, however*, that such cessation shall not be deemed an Event of Default if Seller can make a Commercially Reasonable demonstration to Buyer, in Buyer's Commercially Reasonable discretion, that in spite of such cessation the Facility will achieve Commercial Operation by the Commercial Operation Date as it may be extended pursuant to the terms of Section 20.5;
  - 19.8. Seller fails to fully and timely achieve any of the Operational Milestone Schedule events (other than the Commercial Operation Date that is governed exclusively by Section 19.9 and 20.5); *provided, however*, that such failure shall not be deemed an Event of Default if Seller can make a Commercially Reasonable demonstration to Buyer, in Buyer's Commercially Reasonable discretion, that in spite of missing the Milestone Deadline the Facility will achieve Commercial Operation by the Commercial Operation Date as it may be extended pursuant to the terms of Section 20.5.
  - 19.9. Seller fails to achieve Commercial Operation by the Commercial Operation Date (unless excused as a result of Force Majeure in accordance with article 14), as it may be extended pursuant Section 20.5;
  - 19.10. The actual Nameplate Capacity Rating of the Facility is higher than the Nameplate Capacity Rating set forth in Exhibit 4, or, as of the Commercial Operation Date is lower than the Nameplate Capacity Rating by more than five (5) percent of the Nameplate Capacity Rating set forth in Exhibit 4.
  - 19.11. Seller Abandons the Facility for more than sixty (60) consecutive days;
  - 19.12. Seller fails to obtain or maintain the Facility's registration or certification as a Qualifying Facility under PURPA and such failure is not cured within thirty (30) days.
  - 19.13. Seller fails to obtain or maintain the Facility's registration as a New Renewable Energy Facility, and such failure is not cured within thirty (30) days.
  - 19.14. Seller fails to fully comply with the PURPA Fuel Requirements.
  - 19.15. Seller delivers or attempts to deliver to Buyer any Product (or any component thereof) that was not generated by the Facility.
  - 19.16. Seller delivers or attempts to deliver any Product (or component thereof) to any entity or

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY

JULY 28 2023

- person other than to the Buyer.
- 19.17. Seller fails to promptly and fully comply with a System Operator Instruction.
  - 19.18. Seller fails to provide, replenish, renew, or replace the Performance Assurance and/or otherwise fails to fully comply with the credit related requirements of this Agreement, including without limitation, Section 5, and any such failure is not cured within five (5) Business Days.
  - 19.19. Seller fails to fully meet all the insurance requirements set forth in Section 7.5, and such failure is not cured within five (5) Business Days.
  - 19.20. Seller fails to fully comply with all of the confidentiality obligations set forth in Section 16.
  - 19.21. Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and: (i) at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Seller under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party; or (ii) the resulting, surviving, transferee or successor entity fails to meet the Creditworthiness standards or post Performance Assurance as required under this Agreement.
  - 19.22. An assignment by or Change of Control with respect to Seller, other than in compliance with Section 24;
  - 19.23. A Party becomes Bankrupt;
  - 19.24. Seller transfers or assigns or otherwise conveys any of its rights or obligations under this Agreement to another Person in violation of the terms and conditions of this Agreement;
  - 19.25. Seller violates the publicity obligations set forth in Section 26.10;
  - 19.26. If the Facility is equipped with a Storage Resource: (i) Seller's failure to materially comply with the Energy Storage Protocol as required under this Agreement and such failure is not remedied within three Business Days after Seller's receipt of written notice from Buyer, or (ii) if Seller fails to materially comply with any Energy Storage Protocol on more than three (3) occasions over the Term of this Agreement; *provided however*, that any such failure shall not be counted against the cumulative limit if Seller can make a Commercially Reasonable demonstration to Buyer that Seller's failure to materially comply with the Energy Storage Protocol was beyond Seller's reasonable control and not the result of Seller's intentional misconduct or gross negligence; and
  - 19.27. Except to the extent constituting a separate Event of Default (in which case the provisions applicable to that separate Event of Default shall apply) the failure to perform any material covenant or obligation set forth in this Agreement, if such failure is not remedied within thirty (30) days after the Defaulting Party's receipt of written notice.

**20. Early Termination.**

- 20.1. Early Termination Date. If an Event of Default with respect to a Defaulting Party has occurred and is continuing, then the other Party (such Party, the "Non-Defaulting Party") shall have the right, in its sole discretion and upon written notice to the Defaulting Party, to pursue any or all of the following remedies: (a) withhold payments due to the Defaulting Party under this Agreement; (b) suspend performance under this Agreement; and/or (c) designate a day (which day shall be no earlier than the day such notice is effective and shall be no later than twenty (20) days after the delivery of such notice is effective) as an early termination date to accelerate all amounts owing between the Parties, liquidate, net, recoup, set-off, and early



**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

terminate this Agreement and any other agreement between the Parties (such day, the “Early Termination Date”).

- 20.2. Effectiveness of Default and Remedies. Where an Event of Default is specified herein and is governed by a system of law which does not permit termination to take place upon or after the occurrence of the relevant Event of Default in accordance with the terms of this Agreement an Event of Default and Early Termination Date shall be deemed to have occurred immediately upon any such event and no prior written notice shall be required. All of the remedies and provisions set forth in this section shall be without prejudice to any other right of the Non-Defaulting Party to accelerate amounts owed, net, recoup, setoff, liquidate, and early terminate this Agreement.
- 20.3. Net Settlement Amount. If the Non-Defaulting Party establishes an Early Termination Date, then the Non-Defaulting Party shall calculate its Gains or Losses and Costs resulting from the termination as of the Early Termination Date, in a Commercially Reasonable Manner. The Non-Defaulting Party shall aggregate such Gains or Losses and Costs with respect to the liquidation of the termination and any other amounts due under this Agreement and any other agreement between the Parties into a single net amount expressed in U.S. dollars (the “Net Settlement Amount”). The Non-Defaulting Party shall then notify the Defaulting Party of the Net Settlement Amount. The Defaulting Party shall pay the Non-Defaulting Party the full amount of the Net Settlement Amount within five (5) Business Days of delivery to the Defaulting Party of the notice of the Net Settlement Amount that the Defaulting Party is liable for.
- 20.4. Payment. Any Net Settlement Amount will only be due and payable only to the Non-Defaulting Party from and by the Defaulting Party. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Net Settlement Amount will be deemed to be zero and no payment will be due or payable. The Non-Defaulting Party shall under no circumstances be required to account for or otherwise credit or pay the Defaulting Party for economic benefits accruing to the Non-Defaulting Party as a result of the Defaulting Party’s default. The Non-Defaulting Party shall be entitled to recover any Net Settlement Amount by netting or set-off or to otherwise pursue recovery of damages. Additionally, Buyer will be entitled to recover any Net Settlement Amount by drawing upon any Performance Assurance or by netting or set-off, or to otherwise pursue recovery of damages. Any calculation and payment of the Net Settlement Amount will be independent of and in addition to Seller’s obligation to reimburse Buyer for overpayments pursuant to Section 20.6.
- 20.5. Commercial Operation Date Liquidated Damages.
- 20.5.1. Failure to Achieve First COD Date. Notwithstanding anything to the contrary in this Agreement, to the extent an Event of Default occurs due to Seller’s failure to timely achieve the Commercial Operation Date (unless excused as a result of Force Majeure in accordance with article 14) as set forth in Exhibit 3 (the “First COD Date”), then this Agreement shall terminate and Seller shall be liable to Buyer for liquidated damages in the amount of [REDACTED], (the “Default Liquidated Damages”) which shall be due and payable by Seller within five (5) Business Days after the First COD Date; provided however, if no later than twenty (20) Business Days prior to the First COD Date Seller notifies Buyer in writing that Seller reasonably believes that it will be unable to achieve Commercial Operation by the First COD Date and Seller also notifies Buyer in writing that Seller desires to continue performance under this Agreement, then this Agreement shall remain in full force and effect and upon payment of liquidated damages to Buyer in the amount of [REDACTED].

OFFICIAL COPY

JULY 28 2023



**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY

MAY 28 2023

- [REDACTED], (the "Initial Liquidated Damages") within five (5) Business Days after the First COD Date, Seller shall have up to an additional one hundred eighty (180) days from the First COD Date to achieve Commercial Operation (such extended date, the "Second COD Date"); provided however, no Initial Liquidated Damages shall be due to Buyer if Seller actually achieves Commercial Operation on or before the First COD Date.
- 20.5.2. Second COD Date. If Seller achieves Commercial Operation on or before the Second COD Date Seller shall pay Buyer additional liquidated damages, within five (5) Business Days of achieving the Second COD Date, in the amount of [REDACTED] per day (the "Per Diem Liquidated Damages") for each day that Commercial Operation was delayed beyond the First COD Date up to and including the one hundred eightieth (180th) day following the First COD Date as per diem liquidated damages for failing to timely achieve Commercial Operation by the First COD Date.
- 20.5.3. Failure to Achieve Second COD Date. If Seller fails to achieve Commercial Operation by the Second COD Date (i.e., within one hundred eighty (180) days following the First COD Date) then this Agreement will terminate and Seller will be liable to Buyer and will pay Buyer, within five (5) Business Days of such failure, additional liquidated damages (in addition to the Initial Liquidated Damages paid under Section 20.5.1) in the amount of the Default Liquidated Damages of [REDACTED].
- 20.5.4. Exclusive Remedy. The Parties agree that it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to ascertain and fix the actual damages Buyer would incur if Seller does not achieve Commercial Operation by the promised Commercial Operation Date. Accordingly, the Parties agree that if Seller does not meet the promised Commercial Operation Date (as may be extended under this Section 20.5), Buyer's sole remedy for that delay shall be to recover from Seller as liquidated damages, and not as a penalty, the amount of liquidated damages specified in this Section 20.5. The agreed upon delay liquidated damages shall not limit Buyer's remedies for other breaches, actions or omissions of Seller under this Agreement.
- 20.6. Overpayment Reimbursement. Notwithstanding anything else in this Agreement to the contrary, including without limitation the Net Settlement Amount calculation and payment provisions set forth in Sections 20.1 through 20.5, and without limiting any of Buyer's other rights or remedies hereunder, Seller agrees and acknowledges that in the event this Agreement is terminated prior to the expiration of the Term for any reason other than an Event of Default by Buyer, that Seller will reimburse Buyer for all amounts paid by Buyer to Seller under this Agreement in excess of Buyer's avoided cost for energy and capacity over the period starting from the Commercial Operation Date through the date of termination of this Agreement plus interest on such amount calculated at the rate of 3.7% (three and seven tenths percent) until repaid (the "Overpayment Amount"). Seller agrees to reimburse Buyer for the Overpayment Amount notwithstanding anything to the contrary in this Agreement and without regard to whether Seller is or may be liable to Buyer for any additional amounts under this Agreement, including, without limitation, any Net Settlement Amount, Gains, and/or Losses determined or to be determined pursuant to this Agreement. The Seller will pay Buyer the Overpayment Amount no later than three (3) Business Days after the Early Termination Date.
- 20.7. Survival. This Section 20 will survive any expiration or termination of this Agreement.

**CONFIDENTIAL**

**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2  
MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

**21. Cover Costs.**

- 21.1. Exclusive Remedies. Except where a specific and exclusive remedy is otherwise set forth in this Agreement, the remedies set forth in this Section shall be a Party's exclusive remedies prior to termination for the other Party's failure to deliver the Product or to receive the Product pursuant to and in accordance with this Agreement.
- 21.2. Seller's Failure to Deliver. If Seller fails to deliver Product that complies with the requirements set forth in this Agreement or fails to deliver all or part of the Contract Quantity (each will be deemed as a failure to deliver for purposes of calculating damages), and such failure is not excused by a Permitted Excuse to Perform or Buyer's failure to perform, then Buyer shall elect in its sole discretion: (i) to terminate and liquidate this Agreement if such failure is an Event of Default as set forth herein, and in which case Buyer shall calculate its termination payment in accordance with this Agreement as though it were the Non-Defaulting Party; or, (ii) to require Seller to pay Buyer within three (3) Business Days of invoice receipt, liquidated damages in the amount obtained by multiplying the number of units of Product (or component thereof) that Seller failed to deliver to Buyer multiplied by two (2) times the per unit Contract Price.
- 21.3. Buyer's Failure to Accept Delivery. If Buyer fails to receive all or part of the Contract Quantity that Seller attempted to deliver to Buyer in accordance with this Agreement, and such failure by Buyer is not excused by a Permitted Excuse to Perform or Seller's failure to perform, then Seller shall elect in its sole discretion either to: (i) terminate and liquidate this Agreement if such failure is an Event of Default as set forth herein, and in which case Seller shall calculate its termination payment in accordance with this Agreement as though it were the Non-Defaulting Party; or, (ii) require Buyer to pay Seller within three (3) Business Days of invoice receipt, liquidated damages in the amount obtained by multiplying the number of units of Product (or component thereof) that Buyer failed to receive multiplied by two (2) times the per unit Contract Price.
- 21.4. Event of Default. Any failure by Seller to pay amounts due under this Section 21 will be an Event of Default under Section 19.2.
- 21.5. Survival. This Section 21 will survive any expiration or termination of this Agreement.

