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MAY 27 2022

May 27, 2022

**VIA Electronic Filing**

Ms. A. Shonta Dunston, Chief Clerk  
North Carolina Utilities Commission  
Dobbs Building  
430 North Salisbury Street  
Raleigh, North Carolina 27603

*Re: Petition to Modify the North Carolina Interconnection Agreement  
Docket No. E-100, Sub 101*

Dear Ms. Dunston:

Enclosed for filing in the above-referenced proceeding on behalf of Duke Energy Progress, LLC is its *Petition for Limited Waiver and Authorization to Modify the North Carolina Interconnection Agreement to Accommodate Interconnection Customer Requirements*.

Please do not hesitate to contact me should you have any questions. Thank you for your assistance with this matter.

Very truly yours,

/s/E. Brett Breitschwerdt

EBB:kjg

Enclosure

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-100, SUB 101

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Petition for Approval of Revisions to ) PETITION OF DUKE ENERGY  
Generator Interconnection Standards ) PROGRESS, LLC, FOR LIMITED  
 ) WAIVER AND AUTHORIZATION TO  
 ) MODIFY THE NORTH CAROLINA  
 ) INTERCONNECTION AGREEMENT TO  
 ) ACCOMMODATE  
 ) INTERCONNECTION CUSTOMER  
 ) REQUIREMENTS

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NOW COMES Duke Energy Progress, LLC (“DEP” or the “Company”), and hereby respectfully petitions the North Carolina Utilities Commission (“Commission”) for a limited waiver and authorization to modify certain sections of the *pro forma* North Carolina Interconnection Agreement (“NCIA”), to accommodate the needs of the United States Department of the Army – Fort Bragg Department of Public Works, a prospective Interconnection Customer of the Company (“Army” or the “Interconnection Customer”).

In support of this Petition, DEP respectfully shows the Commission the following:

**PETITION**

1. The Commission has jurisdiction over the physical interconnection of generating facilities to the Company’s system pursuant to North Carolina law and certain federal regulations, *see* N.C. Gen. Stat. § 62-133.8(i)(4); 18 C.F.R. §§ 292.306, 292.308, and has established interconnection procedures, forms, and agreements through the above-captioned proceeding to govern state-jurisdictional generator interconnections (“NC

Interconnection Standard”). Most recently, the Commission approved the current NC Interconnection Standard by Order issued October 11, 2021.<sup>1</sup>

2. The United States Department of the Army is a retail customer of the Company. The Army awarded the Company a Federal Utility Energy Service Contract (“UESC”)<sup>2</sup> in 2020 for development, construction, and, ultimately, transfer of ownership and operational control of a 1.1 MW floating photovoltaic solar array project to be constructed at Camp Mackall within Fort Bragg (“Project”). The Project is now completing the construction phase and the Company and Duke Energy Business Services, LLC (“DEBS”) have executed an Interconnection Agreement (“DEP-DEBS Agreement”) to facilitate initial interconnection and parallel operation of the Project with the DEP system prior to transferring the project to the Army. Under the terms of the DEP-DEBS Agreement<sup>3</sup>, DEBS is responsible for payment of all interconnection-related costs, including, but not limited to, engineering time and expense, procurement of materials, construction of System Upgrades and Interconnection Facilities required by DEP to interconnect the Project, designated overheads, and any commissioning costs. These costs are estimated in Appendices 2 and 6 of that the DEP-DEBS Agreement. Under the DEP-DEBS Agreement terms, DEP will also issue a final accounting report within 120 business days of the Interconnection Facilities Delivery Date that trues up the interconnection-related costs and provides documentation to DEBS as to the difference between amounts previously paid by DEBS and the amount spent by DEP to interconnect the Project (“Final

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<sup>1</sup> See *Order Granting Petition in Part*, Docket No. E-100, Sub 101 (Oct. 11, 2021).

<sup>2</sup> See 42 U.S.C. § 8256.

<sup>3</sup>The DEP-DEBS Agreement is based upon the *pro forma* NCIA approved by the Commission. DEP filed the DEP-DEBS Agreement on March 22, 2022 in Docket No. E-2, Sub 1202 under N.C. Gen. Stat. § 62-153(a) as a notice-required affiliate agreement filing.

Accounting”). DEP anticipates issuing permission to operate to DEBS under the DEP-DEBS Agreement on or around June 1, 2022.

3. Due to the Army’s status as an agency of the federal government within the Department of Defense, the Army is subject to certain federal statutes and regulations, including, *inter alia*, the Federal Acquisition Regulation (“FAR”), which is published in Title 48 of the U.S. Code of Federal Regulations. The FAR contains the uniform policies and procedures that govern acquisition of goods or services by all executive agencies, including the Army.<sup>4</sup>

4. Through discussions with Company personnel, the Army has identified certain provisions of the Commission-approved NCIA as inconsistent with the FAR, federal law, and principles of federal sovereignty. Specifically, the Army has requested to modify provisions of the NCIA related to the term of the agreement, payment obligations,<sup>5</sup> ongoing financial security requirements,<sup>6</sup> indemnification,<sup>7</sup> insurance,<sup>8</sup> disputes, and

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<sup>4</sup> See FAR 1.101 (“The Federal Acquisition Regulation System is established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies.”); FAR 1.104 (“The FAR applies to all acquisitions as defined in part 2 of the FAR, except where expressly excluded”).

<sup>5</sup> The Federal Anti-Deficiency Act prohibits involving the government in any obligation to pay money before funds have been appropriated for that purpose, unless otherwise allowed by law. 31 U.S.C. § 1341(a)(1)(B); *see also* 31 U.S.C. § 3324 (prohibiting agencies from paying for goods or services in advance of receiving them, absent an exception); FAR 32.702.

<sup>6</sup> The federal government’s financial obligations are backed by the United States Treasury.

<sup>7</sup> The Anti-Deficiency Act prevents executive branch agencies from binding the government to expenditures or liabilities beyond those contemplated and authorized by the executive branch, including open-ended indemnification clauses. 31 U.S.C. § 1341(a)(1). Relatedly, the government may not agree in advance to assume liability for which it may not otherwise be responsible under the Federal Tort Claims Act. 28 U.S.C. §§ 1346 and 2671–2680.

<sup>8</sup> It is long-standing policy of the federal government that it is self-insured and it will not purchase commercial insurance to cover loss or damage to its own property. *In the Payment of Ins. Premiums*, B-185488, 55 Comp. Gen. 1196 (June 23, 1976).

conflict of laws.<sup>9</sup> The NCIA provisions currently proposed to be modified are contained in Articles 1, 3, 4, 5, 6, 7, 8, 10, and 12 of the NCIA. DEP and the Army also plan to enter into a supplemental “Letter of Agreement,” which is included as Appendix 7 to the proposed NCIA, prescribing payment terms and modifying the applicability of certain *pro forma* provisions that conform to the FAR requirements and/or clarify how certain provisions of the NCIA apply given that the Project will be fully commissioned prior to transfer of the Project to the Army and DEBS will pay any outstanding amounts in the final accounting report issued by DEP.<sup>10</sup> Attachment A to this Petition presents a redline of these proposed modifications to the Commission-approved form of NCIA agreed to by the Company and the Interconnection Customer.

