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July 2, 2020

**VIA ELECTRONIC FILING**

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

**Re: Evidentiary Hearing - Docket Nos. E-7, Sub 1214, E-2, Sub 1219, and E-7, Sub 1213**

Dear Ms. Campbell:

On behalf of Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC, (collectively, the "Companies") and in compliance with the Commission's June 17, 2020 *Order Adopting Procedures for Expert Witness Hearings* in the above-captioned dockets, the Companies consent to the Commission holding the consolidated phase of the hearing by remote means.

Further, please find enclosed for electronic filing the *Motion Requesting Remote Hearing Accommodations for Witness Marcia Williams*.

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

Sincerely,

Electronically Submitted  
s/ *Kiran H. Mehta*

Enclosure

cc: Parties of Record

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 1214  
DOCKET NO. E-2, SUB 1219  
DOCKET NO. E-7, SUB 1213  
DOCKET NO. E-7, SUB 1187

DOCKET NO. E-7, SUB 1214	)	
	)	
In the Matter of	)	
Application of Duke Energy Carolinas, LLC for	)	
Adjustment of Rates and Charges Applicable to	)	
Electric Utility Service in North Carolina	)	
	)	
DOCKET NO. E-2, SUB 1219	)	<b>MOTION REQUESTING</b>
	)	<b>REMOTE HEARING</b>
In the Matter of	)	<b>ACCOMMODATIONS FOR</b>
Application of Duke Energy Progress, LLC	)	<b>WITNESS MARCIA WILLIAMS</b>
For Adjustment of Rates and Charges	)	
Applicable to Electric Service in North	)	
Carolina	)	
	)	
DOCKET NO. E-7, SUB 1213	)	
	)	
In the Matter of	)	
Application for Approval of Proposed Prepaid	)	
Advantage Program	)	
	)	
DOCKET NO. E-7, SUB 1187	)	
	)	
In the Matter of	)	
Petition of Duke Energy Carolinas, LLC for an	)	
Accounting Order to Defer Incremental Storm	)	
Damage Expenses Incurred as a Result of	)	
Hurricanes Florence and Michael and Winter	)	
Storm Diego	)	

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NOW COMES Duke Energy Carolinas, LLC (“DE Carolinas”); and Duke Energy Progress, LLC (“DE Progress”) (DE Carolinas and DE Progress, each a “Company” and collectively the “Companies”), by and through their legal counsel and pursuant to

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Commission Rule R1-7, and hereby jointly petition the Commission to issue an order permitting remote hearing accommodations for the Companies' Witness Marcia Williams. By this Motion, the Companies seek to allow Witness Williams to participate in the non-consolidated portions of the evidentiary hearings in the above-captioned dockets via remote appearance. The Companies emphasize that this Motion is filed due to the specific features of Witness Williams' unique situation. Counsel for the Companies, as well as all other Company witnesses, are prepared to appear at the hearings in person.

In support of this Motion, the Companies show as follows:

### **BACKGROUND**

1. On September 30, 2019, DE Carolinas filed its rate case Application in Docket No. E-7, Sub 1214 (the "DE Carolinas Rate Case")<sup>1</sup> and on October 30, 2019, DE Progress filed its rate case Application<sup>2</sup> in Docket No. E-2, Sub 1219 (the "DE Progress Rate Case"). The evidentiary hearings in these matters were originally set to commence on March 23, 2020 for DE Carolinas and May 4, 2020, for DE Progress. As a result of the current unprecedented COVID-19 Pandemic and declared State of Emergency

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<sup>1</sup> On November 20, 2019, the Commission issued an *Order Consolidating Dockets*, consolidating DE Carolina's request in Docket No. E-7, Sub 1213 for approval of its Prepaid Advantage Program, with DE Carolinas' general rate case application in Docket No. E-7, Sub 1214. On June 26, 2020, the Commission issued another *Order Consolidating Dockets*, consolidating Docket, No. E-7, Sub 1187, *Petition for an Accounting Order to Defer Incremental Storm Damage Expenses Incurred as a Result of Hurricanes Florence and Michael and Winter Storm Diego*, with the DE Carolinas rate case and Prepaid Advantage Program dockets.

<sup>2</sup> In its rate case Application, DE Progress requested to consolidate Docket No. E-2, Sub 1193, *Petition for an Accounting Order to Defer Incremental Storm Damage Expenses Incurred as a Result of Hurricanes Florence and Michael and Winter Storm Diego*, and for the Commission to consider it simultaneously with DE Progress's Application to adjust rates.