**22. Limitation of Liabilities & Liquidated Damages.**

- 22.1. Reasonableness. THE EXPRESS REMEDIES AND MEASURES OF DAMAGES, INCLUDING WITHOUT LIMITATION DETERMINATION OF LIQUIDATED DAMAGES, COVER COSTS, AND NET SETTLEMENT AMOUNT DAMAGES PROVIDED FOR IN THIS AGREEMENT (i) ARE REASONABLE AND SATISFY THE ESSENTIAL PURPOSES HEREOF FOR BREACH OF ANY PROVISION FOR WHICH THE EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, AND (ii) UNLESS OTHERWISE STATED IN SUCH PROVISIONS, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISIONS, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. TO THE EXTENT ANY PROVISION OF THIS AGREEMENT PROVIDES FOR, OR IS DEEMED TO CONSTITUTE OR INCLUDE, LIQUIDATED DAMAGES, THE PARTIES STIPULATE AND AGREE THAT THE ACTUAL DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO ESTIMATE OR DETERMINE, THE LIQUIDATED AMOUNTS ARE A REASONABLE APPROXIMATION OF AND METHODOLOGY TO DETERMINE THE ANTICIPATED HARM OR LOSS TO THE PARTY, AND OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT. THE PARTIES FURTHER STIPULATE AND AGREE THAT ANY PROVISIONS FOR LIQUIDATED DAMAGES ARE NOT INTENDED AS, AND SHALL NOT BE DEEMED TO CONSTITUTE, A PENALTY, AND EACH PARTY HEREBY WAIVES THE RIGHT TO CONTEST SUCH PROVISIONS AS AN UNREASONABLE PENALTY OR AS UNENFORCEABLE FOR ANY REASON.
- 22.2. Limitation. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, (i) THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY,

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY

JULY 28 2023

SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED; AND (ii) NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, EVEN IF SUCH DAMAGES ARE ALLOWED OR PROVIDED BY STATUTE, STRICT LIABILITY, ANY TORT, CONTRACT, OR OTHERWISE.

22.3. Damages Stipulation. Each Party expressly agrees and stipulates that the terms, conditions, and payment obligations set forth in Sections 20 and 21 are a reasonable methodology to approximate or determine harm or loss, each Party acknowledges the difficulty of determining actual damages or loss, and each Party hereby waives the right to contest such damages and payments as unenforceable, as an unreasonable penalty, or otherwise for any reason. The Parties further acknowledge and agree that damages and payments determined under Sections 20 and 21 are direct damages, will be deemed to be a direct loss, and will not be excluded from liability or recovery under the Limitations of Liabilities provisions of this Section 22.

22.4. Survival. This Section 22 will survive any expiration or termination of this Agreement.

**23. Disputes and Arbitration**

23.1. Resolution by the Parties. The Parties shall attempt to resolve any claims, disputes and other controversies arising out of or relating to this Agreement (collectively, "Dispute(s)") promptly by negotiation between executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. A Party may give the other Party written notice of a Dispute that has not been resolved in the normal course of business. Such notice shall include: (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive. Within ten (10) Business Days after delivery of the notice, the receiving Party shall respond with (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within twenty (20) Business Days after delivery of the initial notice, the executives of both Parties shall meet at Buyer's offices, and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute. At the request of either Party, the Parties shall enter into a confidentiality agreement to cover any Dispute and discussions related thereto.

23.2. Demand for Arbitration.

23.2.1. If a Dispute has not been resolved by negotiation within thirty (30) Business Days of the disputing Party's initial notice, the Parties shall fully and finally settle the Dispute by binding arbitration administered by the American Arbitration Association ("AAA"), or such other nationally recognized arbitration association or organization as the Parties may mutually agree. The Arbitration shall be conducted in accordance with the AAA Commercial Arbitration Rules then in effect, and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16. To the extent the AAA Rules conflict with any provision of Section 23 of this Agreement, the terms of this Agreement shall govern and control.

23.2.2. Either Party may serve the demand for arbitration on the other Party; provided, however, no demand for arbitration shall be made or permitted after the date when the institution of a civil action based on the Dispute would be barred by the applicable statute of limitations or repose.

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY

MAY 28 2023

- 23.2.3. All arbitration proceedings shall take place in Charlotte, North Carolina.
- 23.2.4. A single arbitrator will arbitrate all Disputes where the amount in controversy is less than five-hundred thousand U.S. dollars (\$500,000), and will be selected by the Parties or by the AAA if the Parties cannot agree to the arbitrator. Such arbitrator shall be a licensed attorney with at least ten (10) years of experience in the electric utility industry. The cost of the arbitrator(s) shall be borne equally by the Parties.
- 23.2.5. A panel of three (3) arbitrators will conduct the proceeding when the amount in controversy is equal to or more than five hundred thousand U.S. dollars (\$500,000). If the Parties have not so agreed on such three (3) arbitrator(s) on or before thirty (30) days following the delivery of a demand for Arbitration to the other Party, then each Party, by notice to the other Party, may designate one arbitrator (who shall not be a current or former officer, director, employee or agent of such Party or any of its Affiliates). The two (2) arbitrators designated as provided in the immediately preceding sentence shall endeavor to designate promptly a third (3<sup>rd</sup>) arbitrator.
- 23.2.6. If either Party fails to designate an initial arbitrator on or before forty five (45) days following the delivery of an arbitration notice to the other Party, or if the two (2) initially designated arbitrators have not designated a third (3<sup>rd</sup>) arbitrator within thirty (30) days of the date for designation of the two (2) arbitrators initially designated, any Party may request the AAA to designate the remaining arbitrator(s) pursuant to its Commercial Arbitration Rules. Such third (3<sup>rd</sup>) arbitrator shall be a licensed attorney with at least ten (10) years of experience in the electric utility industry.
- 23.2.7. If any arbitrator resigns, becomes incapacitated, or otherwise refuses or fails to serve or to continue to serve as an arbitrator, the Party entitled to designate that arbitrator shall designate a successor.
- 23.3. Discovery. Either Party may apply to the arbitrators for the privilege of conducting discovery. The right to conduct discovery shall be granted by the arbitrators in their sole discretion with a view to avoiding surprise and providing reasonable access to necessary information or to information likely to be presented during the course of the arbitration, provided that such discovery period shall not exceed sixty (60) Business Days.
- 23.4. Binding Nature. The arbitrator(s)' decision shall be by majority vote (or by the single arbitrator if a single arbitrator is used) and shall be issued in a writing that sets forth in separately numbered paragraphs all of the findings of fact and conclusions of law necessary for the decision. Findings of fact and conclusions of law shall be separately designated as such. The arbitrator(s) shall not be entitled to deviate from the construct, procedures or requirements of this Agreement. The award rendered by the arbitrator(s) in any arbitration shall be final and binding upon the Parties, and judgment may be entered on the award in accordance with applicable law in any court of competent jurisdiction.
- 23.5. Consolidation. No arbitration arising under the Agreement shall include, by consolidation, joinder, or any other manner, any person not a party to the Agreement unless (a) such person is substantially involved in a common question of fact directly relating to the Dispute; provided however, such person will not include any Governmental Authority, (b) the presence of the person is required if complete relief is to be accorded in the arbitration, and (c) the person has consented to be included.
- 23.6. Mediation. At any time prior or subsequent to a Party initiating arbitration, the Parties may mutually agree to (but are not obligated to) attempt to resolve their Dispute by non-binding mediation, using a mediator selected by mutual agreement. The mediation shall be

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY

MAY 28 2023

completed within thirty (30) Business Days from the date on which the Parties agree to mediate. Unless mutually agreed by the parties, any mediation agreed to by the Parties shall not delay arbitration. The Parties shall pay their own costs associated with mediation and shall share any mediator's fee equally. The mediation shall be held in Raleigh, North Carolina, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court of competent jurisdiction.

- 23.7. Remedies. Except for Disputes regarding confidentiality arising under Section 16 of this Agreement, the procedures specified in this Section 23 shall be the sole and exclusive procedures for the resolution of Disputes between the Parties arising out of or relating to this Agreement; provided, however, that a Party may file a judicial claim or action on issues of statute of limitations or repose or to seek injunctive relief, sequestration, garnishment, attachment, or an appointment of a receiver, subject to and in accordance with the provisions of Section 26.5 (Venue/Consent to Jurisdiction). Preservation of these remedies does not limit the power of the arbitrator(s) to grant similar remedies, and despite such actions, the Parties shall continue to participate in and be bound by the dispute resolution procedures specified in Section 23.
- 23.8. Settlement Discussions. All negotiations and discussion concerning Disputes between the Parties pursuant to Section 23 of this Agreement are to be deemed confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and settlement privilege. No statement of position or offers of settlement made in the course of the dispute resolution process can be or will be offered into evidence for any purpose, nor will any such statements or offers of settlement be used in any manner against any Party. Further, no statement of position or offers of settlement will constitute an admission or waiver of rights by either Party. At the request of either Party, any such statements or offers, and all copies thereof, shall be promptly returned to the Party providing the same.
- 23.9. Survival. This Section 23 will survive any expiration or termination of this Agreement.

**24. Assignment**

- 24.1. Limitation. Except as set forth below in Section 24.2 with respect to pledging as collateral security, Seller shall not assign, or encumber (collectively, the "Assignment") this Agreement, any rights or obligations under the Agreement, or any portion hereunder, without Buyer's prior written consent. Seller shall give Buyer at least thirty (30) days prior written notice of any requested Assignment. Subject to Seller providing Buyer with information demonstrating to Buyer, in Buyer's Commercially Reasonable Discretion, that Seller's proposed assignee has the technical, engineering, financial, and operational capabilities to perform under this Agreement, Buyer may not unreasonably withhold its consent; *provided, however*, that any such assignee shall agree in writing to be bound by the terms and conditions hereof and shall deliver to Buyer Performance Assurance in the amount required under this Agreement, and such enforceability assurance as the Buyer may request in its Commercially Reasonable discretion. Notwithstanding anything to the contrary herein, Buyer may pledge, encumber, or assign this Agreement without the consent of Seller to any Person that is Creditworthy, or that has provided Seller with a guaranty substantially in the form of Exhibit 6 from a Creditworthy credit support provider guaranteeing the assignee's obligations hereunder, and that has agreed in writing to assume the obligations of Buyer hereunder.
- 24.2. Pledge. Seller may, without prior consent of Buyer but with no less than ten (10) Business Days prior written notice to Buyer, pledge as collateral security this Agreement to a financing

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY

MAY 28 2023

party in connection with any loan, lease, or other debt or equity financing arrangement for the Facility. Any pledge of this Agreement as collateral security will not relieve Seller of any obligation or liability under this Agreement or compromise, modify or affect any rights, benefits or risks of Buyer under this Agreement.

- 24.3. Acknowledgement of Non-Default. Provided that Seller is not in default of its obligations under this Agreement, upon reasonable request by Seller, Buyer will execute a written acknowledgement of non-default in the form of Exhibit 8 attached hereto (the "Acknowledgement") which shall be based on the actual knowledge of Buyer's personnel responsible for administering the Agreement at the time of the execution of the Acknowledgement and after due inquiry of Buyer's internal records only. Notwithstanding any provision to the contrary set forth in the Acknowledgment, Buyer reserves all rights and defenses available to it under the Agreement, and nothing stated therein shall be deemed to have waived, amended or modified any such rights or defenses. In no event shall the issuance of any Acknowledgement introduce any third party to this Agreement or create any rights, including third party beneficiary rights for any Person under this Agreement.
- 24.4. Change of Control. Any Change of Control of Seller (however this Change of Control occurs) shall require the prior written consent of Buyer, which shall not be unreasonably withheld or delayed. Seller shall give Buyer at least thirty (30) days prior written notice of any such requested consent to a Change of Control.
- 24.5. Delivery of Assurances & Voidable. Any Assignment or Change of Control will not relieve Seller of its obligations hereunder, unless Buyer agrees in writing in advance to waive the Seller's continuing obligations under this Agreement. In case of a permitted Assignment such requesting party or parties shall agree in writing to assume all obligations of Seller and to be bound by the terms and conditions of this Agreement and shall deliver to Buyer such tax, credit, performance, and enforceability assurances as Buyer may request, in its sole Commercially Reasonable discretion. Further, Buyer's consent to any Assignment may be conditioned on and subject to Seller's proposed assignee having first obtained all approvals that may be required by any Requirements of Law and from all applicable Governmental Authorities. Any sale, transfer, Change of Control, and/or Assignment of any interest in the Facility or in the Agreement made without fully satisfying the requirements of this Agreement shall be null and void and will be an Event of Default hereunder with Seller as the Defaulting Party.
- 24.6. Cost Recovery. Without limiting Buyer's rights under this Section 24, to the extent Buyer agrees to a request from Seller for one or more consent(s) to Assignment or Change of Control under this Agreement, Seller shall pay Buyer ten thousand dollars (\$10,000) prior to Buyer processing Seller's request.

**25. Notices.**

- 25.1. Process. All notices, requests, or invoices shall be in writing and shall be sent to the address of the applicable Party as specified on the first page of this Agreement. A Party may change its information for receiving notices by sending written notice to the other Party. Notices shall be delivered by hand, certified mail (postage prepaid and return receipt requested), or sent by overnight mail or courier. This section shall be applicable whenever words such as "notify," "submit," "give," or similar language are used in the context of giving notice to a Party.
- 25.2. Receipt of Notices. Hand delivered notices shall be deemed delivered by the close of the Business Day on which it was hand delivered. Notices provided by certified mail (postage prepaid and return receipt requested), mail delivery or courier service, or by overnight mail or courier service will be deemed received on the date of delivery recorded by the delivery



**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY

MAY 28 2023

service or on the tracking receipt, as applicable. Notwithstanding anything to the contrary, if the day on which any notice is delivered or received is not a Business Day or is after 5:00 p.m. EPT on a Business Day, then it shall be deemed to have been received on the next following Business Day.

