



Jack E. Jirak
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June 1, 2020

VIA ELECTRONIC FILING

Ms. Kimberley A. Campbell, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4300

**RE: Duke Energy Progress, LLC's Filing of Post-Hearing Exhibit
Docket No. E-2, Sub 1204**

Dear Ms. Campbell:

On May 28, 2020, the North Carolina Utilities Commission issued its *Order Requiring Filing of Post-Hearing Exhibit* ("Order") directing Duke Energy Progress, LLC ("DEP" or the "Company") to file the trial affidavit referenced by DEP witness John Halm in the above referenced proceeding at Tr. Vol. 3, 202-05. In accordance with this directive, the Company hereby files the specified affidavit as DEP Post-Hearing Exhibit 1.

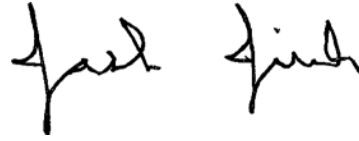
For the sake of clarity, Witness Halm's affidavit contains two exhibits that are relevant to the portion of the transcript referenced in the Commission's Order. Exhibit B to Witness Halm's affidavit contains monthly information regarding the stockpile size, including the amount of gypsum added to the stockpile by DEP and the amount removed from the stockpile by CertainTeed during the period of January 2017 through January 2018, and also shows the stockpile dropping below 100,000 tons for several months beginning in May 2017 (*see* Tr. Vol. 3, 219-20 and Tr. 247-48). Exhibit C shows the amount of gypsum purchased and accepted by CertainTeed during the period of August 2012 through January 2018. Certain information within Witness Halm's affidavit constitutes trade secret, and confidential, proprietary, and commercially sensitive information. Such confidential information 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.

OFFICIAL COPY

JUN 01 2020

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

Sincerely,

A handwritten signature in black ink, appearing to read "Jack E. Jirak". The signature is written in a cursive style with a large initial "J" and "E".

Jack E. Jirak

Enclosures

cc: Parties of Record

STATE OF NORTH CAROLINA
PERSON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
17 CVS 395

CERTAINTTEED GYPSUM NC,
INC.,

Plaintiff,

v.

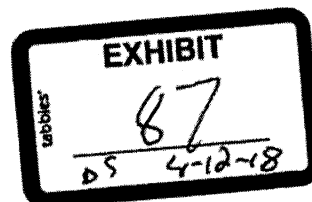
DUKE ENERGY PROGRESS, LLC,

Defendant.

**SECOND AFFIDAVIT OF JOHN
HALM**

The undersigned, being first duly sworn, hereby deposes and says:

1. I am over 18 years of age and have not been declared incompetent.
2. I have personal knowledge of the facts and information stated herein.
3. I work for Duke Energy Corporation and presently serve as Lead Byproducts Marketer. In that position, I am in charge of marketing the byproducts of coal-burning energy generation, including synthetic gypsum. I assumed operational responsibility for Duke Energy Progress, LLC's ("DEP") supply contract relationship with CertainTeed Gypsum NC, Inc. ("CTG") in November 2012, several months after the Second Amended and Restated Supply Agreement, effective August 1, 2012 (the "2012 Agreement"), was signed. Prior to assuming that responsibility, I had no knowledge of or familiarity with the 2012 Agreement.
4. I am not a lawyer, and was not involved in negotiating the 2012 Agreement or prior gypsum supply agreements between DEP and CTG. Those negotiations occurred before I assumed operational responsibility for DEP's supply



contract relationship with CTG, and thus I have no direct knowledge regarding the parties' understanding and intent with respect to the meaning of "Minimum Monthly Quantity" ("MMQ") in Section 3.1 of the 2012 Agreement or any other provision of that agreement.

5. I understand that CTG claims that it is experiencing a significant gypsum shortage and will experience irreparable harm unless the Court orders DEP to supply 50,000 net dry tons of gypsum per month to it while this litigation proceeds. This claim is at odds with the facts as I understand them, since CTG has never consistently taken the full amount of gypsum that DEP has made available to it.