(“COVID-19 Pandemic”), the Commission issued orders postponing the evidentiary hearings in both rate cases until further order of the Commission.

2. On May 6, 2020, the Public Staff, DE Carolinas and Duke Energy Progress, LLC jointly moved for the Commission to issue an order scheduling one consolidated evidentiary hearing to consider the companies’ rate case applications. On May 29, 2020, the Commission issued an order proposing procedures for partially consolidating the expert witness hearings for the Companies’ rate cases and on June 17, 2020, the Commission issued its *Order Adopting Procedures for Expert Witness Hearings* (the “Consolidated Hearing Order”). In the Consolidated Hearing Order, the Commission noted its “preference is to conduct the entirety of these rate case hearings in person. However, due to the current pandemic and continued uncertainty regarding the timing of easing of restrictions, related to mass gatherings, the initial, consolidated phase of the hearing on topics related to both DEC and DEP will be conducted remotely.”<sup>3</sup> The Commission also ordered that the DE Carolinas- and DE Progress-specific phases of the hearing will be conducted in person, beginning August 4, 2020.<sup>4</sup>

3. The Commission further ordered that the parties file a list of topics that the parties believe may be heard during the consolidated phase meeting the following criteria:

[T]opics where the parties agree that all of the testimony and exhibits are fully admissible in both the DEC and DEP proceedings, that the Commission can look to that testimony and those exhibits as evidence in both proceedings, and for which no additional evidence is

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<sup>3</sup> *Consolidated Hearing Order* at 3.

<sup>4</sup> *Id.* at 3-4.

necessary for the Commission to consider and decide those topics for either company.<sup>5</sup>

As noted in the consolidated hearing topics and witness list to be filed by the Companies today, the parties to the rate cases have determined that the coal ash issues in this case do not meet the criteria for consideration during the remote consolidated hearing phase.

4. In both cases, the Companies filed the rebuttal testimony of Marcia E. Williams, who resides in Los Angeles, California. Ms. Williams' rebuttal testimony in each rate case is crucial to the Companies' requests concerning recovery of their coal ash costs. The Companies submit that her extensive professional experience (detailed and spanning approximately eight pages of her rebuttal testimony) and knowledge concerning the contested coal ash issues is unique to her specific background and experience and her testimony cannot be readily adopted by another witness. However, as detailed further below, under the current Centers for Disease Control ("CDC") guidance, Ms. Williams is at higher risk of severe illness from COVID-19. Thus, travel from California to North Carolina and in-person participation in the hearing poses a significant risk to Ms. Williams' health and also impacts the health and safety of the immediate family member with whom she resides, who is also considered at higher risk for COVID-19-related complications. Accordingly, the Companies respectfully submit that the Commission accommodate the Companies' request (and her desire) and allow Ms. Williams to participate in the non-consolidated phases of the evidentiary hearings in the above-captioned dockets via remote means.

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<sup>5</sup> *Id.* at 2.

**THE CIRCUMSTANCES ARE EXTRAORDINARY AND THE PUBLIC  
HEALTH AND SAFETY WARRANTS SPECIAL CONSIDERATION FOR  
WITNESS WILLIAMS**

5. It continues to remain unknown how long the COVID-19 pandemic will pose heightened risks to public health and safety. While on April 23, 2020, as a result of improving COVID-19 statistics in North Carolina, Governor Roy Cooper announced a three-phased approach to lift restrictions that had been put in place to slow the spread of COVID-19, more recently the Governor has implemented a “pause” on the State’s phased re-opening. Specifically, on June 24, 2020, due to increases in North Carolina’s COVID-19 cases and infection rates, Governor Cooper signed Executive Order 147 extending Phase 2 until July 17, 2020 and issuing new measures in an attempt to stem the pandemic.<sup>6</sup> Executive Order 147 states that:

North Carolina’s daily case counts of COVID-19 are continuing to increase, the percent of COVID-19 tests that are positive has not decreased, emergency department visits for COVID-19 illnesses are increasing, and hospitalizations for COVID-19 are increasing, which require the undersigned to continue the measures of Executive Order No. 141 -- and impose additional measures-to slow the spread of this virus during the pandemic.<sup>7</sup>

6. COVID-19 conditions in California, particularly in the Los Angeles area where Ms. Williams resides, are likewise worsening. According to California Governor Gavin Newsome, from June 22, 2020 to June 24, 2020, California has seen a 69 percent

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<sup>6</sup> “Safer at Home: About Phase 2,” <https://www.nc.gov/covid-19/staying-ahead-curve#lifting-restrictions> (last visited July 1, 2020).