**26. Miscellaneous.**

- 26.1. Costs. Each Party shall be responsible for its own costs and fees associated with negotiating or disputing or taking any other action with respect to this Agreement, including, without limitation, attorney costs, except that the cost of the arbitrator(s) will be allocated equally between the Parties as provided in Section 23.
- 26.2. Access. Upon reasonable prior notice, Seller shall provide to Buyer and its authorized agents (including contractors and sub-contractors), employees, auditors, and inspectors reasonable access to the Facility to: (i) tour or otherwise view the Facility; (ii) ascertain the status of the Facility with respect to construction, start-up and testing, or any other obligation of Seller under this Agreement; and, (iii) read meters and perform all inspections, maintenance, service, and operational reviews as may be appropriate to facilitate the performance of this Agreement or to otherwise audit and/or verify Seller's performance under this Agreement. Upon reasonable prior notice, Seller shall provide to Buyer and its guests or customers reasonable access to the Facility to only tour or otherwise view the Facility. While at the Facility, the foregoing agents, employees, auditors, inspectors, guests, and customer shall observe such reasonable safety precautions as may be required by Seller, conduct themselves in a manner that will not interfere with the operation of the Facility, and adhere to Seller's reasonable rules and procedures applicable to Facility visitors. Seller shall have the right to have a representative of Seller present during such access.
- 26.3. Safe Harbor and Waiver of Section 366. Each Party agrees that it will not assert, and waives any right to assert, that the other Party is performing hereunder as a "utility," as such term is used in 11 U.S.C. Section 366. Further, each Party hereby waives any right to assert and agrees that it will not assert that 11 U.S.C. Section 366 applies to this Agreement or any transaction hereunder in any bankruptcy proceeding. In any such proceeding each Party further waives the right to assert and agrees that it will not assert that the other Party is a provider of last resort with respect to this Agreement or any transaction hereunder or to otherwise limit contractual rights to accelerate amounts owed, net, recoup, set-off, liquidate, and/or early terminate. Without limiting the generality of the foregoing or the binding nature of any other provision of this Agreement on permitted successors and assigns, this provision is intended to be binding upon all successors and assigns of the Parties, including, without limitation, judgment lien creditors, receivers, estates in possession, and trustees thereof.
- 26.4. Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED, AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW, AND, IF APPLICABLE, BY THE FEDERAL LAW OF THE UNITED STATES OF AMERICA.
- 26.5. Venue/Consent to Jurisdiction. Except for Disputes that are subject to Arbitration as provided herein, any judicial action, suit, or proceedings arising out of, resulting from, or in any way relating to, this Agreement, or any alleged breach or default under the same or the warranties and representations contained in the same, shall be brought only in a state or federal court of competent jurisdiction located in Mecklenburg County, North Carolina. The Parties hereto irrevocably consent to the jurisdiction of any federal or state court within in Mecklenburg County, North Carolina and hereby submit to venue in such courts. Without limiting the generality of the foregoing, the Parties waive and agree not to assert by way of



**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY

MAY 28 2023

- motion, defense, or otherwise in such suit, action, or proceeding, any claim that (i) such Party is not subject to the jurisdiction of the state or federal Courts within North Carolina; or (ii) such suit, action, or proceeding is brought in an inconvenient forum; or (iii) the venue of such suit, action, or proceeding is improper. The exclusive forum for any litigation between them under this Agreement that is not subject to Arbitration shall occur in federal or state court within in Mecklenburg County, North Carolina.
- 26.6. Limitation of Duty to Buy. If this Agreement is terminated due to a default by Seller, neither Seller, nor any affiliate and/or successor of Seller, nor any affiliate and/or successor to the Facility, including without limitation owner and/or operator of the Facility will require or seek to require Buyer to purchase any output (Energy or otherwise) from the Facility under any Requirements of Law (including without limitation PURPA) or otherwise for any period that would have been covered by the Term of this Agreement had this Agreement remained in effect at a price that exceeds the Contract Price. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, and on behalf of any successor to the Seller or successor to the Facility, hereby agrees to the terms and conditions in the above sentence, and hereby waives its right to dispute the above sentence. Seller authorizes the Buyer to record notice of the foregoing in the real estate records.
- 26.7. Entire Agreement and Amendments. This Agreement represents the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, binding documents, representations and agreements, whether written or oral. No amendment, modification, or change to this Agreement shall be enforceable unless agreed upon in a writing that is executed by the Parties.
- 26.8. Drafting. Each Party agrees that it (and/or its counsel) has completely read, fully understands, and voluntarily accepts every provision, term, and condition of this Agreement. Each Party agrees that this Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties, and no Party shall have any provision hereof construed against such Party by reason of such Party drafting, negotiating, or proposing any provision hereof, or execution of this Agreement. Each Party irrevocably waives the benefit of any rule of contract construction that disfavors the drafter of a contract or the drafter of specific language in a contract.
- 26.9. Headings. All section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.
- 26.10. Publicity.
- 26.10.1. Limitation on Seller. Seller shall not make any announcement or release any information concerning or otherwise relating to this Agreement to any member of the public, press, Person, official body, or otherwise without Buyer's prior written consent, which shall not be unreasonably withheld; provided, however, any content approved by Buyer shall be limited to the non-confidential facts of the Agreement and will not imply, directly or indirectly, any endorsement, partnership, support, or testimonial of Seller by Buyer.
- 26.10.2. Limitation on the Parties. Neither Party shall make any use of the other Party's name, logo, likeness in any publication, promotional material, news release, or similar issuance or material without the other Party's prior review, approval, and written consent. Seller agrees and acknowledges that any reference or likeness to "Duke" shall be a prohibited use of Buyer's name, logo, likeness. Seller agrees and acknowledges that any direct or indirect implication of any endorsement, partnership, support, or testimonial of Seller by Buyer is prohibited, and any such use, endorsement, partnership, support, and/or testimonial will be an Event of

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

Default under this Agreement. Subject to the foregoing, either Party may disclose to the public general information in connection with the Party's respective business activities; *provided, however*, no such disclosure or publicity by Seller will directly or indirectly imply any endorsement, partnership, support, or testimonial of Seller by Buyer.

- 26.11. Waiver. No waiver by any Party of any of its rights with respect to the other Party or with respect to any matter or default arising in connection with this Agreement shall be construed as a waiver of any subsequent right, matter or default whether of a like kind or different nature. Any waiver under this Agreement will be effective only if it is in writing that has been duly executed by an authorized representative of the waiving Party.
- 26.12. Partnership and Beneficiaries. Nothing contained in this Agreement shall be construed or constitute any Party as the employee, agent, partner, joint venture, or contractor of any other Party. This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and their permitted successors and assigns. No other person or entity, including, without limitation, a financing or collateral support provider, will be a direct or indirect beneficiary of or under this Agreement, and will not have any direct or indirect cause of action or claim under or in connection with this Agreement.
- 26.13. Severability. Any provision or section hereof that is declared or rendered unlawful by any applicable court of law, or deemed unlawful because of a statutory change, shall not, to the extent practicable, affect other lawful obligations under this Agreement.
- 26.14. Counterparts. This Agreement may be executed in counterparts, including facsimiles hereof, and each such executed document will be deemed to be an original document and together will complete execution and effectiveness of this Agreement.

*[Remainder of page intentionally left blank. Signature page follows.]*

OFFICIAL COPY

MAY 28 2023

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

**IN WITNESS WHEREOF**, Seller and Buyer have caused this Agreement to be executed by their respective duly authorized officers as of the Effective Date.

DUKE ENERGY CAROLINAS, LLC



David Johnson (Oct 15, 2020 14:44 EDT)

BY: \_\_\_\_\_

NAME: David B. Johnson

TITLE: Director, Business Development and Compliance

DATE: Oct 15, 2020

WILKES SOLAR, LLC



David Zwilling (Oct 14, 2020 10:08 EDT)

BY: \_\_\_\_\_

NAME: David Zwilling

TITLE: Authorized Signatory

DATE: Oct 14, 2020

OFFICIAL COPY

NOV 28 2023

**CONFIDENTIAL**

**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2  
MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

Exhibit 1

Estimated Monthly Energy Production of the Facility

<u>Month</u>	<u>Estimated Facility Energy Production (MWh)</u>
January	██████████
February	██████████
March	██████████
April	██████████
May	██████████
June	██████████
July	██████████
August	██████████
September	██████████
October	██████████
November	██████████
December	██████████
Total	██████████

OFFICIAL COPY

May 28 2023

**CONFIDENTIAL**  
DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2  
MUST BE FULLY EXECUTED BY OCTOBER 15, 2020

Exhibit 2  
Contract Price

<b>CAPACITY pricing by period and season</b>		
	Summer PM	██████████
	Winter AM	██████████
	Winter PM	██████████
<b>ENERGY pricing by period and season</b>		
	Summer Premium Peak	██████████
	Summer On-Peak	██████████
	Summer Off-Peak	██████████
	Winter Premium Peak	██████████
	Winter AM On-Peak	██████████
	Winter PM On-Peak	██████████
	Winter Off-Peak	██████████
	Shoulder AM/PM On-Peak	██████████
	Shoulder Off-Peak	██████████

For Energy Credit purposes, Summer months are defined as calendar months June through September, Winter months are defined as calendar months December through February, and Shoulder months are defined as March through May and October through November. Summer on-peak hours shall be Monday through Friday from 12:00 p.m. noon to 4:00 p.m. and 8:00 p.m. to 10:00 p.m. Winter on-peak hours shall be Monday through Friday with morning hours from 5:00 a.m. to 6:00 a.m. and 9:00 a.m. to 10:00 a.m., plus evening hours from 5:00 p.m. to 10:00 p.m. Shoulder on-peak hours shall be Monday through Friday with morning hours from 6:00 a.m. to 10:00 a.m. plus evening hours from 4:00 p.m. to 11:00 p.m. Summer premium peak hours shall be Monday through Friday from 4:00 p.m. to 8:00 p.m. Winter premium peak hours shall be Monday through Friday from 6:00 a.m. to 9:00 a.m. There are no premium peak hours for Shoulder months. All other hours, plus the following holidays, shall be off-peak: New Year’s Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after, and Christmas Day. When a holiday falls on a Saturday, the Friday before the holiday will be considered off-peak; when the holiday falls on a Sunday, the following Monday will be considered off-peak.

For Capacity Credit purposes, Capacity Credit shall only be applicable in Summer months defined as the calendar months of July and August and Winter months defined as calendar months of December through March. Summer on-peak hours shall be 4:00 p.m. to 8:00 p.m. during all Summer days. During Winter months, the morning on-peak hours shall be all Winter days from 6:00 a.m. to 9:00 a.m. and evening on-peak hours shall be all Winter days from 6:00 p.m. to 9:00 p.m. Capacity credits are not applicable in all other months.



**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

Exhibit 3

Operational Milestone Schedule [to be completed by Seller for Buyer’s approval]

<b>Deadline</b>	<b>Performance/Result Seller Must Timely Achieve</b>
As required under applicable interconnection procedures	Interconnection Agreement Executed
180 days prior to Facilities and System Upgrades In-Service Date	Financing Milestone Commitment
180 days prior to Facilities and System Upgrades In-Service Date	Final System Design under Interconnection Agreement
180 days prior to Facilities and System Upgrades In-Service Date	Required Permits and Approval Deadlines
150 days prior to Facilities and System Upgrades In-Service Date	Commencement Readiness Requirements
90 calendar days after the Interconnection Facilities and System Upgrades In-Service Date, and extended day-to-day for any delays not caused by the Seller.	Commercial Operation Date

1. **Financing Milestone Commitment.** If third party financing is being obtained by Seller to construct the Facility, Seller shall deliver to Buyer a letter of commitment for full project financing meeting all of the minimum requirements set forth below, as determined by Buyer in Buyer’s sole Commercially Reasonable discretion. Buyer has no responsibility or obligation of any kind to Seller or any other person or entity with respect to Seller in connection with Seller’s financing or the Financing Milestone Commitment.
  - 1.1. Fully-underwritten and binding (not “best efforts,” a term sheet, or some lesser commitment).

