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September 9, 2021

VIA ELECTRONIC FILING AND HAND DELIVERY

Ms. A. Shonta Dunston
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

**Re: Duke Energy Progress, LLC's Rebuttal Testimony
Docket No. E-2, Sub 1276**


Dear Ms. Dunston:

Enclosed for filing is Duke Energy Progress, LLC's Rebuttal Testimony of Megan W. Jennings for filing in connection with the referenced matter. Certain information contained in the testimony is commercially sensitive. For that reason, it is being filed under seal pursuant to N.C. Gen. Stat. §132-1.2. Parties to the docket may contact the Company regarding obtaining copies pursuant to an appropriate confidentiality agreement.

Fifteen (15) paper copies of the Rebuttal Testimony will be delivered to the Clerk's Office by close of business on September 10, 2021.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Robert W. Kaylor

Enclosure

cc: Parties of Record

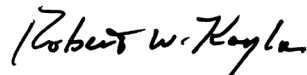
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Sep 09 2021

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Duke Energy Progress, LLC's Rebuttal Testimony of Megan W. Jennings, in Docket No. E-2, Sub 1276, has been served by electronic mail (e-mail), hand delivery or by depositing a copy in the United States Mail, first class postage prepaid, properly addressed to the parties of record.

This, the 9th day of September, 2021.



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ATTORNEY FOR DUKE ENERGY
PROGRESS, LLC

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 1276

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)
)
Application of Duke Energy Progress, LLC for)
Approval of Renewable Energy and Energy)
Efficiency Portfolio Standard (REPS))
Compliance Report and Cost Recovery Rider)
Pursuant to N.C. Gen. Stat. 62-133.8 and)
Commission Rule R8-67)

**REBUTTAL TESTIMONY
OF MEGAN W. JENNINGS**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Megan W. Jennings, and my business address is 400 South
3 Tryon Street, Charlotte, North Carolina.

4 **Q. DID YOU PREVIOUSLY FILE DIRECT TESTIMONY IN THIS**
5 **MATTER BEFORE THE NORTH CAROLINA UTILITIES**
6 **COMMISSION?**

7 A. Yes. I filed direct testimony on behalf of Duke Energy Progress, LLC
8 (“DEP” or “the Company”) in this matter on June 15, 2021.

9 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

10 A. The purpose of my testimony is to explain how the [BEGIN
11 CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] of outside counsel
12 legal fees paid to [BEGIN CONFIDENTIAL] [REDACTED]
13 [REDACTED] [END CONFIDENTIAL] a renowned specialist on the
14 California Global Warming Solutions Act and other California renewable
15 energy law (“Legal Expert A”), are directly related to the Company’s
16 compliance with North Carolina’s Renewable Energy Portfolio Standard
17 (“REPS”) (in particular N.C. Gen. Stat. § 62-133.8(e)), were prudently
18 incurred by DEP, and should be approved for recovery in this proceeding.
19 These costs, to which the Public Staff has objected for recovery, are in
20 connection with Legal Expert A’s work related to Optima MH, LLC’s
21 (“Optima MH”) Motion for Declaratory Relief filed in Docket No. E-100,
22 Sub 113 (“Optima MH Motion”).

1 **Q. PLEASE PROVIDE BACKGROUND INFORMATION RELATED**
2 **TO THE OPTIMA MH MOTION.**

3 A. On December 7, 2020, Optima MH filed a Motion for Declaratory Relief
4 with the North Carolina Utilities Commission (the “Commission”)
5 requesting a “ruling declaring that the only attributes of a “directed biogas”
6 resource used to generate electric power that are necessary to produce
7 Renewable Energy Certificates (“RECs”) eligible for compliance with
8 North Carolina’s Renewable Energy and Energy Efficiency Portfolio
9 Standard (“REPS”) are the attributes required for the directed biogas to meet
10 the definition of a “renewable energy resource” as set forth in N.C. Gen.
11 Stat. § 62-133.8(a)(8).” In response to the Optima MH Motion, DEP, along
12 with DEC, (“the Companies” or “Duke Energy”), filed initial comments,
13 responses and reply comments, and responded to data requests from Optima
14 MH and the Public Staff in February and March 2021. Additional details
15 related to the Companies’ comments and data requests can be found in
16 Docket No. E-100, Sub 113.

17 **[BEGIN CONFIDENTIAL]** [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]. [END CONFIDENTIAL]

14 **Q. DID THE OPTIMA MH MOTION REFERENCE CALIFORNIA**
15 **LAWS AND REGULATIONS?**

16 A. Yes. Optima MH's Motion, the accompanying Affidavit of Mark Maloney,
17 and Public Staff Data Requests in the docket all introduced issues of
18 California law and regulation, of which DEP and DEC would be in
19 violation, if the Companies were to be compelled into a transaction for
20 compliance with NC REPS, [BEGIN CONFIDENTIAL] [REDACTED]
21 [REDACTED]. [END CONFIDENTIAL] For
22 example, the Motion referred to "California's low carbon market," and the
23 Affidavit referred to C California's "vibrant market for carbon emission

1 reduction credits.” The above statements introduced issues that required the
2 Companies to understand relevant California law in connection with DEP
3 and DEC’s compliance with NC REPS. Optima MH, through its Motion,
4 required the Companies to understand the effect on its NC REPS
5 compliance of characteristics and requirements of programs other than NC
6 REPS, such as the California Renewable Portfolio Standard (“RPS”), the
7 California Low Carbon Fuel Standard (“LCFS”), North Carolina truth-in-
8 advertising law, North Carolina anti-fraud law, federal truth-in-advertising
9 law, and federal anti-fraud law.