<sup>7</sup> *Id.*

increase in COVID-19 cases.<sup>8</sup> And now that California has softened its shelter-in-place orders, the state is experiencing an “alarming” increase in cases.<sup>9</sup> In fact, John Hopkins University recently reported that Los Angeles county leads the nation in COVID-19 cases, totaling more than 88,500.<sup>10</sup> Between June 20, 2020 and June 21, 2020, California experienced a record number of COVID-19 hospitalizations, with the state being at 30 percent of its intensive care unit capacity.<sup>11</sup>

7. The CDC has identified certain individuals who need to take extra precautions to avoid exposure to COVID-19 noting that “among adults, the risk for severe illness from COVID-19 increases with age, with older adults at highest risk” and “8 out of 10 COVID-19-related deaths reported in the United States have been among adults aged 65 years and older.”<sup>12</sup> Further, the CDC has advised that people with certain underlying medical conditions are at increased risk of severe illness from COVID-19 and that people with certain conditions might be at an increased risk for severe illness from

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<sup>8</sup> Mario Koran, “California sees 69% COVID-19 rise in two days as LA county has most cases in US, THE GUARDIAN (June 24, 2020) <https://www.theguardian.com/us-news/2020/jun/24/california-increase-coronavirus-covid-19-cases> (last visited July 1, 2020).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*; see also “Hospitalizations for COVID still rising in county; Health chief sees ‘a critical Moment’ in the reopening process as numbers climb.” LOS ANGELES TIMES (June 28, 2020) (stating, “Another day of big increases in coronavirus cases and hospitalizations prompted health officials Saturday to warn that Los Angeles County is entering a “critical moment” and that some of the easing of stay-at-home orders is in jeopardy unless the trend changes.”); see Tom Tapp, “California Coronavirus Update: Governor Gavin Newsom Indicates L.A. County Could Close Back Down Soon: “We Will Be Stepping Up Our Enforcement” DEADLINE (June 29, 2020) <https://deadline.com/2020/06/california-coronavirus-update-governor-gavin-newsom-says-l-a-county-could-close-back-down-soon-we-will-be-stepping-up-our-enforcement-1202972895/> (last visited July 1, 2020).

<sup>11</sup> Mario Koran, “California sees 69% COVID-19 rise in two days as LA county has most cases in US, The Guardian (July 1, 2020) <https://www.theguardian.com/us-news/2020/jun/24/california-increase-coronavirus-covid-19-cases> (last visited June 30, 2020).

<sup>12</sup> “Older Adults,” <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html> (last visited July 1, 2020).

COVID-19.<sup>13</sup> Ms. Williams is currently age 73, and will be age 74 by the time she must first appear to testify in the DE Carolina-specific portion of the hearings. Further, she has an underlying medical condition that might increase her risk of severe illness from COVID-19. Her husband, with whom she resides, also has risk factors including his age (72) and an underlying medical condition. Her husband's risk factors will require her to self-quarantine upon her return from the hearings to California. The issues faced by Ms. Williams and her family are exacerbated by the fact that under the Consolidated Hearing Order Ms. Williams will be required to appear twice – once in each Company's case. Ms. Williams has consulted with her personal physician, who has advised her of the risk factors she and her husband face were she to travel to North Carolina for the hearings, and has advised her not to do so if at all possible.

8. Air travel is also a factor in the case of Witness Williams, as she would necessarily have to fly from Los Angeles to Raleigh, most likely to include a change of aircraft and ground time in a connecting hub, such as Atlanta or Charlotte. Overall flight (including ground) times could easily be on the order of 6-8 hours. The CDC has issued additional guidance regarding air travel, noting that:

Air travel requires spending time in security lines and airport terminals, which can bring you in close contact with other people and frequently touched surfaces. Most viruses and other germs do not spread easily on flights because of how air circulates and is filtered on airplanes. However, social distancing is difficult on crowded flights, and you may have to sit near others (within 6 feet), sometimes for

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<sup>13</sup> "People of Any Age with Underlying Medical Conditions," [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html) (last visited July 1, 2020).



hours. This may increase your risk for exposure to the virus that causes COVID-19.”<sup>14</sup>

The CDC advises that “staying home is the best way to protect yourself and others from getting sick.”<sup>15</sup> To testify in person in North Carolina, Ms. Williams will be required to spend several hours on a cross-country flight twice, flying in both directions to and from locales in which COVID-19 risk is increasing instead of decreasing.