**CONFIDENTIAL**

**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2  
MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

- 1.2. In an amount that is, along with fully underwritten and committed equity, adequate funding for the construction and operation of the project.
  - 1.3. Full agreement of the lender and Seller with respect to term, interest rates, fees and other economics of the lending transaction.
  - 1.4. Lender has approved the form of the power purchase agreement, turbine/panel supply agreement, engineering procurement and construction contract and other significant project agreements, subject only to the execution and delivery of those documents, as well as the construction budget for the project, and that the lender has completed all necessary due diligence.
  - 1.5. Lender retains no further approval rights with respect to size, site or technical aspects of the project.
  - 1.6. Free of conditions to effectiveness relating to further equity commitments, the confirmation of tax attributes, the approvals of other public or private third parties or the satisfactory completion of third party reports or assessments (environmental, insurance or otherwise).
  - 1.7. Not require any bonds or performance guarantees that have not already been obtained.
  - 1.8. No general condition to financing that the lender be satisfied with the project in its discretion.
  - 1.9. Fully executed by the lender and the Seller.
2. If Seller (or its Affiliate) is balance sheet financing the construction of the Facility, Seller shall satisfy this Financial Milestone Commitment by delivering to Buyer evidence of Seller's, or its Affiliate's, approval for funding in an amount adequate for the construction of the Facility.
3. **Final System Design Under Interconnection Agreement.** Seller shall deliver to Buyer a copy of the design specifications delivered by Seller to the Transmission Provider as of Seller's execution of the facility study agreement with the Transmission Provider, which design specifications shall be deemed as the "final" system design for purposes of Seller's obligation to timely achieve the Commercial Operation Date set forth above in this Exhibit 3. The final design specification documents delivered by Seller shall be labeled as "**FINAL**", and shall be sealed with a [North Carolina/South Carolina] Professional Engineer for purposes of establishing the final design submitted by the Seller based on which the Transmission Provider will determine impacts to the System and construct interconnection facilities for Seller to interconnect with the System and perform under this Agreement. Seller understands that changes in system design may be deemed as material or significant design changes by the Transmission Provider, and could result in the Transmission Provider withdrawing Seller's position in the transmission queue or otherwise withdrawing Seller's transmission request, as may be determined by the Transmission Provider.
4. **Required Permits and Approval Deadlines.** Seller shall deliver to Buyer a list of required Permits and deadlines to secure each of those Permits. Seller shall identify and list all Permits customary and necessary for Seller to design, construct, test, commission, and fully operate the Facility. Seller shall also identify and list the deadline by which Seller must secure all final Permits for Seller to achieve the Commercial Operation Date set forth above in this Exhibit 3 and such final deadline shall be deemed to be a Milestone Deadline. Seller shall keep Buyer informed of its efforts to secure the Permits. For each identified Permit, Seller shall provide Buyer written notice, and any supporting documentation requested by Buyer in its Commercially Reasonable Discretion, that the identified Permits have been obtained, including, without limitation, any approvals from the local Governmental Authority approving the land use, site plan and construction of the Facility.
5. **Commencement Readiness Requirements.** Seller shall deliver to Buyer the list of major development and construction activities, together with deadlines for the commencement and successful completion of those activities for Seller to achieve the Commercial Operation Date set forth in this Exhibit 3. The list of major development and construction activities, together with commencement and completion deadlines, shall include each of the activities set forth below. Each such major development and construction activity shall be deemed to be an Operational Milestone, and the deadline by which Seller must successfully complete each such activity for Seller to achieve the Commercial Operation Date set forth in this Exhibit 3 shall be deemed to be a Milestone Deadline. For each identified activity, Seller shall provide Buyer written notice,

OFFICIAL COPY

JULY 28 2023



**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

and any supporting documentation requested by Buyer in its Commercially Reasonable Discretion, that the identified activity has been commenced and/or successfully completed.

- 5.1. Proof of Seller's rights and interest in the site upon which the Facility is to be constructed, including the applicable sale agreement or long-term lease.
- 5.2. Delineation of any long lead-time procurement items, including a schedule for ordering and proof of such activity.
- 5.3. A project key milestone schedule, reflecting the critical milestone events for design and construction of the facility including the date upon which Seller shall achieve: thirty and ninety percent detailed design; site mobilization and commencement; mechanical completion; substantial completion; and final completion.
- 5.4. Identification of Seller's key personnel, with primary responsibility for the design and construction of the Facility and communications with Buyer.
- 5.5. Seller's operations and maintenance plan.
- 5.6. Seller's performance and capacity testing plan and performance guarantees, in which Seller defines the performance output requirements of the Facility and describes the procedures and timing for all testing that will be conducted to demonstrate whether the Facility meets the applicable performance requirements and conditions.

OFFICIAL COPY

JULY 28 2023

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

Exhibit 4

Facility Information

The Facility covered under this Agreement is hereby identified as follows:

1. Facility Name: Wilkes Solar
2. Facility Address: [REDACTED]
3. Description of Facility (include number, manufacturer and model of Facility generating units, and layout):

A new 75 MW Wilkes Solar Power Project is being proposed in Wilkes County, North Carolina. The site consists of [REDACTED]

The Project Substation is equipped with a 100 kV Manual Disconnect Switch, Outdoor CVT, 100 kV Circuit Breaker, 50/67/83 MVA, 34.5/100 kV Power Transformer, and 34.5 kV Metal-enclosed Outdoor Switchgear line-up. Control & Relay Protection panels, Station Batteries & Chargers, inverters, panel boards, SCADA, telemetry etc., are installed in the Operations building. Capacitor banks at 34.5 kV will be added if required during system studies and final design. The 100 kV Line terminates on an entrance structure. Bi-directional client revenue metering is provided at the 34.5 kV switchgear.

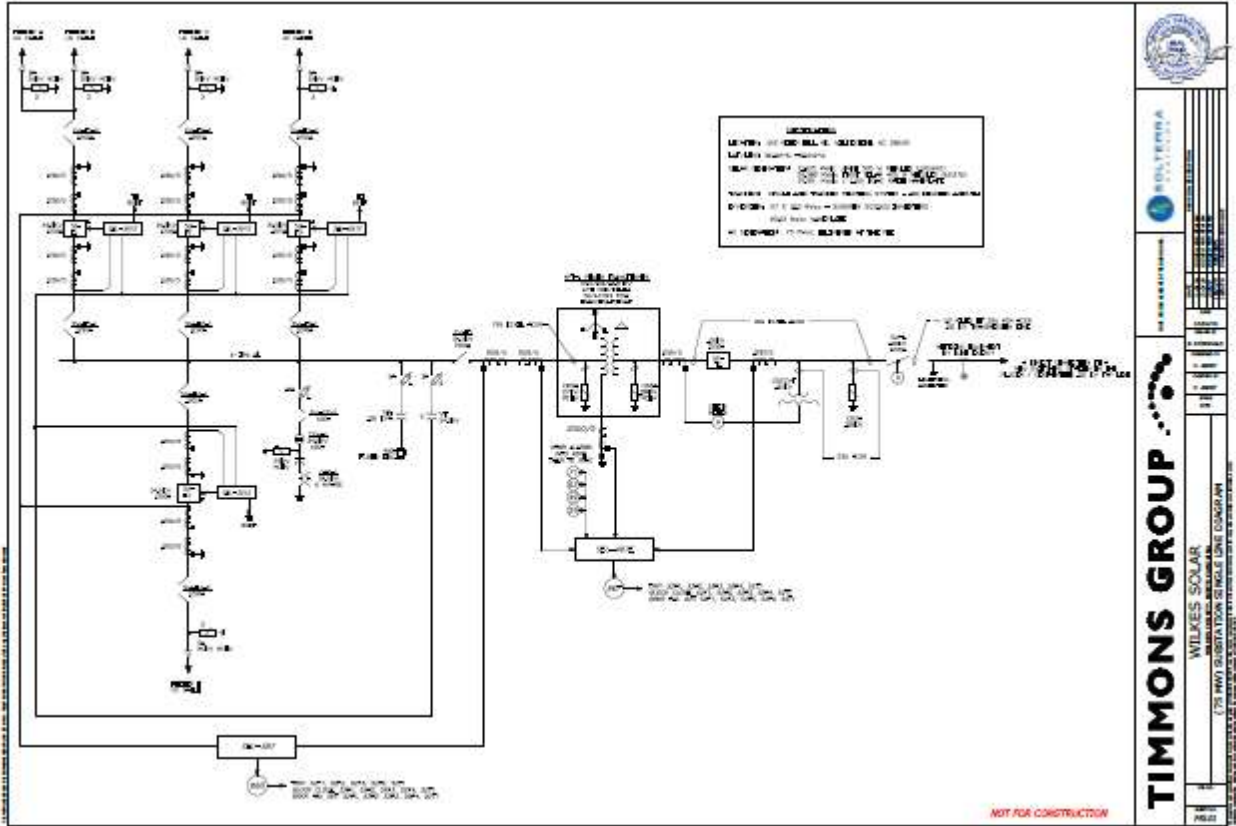
The Interconnection Substation is equipped with three (3) 100kV (145kV max) Disconnect Switches, three (3) 100kV (450kV max) SF6 outdoor Circuit Breakers, outdoor VT, breaker bushing CT, Surge arrestor and a Manual Disconnect Switch. Wilkes SS has also a pre-fabricated Control Building, which houses the Protection panels, Transfer Trip panel, AC & DC panels etc.

*Specification Sheets are provided for major components. Not all components are specified at this time.*

4. Nameplate Capacity Rating (MW): AC and DC:
  - 75 MW AC as programmed by the plant controller and per the Interconnection Agreement limitation
  - [REDACTED] **[FINAL DC RATING TO BE MEMORIALIZED AT TIME OF COD BY AMENDMENT]**
5. Fuel Type/Generation Type:
  - Photovoltaic Solar
6. Site Map (include location and layout of the Facility, equipment, and other site details):



**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**



OFFICIAL COPY

May 28 2023

8. Control Equipment. Subject to final approval by Buyer as of the date of final execution of the Interconnection Agreement, the following control equipment shall be installed at the Facility: A Power Plant Controller (PPC) which includes all features required to comply with this Agreement and the Interconnection Agreement, including, but not limited to, active power control (dispatch), power factor set point control, voltage schedule set point control, active power ramp rates, and frequency response control (from regulation signal sent from System Operator). Set points such as active power control, as required by this Agreement, will be made available to Buyer via a hard-wired DNP3 path at the Facility's Point of Interconnection. Remote access to the Facility's HMI (the Plant Controller Interface) will be given for control of the required variables, by the Buyer
9. Storage Resources. Subject to final approval by Buyer as of the date of final execution of the Interconnection Agreement, the following Storage resources shall be connected to or incorporated into the Facility [identify the design and all material components of any battery storage or other energy storage device connected to or incorporated into the Facility]

UPON EXECUTION OF THE AGREEMENT TO WHICH THIS EXHIBIT IS ATTACHED, ANY MATERIAL MODIFICATION TO THE FACILITY SHALL REQUIRE BUYER'S PRIOR APPROVAL, AND SHALL BE MEMORIALIZED IN WRITING IN AN AMENDMENT TO THE AGREEMENT.

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

Exhibit 5  
Expected Annual Output

<u>Term Year</u>	<u>Net Energy (MWh)</u>
year 1	[REDACTED]
year 2	[REDACTED]
year 3	[REDACTED]
year 4	[REDACTED]
year 5	[REDACTED]
year 6	[REDACTED]
year 7	[REDACTED]
year 8	[REDACTED]
year 9	[REDACTED]
year 10	[REDACTED]
year 11	[REDACTED]
year 12	[REDACTED]
year 13	[REDACTED]
year 14	[REDACTED]
year 15	[REDACTED]
year 16	[REDACTED]
year 17	[REDACTED]
year 18	[REDACTED]
year 19	[REDACTED]
year 20	[REDACTED]

OFFICIAL COPY

May 28 2023

**CONFIDENTIAL**

**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2  
MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

Exhibit 6  
Form of Guaranty

**THIS GUARANTY AGREEMENT** (this "Guaranty"), dated as of [date], is issued and delivered by [ **enter corporate legal name** ], a [state] [form of entity] (the "Guarantor"), for the account of [ **enter corporate name** ], a [state] [form of entity] (the "Obligor"), and for the benefit of [ **enter corporate name** ], a [state] [form of entity] (the "Beneficiary").

**Background Statement**

WHEREAS, the Beneficiary and Obligor entered into that certain \_\_\_\_\_ dated (the "Agreement"); and

WHEREAS, Beneficiary has required that the Guarantor deliver to the Beneficiary this Guaranty as an inducement to enter into the Agreement.

**Agreement**

**NOW, THEREFORE**, in consideration of the foregoing and for good and valuable consideration, the Guarantor hereby agrees as follows:

1. Guaranty; Limitation of Liability. Subject to any rights, setoffs, counterclaims and any other defenses that the Guarantor expressly reserves to itself under this Guaranty, the Guarantor absolutely and unconditionally guarantees the timely payment of the Obligor's payment obligations under the Agreement (the "Guaranteed Obligations"); provided, however, that the Guarantor's aggregate liability hereunder shall not exceed [ **amount** ] **U. S. Dollars (U.S. [\$xx,xxx,xxx])**.

Subject to the other terms of this Guaranty, the liability of the Guarantor under this Guaranty is limited to payments expressly required to be made under the Agreement, and except as specifically provided therein, the Guarantor shall not be liable for or required to pay any consequential or indirect loss (including but not limited to loss of profits), exemplary damages, punitive damages, special damages, or any other damages or costs.

2. Effect of Amendments. The Guarantor agrees that the Beneficiary and the Obligor may modify, amend and supplement the Agreement and that the Beneficiary may delay or extend the date on which any payment must be made pursuant to the Agreement or delay or extend the date on which any act must be performed by the Obligor thereunder, all without notice to or further assent by the Guarantor, who shall remain bound by this Guaranty, notwithstanding any such act by the Beneficiary.

3. Waiver of Rights. The Guarantor expressly waives (i) protest, (ii) notice of acceptance of this Guaranty by the Beneficiary, and (iii) demand for payment of any of the Guaranteed Obligations.

4. Reservation of Defenses. Without limiting the Guarantor's own defenses and rights hereunder, the Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses that the Obligor may have to payment of all or any portion of the Guaranteed Obligations except defenses arising from the bankruptcy, insolvency, dissolution or liquidation of the Obligor and other defenses expressly waived in this Guaranty.