5. The NCIA contemplates that parties to the Agreement can modify the language of the NCIA to meet the parties’ needs so long as both parties agree in writing to the modifications. Specifically, Section 12.2 of the NCIA states that “[t]he Parties may amend this Agreement by a written instrument duly executed by both Parties, or under Article 12.12 of this Agreement.” The Company reads Section 12.2 of the NCIA as contemplating the potential for revisions to the NCIA in unique situations, such as the Army’s need to comply with federal law, so long as the parties mutually agree to the changes in writing.

6. The Company is filing this Petition in light of language in the Commission’s November 1, 2016 *Order Regarding Duke Settlement with Generation Interconnection Customers* (“Order on Duke Interconnection Settlement”), issued in the above-captioned

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<sup>9</sup> Disputes with the federal government arising out of a procurement contract are governed by the Contract Disputes Act, 41 U.S.C. §§ 7101–7109. *See also* FAR 33.202, 33.203.

<sup>10</sup> *See, e.g.*, FAR 16.301-1.

docket, where the Commission stated “all changes to the Interconnection Standard approved in Docket E-100, Sub 101 shall be presented to the Commission for review and approval.” Order on Duke Interconnection Settlement at 2. The Order on Duke Interconnection Settlement stated that specific language not included in the Commission-approved NC Interconnection Standard can be included as additional terms and conditions; however, all revisions to the NC Interconnection Standard should be presented for the Commission’s review and approval.

7. The Commission has previously granted similar waiver of the NC Interconnection Standard and allowed amendments to the *pro forma* NCIA to meet the needs of a federal government customer. On April 21, 2020, in the above-captioned docket, the Commission issued its *Order Granting Limited Waiver and Authorization to Modify the North Carolina Interconnection Agreement* (“Dominion-Coast Guard Order”). In the Dominion-Coast Guard Order, the Commission approved modifications to certain sections of the *pro forma* NCIA to accommodate a federal agency interconnection customer—the Coast Guard—subject to many of the same federal requirements as the Army is here. The modifications proposed in this Petition largely mirror those approved by the Commission in the Dominion-Coast Guard Order.

8. The Company and Duke Energy Carolinas, LLC (“DEC” and together with DEP, the “Companies”) also recognize that other federal agency Interconnection Customers may request similar amendments to the *pro forma* NCIA in the future to ensure compliance with federal law. In the Dominion-Coast Guard Order, the Commission stated that “[t]o the extent any future modifications to the NCIA for federal agency customers vary from the amendments filed in this petition, DENC shall file the NCIA modifications

for Commission review.”<sup>11</sup> Many of the proposed modifications presented in Attachment A mirror those approved in the Coast Guard Order. DEP and the Army have also agreed to limited additional modifications to accommodate different requirements presented by the Army as well as to reflect the fact that the Project will be fully commissioned and interconnection costs paid for by DEBS before transfer to the Army.<sup>12</sup>

9. Based upon the foregoing, the Company is requesting approval to modify the NCIA to meet the needs of the Army for the reasons discussed in this Petition.

10. Commission authorization of modifications to the approved form of NCIA in this instance will not adversely impact power quality and reliability on the DEP system, will not unduly shift commercial risk to the Company, and does not create a need for the NC Interconnection Standard to be revised on a permanent basis. DEP does, however, anticipate that other federal agency customers may request similar modifications to the Commission-approved NCIA in the future to comply with the FAR. As a result, and similar to the directive in the Dominion-Coast Guard Order, the Company and DEC also seek prospective authorization to work with other federal government Interconnection Customers to enter into amendments to the *pro forma* NCIA consistent with those presented for approval herein. The Companies also commit to filing NCIA modifications that vary materially from the amendments shown in Attachment A.<sup>13</sup>

**WHEREFORE**, based upon the foregoing, DEP respectfully requests the Commission to authorize the Company to modify the NCIA presented in Attachment A to

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<sup>11</sup> Coast Guard Order at 2. Though directed at DENC, the Company reads this approval requirement applicable to it as well when read in conjunction with the Order on Duke Interconnection Settlement.

<sup>12</sup> DEBS is also initially responsible for service and operation and maintenance costs tied to Commission-approved tariffs until ownership of the Project is transferred to the Army where, at that point, those costs would be the responsibility of the Army.

<sup>13</sup> See Dominion-Coast Guard Order at Ordering Paragraph 2.

accommodate the needs of the Army, provide guidance that DEP can negotiate similar modifications to commercial provisions of the NCIA to accommodate the needs of other federal agency customers in the future, and to grant any further relief that the Commission deems to be just and reasonable and in the public interest.

Respectfully submitted, this the 27<sup>th</sup> day of May, 2022.

/s/E. Brett Breitschwerdt

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**NORTH CAROLINA**

**INTERCONNECTION AGREEMENT**

**For State-Jurisdictional Generator Interconnections**

Effective October 11, 2021

Docket No. E-100, Sub  
101

Between

~~Utility Name And Customer  
Name "Project Name"~~Duke  
Energy Progress, LLC And  
Fort Bragg Department of Public  
Works "Camp Mackall"

NC Interconnection Agreement<sup>4</sup>

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This Interconnection Agreement (“Agreement”) is made and entered into this \_\_\_\_\_ the \_\_\_\_\_ Day of \_\_\_\_\_, 20\_, by Duke Energy Progress, LLC (“Utility”) and Fort Bragg Department of Public Works (“Interconnection Customer”) each hereinafter sometimes referred to individually as “Party” or both referred to collectively as the “Parties.”

**Utility Information**

Utility: \_\_\_\_\_ Attention: \_\_\_\_\_

**Interconnection Customer Information**

Name: \_\_\_\_\_ Project Name: \_\_\_\_\_

In consideration of the mutual covenants set forth herein, the Parties agree as follows:

**Article 1. Scope and Limitations of Agreement**

1.1 Applicability

This Agreement shall be used for all Interconnection Requests submitted under the North Carolina Interconnection Procedures except for those submitted under the 20 kW Inverter Process in Section 2 of the Interconnection Procedures.

1.2 Purpose

This Agreement governs the terms and conditions under which the Interconnection Customer’s Generating Facility will interconnect with, and operate in parallel with, the Utility’s System.

1.3 No Agreement to Purchase or Deliver Power or RECs

This Agreement does not constitute an agreement to purchase or deliver the Interconnection Customer’s power or Renewable Energy Certificates (RECs). The purchase or delivery of power, RECs that might result from the operation of the Generating Facility, and other services that the Interconnection Customer may require will be covered under separate agreements, if any. The Interconnection Customer will be responsible for separately making all necessary arrangements (including scheduling) for delivery of electricity with the applicable Utility.

1.4 Limitations

Nothing in this Agreement is intended to affect any other agreement between the Utility and the Interconnection Customer.

1.5 Responsibilities of the Parties

1.5.1 The Parties shall perform all obligations of this Agreement in accordance with all Applicable Laws and Regulations, Operating Requirements, and



Good Utility Practice.