9. Moreover, intervenors in these cases have signaled that Ms. Williams will be extensively cross-examined, as indicated in the Companies’ witness list to be filed today in the above-captioned dockets. This necessarily means that Ms. Williams will be required to spend many hours with multiple other people, in a high risk indoor setting, in a location in which community spread of the virus that causes COVID-19 is occurring. The CDC has noted that individuals in such circumstances are at greater risk for COVID-19 infection.<sup>16</sup> The at-risk nature of the physical setting is further evident because the CDC also indicates that “SARS-CoV-2, the virus that causes COVID-19, is thought to be mostly spread by respiratory droplets released when people talk, cough, or sneeze,”<sup>17</sup> and the purpose of being in the hearing room is to talk. This factor is a prominent component of the advice Ms. Williams has received from her physician – that is, if at all possible, she refrain from in-person participation in the hearings.

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<sup>14</sup> Considerations for Travelers – Coronavirus in the US,” <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html>, (last visited July 1, 2020).

<sup>15</sup> *Id.*

<sup>16</sup> Considerations for Events and Gatherings (June 12, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html> (last visited July 1, 2020)

<sup>17</sup> *Id.*

**DUE PROCESS CONSIDERATIONS WARRANT REASONABLE  
ACCOMMODATIONS FOR THE COMPANIES, WHICH BEAR THE  
ULTIMATE BURDEN OF PROOF IN THESE RATE CASES**

10. The Companies fully understand and appreciate the Commission's preference for holding these complex rate case proceedings in person. However, the Commission has already recognized, through its decision to hold the consolidated portion of the hearings remotely, that remote participation is a viable option in particular circumstances. Given the increased health and safety risks posed to Ms. Williams, a critical rebuttal witness for the Companies, the Companies respectfully submit that their request with respect to this one witness presents another particular circumstance favoring remote participation. Ms. Williams is in the unique situation of being 1) at higher risk for COVID-19 complications, 2) required to travel a cross-country to appear in-person for the two Company-specific non-consolidated portions of the hearings, and 3) likely to be subject to extensive cross examination.

11. The Companies bear the ultimate burden of proof in these rate cases and Ms. Williams' rebuttal testimony is crucial to meeting that burden of proof for a material portion of the Companies' requests for increased rates. Accordingly, the Companies submit that overarching due process concerns warrant an exception to the in-person requirement that Ms. Williams appear for the non-consolidated portions of the hearing. It is well-established that "[a]s a matter of procedural due process, a regulated utility cannot

be deprived of its opportunity to demonstrate a need for rate relief to achieve the level of the profitability that satisfies constitutional requirements.”<sup>18</sup>

12. Ms. Williams’ rebuttal testimony is critical to the Companies’ case; however, the in-person requirement to appear could potentially and unnecessarily expose Ms. Williams to COVID-19. As noted above, if exposed from appearing to testify in-person, she is at a greater risk of experiencing significant, if not life-threatening complications from COVID-19. Thus, to permit Ms. Williams to testify remotely is an appropriate and reasonable accommodation to protect her health and safety without limiting the Companies due process rights to present evidence to meet their burden of proof.

### **CONCLUSION**

For the foregoing reasons, the Movants respectfully request that the Commission issue an order granting the relief sought by this Motion.

Respectfully submitted, this the 2<sup>nd</sup> day of July 2020.

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

*/s/ Kiran H. Mehta*

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<sup>18</sup> James M. Van Nostrand, *Constitutional Limitations on the Ability of States to Rehabilitate Their Failed Electric Utility Restructuring Plans*, Seattle University Law Review Vol. 31:593 at 594 (2008) available at <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1058&context=sulr>.

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ATTORNEYS FOR DUKE ENERGY  
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PROGRESS, LLC

## **CERTIFICATE OF SERVICE**

DOCKET NO. E-7, SUB 1214  
DOCKET NO. E-2, SUB 1219  
DOCKET NO. E-7, SUB 1213  
DOCKET NO. E-7, SUB 1187

I hereby certify that a copy of the foregoing **CONSENT TO REMOTE HEARING AND MOTION REQUESTING REMOTE HEARING ACCOMMODATIONS FOR WITNESS MARCIA WILLIAMS** was served electronically or by depositing a copy in United States Mail, first class postage prepaid, properly addressed to the parties of record.

This the 2<sup>nd</sup> day of July 2020.

*/s/ Kiran H. Mehta*

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