5. Settlements Conditional. This guaranty shall remain in full force and effect or shall be reinstated (as the case may be) if at any time any monies paid to the Beneficiary in

reduction of the indebtedness of the Obligor under the Agreement have to be repaid by the Beneficiary by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being in force, and the liability of the Guarantor under this Guaranty shall be computed as if such monies had never been paid to the Beneficiary

6. Notice. The Beneficiary will provide written notice to the Guarantor if the Obligor defaults under the Agreement.

7. Primary Liability of the Guarantor. The Guarantor agrees that the Beneficiary may enforce this Guaranty without the necessity at any time of resorting to or exhausting any other security or collateral. This is a continuing Guaranty of payment and not merely of collection.

8. Representations and Warranties. The Guarantor represents and warrants to the Beneficiary as of the date hereof that:

- a. The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guaranty and to perform the provisions of this Guaranty on its part to be performed;
- b. The execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;
- c. All consents, authorizations, approvals, registrations and declarations required for the due execution, delivery and performance of this Guaranty have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect, and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and
- d. This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against it in accordance with its terms, except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

9. Nature of Guaranty. The Guarantor hereby agrees that its obligations hereunder shall be unconditional irrespective of the impossibility or illegality of performance by the Obligor under the Agreement; the absence of any action to



**CONFIDENTIAL**

**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2  
MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY

JULY 28 2023

enforce the Agreement; any waiver or consent by Beneficiary concerning any provisions of the Agreement; the rendering of any judgment against the Obligor or any action to enforce the same; any failure by Beneficiary to take any steps necessary to preserve its rights to any security or collateral for the Guaranteed Obligations; the release of all or any portion of any collateral by Beneficiary; or any failure by Beneficiary to perfect or to keep perfected its security interest or lien in any portion of any collateral.

10. Subrogation. The Guarantor will not exercise any rights that it may acquire by way of subrogation until all Guaranteed Obligations shall have been paid in full. Subject to the foregoing, upon payment of all such Guaranteed Obligations, the Guarantor shall be subrogated to the rights of Beneficiary against the Obligor, and Beneficiary agrees to take at the Guarantor's expense such steps as the Guarantor may reasonably request to implement such subrogation.

11. Term of Guaranty. This Guaranty shall remain in full force and effect until the earlier of (i) such time as all the Guaranteed Obligations have been discharged, and (ii) [date] (the "Expiration Date"); provided however, the Guarantor will remain liable hereunder for Guaranteed Obligations that were outstanding prior to the Expiration Date.

12. Governing Law. This Guaranty shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to principles of conflicts of law.

13. Expenses. The Guarantor agrees to pay all reasonable out-of-pocket expenses (including the reasonable fees and expenses of the Beneficiary's counsel) relating to the enforcement of the Beneficiary's rights hereunder in the event the Guarantor disputes its obligations under this Guaranty and it is finally determined (whether through settlement, arbitration or adjudication, including the exhaustion of all permitted appeals), that the Beneficiary is entitled to receive payment of a portion of or all of such disputed amounts.

14. Waiver of Jury Trial. The Guarantor and the Beneficiary, through acceptance of this Guaranty, waive all rights to trial by jury in any action, proceeding or counterclaim arising or relating to this Guaranty.

15. Entire Agreement; Amendments. This Guaranty integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all oral negotiations and prior writings in respect to the subject matter hereof. This Guaranty may only be amended or modified by an instrument in writing signed by each of the Guarantor and the Beneficiary.

16. Headings. The headings of the various Sections of this Guaranty are for convenience of reference only and shall not modify, define or limit any of the terms or provisions hereof.

17. No Third-Party Beneficiary. This Guaranty is given by the Guarantor solely for the benefit of the Beneficiary, and is not to be relied upon by any other person or entity.

18. Assignment. Neither the Guarantor nor the Beneficiary may assign its rights or obligations under this Guaranty without the prior written consent of the other, which consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Beneficiary may assign this Guaranty, without the Guarantor's consent, provided such assignment is made to an affiliate or subsidiary of the Beneficiary

Any purported assignment in violation of this Section 18 shall be void and without effect.

19. Notices. Any communication, demand or notice to be given hereunder will be duly given when delivered in writing or sent by electronic mail to the Guarantor or to the Beneficiary, as applicable, at its address as indicated below:

If to the Guarantor, at:

**[Guarantor name]**  
[Address]  
Attention: [contact]  
Email:[email address]

With a copy to:

**[Seller name]**  
[Address]  
Attention: [contact]  
Email:[email address]

If to the Beneficiary, at:

**[Beneficiary name]**  
[Address]  
Attention: [contact]  
Email:[email address]

or such other address as the Guarantor or the Beneficiary shall from time to time specify. Notice shall be deemed given (a) when received, as evidenced by signed receipt, if sent by hand delivery, overnight courier or registered mail or (b) when received, as evidenced by email confirmation, if sent by email and received on or before 4 pm local time of recipient, or (c) the next business day, as evidenced by email confirmation, if sent by email and received after 4 pm local time of recipient.



**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

**IN WITNESS WHEREOF**, the Guarantor has executed this  
Guaranty as of the day and year first above written

**[Guarantor name]**

By: \_\_\_\_\_  
Name:  
Title:

**OFFICIAL COPY**

**July 28 2023**

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

Exhibit 7  
Form of Letter of Credit

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit No.: \_\_\_\_\_

Date: \_\_\_\_\_

Beneficiary:

[Duke Energy Carolinas, LLC][Duke Energy Progress, LLC]  
550 S. Tryon Street, DEC 40C  
Charlotte, North Carolina 28202  
Attn: Chief Risk Officer

Ladies and Gentlemen:

By the order of:

Applicant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

We hereby issue in your favor our irrevocable standby letter of credit No.: \_\_\_\_\_ for the account of \_\_\_\_\_ for an amount or amounts not to exceed \_\_\_\_\_ US Dollars in the aggregate (US\$ \_\_\_\_\_) available by your drafts at sight drawn on [Issuing Bank] effective \_\_\_\_\_ and expiring at our office on \_\_\_\_\_ (the “Expiration Date”).

The Expiration Date shall be deemed automatically extended without amendments for one year from the then current Expiration Date unless at least ninety (90) days prior to the then applicable Expiration Date, we notify you in writing by certified mail return receipt requested or overnight courier that we are not going to extend the Expiration Date. During said ninety (90) day period, this letter of credit shall remain in full force and effect

Funds under this letter of credit are available against your draft(s), in the form of attached Annex 1, mentioning our letter of credit number and presented at our office located at [Issuing Bank’s address must be in US] and accompanied by a certificate in the form of attached Annex 2 with appropriate blanks completed, purportedly signed by an authorized representative of the Beneficiary, on or before the Expiration Date in accordance with the terms and conditions of this letter of credit. Partial drawings under this letter of credit are permitted.

Certificates showing amounts in excess of amounts available under this letter of credit are acceptable, however, in no event will payment exceed the amount available to be drawn under this letter of credit.

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY

JULY 28 2023

We engage with you that drafts drawn under and in conformity with the terms of this letter of credit will be duly honored on presentation if presented on or before the Expiration Date. Presentation at our office includes presentation in person, by certified, registered, or overnight mail.

Except as stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of [Issuing Bank] under this letter of credit is the individual obligation of [Issuing Bank] and is in no way contingent upon reimbursement with respect hereto.

This letter of credit is subject to the International Standby Practices 1998, International Chamber Of Commerce Publication No. 590 (“ISP98”). Matters not addressed by ISP98 shall be governed by the laws of the state of New York.

We shall have a reasonable amount of time, not to exceed three (3) business days following the date of our receipt of drawing documents, to examine the documents and determine whether to take up or refuse the documents and to inform you accordingly.

Kindly address all communications with respect to this letter of credit to [Issuing Bank’s contact information], specifically referring to the number of this standby letter of credit.

All banking charges are for the account of the Applicant.

This letter of credit may not be amended, changed or modified without our express written consent and the consent of the Beneficiary.

This letter of credit is transferable, and we agree to consent to its transfer, subject to our standard terms of transfer and your payment to us of our standard transfer fee.

Very truly yours  
[Issuing Bank]

\_\_\_\_\_  
Authorized Signer

\_\_\_\_\_  
Authorized Signer

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY

NOV 28 2023

This is an integral part of letter of credit number: *[irrevocable standby letter of credit number]*

ANNEX 1

FORM OF SIGHT DRAFT

[Insert date of sight draft]

To: *[Issuing Bank's name and address]*

For the value received, pay to the order of \_\_\_\_\_ by wire transfer of immediately available funds to the following account:

*[name of account]*  
*[account number]*  
*[name and address of bank at which account is maintained]*  
*[aba number]*  
*[reference]*

The following amount:

*[insert number of dollars in writing]* United States Dollars  
(US\$ *[insert number of dollars in figures]*)

Drawn upon your irrevocable letter of credit No. *[irrevocable standby letter of credit number]*  
dated *[effective date]*

*[Beneficiary]*

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY

NOV 28 2023

This is an integral part of letter of credit number: *[irrevocable standby letter of credit number]*

ANNEX 2

FORM OF CERTIFICATE

[Insert date of certificate]

To: *[issuing bank's name and address]*

*[check appropriate draw condition]*

[ ] An Event of Default (as defined in the [Name of Agreement between [Beneficiary's Name] and [Insert Counterparty's Name] dated as of \_\_\_\_\_ (the "Agreement")) has occurred with respect to [Counterparty's Name] and such Event of Default has not been cured within the applicable cure period, if any provided for in the Agreement.

Or

[ ] [Counterparty's Name] is required, pursuant to the terms of the Agreement, to maintain a letter of credit in favor of [Beneficiary's Name], has failed to renew or replace the Letter of Credit and the Letter of Credit has less than thirty (30) days until the expiration thereof.

*[Beneficiary]*

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY

JULY 28 2023

Exhibit 8  
Acknowledgement of Non-Default

[Print Duke Energy letterhead]

Date:

Address of Seller

Re: Acknowledgement of Non-Default (the “Acknowledgement”) of the Renewable Power Purchase Agreement, between [Duke Energy Carolinas, LLC][Duke Energy Progress, LLC] (“Buyer”) and [insert Seller name] dated as of \_\_\_\_\_ (the “Agreement”).

Dear Sir or Madam:

The undersigned, a duly authorized representative of Buyer hereby acknowledges to Seller as follows:

1. The copy of the Agreement attached hereto as Exhibit A (including any amendments thereto) constitutes a true and complete copy of the Agreement;
2. Buyer has not transferred or assigned its interest in the Agreement; and
3. as of the date of this Acknowledgement based on the actual knowledge of Buyer’s personnel responsible for administering the Agreement after due inquiry of Buyer’s internal records only, there is no current Event of Default by Seller or Buyer under the Agreement, nor to Buyer’s knowledge, has any event or omission occurred which, with the giving of notice or the lapse of time or both, would constitute an Event of Default under the Agreement and the Agreement is in full force and effect.

Notwithstanding any provision to the contrary set forth herein, Buyer reserves all rights and defenses available to it under the Agreement and nothing stated herein shall be deemed to have waived, amended or modified any such rights or defenses.

Except as specified herein to the contrary, capitalized terms used in this Acknowledgement shall have the meaning ascribed to such terms in the Agreement.

Sincerely,

[Duke Energy Carolinas, LLC][Duke Energy Progress, LLC]

By: \_\_\_\_\_  
Name:  
Title:

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

Exhibit 9

<b>Power Plant Controller Output Points</b>			
<b>Analog</b>	<b>Units of Measure</b>	<b>Accuracy</b>	<b>Notes</b>
Estimated Unit Active Power Operating High Limit		± 5 %	Estimated Generation currently possible given current equipment status, equipment characteristics, and current ambient conditions. Calculation based on site rating, percentage of inverters in service, POA irradiance, DC/AC ratio, ambient conditions, etc.
Estimated Unit Active Power Operating Low Limit		± 5 %	Estimated Minimum Generation currently possible given current equipment status, equipment characteristics, and current ambient conditions. Calculation based on site rating, percentage of inverters in service, POA irradiance, DC/AC ratio, ambient conditions, etc.
Air Temperature	Degrees Celsius	± 1°	
Back Panel Temperature	Degrees Celsius	± 1°	Temperature sensor mounted behind a solar photovoltaic panel.
Plane Of Array Irradiance- Primary Meter	Watts/Meter Sq.	± 25 W/m <sup>2</sup>	Measured with a Class II pyranometer or equivalent equipment. For fixed-tilt sites, the sensor shall be mounted on a meteorological station facing the same angle and direction as the solar photovoltaic panels at the site. For tracking sites, the sensor shall be mounted on a tracker to be oriented at the same angle and direction as the solar photovoltaic panels at the site.
Plane Of Array Irradiance- Secondary Meter	Watts/Meter Sq.	± 25 W/m <sup>2</sup>	Measured with a Class II pyranometer or equivalent equipment. For fixed-tilt sites, the sensor shall be mounted on a meteorological station facing the same angle and direction as the solar photovoltaic panels at the site. For tracking sites, the sensor shall be mounted on a tracker to be oriented at the same angle and direction as the solar photovoltaic panels at the site.
Global Horizontal Irradiance	Watts/Meter Sq.	± 25 W/m <sup>2</sup>	Measured with a Class II pyranometer or equivalent equipment. The sensor shall be mounted on a metrological station set at the global horizontal angle of the earth in reference to the sun solar radiation.
Global Horizontal Diffuse Irradiance	Watts/Meter Sq.	± 25 W/m <sup>2</sup>	Measured with a Class II pyranometer or equivalent equipment. All Solar irradiance coming from the sky and other reflected surfaces except for solar radiation coming directly from the sun and the circumsolar