6. As a practical matter, CTG controls the amount of gypsum that DEP delivers to CTG on a monthly basis. DEP transports the Gypsum Filter Cake that it produces at the Roxboro and Mayo Plants to the Progress Energy Gypsum Storage Area (the "Storage Area"). Under Section 2.2.3(b) of the 2012 Agreement, CTG is responsible for managing the Progress Energy Gypsum Storage Area, which contains the Stockpile. CTG, with assistance from a third-party contractor, takes gypsum from the Storage Area and places it on a conveyor that transports the gypsum across a canal to CTG's wallboard plant. Delivery occurs at the "Point of Delivery" as defined in the 2012 Agreement, which is the point at which the gypsum contacts the conveyor described above. Accordingly, as long as there is gypsum available in the Stockpile, CTG has exclusive control over how much gypsum is delivered to it in a given month. For at least the last four years, DEP has

transported all the Gypsum Filter Cake being produced by its Roxboro and Mayo Plants to the Storage Area.

7. DEP has made gypsum available to DEP in three primary ways—through the established Stockpile inventory, through gypsum production that is added to the Stockpile on a monthly basis, and, since July 2017, by voluntarily offering “Other Gypsum” to CTG for purchase on a negotiated basis. DEP has obtained this Other Gypsum from Duke Energy Carolinas, LLC’s (“DEC”) Belews Creek Plant through an affiliate sales transaction.

8. Over the past six months (August 1, 2017 through January 31, 2018), the estimated Stockpile inventory above grade has fluctuated between a low of 25,526 net dry tons (on December 19, 2017) and a high of 67,767 net dry tons (on January 31, 2018). All of the inventory on the Stockpile was available for delivery to CTG during that period.

9. The totals set forth in the preceding paragraph do not include the base of the Stockpile, which contains an estimated additional 120,842 net dry tons of gypsum. Under Section 2.2.3(b) of the 2012 Agreement, CTG is responsible for maintaining the Storage Area, which contains the Stockpile, and for reclaiming gypsum from the Storage Area for delivery to CTG’s wallboard plant. Over the past six months, the Stockpile base has consistently contained an estimated 120,842 net dry tons of gypsum that was available for delivery to CTG. The estimated amount of gypsum in the Storage Area, taking into account both the Stockpile inventory

above grade and the Stockpile base, has consistently been 145,000 net dry tons or more over the last six months.

10. Additionally, beginning in July 2017, DEP made gypsum available to CTG apart from the amounts that were on the Stockpile or being produced at Roxboro and Mayo. Specifically, in each month from July 2017 to the present, DEP has offered up to 20,000 net dry tons of Other Gypsum to CTG for purchase at the contract price plus transportation cost. The terms of the agreement between CTG and DEP with respect to this Other Gypsum, which has been renewed monthly during this period, are reflected in the January 2018 confirmation form attached hereto as **Exhibit A**. CTG, however, has never taken the full 20,000 net dry tons offered, and has taken less than half of the total Other Gypsum that DEP has offered during this period.

11. In January 2018, the month that CTG filed its motion for preliminary injunction alleging a likelihood of immediate and irreparable harm, DEP made a total of approximately 98,778 net dry tons of gypsum available to CTG, including an estimated 37,391 net dry tons available from the Stockpile inventory above grade at the beginning of the month, another 41,387 net dry tons of Gypsum Filter Cake that were produced by the Roxboro and Mayo Plants and added to the Stockpile inventory during the month, and another 20,000 net dry tons of Other Gypsum that were offered to CTG.

12. Of the total amount of gypsum DEP made available to CTG in January 2018, CTG took only 21,822 net dry tons, which is less than half the minimum

monthly quantity of gypsum (50,000 net dry tons) that CTG contends DEP is required to provide under the 2012 Agreement. Even setting aside the gypsum in the Stockpile inventory, the additional gypsum in the Stockpile base, and the 20,000 additional net dry tons of Other Gypsum DEP offered, CTG took barely over half of the Gypsum Filter Cake that the Roxboro and Mayo Plants produced in January 2018.

13. Most recently, through February 27, 2018, CTG had only taken 19,951 net dry tons in February even though much more was available on the Stockpile inventory above grade, which began the month at 67,767 net dry tons. As of February 27, 2018, the Stockpile inventory above grade was 63,281 net dry tons.

14. During 2017, CTG took an average of only 37,679 net dry tons of gypsum per month. This total includes Other Gypsum accepted by CTG. During that same period, DEP made more gypsum available to CTG than CTG actually accepted. A chart showing the available gypsum and the amount of gypsum actually taken by CTG for each month of 2017 and January of 2018 is attached hereto as **Exhibit B**.

15. CTG's failure to take the amount that it contends is MMQ is not a new phenomenon. Based on my review of corporate records that DEP maintains in the ordinary course of its business, and my own personal knowledge since assuming operational responsibility for the 2012 Agreement, CTG has not consistently sought or accepted 50,000 net dry tons of gypsum a month under the agreement.