10 **Q. IN THIS PROCEEDING CONCERNING THE MEANING OF NC**
11 **REPS, DID THE PUBLIC STAFF REQUEST THAT THE**
12 **COMPANIES PROVIDE INFORMATION ABOUT CALIFORNIA**
13 **LAW?**

14 A. Yes. Public Staff Data Request 1-13 asked a question concerning the
15 application of the California RPS market rules and other California-related
16 products and associated rules, as those products and markets affected the
17 Optima MH Motion’s claims that environmental attributes associated with
18 the swine waste methane could be sold in California (i.e., California
19 compliant) simultaneous with sales in North Carolina for purposes of
20 compliance with NC REPS.

21 **Q. WHAT WORK DID LEGAL EXPERT A PERFORM RELATED TO**
22 **OPTIMA MH?**

1 A. Legal Expert A provided legal advice to the Companies concerning
2 California compliance programs that Optima MH and the Public Staff raised
3 as issues in filings and data requests related to the Optima MH Motion.
4 After receiving the initial correspondence from Optima MH noted above,
5 the Companies had concerns about achieving and maintaining compliance
6 with NC REPS if Optima MH were to sell the environmental attributes
7 associated with the swine waste methane into the California RPS and
8 environmental products markets. Therefore, the Companies sought Legal
9 Expert A's advice, which related to the application of NC REPS' legislative
10 provisions, the Companies' compliance with those NC REPS legislative
11 provisions, and NC REPS prohibitions against double counting or double
12 selling.

13 **Q. PLEASE EXPLAIN HOW "COMPLIANCE" WITH CALIFORNIA**
14 **LAW APPLIES TO THE COMPANIES' COMPLIANCE WITH NC**
15 **REPS.**

16 A. The NC REPS statute – N.C. Gen. Stat. §62.133.8(i)(3) – requires that “the
17 Commission shall ... *Ensure* that energy credited toward compliance with
18 the provisions of this section *not be credited toward any other purpose,*
19 *including* another renewable energy portfolio standard or voluntary
20 renewable energy purchase program in this State or *any other state.*” The
21 California legal issues on which the Companies received advice from Legal
22 Expert A applied to the Companies' compliance under NC REPS due to the
23 effect of California law on what attributes the Companies must possess for

1 the purpose of complying with NC REPS, as well as concerns under North
2 Carolina and Federal anti-fraud, and anti-manipulation laws and
3 regulations. Optima MH proposed to sell directed biogas to DEP or DEC to
4 create RECs that allegedly would comply with NC REPS, while at the same
5 time selling all attributes for the California RPS and California LCFS.

6 California's LCFS regulation §95488.8(i)(2)(C).2 requires any
7 entity reporting any RNG to submit attestations including "I certify *under*
8 *penalty of perjury under the laws of the State of California* that no other
9 party has or will sell, transfer, or retire the environmental attributes
10 corresponding to the biomethane for which (entity name) claims credit in
11 the LCFS program."

12 The above regulation provides, unequivocally, *under criminal*
13 *liability of perjury*, that sales of renewable natural gas into California must
14 include "the environmental attributes corresponding to the biomethane" –
15 i.e., all environmental attributes associated with the biomethane. As the
16 Companies have explained, this regulation makes it clear, without any
17 doubt, that a sale into California's LCFS program cannot coexist with a sale
18 for NC REPS, because the sale to DEP or DEC would (i) either be of
19 "undifferentiated gas" from which renewable energy cannot be created or
20 (ii) would be double counting in both markets.

21 As the Companies have stated, the concern is about how a delivery
22 into a California program by a developer that is also selling to the
23 Companies under NC REPS creates multiple claims on environmental

1 attributes that would thereby render DEP or DEC's claim over those same
2 environmental attributes double counting under NC REPS, false and
3 fraudulent under Federal regulations and North Carolina anti-fraud and anti-
4 manipulation laws, and implicating the Companies in the crime of perjury
5 in California. Being in technical compliance under a regulation is not a
6 defense to violating other applicable laws or regulations, as the Companies
7 have explained in their comments and discovery responses.

8 For all the reasons detailed herein, the legal advice provided by
9 Legal Expert A, that was required in order for the Companies to fully
10 understand the effects of the California RPS and LCFS regulations, is
11 directly related to the Companies' compliance under NC REPS.

12 **Q. WHAT WORRIES YOU MOST ABOUT THE PUBLIC STAFF'S**
13 **OPPOSITION TO RECOVERY OF THESE LEGAL FEES AS A**
14 **REPS COMPLIANCE COST?**

15 A. I am concerned that the Public Staff has adopted the position advocated by
16 Optima MH that could lead DEP and DEC to engage in activities under one
17 set of laws (i.e., NC REPS), which activities demonstrably carry the risk of
18 significant penal sanctions and civil liability for violating other laws.

19 The Public Staff's objection to cost recovery of these legal fees,
20 under the cost recovery mechanism to which they apply (NC REPS),
21 appears to reveal their position that the Companies cannot receive cost
22 recovery for legal advice to respond to questions they are asked after the
23 Companies raise well-founded concerns that an activity in which they

1 would be compelled to engage would create non-compliance, penal
2 sanctions, and civil liability under another set of laws. When it comes to the
3 requirements to comply with the law, all applicable laws, of North Carolina,
4 the United States, or any other state, N.C. Gen. Stat. §62.133.8(i)(3) could
5 not be any clearer. Therefore, compliance with NC REPS requires
6 knowledge of all applicable laws.

7 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

8 A. Yes.