OFFICIAL COPY

MAY-28-2023



**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY  
MAY 28 2025

			irradiance within approximately three degrees of the sun. Global diffuse irradiance sensors follow the same accuracy and mounting requirements as the GHI sensors but shall be designed to measure diffused irradiance.
Direct Irradiance (Optional)	Watts/Meter Sq.	± 25 W/m <sup>2</sup>	Measured with a Class II pyranometer or equivalent equipment. Solar irradiance arriving at the earth's surface from the sun's direct beam, on a plane perpendicular to the beam and is typically measured on a solar tracker.
Number of Inverters in Ready Status			Sum of the Number of inverters currently in service. Can be a decimal if one or more inverters are partially available.
<b>Digital</b>	<b>Status</b>	<b>Accuracy</b>	<b>Notes</b>
Active Power Dispatch Event	ON/OFF		ON indicates the resource is currently being dispatched to the Active Power Automatic Generation Control Setpoint.
Plane Of Array Irradiance- Primary Meter Status	ON/OFF		Communications Online Offline Status
Plane Of Array Irradiance- Secondary Meter Status	ON/OFF		Communications Online Offline Status

**For Facilities equipped with DC tied, behind a solar inverter, Storage Resources the following Power Plant Controller Output Points shall also be reported to Buyer<sup>1</sup>**

<b>Analog</b>	<b>Units of Measure</b>	<b>Accuracy</b>	<b>Notes</b>
Unit Net MW			The resource's real power output measured at the low side of the step-up transformer.
Unit Gross MW			The resource's real power output before subtracting the auxiliary real power load or step-up transformer real power losses.
Unit Auxiliary MW			The resource's real power load the generating unit provides to maintain its station service power.
Storage Device Active Power Operating (Discharging) High Limit	+MWs		Storage Device's Active Power Operating High Limit given current equipment status, equipment characteristics, and current ambient conditions.
Storage Device Active Power Operating (Charging) Low Limit	-MWs		Storage Device's Active Power Operating Low Limit given current equipment status, equipment characteristics, and current ambient conditions.

<sup>1</sup> For non-DC tied, behind a solar inverter, Storage Resources Buyer may require additional Power Plant Controller Output Points to be reported upon reasonable notice to Seller.

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY  
MAY 28 2023

Number of Storage Device DC-DC Converters in Ready Status			Sum of the Number of DC-DC Converters currently in service. Can be a decimal if one or more DC-DC Converters are partially available.
Allowable Depth of Discharge	MWh		MWh energy storage potential, considering OEM recommendations and any emergent operating limitations, at a given point in time.
State of Charge			<p>Percentage of the Allowable Depth of Discharge currently charged within the storage device.</p> <p>Example: A nameplate rated 10 MWh storage device is currently allowed to store energy up to 80% of its nameplate rating and down to 20% of its nameplate rating. The storage device currently has 4 MWhs stored in the device.</p> <p>The Allowable Depth of Discharge is 10 MWh  <math>*80\% - 10 \text{ MWh} * 20\% = 6 \text{ MWh}</math></p> <p>The State of Charge = 4 MWh / 6 MWh = 66.66%</p>
Max MWh Charge			Maximum amount of energy currently allowed to be stored in the energy device given current equipment status, equipment characteristics, and current ambient conditions.
Min MWh Charge			Minimum amount of energy currently allowed to be stored in the energy device given current equipment status, equipment characteristics, and current ambient conditions.
Bulk Discharge Window Start Timestamp			The Timestamp of the start of the next Bulk Discharge Window.
Bulk Discharge Window End Timestamp			The Timestamp of the end of the next Bulk Discharge Window.
Bulk Discharge Window Active Power Setpoint			Active Power Setpoint for the current or next Bulk Discharge window taking into account the storage device's current State of Charge and Allowable Depth of Discharge.
<b>Digital</b>	<b>Status</b>	<b>Accuracy</b>	<b>Notes</b>
Storage Device Breaker Status	OPEN/CLOSED		Indicates whether a the Unit Generator Breaker is Open or Closed.

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

**Exhibit 10**  
**Energy Storage Protocol**

1. The Storage Resource must be on the DC side of the inverter and charged exclusively by the Facility.
2. The Storage Resource will be controlled by the Seller, within operational limitations described below.
3. The maximum output of the Facility, including any storage capability, at any given time shall be limited to the Facility's Nameplate Capacity as specified in the Agreement.
4. The discharge of stored energy is not permitted while the Facility has received or is subject to a curtailment instruction (i.e., System Operator Instruction) from the system operator if such discharge would cause the total output of the Facility to exceed the level permitted by the System Operator Instruction.
5. Ramp rates for Storage Resource shall not exceed 10 percent of the Storage Resource's capacity (MW) on a per minute basis, up or down, unless the Storage Resource is ramping to mitigate solar volatility, in which case the ramp rate limitation does not apply.
6. Scheduling for capturing peak pricing periods and other storage limitations:
  - a. Note: Scheduling criteria below are not intended to preclude the ability of the Seller to use the storage device primarily to smooth facility output and thereby qualify for the SISC Credit in lieu of maximizing discharge during Capacity Hour or peak pricing windows.
  - b. For all (winter and summer) months/days with discrete capacity rate hour window periods ("Capacity Hour Window"), the Seller shall distribute any intended energy storage discharge of the storage device in a manner that levelizes (holds constant), on an expected basis, the total output of the Facility at the highest practical level over the duration of each specific Capacity Hour Window selected by the Seller for energy storage discharge of such calendar day, except as limited by ramp rate criteria, inverter capability, availability, state of charge and the Facility's Nameplate Capacity as specified in the Agreement. For clarity, total output of the Facility is not required to be held at the same level across both morning and evening Capacity Hour Windows during winter months. The Seller may, at its discretion, elect to discharge storage across either or both winter morning and evening Capacity Hour Windows, provided that the intended energy storage discharge for each Capacity Hour Window is distributed in a way that holds total Facility output constant across the respective Capacity Hour Window.
    - i. For any storage discharge occurring on weekends and holidays where only Off-Peak energy rates apply, the Seller shall be permitted to distribute discharge (if any) of the storage device across hours selected by Seller, except as limited by ramp rate criteria, inverter capability, availability, state of charge and the Facility's Nameplate Capacity as specified in the Agreement.

**CONFIDENTIAL**

**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2  
MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

- c. For the remaining (shoulder) months without Capacity Hour windows, the Seller shall be permitted to distribute discharge (if any) of the storage device across hours selected by Seller, except as limited by ramp rate criteria, inverter capability, availability, state of charge and the Facility's Nameplate Capacity as specified in the Agreement.
7. Company reserves the right to add or modify operating restrictions specified in these Energy Storage Protocols to the extent necessary to comply with NERC Standards as such standards may be modified from time to time during the Term. Any such modification shall be implemented by Company in a Commercially Reasonable Manner and shall be applied to the Facility and Company's own generating assets on a non-discriminatory basis. If Seller can make a commercially reasonable demonstration to Company, which is approved by Company in its reasonable discretion, that the Facility does not contribute to potential NERC compliance violations for which the modifications have been implemented, then such modifications shall not apply to the Facility.
8. If identification of Capacity Hours changes over the course of the term of the Agreement, Seller will make Commercially Reasonable Efforts to work with Company to adjust the hours of charging/discharging to coincide with these updated hours. However, Seller shall not be obligated to do so in a way that compromises their original economic value contemplated for storage resource.
9. Seller will only be compensated for Energy and Capacity actually provided to Buyer in accordance with the terms of the Agreement.

Notes:

- a) Other capitalized terms used in this Exhibit which have not been defined herein shall have the meaning ascribed to such terms in the Agreement to which this exhibit is attached.

OFFICIAL COPY

NOV 28 2023

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY

JULY 28 2023

**Exhibit 11**  
**Application of SISC Credit**

**Process for Calculating SISC Credit**

If the Seller intends to utilize an Energy Storage device, installed in accordance with the requirements of this Agreement, or other means reasonably acceptable to Duke Energy in writing, to reduce solar volatility, it must provide notification to the Contract Administrator at [DERContracts@duke-energy.com](mailto:DERContracts@duke-energy.com). In all cases, information provided by Seller to support validation of Seller's efforts to mitigate solar volatility must reasonably demonstrate, to Buyer's reasonable satisfaction, that the reduction in volatility was actually achieved in accordance with the measurement methodologies in this Exhibit 11.

The Seller shall be required to collect 5-minute solar output data for the Facility, for purposes of calculating the Solar Site Volatility Metric (as defined below), using the Power Plant Controller or other means proposed by Seller and reasonably accepted by Buyer. The Buyer will provide an excel template with the calculations (see calculation description under "Solar Site Volatility Metric" below) allowing the Seller to enter 5-minute solar output from the Seller's metering facilities. In addition, in order to qualify for the SISC Credit, a revenue quality meter capable of recording five-minute (5-minute) usage data ("SISC Meter") shall be installed at the Facility by Duke Energy at Seller's expense. The SISC Meter shall be owned by Duke Energy but shall be paid for by the Seller under the Extra Facilities plan for interconnection facilities specified in the Interconnection Agreement.

Each Billing Period, Seller will enter 5-minute data into the spreadsheet template to calculate the solar volatility for the Billing Period. Within ten (10) business days after the end of the Billing Period, Seller will attest to Buyer the amount of volatility in the preceding Billing Period (calculated in accordance with the Solar Volatility Metric) and the Monthly SISC Credit Amount claimed by Buyer based on the Volatility Thresholds specified below. The Volatility Thresholds shall be as follows:

- Volatility less than or equal to 12%: shall be entitled to 50% of the SISC Credit
- Volatility less than or equal to 6%: shall be entitled to 100% of the SISC Credit.
- Volatility greater than 12% shall not be entitled to a SISC Credit

In each Billing Period in which Seller's Facility achieves volatility of 6% or less, Seller shall be entitled to a credit determined as follows: the SISC Credit shall be multiplied by each MWh generated by the Facility in such Billing Period and then, if the volatility is greater than 6% but less than or equal to 12%, such amount shall be reduced by 50% (such amount so determined shall be the "Monthly SISC Credit Amount")

Should the Seller fail to deliver the attestation within the required time, Seller will forfeit any right to a SISC Credit for the applicable Billing Period. The Parties may mutually agree to adjust the timing of attestations and billing adjustments as provided above.

Buyer retains audit rights to review the 5-minute usage data and may periodically verify that the attestations for each Billing Period are correct. Usage data provided by the SISC Meter will also be reviewed as an independent verification of compliance and in cases of dispute shall be the determinant in assessing the appropriate charge. Should Buyer determine that Seller received a Monthly SISC Credit

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

OFFICIAL COPY

JULY 28 2023

Amount in error, or that Seller should have received a Monthly SISC Credit Amount that was not included on the invoice, Buyer will make an appropriate adjustment on a future invoice.

In the event that the SISC Meter fails to register the generation data, the calculation will exclude the entire day containing the missing data from the calculation, as long as a minimum of twenty (20) days is available for the Billing Period. Should the meter provide less than the required data for the Billing Period, then for purposes of preparing any affected invoice, the Parties shall negotiate in good faith to determine an estimate of the 5-minute Energy delivered during the relevant Billing Period.

**Solar Site Volatility Metric**

The solar site net output volatility metric (the “Solar Volatility Metric”) shall be calculated as the average of the Facility’s volatility computed for each daylight hour (as identified in the table below) for each Billing Period divided by the average of the Facility’s generation over each daylight hour and month. The calculation steps are as follows:

1. Calculate 10-minute change in the Facility’s net AC generation at 5-minute intervals. For example, calculate changes between 8:00 and 8:10, 8:05 and 8:15, 8:10 and 8:20 and so on.
2. For each daylight hour, for each Billing Period, calculate
  - a. The standard deviation of 10-minute changes within the hour using all days of the Billing Period.
  - b. The average power output from the Facility within the hour over all days of that Billing Period.
3. Average over all daylight hour and month groups to calculate
  - a. The average daylight volatility in MW as the mean of the standard deviations calculated in step 2.a
  - b. The average daylight generation in MW as the mean of the average power output calculated in step 2.b
4. Calculate the volatility score as a ratio of the average daylight volatility to the average daylight power output calculated in steps 3a and 3b.

The daylight hours for the calculation are selected from full hours of non-zero solar generation measured on the System for each month for a one-year period. The first and last hours in each month are discarded to eliminate partial hours and periods of low generation around sunrise and sunset. The resulting definition of daylight hours in Eastern Standard Time (non-DST adjusted) is as follows:

Daylight Hours	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
From HE (Inclusive)	9	9	8	8	7	7	7	8	8	8	9	9
To HE (Inclusive)	17	17	18	18	18	18	18	18	18	17	16	16

**CONFIDENTIAL**  
**DUKE ENERGY CAROLINAS, LLC – CPRE TRANCHE 2**  
**MUST BE FULLY EXECUTED BY OCTOBER 15, 2020**

**OFFICIAL COPY**

**July 28 2023**



# Rebuttal Panel Exhibit 2

## Guaranty Agreement

Duke Energy Carolinas, LLC  
Docket No. E-7, Sub 1281

## Guaranty

**THIS GUARANTY AGREEMENT** (this "Guaranty"), dated as of October 21, 2020, is issued and delivered by **DESRI Portfolios, L.L.C.**, a Delaware limited liability company (the "Guarantor"), for the account of **Wilkes Solar, LLC**, a North Carolina limited liability company (the "Obligor"), and for the benefit of **Duke Energy Carolinas, LLC**, a corporation organized and existing under the laws of the State of North Carolina (the "Beneficiary").