- 1.5.2 The Interconnection Customer shall construct, interconnect, operate and maintain its Generating Facility and construct, operate, and maintain its Interconnection Facilities in accordance with the applicable manufacturer's recommended maintenance schedule, and in accordance with this Agreement, and with Good Utility Practice.
- 1.5.3 The Utility shall construct, operate, and maintain its System and Interconnection Facilities in accordance with this Agreement, and with Good Utility Practice.
- 1.5.4 The Interconnection Customer agrees to construct its facilities or systems in accordance with applicable specifications that meet or exceed those provided by the National Electrical Safety Code, the American National Standards Institute, IEEE, Underwriters' Laboratories, and Operating Requirements in effect at the time of construction and other applicable national and state codes and standards. The Interconnection Customer agrees to design, install, maintain, and operate its Generating Facility so as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the System or equipment of the Utility and any Affected Systems.
- 1.5.5 Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for the facilities that it now or subsequently may own unless otherwise specified in the Appendices to this Agreement. Each Party shall be responsible for the safe installation, maintenance, repair and condition of their respective lines and appurtenances on their respective sides of the point of change of ownership. The Utility and the Interconnection Customer, as appropriate, shall provide Interconnection Facilities that adequately protect the Utility's System, personnel, and other persons from damage and injury. The allocation of responsibility for the design, installation, operation, maintenance and ownership of Interconnection Facilities shall be delineated in the Appendices to this Agreement.
- 1.5.6 The Utility shall coordinate with all Affected Systems to support the interconnection.
- 1.5.7 The Customer shall not operate the Generating Facility in such a way that the Generating Facility would exceed the Maximum Generating Capacity.

## 1.6 Parallel Operation Obligations

Once the Generating Facility has been authorized to commence parallel operation, the Interconnection Customer shall abide by all rules and procedures pertaining to the parallel operation of the Generating Facility in the applicable

control area, including, but not limited to: 1) any rules and procedures concerning the operation of generation set forth in Commission-approved tariffs or by the applicable system operator(s) for the Utility's System and; 2) the Operating Requirements set forth in Appendix 5 of this Agreement.

## 1.7 Metering

The Interconnection Customer shall be responsible for the ~~Utility's~~ reasonable and necessary cost for the purchase, installation, operation, maintenance, testing, repair, and replacement of interconnection, metering and data acquisition equipment specified identified as being owned by the Interconnection Customer in Appendices 2 and 3 of this Agreement.

The Interconnection Customer's metering (and data acquisition, as required) equipment shall conform to applicable industry rules and Operating Requirements.

## 1.8 Reactive Power

1.8.1 The Interconnection Customer shall design its Generating Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless the Utility has established different requirements that apply to all similarly situated generators in the control area on a comparable basis. The requirements of this paragraph shall not apply to wind generators.

1.8.2 The Utility is required to pay the Interconnection Customer for reactive power that the Interconnection Customer provides or absorbs from the Generating Facility when the Utility requests the Interconnection Customer to operate its Generating Facility outside the range specified in Article

1.8.1 or outside the range established by the Utility that applies to all similarly situated generators in the control area. In addition, if the Utility pays its own or affiliated generators for reactive power service within the specified range, it must also pay the Interconnection Customer.

1.8.3 Payments shall be in accordance with the Utility's applicable rate schedule then in effect unless the provision of such service(s) is subject to a regional transmission organization or independent system operator FERC- approved rate schedule. To the extent that no rate schedule is in effect at the time the Interconnection Customer is required to provide or absorb reactive power under this Agreement, the Parties agree to expeditiously file such rate schedule and agree to support any request for waiver of any prior notice requirement in order to compensate the Interconnection Customer from the time service commenced.

## 1.9 Capitalized Terms

Capitalized terms used herein shall have the meanings specified in the Glossary of Terms in Attachment 1 of the North Carolina Interconnection Procedures or the body of this Agreement.

## **Article 2. Inspection, Testing, Authorization, and Right of Access**

### **2.1 Equipment Testing and Inspection**

2.1.1 The Interconnection Customer shall test and inspect its Generating Facility and Interconnection Facilities prior to interconnection. The Interconnection Customer shall notify the Utility of such activities no fewer than ten (10) Business Days (or as may be agreed to by the Parties) prior to such testing and inspection. Testing and inspection shall occur on a Business Day, unless otherwise agreed to by the Parties. The Utility may, at its own expense, send qualified personnel to the Generating Facility site to inspect the interconnection and observe the testing. The Interconnection Customer shall provide the Utility a written test report when such testing and inspection is completed.

2.1.2 The Utility shall provide the Interconnection Customer written acknowledgment that it has received the Interconnection Customer's written test report. Such written acknowledgment shall not be deemed to be or construed as any representation, assurance, guarantee, or warranty by the Utility of the safety, durability, suitability, or reliability of the Generating Facility or any associated control, protective, and safety devices owned or controlled by the Interconnection Customer or the quality of power produced by the Generating Facility.

2.1.3 In addition to the Utility's observation of the Interconnection Customer's testing and inspection of its Generating Facility and Interconnection Facilities pursuant to this Section, the Utility may also require inspection and testing of Interconnection Facilities that can impact the integrity or safety of the Utility's System or otherwise cause adverse operating effects, as described in Section 3.4.4. Such inspection and testing activities will be performed by the Utility or a third-party independent contractor approved by the Utility and at a time mutually agreed to by the Interconnection Customer and will be performed at the Interconnection Customer's expense. The scope of required inspection and testing will be consistent across similar types of generating facilities.

### **2.2 Authorization Required Prior to Parallel Operation**

2.2.1 The Utility shall use Reasonable Efforts to list applicable parallel operation requirements in Appendix 5 of this Agreement. Additionally, the Utility shall notify the Interconnection Customer of any changes to these requirements as soon as they are known. The Utility shall make Reasonable Efforts to cooperate with the Interconnection Customer in meeting requirements necessary for the Interconnection Customer to

commence parallel operations by the in-service date.

- 2.2.2 The Interconnection Customer shall not operate its Generating Facility in parallel with the Utility's System without prior written authorization of the Utility. The Utility will provide such authorization once the Utility receives notification that the Interconnection Customer has complied with all applicable parallel operation requirements. Such authorization shall not be unreasonably withheld, conditioned, or delayed.

## 2.3 Right of Access

- 2.3.1 Upon reasonable notice, the Utility may send a qualified person to the premises of the Interconnection Customer at or before the time the Generating Facility first produces energy to inspect the interconnection and those Interconnection Customer facilities which can impact the integrity or safety of the Utility's System or otherwise cause adverse operating effects, as described in Section 3.4.4, and observe the commissioning of the Generating Facility (including any required testing), startup, and operation for a period of up to three (3) Business Days after initial start-up of the unit. In addition, the Interconnection Customer shall notify the Utility at least five (5) Business Days prior to conducting any on-site verification testing of the Generating Facility.
- 2.3.2 Following the initial inspection process described above, at reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, the Utility shall have access to the Interconnection Customer's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its customers.
- 2.3.3 Each Party shall be responsible for its own costs associated with following this Article, with the exception of Utility-required inspection and testing described in Section 2.1.3, the costs for which shall be the responsibility of the Interconnection Customer.

## Article 3. **Effective Date, Term, Termination, and Disconnection**

### 3.1 Effective Date

This Agreement shall become effective upon execution by the Parties.