16. Over the life of the 2012 Agreement, CTG has taken an average of only 38,268 net dry tons a month. CTG has only taken 50,000 net dry tons or more six times over that period (i.e., less than 10 percent of the time), and has only taken 45,000 net dry tons or more 20 times over that period (i.e., 30 percent of the time).

17. CTG accepted and purchased less than 50,000 net dry tons of gypsum for 60 out of 66 months between August 2012 and January 2018. Additionally, to the extent that CTG now claims that DEP's delivery obligation (and, conversely, its acceptance obligation) was plus or minus 10 percent of 50,000 net dry tons (i.e., 45,000 to 55,000 net dry tons), the amount CTG sought and accepted during this same period fell within that range only 20 times over 66 months. The monthly amounts of gypsum accepted by CTG under the 2012 Agreement from the August 2012 through January 2018 are set forth in **Exhibit C** hereto.

18. The amount of gypsum actually produced at any DEP plant is closely related to the amount of coal burned at the plant over the period in question, which can vary greatly from month to month based on the weather, relative fuel prices, fuel quality, unit availability, and other factors. Given these variables, gypsum production projections are at best rough estimates.

19. DEP forecasts that its Roxboro and Mayo Plants will produce 57,565 net dry tons of Gypsum Filter Cake between March 2018 through June 2018, a total of 213,365 net dry tons of Gypsum Filter Cake in 2018, and a total of 241,099 net dry tons of Gypsum Filter Cake in 2019.

20. The cost of transporting gypsum to Roxboro, North Carolina from non-DEP plants within the Duke Energy system would be exorbitant compared to the contract price of \$4 per net dry ton for gypsum under the 2012 Agreement. While DEP has no obligation under the 2012 Agreement to supply gypsum produced by Duke Energy plants other than the Roxboro and Mayo Plants, the potential available supply of gypsum at other Duke Energy plants is extremely limited, and the estimated range of cost for transport from those plants to Roxboro, North Carolina under current conditions would be between _____ per net dry ton, depending on the source.


21. Duke Energy is not a gypsum broker and does not regularly buy or source gypsum from other utilities or third parties. As a result, Duke Energy does not have resources or personnel dedicated to the purchase of gypsum from third parties.

22. Based on the location of other utilities and other potential sources of gypsum, the transport costs of moving gypsum from such other locations to Roxboro, NC would substantially exceed the contract price that CTG pays for gypsum under the 2012 Agreement. In fact, in correspondence dated January 12, 2018, CTG communicated to DEP that it believed that obtaining third-party gypsum for delivery to the Roxboro site would cost _____ A true and accurate copy of that correspondence is attached hereto as **Exhibit D**.

23. Upon information and belief, utilities other than Duke Energy are experiencing gypsum shortages due to the industry's shift from expensive coal-fired generation to less expensive sources of electrical power like natural gas.

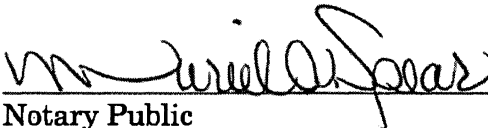
Further Affiant Sayeth Not.

This the 28th day of FEBRUARY, 2018.


John Halm

Sworn to and subscribed before me this 28th day of February, 2018.

[Official Seal]


Notary Public

My Commission Expires: Oct. 20, 2018

TAB 5

Exhibit A to Second Affidavit of John Halm

Jan. 2018 Other Gypsum Sale
Confirmation

This confirms the agreement between Duke Energy Progress, LLC ("DEP") and CertainTeed Gypsum NC, Inc. ("CertainTeed") regarding the purchase and sale of Other Gypsum for the month of January 2018 ("Subject Month") pursuant to the Second Amended and Restated Supply Agreement dated August 1, 2012 (as amended, "Supply Agreement") between the DEP and CertainTeed.