### Background Statement

WHEREAS, the Beneficiary and Obligor entered into that certain Renewable Power Purchase Agreement dated October 15, 2020 (the "Agreement"); and

WHEREAS, Beneficiary has required that the Guarantor deliver to the Beneficiary this Guaranty as an inducement to enter into the Agreement.

### Agreement

**NOW, THEREFORE**, in consideration of the foregoing and for good and valuable consideration, the Guarantor hereby agrees as follows:

1. Guaranty; Limitation of Liability. Subject to any rights, setoffs, counterclaims and any other defenses that the Guarantor expressly reserves to itself under this Guaranty, the Guarantor absolutely and unconditionally guarantees the timely payment of the Obligor's payment obligations under the Agreement (the "Guaranteed Obligations"); provided, however, that the Guarantor's aggregate liability hereunder shall not exceed [REDACTED]

Subject to the other terms of this Guaranty, the liability of the Guarantor under this Guaranty is limited to payments expressly required to be made under the Agreement, and except as specifically provided therein, the Guarantor shall not be liable for or required to pay any consequential or indirect loss (including but not limited to loss of profits), exemplary damages, punitive damages, special damages, or any other damages or costs.

2. Effect of Amendments. The Guarantor agrees that the Beneficiary and the Obligor may modify, amend and supplement the Agreement and that the Beneficiary may delay or extend the date on which any payment must be made pursuant to the Agreement or delay or extend the date on which any act must be performed by the Obligor thereunder, all without notice to or further assent by the Guarantor, who shall remain bound by this Guaranty, notwithstanding any such act by the Beneficiary.

3. Waiver of Rights. The Guarantor expressly waives (i) protest, (ii) notice of acceptance of this Guaranty by the Beneficiary, and (iii) demand for payment of any of the Guaranteed Obligations.

4. Reservation of Defenses. Without limiting the Guarantor's own defenses and rights hereunder, the Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses that the Obligor may have to payment of all or any portion of the Guaranteed Obligations except defenses arising from the bankruptcy, insolvency, dissolution or liquidation of the Obligor and other defenses expressly waived in this Guaranty.

5. Settlements Conditional. This guaranty shall remain in full force and effect or shall be reinstated (as the case may be) if at any time any monies paid to the Beneficiary in reduction of the indebtedness of the Obligor under the Agreement have to be repaid by the Beneficiary by virtue of any

provision or enactment relating to bankruptcy, insolvency or liquidation for the time being in force, and the liability of the Guarantor under this Guaranty shall be computed as if such monies had never been paid to the Beneficiary

6. Notice. The Beneficiary will provide written notice to the Guarantor if the Obligor defaults under the Agreement.

7. Primary Liability of the Guarantor. The Guarantor agrees that the Beneficiary may enforce this Guaranty without the necessity at any time of resorting to or exhausting any other security or collateral. This is a continuing Guaranty of payment and not merely of collection.

8. Representations and Warranties. The Guarantor represents and warrants to the Beneficiary as of the date hereof that:

- a. The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guaranty and to perform the provisions of this Guaranty on its part to be performed;
- b. The execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;
- c. All consents, authorizations, approvals, registrations and declarations required for the due execution, delivery and performance of this Guaranty have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect, and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and
- d. This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against it in accordance with its terms, except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

9. Nature of Guaranty. The Guarantor hereby agrees that its obligations hereunder shall be unconditional irrespective of the impossibility or illegality of performance by the Obligor under the Agreement; the absence of any action to enforce the Agreement; any waiver or consent by Beneficiary concerning any provisions of the Agreement; the rendering of any judgment against the Obligor or any action to enforce the same; any failure by Beneficiary to take any steps necessary to preserve its rights to any security or collateral for the Guaranteed Obligations; the release of all or any portion of any collateral by Beneficiary; or any failure by Beneficiary to perfect

or to keep perfected its security interest or lien in any portion of any collateral.

10. Subrogation. The Guarantor will not exercise any rights that it may acquire by way of subrogation until all Guaranteed Obligations shall have been paid in full. Subject to the foregoing, upon payment of all such Guaranteed Obligations, the Guarantor shall be subrogated to the rights of Beneficiary against the Obligor, and Beneficiary agrees to take at the Guarantor's expense such steps as the Guarantor may reasonably request to implement such subrogation.

11. Term of Guaranty. This Guaranty shall remain in full force and effect until the earlier of (i) such time as all the Guaranteed Obligations have been discharged, and (ii) December 31, 2021 (the "Expiration Date"); provided however, the Guarantor will remain liable hereunder for Guaranteed Obligations that were outstanding prior to the Expiration Date.

12. Governing Law. This Guaranty shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to principles of conflicts of law.

13. Expenses. The Guarantor agrees to pay all reasonable out-of-pocket expenses (including the reasonable fees and expenses of the Beneficiary's counsel) relating to the enforcement of the Beneficiary's rights hereunder in the event the Guarantor disputes its obligations under this Guaranty and it is finally determined (whether through settlement, arbitration or adjudication, including the exhaustion of all permitted appeals), that the Beneficiary is entitled to receive payment of a portion of or all of such disputed amounts.

14. Waiver of Jury Trial. The Guarantor and the Beneficiary, through acceptance of this Guaranty, waive all rights to trial by jury in any action, proceeding or counterclaim arising or relating to this Guaranty.

15. Entire Agreement; Amendments. This Guaranty integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all oral negotiations and prior writings in respect to the subject matter hereof. This Guaranty may only be amended or modified by an instrument

in writing signed by each of the Guarantor and the Beneficiary.

16. Headings. The headings of the various Sections of this Guaranty are for convenience of reference only and shall not modify, define or limit any of the terms or provisions hereof.

17. No Third-Party Beneficiary. This Guaranty is given by the Guarantor solely for the benefit of the Beneficiary, and is not to be relied upon by any other person or entity.

18. Assignment. Neither the Guarantor nor the Beneficiary may assign its rights or obligations under this Guaranty without the prior written consent of the other, which consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Beneficiary may assign this Guaranty, without the Guarantor's consent, provided such assignment is made to an affiliate or subsidiary of the Beneficiary

Any purported assignment in violation of this Section 18 shall be void and without effect.

19. Notices. Any communication, demand or notice to be given hereunder will be duly given when delivered in writing or sent by electronic mail to the Guarantor or to the Beneficiary, as applicable, at its address as indicated below:

If to the Guarantor, at:

**DESRI Portfolios, L.L.C.**

c/o D. E. Shaw Renewable Investment  
1166 Avenue of the Americas, 9<sup>th</sup> Floor  
New York, NY 10036  
Attention: General Counsel  
Email: desri-notices@world.deshaw.com  
Cc:Russell.Petrella@deshaw.com;  
dolitsky@deshaw.com

With a copy to:

**Wilkes Solar, LLC**

c/o D. E. Shaw Renewable Investment  
1166 Avenue of the Americas, 9<sup>th</sup> Floor  
New York, NY 10036  
Attention: General Counsel  
Email: desri-notices@world.deshaw.com  
Cc:Russell.Petrella@deshaw.com;  
dolitsky@deshaw.com; lklein@oriolesolar.com

If to the Beneficiary, at:

**Duke Energy Carolinas, LLC**

550 South Tryon Street  
Mail code DEC41Q  
Charlotte, NC 28202  
Attention: Chief Risk Officer  
Email: reg.credit@duke-energy.com

or such other address as the Guarantor or the Beneficiary shall from time to time specify. Notice shall be deemed given (a) when received, as evidenced by signed receipt, if sent by hand delivery, overnight courier or registered mail or (b) when received, as evidenced by email confirmation, if sent by email and received on or before 4 pm local time of recipient, or (c) the next business day, as evidenced by email confirmation, if sent by email and received after 4 pm local time of recipient.

I/A

**IN WITNESS WHEREOF**, the Guarantor has executed this  
Guaranty as of the day and year first above written

**DESRI Portfolios, L.L.C.**

By:   
Name: David Zwillinger  
Title: Authorized Signatory

OFFICIAL COPY

July 28 2023

# Rebuttal Panel Exhibit 3

Letter to Wilkes Solar, LLC dated July 5,  
2022

Duke Energy Carolinas, LLC  
Docket No. E-7, Sub 1281



VIA: Overnight Courier and Email ([Greg.Slovick@deshaw.com](mailto:Greg.Slovick@deshaw.com); [DESRI-Notices@deshaw.com](mailto:DESRI-Notices@deshaw.com))

Date: July 5, 2022

Wilkes Solar, LLC  
c/o D.E. Shaw & Co., LP  
1166 Avenue of the Americas, 9<sup>th</sup> Floor  
New York, NY 10036  
Attn: Greg Slovick

With copy to:

Wilkes Solar, LLC  
c/o D.E. Shaw & Co., LP  
1166 Avenue of the Americas, 9<sup>th</sup> Floor  
New York, NY 10036  
Attn: General Counsel

**Re: Renewable Power Purchase Agreement (CPRE Tranche 2) between Duke Energy Carolinas, LLC (“Duke Energy”), and Wilkes Solar, LLC (“Wilkes”), dated as of October 15, 2020 (the “Agreement”).**

Dear: Mr. Slovick:

In follow up to your email to Scott Tharp on June 10, 2022, Duke Energy disagrees with your assertion that Wilkes should be excused from its obligations to pay Default Liquidated Damages for failing to achieve Commercial Operation of the Facility as required under the Agreement. The obligation to construct the Facility is solely the responsibility of Wilkes. Nothing in the Agreement provides that Wilkes’ obligations to construct, own and operate the Facility are contingent on the results of the system impact study, the availability, or unavailability of tax credits or the overall cost to Wilkes to construct the Facility, and none of the items listed in your email would constitute a Permitted Excuse to Perform under the terms of the Agreement. As we have previously discussed, Duke Energy is willing to terminate the Agreement, as requested by Wilkes, but is not willing to waive the payment of Default Liquidated Damages.

Furthermore, it has come to our attention that Wilkes has declined to execute the final Interconnection Agreement provided by the Transmission Provider and as such the Interconnection Agreement has been deemed withdrawn by Wilkes pursuant to the North Carolina Interconnection Procedures, and in violation of Section 19.8. Your withdrawal of the Interconnection Agreement together with your

I/A

request to terminate the Agreement constitutes a repudiation of the obligation to achieve Commercial Operation of the Facility and entitles Duke Energy to Default Liquidated Damages as specified in Section 20.5.1 and 20.5.4.

If Wilkes desires to terminate the Agreement by mutual agreement, Duke Energy can agree to do so in accordance with the terms of the termination agreement which was originally provided to you by Scott Tharp on May 13, 2022. Please provide your response to this letter by July 13, 2022.

Unless the parties reach mutual agreement on the termination of the Agreement, Duke Energy reserves all rights and remedies available under the Agreement including recourse to Performance Assurance.

Any capitalized terms used in this letter which are not defined herein shall have the meaning ascribed to such terms in the Agreement.

Feel free to contact Scott Tharp (317-459-7704) or David Johnson (704-382-3401) if you have any questions regarding this matter.

Sincerely,



David Johnson (Jul 5, 2022 17:42 EDT)

Director

OFFICIAL COPY

JULY 28 2023



# Rebuttal Panel Exhibit 4

Notice of Default and Termination provided  
to Wilkes Solar, LLC  
(dated October 15, 2020)

Duke Energy Carolinas, LLC  
Docket No. E-7, Sub 1281

**CONFIDENTIAL**



**David Johnson**  
Director, Business Development & Compliance  
david.johnson@duke-energy.com

o: 704.382.3401  
c: 704.907.4767

**OFFICIAL COPY**

**July 28 2023**

**Via Overnight Courier and Email** (mailto:Greg.Slovick@deshaw.com;  
DESRI-Notices@deshaw.com)

Date: August 23, 2022

Wilkes Solar, LLC  
c/o D.E. Shaw & Co., LP  
1166 Avenue of the Americas, 9th Floor  
New York, NY 10036  
Attn: Greg Slovic

With copy to:

Wilkes Solar, LLC  
c/o D.E. Shaw & Co., LP  
1166 Avenue of the Americas, 9th Floor  
New York, NY 10036  
Attn: General Counsel

DESRI Portfolios, L.L.C.  
c/o D. E. Shaw Renewable Investment  
1166 Avenue of the Americas, 9<sup>th</sup> Floor  
New York, NY 10036  
Attn: General Counsel

## **NOTICE OF DEFAULT AND TERMINATION**

Re: Renewable Power Purchase Agreement (CPRE Tranche 2) between Duke Energy Carolinas, LLC (“Duke Energy”), and Wilkes Solar, LLC (“Wilkes”), dated as of October 15, 2020 (the “PPA”).

Dear Mr. Slovic, or to Whom It May Concern:

In follow up to our discussions regarding the above referenced PPA, the termination of which was requested by Wilkes due to its stated inability to construct, own and operate the proposed 75 MW solar generating facility, located in Wilkes County, North Carolina (the “Facility”) as obligated under the PPA, and the email from Greg Slovic to Scott Tharp dated July 13, 2022 in which Wilkes declined to accept Duke Energy’s proposed mutual termination agreement, Duke Energy hereby provides Wilkes with this Notice of Default and Termination.