### 3.2 Term of Agreement

This Agreement shall become effective on the Effective Date and shall remain in effect for a period of ten (10) years from the Effective Date ~~or such other longer period as the Interconnection Customer may request and shall be automatically renewed for each successive one-year period thereafter~~, unless terminated earlier in accordance with Article 3.3 of this Agreement.

### 3.3 Termination

No termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination.

3.3.1 The Interconnection Customer may terminate this Agreement at any time by giving the Utility 20 Business Days written notice and physically and permanently disconnecting the Generating Facility from the Utility's System.

3.3.2 The Utility may terminate this Agreement by giving the Interconnection Customer 20 Business Days written notice upon the Interconnection Customer's failure to timely make the payment(s) required by Article 6.1.1 pursuant to the milestones specified in Appendix 4, or to comply with the requirements of Article 7.1.2 or Article 7.1.3.

3.3.3 Either Party may terminate this Agreement after Default pursuant to Article 7.6.

3.3.4 Upon termination of this Agreement, the Generating Facility will be disconnected from the Utility's System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this Agreement or such non-terminating Party otherwise is responsible for these costs under this Agreement.

3.3.5 The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination, including any remaining term requirements for payment of Charges that are billed under a monthly payment option as prescribed in Article 6.

3.3.6 The provisions of this article shall survive termination or expiration of this Agreement.

### 3.4 Temporary Disconnection

Temporary disconnection shall continue only for so long as reasonably necessary under Good Utility Practice.

#### 3.4.1 Emergency Conditions

"Emergency Condition" shall mean a condition or situation: (1) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of the Utility, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the Utility's System, the Utility's Interconnection Facilities or the systems of others to which the Utility's System is directly connected; or (3) that, in the case of the Interconnection Customer, is imminently likely (as determined in a

nondiscriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or the Interconnection Customer's Interconnection Facilities.

Under Emergency Conditions, the Utility may immediately suspend interconnection service and temporarily disconnect the Generating Facility. The Utility shall notify the Interconnection Customer promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Interconnection Customer's operation of the Generating Facility. The Interconnection Customer shall notify the Utility promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Utility's System or any Affected Systems. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties' facilities and operations, its anticipated duration, and the necessary corrective action.

#### 3.4.2 Routine Maintenance, Construction, and Repair

The Utility may interrupt interconnection service or curtail the output of the Generating Facility and temporarily disconnect the Generating Facility from the Utility's System when necessary for routine maintenance, construction, and repairs on the Utility's System. The Utility shall provide the Interconnection Customer with two (2) Business Days' notice prior to such interruption. The Utility shall use Reasonable Efforts to coordinate such reduction or temporary disconnection with the Interconnection Customer.

#### 3.4.3 Forced Outages

During any forced outage, the Utility may suspend interconnection service to effect immediate repairs on the Utility's System. The Utility shall use Reasonable Efforts to provide the Interconnection Customer with prior notice. If prior notice is not given, the Utility shall, upon request, provide the Interconnection Customer written documentation after the fact explaining the circumstances of the disconnection.

#### 3.4.4 Adverse Operating Effects

The Utility shall notify the Interconnection Customer as soon as practicable if, based on Good Utility Practice, operation of the Generating Facility may cause disruption or deterioration of service to other customers served from the same electric System, or if operating the Generating Facility could cause damage to the Utility's System or Affected Systems. Supporting documentation used to reach the decision to disconnect shall be provided to the Interconnection Customer upon request. If, after notice, the Interconnection Customer fails to remedy the adverse operating effect within a reasonable time, the Utility may

disconnect the Generating Facility. The Utility shall provide the Interconnection Customer with five (5) Business Day notice of such disconnection, unless the provisions of Article 3.4.1 apply.

#### 3.4.5 Modification of the Generating Facility

The Interconnection Customer must receive written authorization from the Utility before making a Material Modification or any other change to the Generating Facility that may have a material impact on the safety or reliability of the Utility's System. Such authorization shall not be unreasonably withheld. Modifications shall be done in accordance with Good Utility Practice. If the Interconnection Customer makes such modification without the Utility's prior written authorization, the latter shall have the right to temporarily disconnect the Generating Facility [in accordance with Article 3.4.4](#).

#### 3.4.6 Reconnection

The Parties shall cooperate with each other to restore the Generating Facility, Interconnection Facilities, and the Utility's System to their normal operating state as soon as reasonably practicable following a temporary or emergency disconnection.

### **Article 4. Cost Responsibility for Interconnection Facilities and Distribution Upgrades**

#### 4.1 Interconnection Facilities

4.1.1 The Interconnection Customer shall pay for the cost of the Interconnection Facilities itemized in Appendix 2 of this Agreement [in accordance with Appendix 7](#). The Utility shall provide a best estimate cost, including overheads, for the purchase and construction of its Interconnection Facilities and provide a detailed itemization of such costs. Costs associated with Interconnection Facilities may be shared with other entities that may benefit from such facilities by agreement of the Interconnection Customer, such other entities, and the Utility.

4.1.2 The Interconnection Customer shall be responsible for its share of all reasonable expenses, including overheads, associated with (1) owning, operating, maintaining, repairing, and replacing its own Interconnection Facilities, and (2) operating, maintaining, repairing, and replacing the Utility's Interconnection Facilities [in accordance with IAW Appendix 7](#).

#### 4.2 Distribution Upgrades

The Utility shall design, procure, construct, install, and own the Distribution Upgrades described in Appendix 6 of this Agreement. If the Utility and the Interconnection Customer agree, the Interconnection Customer may construct

Distribution Upgrades that are located on land owned by the Interconnection Customer. The ~~actual~~ Interconnection Customer shall pay for the agreed-to estimated cost of the Distribution Upgrades, ~~including overheads, on-going operations, maintenance, repair, and replacement, shall be directly assigned to the Interconnection Customer~~ itemized in Appendix 2 of this Agreement in accordance with IAW Appendix 7.

## Article 5. Cost Responsibility for Network Upgrades

### 5.1 Applicability

No portion of this Article 5 shall apply unless the interconnection of the Generating Facility requires Network Upgrades.

### 5.2 Network Upgrades

~~The Utility shall design, procure, construct, install, and own the Network Upgrades described in Appendix 6 of this Agreement. If the Utility and the Interconnection Customer agree, the Interconnection Customer may construct Network Upgrades that are located on land owned by the Interconnection Customer. Unless the Utility elects to pay for Network Upgrades, the actual cost of the Network Upgrades, including overheads, on-going operations, maintenance, repair, and replacement shall be borne by the Interconnection Customer.~~ Project does not include any Network Upgrades to the Utility's System.

## Article 6. Billing, Payment, Milestones, and Financial Security

### 6.1 Billing and Payment Procedures and Final Accounting

~~The Interconnection Customer shall pay 100% of required Interconnection Facilities and any other charges as required in Appendix 2 pursuant to the milestones specified in Appendix 4.~~

~~The Interconnection Customer shall pay 100% of required Upgrades and any other charges as required in Appendix 6 pursuant to the milestones specified in Appendix 4.~~ [Omitted. See Appendix 7.]