DEP expects to have fully delivered its Minimum Monthly Quantity obligation of Gypsum Filter Cake to CertainTeed for the Subject Month as of January 26, 2018 in accordance with its understanding of the Supply Agreement. CertainTeed interprets the Minimum Monthly Quantity to require a greater quantity of Gypsum Filter Cake than DEP has delivered. Without either party waiving its position regarding the Minimum Monthly Quantity, DEP agrees to use commercially reasonable efforts to procure, sell and deliver up to 20,000 tons of Other Gypsum to CertainTeed commencing on January 26, 2018 and continuing for the remainder of the Subject Month subject to CertainTeed's agreement to each of the following conditions:

1. All such Gypsum Filter Cake that is delivered on or after January 26, 2018 and continuing through the remainder of the Subject Month will constitute Other Gypsum under the Supply Agreement. Accordingly the price and terms for the purchase and sale of such Other Gypsum have been mutually agreed upon by DEP and CertainTeed in accordance with the provisions of Section 3.6 of the Supply Agreement and are set forth in these items 1. – 6.
2. The minimum limit for $\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$ set forth in Attachment C of the Supply Agreement for the Other Gypsum will be 93%. The Other Gypsum is expected to meet all other Specifications.
3. DEP's sale and delivery of such Other Gypsum to CertainTeed is on a non-firm basis and is expressly conditioned on the availability of the supply of such Other Gypsum to DEP from the Belews Creek Station owned and operated by DEP's affiliate company, Duke Energy Carolinas, LLC ("Duke Carolinas") and is further subject to all legal and regulatory requirements and restrictions governing each of DEP and Duke Carolinas.
4. CertainTeed will pay DEP per net dry ton for each net dry ton of Other Gypsum that is delivered to CertainTeed at the Point of Delivery during the Subject Month pursuant to Section 3.3.1 of the Supply Agreement.
5. If and to the extent that DEP sells and delivers such Other Gypsum to CertainTeed during the Subject Month then DEP will be deemed to be continuing to comply with its commercially reasonable obligations to replenish and maintain the Stockpile pursuant to Section 2.2.3(a) of the Supply Agreement.
6. Consistent with Section 3.6 CertainTeed and DEP agree that any amounts of Other Gypsum purchased and accepted by CertainTeed for the Subject Month pursuant to this agreement shall apply to and be accounted for as sale and delivery by DEP, and purchase and acceptance by CertainTeed, of the same quantity of Gypsum Filter Cake for purposes of the parties' obligations under Section 3.1 of the Supply Agreement in the event that a court determines DEP's Minimum Monthly Quantity obligation is greater than what DEP understand it to be.

Any capitalized term that is used but not defined herein will have the meaning given to such term in the Supply Agreement.

Please indicate your agreement to the foregoing by countersigning below:



David Maganja, CertainTeed Gypsum



John Halm, DEP

JAN 30 2018

TAB 6

Exhibit B to Second Affidavit of John Halm

Gypsum Available v. Gypsum Taken
Jan. 2017 – Jan. 2018

GYPSUM NET DRY TONS AVAILABLE VS. TAKEN
BY CERTAINTED GYPSUM NC, INC.

January 1, 2017 through January 31, 2018

Month	Initial Stockpile (above grade)	Production Added to Stockpile	Other Gypsum Offered	Total Available Gypsum*	CTG's Take
Jan. 2017	171,708	13,385	0	185,093	42,064
Feb. 2017	141,078	11,821	0	152,899	32,046
Mar. 2017	117,939	17,050	0	134,989	46,970
Apr. 2017	85,811	11,507	0	97,318	49,656
May 2017	31,385	10,350	0	41,735	36,253
June 2017	409	22,187	0	22,596	27,548
July 2017	14,106	40,061	20,000	74,167	33,178
Aug. 2017	34,925	43,678	20,000	98,603	39,819
Sept. 2017	54,470	34,300	20,000	108,770	34,866
Oct. 2017	64,921	19,861	20,000	104,782	40,080
Nov. 2017	47,906	14,444	20,000	82,350	38,007
Dec. 2017	33,413	24,764	20,000	78,177	31,657
Jan. 2018	37,391	41,387	20,000	98,778	21,882

*Does not include estimated 120,842 net dry tons available in Stockpile base

TAB 7

Exhibit C to Second Affidavit of John Halm

**Gypsum Purchased and Accepted by CTG
Aug. 2012 – Jan. 2018**

**GYPSUM FILTER CAKE NET DRY TONS PURCHASED AND ACCEPTED
BY CERTAINTEED GYPSUM NC, INC.**

August 1, 2012 through January 31, 2018

Month	Amount
August 2012	43,471.84
September 2012	41,291.37
October 2012	45,224.08
November 2012	39,622.32
December 2012	39,622.19
January 2013	31,992.82
February 2013	22,410.17
March 2013	33,621.95
April 2013	37,120.08
May 2013	38,795.97
June 2013	38,221.93
July 2013	38,207.12
August 2013	39,307.86
September 2013	30,914.61
October 2013	41,306.13
November 2013	36,846.95
December 2013	32,775.23
January 2014	25,987.07
February 2014	27,773.58
March 2014	34,072.84
April 2014	38,683.20
May 2014	35,132.74
June 2014	38,047.43
July 2014	40,349.90
August 2014	43,599.40
September 2014	37,442.06
October 2014	45,477.66
November 2014	38,246.49
December 2014	41,676.27
January 2015	28,325.36
February 2015	28,455.84
March 2015	44,590.14
April 2015	42,326.87