It has come to our attention that Wilkes: (i) has suspended further development of the Facility in repudiation of its obligations under the PPA, and (ii) has declined to execute the interconnection agreement for the Facility when presented by Duke Energy resulting in the deemed withdrawal of

**CONFIDENTIAL**

the interconnection request by Wilkes in accordance with the North Carolina Interconnection Procedures.

Based on the foregoing, an Event of Default has occurred with respect to Wilkes for its failure to execute the Interconnection Agreement when required under the Operational Milestone Schedule and based on its decision to suspend further development of the Facility and thereby abandon its obligation to achieve Commercial Operation of the Facility in violation of Sections 19.3, 19.8 and 19.9 of the Agreement.

**As a result of the Event of Default specified above, the Agreement is hereby terminated effective as of the date of this letter (the “Early Termination Date”).**

**Furthermore, pursuant to Section 20.5 and the acceleration rights specified in Section 20.1 of the Agreement, Duke Energy hereby demands payment of liquidated damages in the amount of [REDACTED]. (the “Default Liquidated Damages”) for the failure of Wilkes to achieve Commercial Operation of the Facility as required under the Agreement.**

Please pay the Default Liquidated Damages requested hereunder by wire transfer of immediately available funds to the following account, no later than five (5) business days after the Early Termination Date:

Duke Energy Carolinas, LLC

[REDACTED]  
[REDACTED]

aba #: [REDACTED]

account #: [REDACTED]

Your failure pay the Default Liquidated Damages as demanded in this notice may result in recourse by Duke Energy to the Guaranty dated October 21, 2020, issued by DESRI Portfolios, L.L.C. (the “Guarantor”) securing Wilkes’ payment obligations under the PPA and may result in the disqualification of Wilkes or its affiliates in the award of pending or future transactions with Duke Energy or its affiliates.

Notwithstanding anything to the contrary set forth herein Duke Energy reserves all rights and remedies available to it under the PPA (including, without limitation, Section 26.6), or at law or equity.

All capitalized terms used in this Notice of Termination which have not been defined herein shall have the meaning ascribed to such terms in the Agreement.

If you have any questions feel free to contact me at your earliest convenience.

Sincerely,



David Johnson (Aug 23, 2022 14:18 EDT)

David Johnson  
Director, Business Development & Compliance

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. E-7, SUB 1281

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
	)	
Application of Duke Energy Carolinas, LLC	)	<b>APPLICATION FOR</b>
Pursuant to G.S. 62-110.8 and Commission	)	<b>APPROVAL OF CPRE COST</b>
Rule R8-71 Relating to CPRE Compliance	)	<b>RECOVERY RIDER AND 2022</b>
Report and CPRE Cost Recovery Rider	)	<b>CPRE COMPLIANCE REPORT</b>

---

Duke Energy Carolinas, LLC (“DEC,” “Company,” or “Applicant”), pursuant to North Carolina General Statutes (“N.C. Gen. Stat.”) § 62-110.8(g) and North Carolina Utilities Commission (“NCUC” or the “Commission”) Rule R8-71(j), hereby submits this Application requesting approval of (1) a Rider CPRE to recover the costs incurred to implement the Competitive Procurement of Renewable Energy (“CPRE”) Program and comply with N.C. Gen. Stat. § 62-110.8 and (2) approval of its CPRE Compliance Report for calendar year 2022. In support thereof, the Applicant respectfully shows the Commission the following:

1. The Applicant’s general offices are located at 526 South Church Street, Charlotte, North Carolina, and its mailing address is:

Duke Energy Carolinas, LLC  
P. O. Box 1006  
Charlotte, North Carolina 28201-1006

2. The name and address of Applicant's attorneys are:

Ladawn Toon  
Associate General Counsel  
Duke Energy Corporation  
P.O. Box 1551/NCRH 20  
Raleigh, North Carolina 27602  
(919) 546-7971  
ladawn.toon@duke-energy.com

E. Brett Breitschwerdt  
Kristin M. Athens  
McGuireWoods LLP  
434 Fayetteville Street, Suite 2600  
PO Box 27507 (27611)  
Raleigh, North Carolina 27601  
(919) 755-6563 (EBB)  
(919) 755-5909 (KMA)  
bbreitschwerdt@mcguirewoods.com  
kathens@mcguirewoods.com

Copies of all pleadings, testimony, orders and correspondence in this proceeding should be served upon the attorneys listed above.

3. N.C. Gen. Stat. § 62-110.8 requires North Carolina's electric public utilities to file for Commission approval of a program for the competitive procurement of energy and capacity from renewable energy facilities with the purpose of adding renewable energy to the State's generation portfolio in a manner that allows the State's electric public utilities to continue to reliably and cost-effectively serve customers' future energy needs.

4. N.C. Gen. Stat. § 62-110.8(b) provides that electric public utilities may jointly or individually implement the aggregate competitive procurement requirements and may satisfy certain requirements set forth in N.C. Gen. Stat. § 62-110.8 for the procurement of renewable energy capacity to be supplied by renewable energy facilities through any of the following: (i) renewable energy facilities to be acquired from third parties and

subsequently owned and operated by the soliciting public utility or utilities; (ii) renewable energy facilities to be constructed, owned, and operated by the soliciting public utility or utilities subject to certain limitation set forth in N.C. Gen. Stat. § 62-110.8; or (iii) the purchase of renewable energy, capacity, and environmental and renewable attributes from renewable energy facilities owned and operated by third parties that commit to allow the procuring public utility rights to dispatch, operate, and control the solicited renewable energy facilities in the same manner as the utility's own generating resources.

5. N.C. Gen. Stat. § 62-110.8(g) provides that an electric public utility shall be authorized to recover the costs of all purchases of energy, capacity, and environmental and renewable attributes from third-party renewable energy facilities and to recover the authorized revenue of any utility-owned assets through an annual rider approved by the Commission and reviewed annually.

6. N.C. Gen. Stat. § 62-110.8(h) provides that the Commission shall adopt rules to implement the requirements of the competitive procurement of renewable energy program. The Commission adopted and subsequently authorized amendments to Rule R8-71 to implement N.C. Gen. Stat. § 62-110.8, by orders issued November 6, 2017 and April 9, 2018, in Docket No. E-100, Sub 150.<sup>1</sup>

7. Rule R8-71(j)(1) provides that the Commission shall schedule an annual public hearing pursuant to N.C. Gen. Stat. § 62-110.8(g) to review the costs incurred or anticipated to be incurred by the electric public utility to comply with N.C. Gen. Stat. § 62-110.8.

8. Rule R8-71(j)(2) provides that the Commission shall permit each electric

---

<sup>1</sup> See *Order Adopting and Amending Rules*, Docket No. E-100, Sub 150 (Nov. 6, 2017); *Order Amending Commission Rule R8-71*, Docket No. E-100, Sub 150 (April 9, 2018).

public utility to charge an increment or decrement as a rider to its rates to recover in a timely manner the reasonable and prudent costs incurred and anticipated to be incurred to implement its CPRE Program and to comply with N.C. Gen. Stat. § 62-110.8. The costs and authorized revenue will be further modified through the use of a CPRE Program experience modification factor (CPRE EMF) rider. The CPRE EMF rider will reflect the difference between reasonable and prudently-incurred CPRE Program actual costs and authorized revenue, and the revenues that were actually realized during the test period under the CPRE Program rider then in effect.

9. Rule R8-71(h) provides that each electric public utility shall file its annual CPRE Program compliance report on the same date that it files its application to recover costs pursuant to Rule R8-71(j). The Commission shall consider each electric public utility's CPRE Program compliance report at the hearing provided for in Rule R8-71(j) and shall determine whether the electric public utility is reasonably and prudently implementing the CPRE Program requirements of N.C. Gen. Stat. § 62-110.8. *See* NCUC Rule R8-71(i)(1).

10. DEC and DEP are reasonably and prudently implementing the CPRE Program requirements. DEC and DEP procured 1,185 MW through the Tranche 1 and Tranche 2 solicitations completed in 2018 and 2020, and DEC procured an additional 155 MW of new CPRE Program capacity through the currently on-going Tranche 3 solicitation. As further explained in the CPRE Program Plan, DEC and DEP are seeking to procure 441 MW of unawarded CPRE Program MW through the 2022 Solar Procurement, to fulfill the



remaining capacity requirements of N.C. Gen. Stat. § 62-110.8.<sup>2</sup> Notably, the Commission has determined that regardless of whether the Companies procure the total 441 MW of unawarded CPRE Program MW through the 2022 Solar Procurement, the CPRE Program will be closed out upon the conclusion of the 2022 Solar Procurement.<sup>3</sup> Further details regarding Tranche 3 and the 2022 Solar Procurement Program are described in the direct testimony of DEC witness Angela M. Tabor.

11. Pursuant N.C. Gen. Stat. § 62-110.8(g) and Commission Rule R8-71(j), DEC hereby requests Commission approval of the Rider CPRE to recover the Company's reasonable and prudently incurred costs to comply with the CPRE Program. More specifically, the Company requests to give back to DEC's North Carolina retail customers, through the CPRE EMF rider, (\$5,397,163) related to the actual CPRE costs incurred and other credits for the test period and to collect \$25,149,730 for CPRE costs projected to be incurred during the period from September 1, 2023 through August 31, 2024 ("Billing Period"). The Rider CPRE will be in effect for the twelve-month period September 1, 2023 through August 31, 2024.

12. In this Application, DEC proposes a CPRE Rider amount (excluding regulatory fee) of:

Residential – 0.0426¢/kWh

General Service & Lighting – 0.0410¢/kWh

---

<sup>2</sup> On November 1, 2022, the Commission granted the Companies authority to procure the remaining CPRE Program MW through the 2022 Solar Procurement Program. *Order Permitting Additional CPRE Program Procurement and Establishing Target Procurement Volume for the 2022 Solar Procurement*, Docket No. E-2, Subs 1159 and 1297 and E-7, Subs 1156 and 1268.

<sup>3</sup> *Order Permitting Additional CPRE Program Procurement and Establishing Target Procurement Volume for the 2022 Solar Procurement*, at 7, Docket No. E-2, Subs 1159 and 1297 and E-7, Subs 1156 and 1268 (Nov. 1 2022).

Industrial – 0.0397¢/kWh

And DEC proposes an EMF decrement (excluding regulatory fee) of:

Residential – (0.0086)¢/kWh

General Service & Lighting – (0.0099)¢/kWh

Industrial – (0.0098)¢/kWh

This results in composite CPRE factors (excluding regulatory fee) of:

Residential – 0.0340¢/kWh

General Service & Lighting – 0.0311¢/kWh

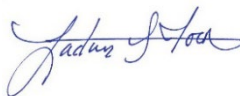
Industrial – 0.0299¢/kWh

13. The Company also requests approval of its Compliance Report for calendar year 2022, which is being submitted as an attachment to the testimony of DEC witness Tabor. The Compliance Report details the Company's compliance with the CPRE Program requirements of N.C. Gen. Stat. § 62-110.8 and, along with Company's updated CPRE Program Plan, demonstrates that the Company is reasonably and prudently implementing the CPRE Program requirements.

14. The information and data required to be filed by NCUC Rule R8-71 in connection with this Application is contained in the testimony and exhibits of DEC witnesses Tabor and Christy J. Walker, which are being filed simultaneously with this Application and incorporated herein by reference.

WHEREFORE, DEC requests that the Commission issue an order approving Rider CPRE, approving the Company's Compliance Report, and finding the Company to be reasonably and prudently implementing the CPRE Program Requirements of N.C. Gen. Stat. § 62-110.8.

Respectfully submitted this 28<sup>th</sup> day of February 2023.



By: \_\_\_\_\_

Ladawn Toon  
Associate General Counsel  
Duke Energy Corporation  
P.O. Box 1551/NCRH 20  
Raleigh, North Carolina 27602  
(919) 546-7971  
Ladawn.toon@duke-energy.com

E. Brett Breitschwerdt  
Kristin M. Athens  
McGuireWoods LLP  
434 Fayetteville Street, Suite 2600  
PO Box 27507 (27611)  
Raleigh, North Carolina 27601  
(919) 755-6563 (EBB)  
(919) 755-5909 (KMA)  
bbreitschwerdt@mcguirewoods.com  
kathens@mcguirewoods.com

ATTORNEYS FOR DUKE ENERGY CAROLINAS, LLC

VERIFICATION

STATE OF NORTH CAROLINA     )  
                                                           )  
 COUNTY OF CABARRUS            )

DOCKET NO. E-7, SUB 1281

Christy J. Walker, being first duly sworn, deposes and says:

That she is Rates and Regulatory Strategy Manager for Duke Energy Carolinas, LLC; that she has read the foregoing Application and knows the contents thereof; that the same is true except as to the matters stated therein on information and belief; and as to those matters, she believes it to be true.

*Christy J. Walker*  
 \_\_\_\_\_  
 Christy J. Walker

Signed and sworn to before me this day by Christy J. Walker  
*Name of principal*

Date: February 16, 2023

*Amira Mourdi*  
 \_\_\_\_\_  
 Official Signature of Notary

Amira Mourdi, Notary Public  
*Notary's printed or typed name*

My commission expires: July 2, 2023

(Official Seal)