~~Upon receipt of 100% of the foregoing pre-payment charges for Upgrades, the payment is not refundable due to cancellation of the Interconnection Request for any reason.~~

~~However, if an Interconnection Customer terminates its Interconnection Agreement and cancels its facility, it shall be entitled to a refund of any unspent amounts that had been collected by the Utility for the Interconnection Customer's Interconnection Facilities.~~

~~6.1.2 If implemented by the Utility or requested by the Interconnection Customer in writing within 15 Business Days of the Interconnection Facilities Delivery Date, the Utility shall provide the Interconnection Customer a final accounting report within 120 Business Days addressing any difference between (1) the Interconnection Customer's cost responsibility for the actual cost of such facilities or Upgrades, and (2) the Interconnection Customer's previous aggregate payments to the Utility for such facilities or Upgrades. If the Interconnection Customer's cost responsibility exceeds its previous aggregate payments, the Utility shall invoice the Interconnection Customer for the amount due and the~~



~~Interconnection Customer shall make payment to the Utility within 20 Business Days. If the Interconnection Customer's previous aggregate payments exceed its cost responsibility under this Agreement, the Utility shall refund to the Interconnection Customer an amount equal to the difference within 20 Business Days of the final accounting report. If necessary and appropriate as a result of the final accounting, the Utility may also adjust the monthly charges set forth in Appendix 2 of the Interconnection Agreement.~~ [Omitted. See Appendix 7.]

~~6.1.1 The Utility shall also bill the Interconnection Customer for the costs associated with operating, maintaining, repairing and replacing the Utility's System Upgrades, as set forth in Appendix 6 of this Agreement.~~ The Utility shall bill the Interconnection Customer for the costs of providing the Utility's Interconnection Facilities including the costs for on-going operations, maintenance, repair and replacement of the Utility's Interconnection Facilities under a Utility rate schedule, tariff, rider or service regulation providing for extra facilities or additional facilities charges, as set forth in Appendix 2 of this Agreement in accordance with IAW limitations set out in Appendix 7, such monthly charges to continue throughout the entire life of the interconnection agreement.

## 6.2 Milestones

~~The Parties shall agree on milestones for which each Party is responsible and list them in Appendix 4 of this Agreement. A Party's obligations under this provision may be extended by agreement, except for timing for Payment or Financial Security related requirements set forth in the milestones, which shall adhere to Section 5.2.4 of the Standards. If a Party anticipates that it will be unable to meet a milestone for any reason other than a Force Majeure Event, it shall immediately notify the other Party of the reason(s) for not meeting the milestone and (1) propose the earliest reasonable alternate date by which it can attain this and future milestones, and (2) request appropriate amendments to Appendix 4. The Party affected by the failure to meet a milestone shall not unreasonably withhold agreement to such an amendment unless (1) it will suffer significant uncompensated economic or operational harm from the delay, (2) the delay will materially affect the schedule of another Interconnection Customer with subordinate Queue Position, (3) attainment of the same milestone has previously been delayed, or (4) it has reason to believe that the delay in meeting the milestone is intentional or unwarranted notwithstanding the circumstances explained by the Party proposing the amendment.~~

## 6.3 Financial Security Arrangements

~~Pursuant to the Interconnection Agreement Milestones Appendix 4, the Interconnection Customer shall provide the Utility a letter of credit or other financial security arrangement that is reasonably acceptable to the Utility and is consistent with the Uniform Commercial Code of North Carolina. Such security for payment shall be in an amount sufficient to cover the costs for constructing, designing, procuring, and installing the applicable portion of the Utility's Interconnection Facilities and shall be reduced on a dollar-for-dollar basis for~~

~~payments made to the Utility under this Agreement during its term. In addition:~~  
6.3.1 ~~The guarantee must be made by an entity that meets the creditworthiness requirements of the Utility, and contain terms and conditions that guarantee payment of any amount that may be due from the Interconnection Customer, up to an agreed-to maximum amount.~~

~~6.3.2 The letter of credit must be issued by a financial institution or insurer reasonably acceptable to the Utility and must specify a reasonable expiration date.~~

~~6.3.3 The Utility may waive the security requirements if its credit policies show that the financial risks involved are *de minimus*, or if the Utility's policies allow the acceptance of an alternative showing of credit worthiness from the Interconnection Customer.~~ understand that Project is being transferred to Interconnection Customer after all Interconnection Facilities and System Upgrade costs have been fully funded, in accordance with Appendix 7.

## **Article 7. Assignment, Liability, Indemnity, Force Majeure, Consequential Damages, and Default**

### **7.1 Assignment**

7.1.1 The Interconnection Customer shall notify the Utility of the pending sale of an existing Generating Facility in writing. The Interconnection Customer shall provide the Utility with information regarding whether the sale is a change of ownership of the Generating Facility to a new legal entity, or a change of control of the existing legal entity.

7.1.2 The Interconnection Customer shall promptly notify the Utility of the final date of sale and transfer date of ownership in writing. The purchaser of the Generating Facility shall confirm to the Utility the final date of sale and transfer date of ownership in writing

7.1.3 This Agreement shall not survive the transfer of ownership of the Generating Facility to a new legal entity owner. The new owner must complete a new Interconnection Request and submit it to the Utility within 20 Business Days of the transfer of ownership or the Utility's Interconnection Facilities shall be removed or disabled and the Generating Facility disconnected from the Utility's System. The Utility shall not study or inspect the Generating Facility unless the new owner's Interconnection Request indicates that a Material Modification has occurred or is proposed.

7.1.4 This Agreement shall survive a change of control of the Generating Facility's legal entity owner, where only the contact information in the Interconnection Agreement must be modified. The new owner must complete a new Interconnection Request and submit it to the Utility within 20 Business Days of the change of control and provide the new

contact information. The Utility shall not study or inspect the Generating Facility unless the new owner's Interconnection Request indicates that a Material Modification has occurred or is proposed.

7.1.5 The Interconnection Customer shall have the right to assign this Agreement, without the consent of the Utility, for collateral security purposes to aid in providing financing for the Generating Facility, provided that the Interconnection Customer will promptly notify the Utility of any such assignment. Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof.

7.1.6 Any attempted assignment that violates this article is void and ineffective.

## 7.2 Limitation of Liability

Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, incidental, consequential, or punitive damages of any kind, except as authorized by this Agreement.

## 7.3 Indemnity

7.3.1 This provision protects each Party from liability incurred to third parties as a result of carrying out the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in Article 7.2.

~~7.3.2~~The To the extent permitted by federal law, including, but not limited to, the Anti-Deficiency Act, 31 USC 1341, et. seq., and the Federal Tort Claims Act, 28 USC 2674, the Parties shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inaction of its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

~~7.3.3~~If an indemnified Party is entitled to indemnification under this Article as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under this Article, to assume the defense of such claim, such indemnified Party may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

~~7.3.4~~If an indemnifying Party is obligated to indemnify and hold any

~~indemnified Party harmless under this Article, the amount owing to the indemnified Party shall be the amount of such indemnified Party's actual loss, net of any insurance or other recovery.~~ With the exception of the limited waiver regarding the Federal Tort Claims Act, nothing herein shall conflict or waive federal law and principles of federal sovereign immunity.

7.3.2 ~~7.3.5~~ Promptly after receipt by an indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this Article may apply, the indemnified Party shall notify the indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Party.