Month	Amount
May 2015	53,149.87
June 2015	43,822.64
July 2015	39,220.04
August 2015	49,962.27
September 2015	45,611.03
October 2015	45,995.51
November 2015	38,253.44
December 2015	48,541.12
January 2016	36,713.19
February 2016	47,457.47
March 2016	53,408.88
April 2016	51,165.22
May 2016	46,947.17
June 2016	50,027.20
July 2016	49,210.50
August 2016	51,494.84
September 2016	45,212.43
October 2016	52,432.21
November 2016	47,779.79
December 2016	48,067.58
January 2017	42,063.57
February 2017	32,046.49
March 2017	46,969.55
April 2017	49,655.56
May 2017	36,252.97
June 2017	27,547.96
July 2017	33,178.35*
August 2017	39,704.44*
September 2017	34,865.82*
October 2017	40,080.01*
November 2017	38,006.52*
December 2017	31,656.60*
January 2018	21,822.09*

*Includes "Other Gypsum" supplied at a negotiated rate

TAB 8

Exhibit D to Second Affidavit of John Halm

Puleo/CTG Letter to
Cassels/Weisker/DEP
Jan. 12, 2018



January 12, 2018

VIA FEDEX OVERNIGHT

Ms. Pam Cassels
Mr. Brian Weisker
Duke Energy
400 South Tryon Street
Charlotte, NC 28202

Re: Second Amended and Restated Supply Agreement dated August 1, 2012 (the "Agreement") by and between CertainTeed Gypsum NC, Inc. ("CTG") Duke Energy Progress, LLC f/k/a Carolina Power & Light d/b/a Progress Energy Carolinas, Inc. ("Duke")

Dear Ms. Cassels and Mr. Weisker:

As you know, CTG believes the Agreement is clear that Duke is obligated to sell and deliver to CTG at least 50,000 net dry tons of Gypsum Filter Cake ("Gypsum") per month, (the "Minimum Monthly Quantity"). While that amount is subject to minor fluctuations, under no set of circumstances can Duke supply less than 45,000 net dry tons per month.

This letter serves as notice pursuant to Section 6.2 that Duke failed to supply the Minimum Monthly Quantity for the month of December 2017. Duke supplied only 22,004 net dry tons of Gypsum in the month of December 2017.¹

Duke is instructed to supply CTG with enough Gypsum to meet the Minimum Monthly Quantity for December 2017 within thirty (30) days of this letter. If CTG is forced to utilize third parties for the delivery of Gypsum to cover the difference between the amount of Gypsum delivered by Duke and the Minimum Monthly Quantity, CTG will be paying

I look forward to Duke's prompt response to this matter.

Sincerely,

Michael B. Puleo

¹ This number represents the amount supplied from Roxboro and Mayo at the price stipulated in the Agreement for the Minimum Monthly Quantity; while additional quantities were supplied from Roxboro, Mayo and other sources, CTG paid a premium for such additional quantities



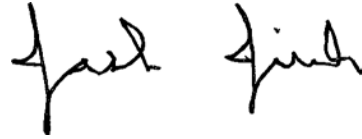
CertainTeed Corporation

20 Moores Road • Malvern, PA 19355 • USA • Tel: (610) 893-6000 • Fax: (855) 205-9493 • certainteed.com

CERTIFICATE OF SERVICE

I certify that a copy of the Post-Hearing Exhibit of Duke Energy Progress, LLC, in Docket No. E-2, Sub 1204, has been served by electronic mail, hand delivery or by depositing a copy in the United States mail, postage prepaid to parties of record.

This the 1st day of June, 2020.

Handwritten signature of Jack E. Jirak in black ink.

Jack E. Jirak
Associate General Counsel
Duke Energy Corporation
P.O. Box 1551/NCRH 20
Raleigh, North Carolina 27602
(919) 546-3257
Jack.jirak@duke-energy.com