#### 7.4 Consequential Damages

Other than as expressly provided for in this Agreement, neither Party shall be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

#### 7.5 Force Majeure

7.5.1 As used in this article, a Force Majeure Event shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure Event does not include an act of negligence or intentional wrongdoing.

7.5.2 If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the Force Majeure Event (Affected Party) shall promptly notify the other Party, either in writing or via the telephone, of the existence of the Force Majeure Event. The notification must specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the Force Majeure Event until the event ends. The Affected Party will be entitled to suspend or

modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of Reasonable Efforts. The Affected Party will use Reasonable Efforts to resume its performance as soon as possible.

## 7.6 Default

- 7.6.1 No Default shall exist where such failure to discharge an obligation (other than the payment of money or provision of Financial Security) is the result of a Force Majeure Event as defined in this Agreement or the result of an act or omission of the other Party. Upon a Default, the non-defaulting Party shall give written notice of such Default to the defaulting Party. Except as provided in Article 7.6.2, the defaulting Party shall have ~~five~~ten (510) Business Days from receipt of the Default notice within which to cure such Default.
- 7.6.2 If a Default presents an imminent risk to life safety or damage to a non-defaulting Party's property, or is not cured as provided in this Article, the non-defaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, ~~and be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity.~~ The provisions of this article will survive termination of this Agreement.

## Article 8. Insurance

8.1 ~~The Interconnection Customer shall obtain and retain, for as long as the Generating Facility is interconnected with the Utility's System, liability insurance which protects the Interconnection Customer from claims for bodily injury and/or property damage. The amount of such insurance shall be sufficient to insure against all reasonably foreseeable direct liabilities given the size and nature of the generating equipment being interconnected, the interconnection itself, and the characteristics of the system to which the interconnection is made. This insurance shall be primary for all purposes. The Interconnection Customer shall provide certificates evidencing this coverage as required by the Utility. Such insurance shall be obtained from an insurance provider authorized to do business in North Carolina. The Utility reserves the right to refuse to establish or continue the interconnection of the Generating Facility with the Utility's System, if such insurance is not in effect.~~

~~8.1.1 For an Interconnection Customer that is a residential customer of the Utility proposing to interconnect a Generating Facility no larger than 250 kW, the required coverage shall be a standard homeowner's insurance policy with liability coverage in the amount of at least \$100,000 per occurrence.~~

~~8.1.2 For an Interconnection Customer that is a non-residential customer of the Utility proposing to interconnect a Generating Facility no larger than 250 kW, the required coverage shall be comprehensive general liability insurance with coverage in the amount of at least \$300,000 per~~

~~occurrence.~~

~~8.1.3 For an Interconnection Customer that is a non-residential customer of the Utility proposing to interconnect a Generating Facility greater than 250 kW, the required coverage shall be comprehensive general liability insurance with coverage in the amount of at least \$1,000,000 per occurrence.~~

~~8.1.4 An Interconnection Customer of sufficient credit worthiness may propose to provide this insurance via a self-insurance program if it has a self-insurance program established in accordance with commercially acceptable risk management practices, and such a proposal shall not be unreasonably rejected~~ acts as a self-insurer under the Federal Tort Claims Act (FTCA). The FTCA provides the Utility a means through which to assert claims against the federal government related to this Agreement, to include the administrative settlement of claims as well as the ability of the Utility to file a legal action against the federal government for money damages in the applicable United States District Court if such administrative claim is denied.

- 8.2 The Utility agrees to maintain general liability insurance or self-insurance consistent with the Utility's commercial practice. Such insurance or self-insurance shall not exclude coverage for the Utility's liabilities undertaken pursuant to this Agreement.
- 8.3 The Parties further agree to notify each other whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.

## **Article 9. Confidentiality**

- 9.1 Confidential Information shall mean any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated "Confidential." For purposes of this Agreement all design, operating specifications, and metering data provided by the Interconnection Customer shall be deemed Confidential Information regardless of whether it is clearly marked or otherwise designated as such.
- 9.2 Confidential Information does not include information previously in the public domain, required to be publicly submitted or divulged by Governmental Authorities (after notice to the other Party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce this Agreement. Each Party receiving Confidential Information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the Party providing that information, except to fulfill obligations under this Agreement, or to fulfill legal or regulatory requirements, including but not limited to the Freedom of Information Act, 5. U.S.C. § 552 and related guidance.
- 9.2.1 Each Party shall employ at least the same standard of care to protect Confidential Information obtained from the other Party as it employs to

protect its own Confidential Information.

9.2.2 ~~Each~~ To the fullest extent allowed by Federal law, each Party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of Confidential Information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.

9.2.3 All information pertaining to a project will be provided to the new owner in the case of a change of control of the existing legal entity or a change of ownership to a new legal entity.

9.3 If information is requested by the Commission from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to the Commission within the time provided for in the request for information. In providing the information to the Commission, the Party may request that the information be treated as confidential and non-public in accordance with North Carolina law and that the information be withheld from public disclosure.

## Article 10. Disputes

10.1 The Parties agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this Article and the Contract Disputes Act, 41 USC § 7101, et. seq.

10.2 In the event of a dispute, either Party shall provide the other Party with a written notice of dispute. Such notice shall describe in detail the nature of the dispute.

10.3 ~~If the dispute has not been resolved within 20 Business Days after receipt of the notice, either Party may contact the Public Staff for assistance in informally resolving the dispute, or the Parties may mutually agree to continue negotiations for up to an additional 20 Business Days. In the alternative, the Parties may, upon mutual agreement, seek the assistance of a dispute resolution service to resolve the dispute within 20 Business Days, with the opportunity to extend this timeline upon mutual agreement. If the Parties are unable to informally resolve the dispute, either Party may then file a formal complaint with the Commission~~ 10.3 The parties acknowledge that the Contract Disputes Act, 41 USC § 7101, et. seq. governs all explicit and implied contracts entered into by the Army and that the procedures of the Act shall be effective upon this Agreement. .

10.4 Each Party agrees to conduct all negotiations in good faith.

## Article 11. Taxes

11.1 The Parties agree to follow all applicable tax laws and regulations, consistent with North Carolina and federal policy and revenue requirements.

11.2 ~~Each Party shall cooperate with the other to maintain the other Party's tax status.~~

Nothing in this Agreement is intended to adversely affect the Utility's tax exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds.

## Article 12. Miscellaneous

### 12.1 Governing Law, Regulatory Authority, and Rules

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by Federal law and the laws of the State of North Carolina, ~~without regard to its conflicts of~~ the extent that North Carolina laws do not conflict with federal law or the principles of federal sovereignty. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.

### 12.2 Amendment

The Parties may amend this Agreement by a written instrument duly executed by both Parties, or under Article 12.12 of this Agreement.

### 12.3 No Third-Party Beneficiaries

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

### 12.4 Waiver

12.4.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

12.4.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, or duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Utility. Any waiver of this Agreement shall, if requested, be provided in writing.

### 12.5 Entire Agreement

This Agreement, including all Appendices, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes



all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

#### 12.6 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

#### 12.7 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

#### 12.8 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

#### 12.9 Security Arrangements

Infrastructure security of electric system equipment and operations and control hardware and software is essential to ensure day-to-day reliability and operational security. All Utilities are expected to meet basic standards for electric system infrastructure and operational security, including physical, operational, and cyber- security practices.

#### 12.10 Environmental Releases

Each Party shall notify the other Party, first orally and then in writing, of the release of any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Generating Facility or the Interconnection Facilities, ~~each of which~~that may reasonably be expected to affect the other Party. The notifying Party shall (1) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than 24 hours after such Party becomes aware of the occurrence, and (2) promptly furnish to the other Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

## 12.11 Subcontractors

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

12.11.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the Utility be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

12.11.2 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

## 12.12 Reservation of Rights

The Utility shall have the right to make a unilateral filing with the Commission to modify this Agreement with respect to any rates, terms and conditions, charges, or classifications of service, and the Interconnection Customer shall have the right to make a unilateral filing with the Commission to modify this Agreement; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before the Commission in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties except to the extent that the Parties otherwise agree as provided herein.

## Article 13. Notices

### 13.1 General

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement (Notice) shall be deemed properly given if delivered in person, delivered by recognized national courier service, sent by [certified/return receipt](#) first class mail, postage prepaid, or sent electronically ~~to~~. [Such notice must be sent to the Government's cognizant Contracting Officer for FBDPW and](#) the person specified below:

If to the Interconnection Customer:

Interconnection Customer: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

If to the Utility:

Utility: \_\_\_\_\_

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

13.2 Billing and Payment

Billings and payments shall be sent to the addresses set out below: If to the Interconnection Customer:

Interconnection Customer: \_\_\_\_\_ Attention: \_\_\_\_\_

If to the Utility:

Utility: \_\_\_\_\_

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

13.3 Alternative Forms of Notice

Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or e-mail to the telephone numbers and e-mail addresses set out below:

If to the Interconnection Customer:

Interconnection Customer: \_\_\_\_\_ Attention: \_\_\_\_\_

If to the Utility:

Utility: \_\_\_\_\_

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

13.4 Designated Operating Representative

The Parties may also designate operating representatives to conduct the communications which may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.

Interconnection Customer's Operating Representative: \_\_\_\_\_

Interconnection Customer: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone: \_\_\_\_\_

Utility's \_\_\_\_\_ Operating \_\_\_\_\_

Representative: Utility: \_\_\_\_\_

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

13.5 Changes to the Notice Information

Either Party may change this information by giving five Business Days written notice prior to the effective date of the change.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For the Utility

Name: \_\_\_\_\_ Print Name: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_ For the Interco

Name: \_\_\_\_\_ Print Name: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Glossary of Terms**

See Glossary of Terms, Attachment 1 to the North Carolina Interconnection Procedures Interconnection Agreement Appendix 2

**Description and Costs of the Generating Facility, Interconnection Facilities, and Metering Equipment**

Equipment, including the Generating Facility, Interconnection Facilities, and metering equipment shall be itemized and identified as being owned by the Interconnection Customer, or the Utility. The Utility will provide a best estimate itemized cost, including overheads, of its Interconnection Facilities and metering equipment, and a best estimate itemized cost of the annual operation and maintenance expenses associated with its Interconnection Facilities and metering equipment.

Interconnection Agreement Appendix 3

**One-line Diagram Depicting the Generating Facility, Interconnection Facilities, Metering Equipment, and Upgrades**

This agreement will incorporate by reference the one-line diagram submitted by the Customer on \_\_\_\_\_, dated \_\_\_\_\_, with file name “\_\_\_\_\_” as part of the Interconnection Request, or as subsequently updated and provided to the Company.

Interconnection Agreement Appendix 4

**Milestones**

Requested Upgrade In-Service Date: \_\_\_\_\_ Requested Interconnection Facilities

The build-out schedule does not include contingencies for deployment of Utility personnel to assist in outage restoration efforts on the Utility’s System or the systems of other utilities with whom the Utility has a mutual assistance agreement. Consequently, the Requested In-Service Date may be delayed to the extent outage restoration work interrupts the design, procurement and construction of the requested facilities.

	Milestone	Completion Date	Responsible Party
1)			
2)			
3)			

4)			
5)			
6)			
7)			
8)			
9)			
10)	Expand as needed		

Signatures on next page [Interconnection Agreement Appendix 4](#)

Agreed to for the Utility:

Name: \_\_\_\_\_ Print Name: \_\_\_\_\_ Date: \_\_\_\_\_ Agreed to for the Utility:

Name: \_\_\_\_\_ Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

OFFICIAL COPY

May 27 2022

**Additional Operating Requirements for the Utility’s  
System and Affected Systems Needed to Support  
the Interconnection Customer’s Needs**

The Utility shall also provide requirements that must be met by the Interconnection Customer prior to initiating parallel operation with the Utility’s System.



**Utility's Description of its Upgrades and  
Best Estimate of Upgrade Costs**

The Utility shall describe Upgrades and provide an itemized best estimate of the cost, including overheads, of the Upgrades and annual operation and maintenance expenses associated with such Upgrades. The Utility shall functionalize Upgrade costs and annual expenses as either transmission or distribution related.

NC

[Date]Interconnection Agreement-4 Appendix 7[DEP authorized employee]**RE: LETTER OF AGREEMENT: Interconnection Costs for Camp Mackall 1 MW Floating Solar Project (“Generating Facility”)**

Fort Bragg Department of Public Works (“FBDPW” or the “Interconnection Customer”) and Duke Energy Progress, LLC (“DEP” or the “Utility”, and together with FBDPW, the “Parties”), by means of this Letter Agreement acknowledge the following terms and conditions set forth in this Appendix 7. The Parties recognize and agree that the Interconnection Agreement (“Agreement”) establishes the Parties’ rights, responsibilities, and obligations relating to the interconnection and parallel operation of the Interconnection Customer’s Generating Facility . The Parties further recognize and agree that they are entering into this Letter of Agreement to address how certain interconnection-related costs pertaining to the certain operation and maintenance costs tied to Commission-approved tariffs (e.g., Schedule EF for extra facilities) incurred to interconnect the Generating Facility will be paid, recognizing that FBDPW is Federal Government customer and is subject to certain federal law prescribing payment terms applicable the Federal Government. The terms and conditions in this Letter of Agreement are incorporated in this Agreement and will supplement, take precedence over, and supersede the related terms and conditions therein.

DEP and the U.S. Army Mission Installation Contracting Command-Fort Sam Houston (“MICC-FSH”) have executed a separate Utility Energy Services Contract (“UESC”) under which DEP is responsible for the design, construction, and, at completion, delivery of Project to FBDPW. The administration of the UESC has been transferred to the U.S. Corps of Engineers. Nothing in this Agreement modifies the UESC.

Currently, DEP, as the Utility, and Duke Energy Business Services, LLC (“DEBS”), as Interconnection Customer, have executed a separate Interconnection Agreement, (“DEBS IA”), and DEP has issued a permission to operate the Generating Facility in parallel with DEP’s System. Nothing in this Agreement creates a contractual relationship between FBDPW and DEBS as DEP is responsible for fulfilling all terms and conditions of the UESC referred to above. Under the terms of the DEBS IA, DEBS is responsible for payment of all interconnection-related costs, including, but not limited to, engineering time and expense, procurement of materials, construction of System Upgrades and Interconnection Facilities required by DEP to interconnect the Generating Facility, designated overheads, and any commissioning costs. These costs are estimated in Appendices 2 and 6 of the Agreement. Under the terms of the Agreement, DEP will also issue a final accounting report within 120 business days of the Interconnection Facilities Delivery Date that trues up the interconnection-related costs and provides documentation to DEBS as to the difference between amounts previously paid by DEBS and the amount spent by DEP to interconnect the Project (“Final Accounting”).

As such, this Agreement is modified as follows:

1. All duties, obligations, or responsibilities of the Interconnection Customer for or regarding the design construction, and installation of the Project under Agreement Sections 1.5.4 and 1.8 are inapplicable given DEBS’s commitment to DEP to pay the Final Accounting for all Interconnection Facilities and System Upgrades, when due, even after change of ownership of the Generating Facility to FBDPW. The Interconnection Customer shall be responsible for

maintenance and operation of the Generating Facility so as to reasonably minimize the likelihood

of a disturbance adversely affecting or impairing the System or equipment of the Utility and any Affected Systems and shall be subject to Temporary Disconnection by the Utility during Emergency Conditions, Forced Outages, or where the Generating Facility causes Adverse Operating Effects to the Utility's System as provided for in Section 3.4.

2. All duties, obligations, or responsibilities of the Interconnection Customer for or regarding the Utility's cost for the purchase, installation, and testing of interconnection, metering and data acquisition equipment under Agreement Section 1.7 are inapplicable given DEBS's commitment to DEP to pay the Final Accounting for all Interconnection Facilities and System Upgrades, when due, even after change of ownership of the Generating Facility to FBDPW.
3. All duties, obligations, or responsibilities of the Interconnection Customer for or regarding the testing and inspection of the Generating Facility or Interconnection Facilities under Agreements Sections 2.1.1, 2.1.2, 2.1.3, and 2.3.3 and the cost thereof are inapplicable given that DEP has authorized the Generating Facility to operate in parallel with DEP's system prior to change of ownership of the Generating Facility from DEBS to FBDPW .
4. All DEP or Utility access to and activities on the Government installation under Agreement Section 2.3.1 shall be subject to all applicable base/installation safety and security access requirements.
5. The Interconnection Customer must provide Utility written notice at least 20 business days before making a Material Modification or any other change to the Generating Facility that may have a material impact on the safety or reliability of the Utility's System, as described in IA Section 3.4.5. The Utility shall have 10 business days after receipt of written notice to determine whether the proposed modification constitutes a Material Modification requiring a new interconnection study for impacts to the DEP system under the terms of the North Carolina Interconnection Procedures or may be accepted without further study. Utility approval shall not be unreasonably withheld. Modifications shall be done in accordance with Good Utility Practice. If the Interconnection Customer makes such modification without the Utility's prior approval, or if the Utility reasonably believes that such modification will result in an Adverse Operating Effect to the Utility's System, the Utility shall have the right to temporarily disconnect the Generating Facility in accordance with Agreement Section 3.4.4. To the extent that such disconnection results in a monetary impact under Task Order W9124J-20-F-0052, then the Interconnection Customer will fully indemnify the Utility for such costs pursuant to this Agreement.
6. All duties, obligations, or responsibilities of the Interconnection Customer for or regarding the purchase or construction of the Interconnection Facilities or the costs to the Utility thereof under Agreement Sections 4.1.1 and 4.1.2 are inapplicable given DEBS's commitment to DEP to pay the Final Accounting for all Interconnection Facilities and System Upgrades, when due, even after change of ownership of the Generating Facility to FBDPW.
7. All duties, obligations, or responsibilities of the Interconnection Customer to indemnify or hold harmless the Utility under Agreement Sections 7.3.1, 7.3.2, and 7.3.3 shall be limited to those allowed under the Federal Tort Claims Act, 28 U.S.C. § 2674, et. seq.

The Interconnection Facilities Delivery Date for the Project was [ ] and the final accounting report is scheduled to be delivered to DEBS on or about [ ]. If, before the Final Accounting is delivered to DEBS after ownership of the Generating Facility is transferred to FBDPW, DEBS has informed DEP that DEBS

will be responsible for payment of any outstanding costs identified in the Final Accounting.

After ownership of the Project is transferred from DEBS to FBDPW, FBDPW understands and agrees that Customer will be responsible for ongoing monthly facilities charges applicable to the Generating Facility as well as any other applicable charges related to DEP's provision of interconnection service to the Interconnection Customer under DEP's rates and tariffs on file with the North Carolina Utilities Commission subject to the availability of funding. Only the cognizant Contracting Officer can obligate the Government. The Government's obligation under this Agreement is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment under this Agreement may arise until such funds are made available to the below referenced Contracting Officer, Interconnection Customer, and until DEP receives notice of such availability. As an authorized representative and duly warranted Contracting Officer of the Customer, I hereby provide an agreement of understanding to DEP with respect to how the interconnection-related costs for the Project will be paid, as described above.

AGREEMENT OF UNDERSTANDING:

For the Interconnection Customer

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

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

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

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

As an authorized and duly warranted Contracting Officer of the Interconnection Customer, I hereby provide an agreement of understanding to DEP with respect to how the interconnection-related costs for the Project will be paid, as described above.

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

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

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

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

ACCEPTED AND AGREED:

DUKE ENERGY PROGRESS, LLC

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

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

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

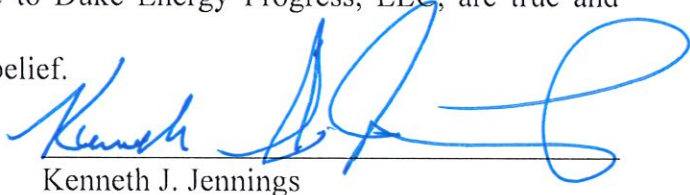
| Date: \_\_\_\_\_

OFFICIAL COPY  
May 27 2022

VERIFICATION

Docket No. E-100, Sub 101

I, Kenneth J. Jennings, General Manager – DET Renewables Integration and Operations, for Duke Energy Progress, LLC do solemnly swear that the facts stated in the foregoing petition, insofar as they relate to Duke Energy Progress, LLC, are true and correct to the best of my knowledge and belief.

  
Kenneth J. Jennings

STATE OF NORTH CAROLINA    )  
  )  
COUNTY OF WAKE             )

The foregoing instrument was sworn to and acknowledged before me this 27  
day of May, 2022.

  
Notary Public

My Commission Expires: 6/2/2024

**NEINEETA LYTLE QUASH**  
NOTARY PUBLIC  
WAKE COUNTY, NC  
My Commission Expires 6-2-2024

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Petition for Limited Waiver and Authorization to Modify the North Carolina Interconnection Agreement to Accommodate Interconnection Customer Requirements*, as filed in Docket No. E-100, Sub 101, was served via electronic delivery or mailed, first-class, postage prepaid, upon all parties of record.

This, the 27<sup>th</sup> day of May, 2022.

*/s/E. Brett Breitschwerdt*

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*Attorney for Duke Energy Progress, LLC*