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January 11, 2021

VIA ELECTRONIC FILING

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

RE: Applications of Duke Energy Progress, LLC and Duke Energy Carolinas, LLC for Adjustment of Rates and Charges Applicable to Electric Service in North Carolina
DOCKET NO. E-2, SUB 1131
DOCKET NO. E-2, SUB 1142
DOCKET NO. E-2, SUB 1103
DOCKET NO. E-2, SUB 1153
DOCKET NO. E-7, SUB 1146
DOCKET NO. E-7, SUB 819
DOCKET NO. E-2, SUB 1152
DOCKET NO. E-2, SUB 1110

Dear Ms. Campbell:

Enclosed for filing in the above referenced dockets is the *Joint Submission Regarding Procedure Upon Remand* of the Public Staff – North Carolina Utilities Commission, Duke Energy Progress, LLC, Duke Energy Carolinas, LLC, the North Carolina Office of the Attorney General, Carolina Industrial Group for Fair Utility Rates II, Carolina Industrial Group for Fair Utility Rates III, and Sierra Club.

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

Sincerely,

/s/ Kiran H. Mehta

Kiran H. Mehta

Enclosures

cc: Parties of Record

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1131
DOCKET NO. E-2, SUB 1142
DOCKET NO. E-2, SUB 1103
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DOCKET NO. E-7, SUB 1110

In the Matters of)
Applications of Duke Energy Progress, LLC)
and Duke Energy Carolinas, LLC for)
Adjustment of Rates and Charges Applicable)
To Electric Service in North Carolina)
)

**JOINT SUBMISSION
REGARDING PROCEDURE
UPON REMAND**

NOW COMES the Public Staff-North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Christopher J. Ayers; the North Carolina Office of the Attorney General (AGO); Sierra Club; Carolina Industrial Group for Fair Utility Rates II (CIGFUR II); Carolina Industrial Group for Fair Utility Rates III (CIGFUR III); Duke Energy Progress, LLC (DEP); and Duke Energy Carolinas, LLC (DEC) (DEP and DEC, each a “Company” and collectively the “Companies”); (Public Staff, AGO, Sierra Club, CIGFUR II, CIGFUR III, and the Companies, collectively, “Submitting Parties”), by and through their legal counsel, and hereby jointly submit comments to the North Carolina Utilities Commission (Commission) in response to the Commission’s December 17, 2020 Order Requesting Comments on Procedure on Remand (Order) entered in the above-referenced dockets.

The Order solicits comments from all parties regarding the procedures the Commission should follow in connection with the North Carolina Supreme Court’s

remand¹ of two orders previously entered by the Commission, namely (1) the February 23, 2018 Order Accepting Stipulation, Deciding Contested Issues and Granting Partial Rate Increase (2018 DEP Rate Order) entered in Docket No. E-2, Sub 1142 and consolidated dockets (2017 DEP Rate Case); and (2) the June 22, 2018 Order Accepting Stipulation, Deciding Contested Issues, and Requiring Revenue Reduction (2018 DEC Rate Order, and collectively with the 2018 DEP Rate Order, the 2018 Rate Orders) entered in Docket No. E-7, Sub 1146 and consolidated dockets (2017 DEC Rate Case, and collectively with the 2017 DEP Rate Case, the 2017 Rate Cases). In *Stein*, while affirming the 2018 Rate Orders on most issues, the Supreme Court reversed and remanded those orders for additional findings and conclusions related to the Commission's consideration on remand of the Public Staff's equitable sharing proposal in the 2017 Rate Cases. This presents a unique situation in that only three of the current Commissioners actually heard and decided the 2017 Rate Cases, a number insufficient to constitute a quorum for consideration of the cases on remand. See N.C. Gen. Stat. §§ 62-60 (quorum requirement) and 62-76 (matters shall be "heard and decided" by the Commission). However, as described more fully below, the Submitting Parties agree that in this instance the Commission need not hold additional evidentiary hearings on remand.

In summary, the Submitting Parties propose that on remand:

With respect to hearing evidence on remand:

- Option A: The Commission need not hold additional evidentiary hearings in connection with its further consideration of equitable sharing, as the existing evidentiary record in the 2017 Rate Cases is sufficient for the Commission to

¹ See *State ex rel. Utils. Comm'n v. Stein (Stein)*, Nos. 271A18 and 401A18, 2020 WL 7294770 (N.C. Dec. 11, 2020).

comply with the Supreme Court's remand directive. Without objection from any party, the Commission has already taken judicial notice of the evidence in the 2017 Rate Cases in DEC's and DEP's currently pending rate cases,² so that evidence is already before the Commission.

- Option B: To the extent that the Commission believes that additional evidence is necessary, inasmuch as the just-concluded expert evidentiary hearings in the 2019 Rate Cases include extensive testimony and evidence concerning equitable sharing, the Commission should simply take judicial notice of that evidence and use it in conjunction with the evidence on the topic of equitable sharing introduced during the 2017 Rate Cases. This would obviate the need for further evidentiary proceedings on remand.

With respect to consolidation, the Commission should further consider equitable sharing in the 2017 Rate Cases on a consolidated basis. The process followed in the 2019 Rate Cases, including stipulations approved by the Commission regarding use of DEC testimony and exhibits in DEP's case, and judicial notice approved by the Commission regarding use of DEP testimony and exhibits in DEC's case (and vice versa), shows that evidence on the topic of equitable sharing is substantially similar and largely overlaps. In particular, the theory underlying equitable sharing in each rate case is identical, as are the mechanics by which the Public Staff achieves its desired sharing percentages. Consolidation would therefore ease the administrative burden upon the Commission and all parties by eliminating duplicative processes, briefs, and proposed orders.

² Docket Nos. E-7, Sub 1214 (DEC) and E-2, Sub 1219 (DEP) (collectively, the 2019 Rate Cases).

Accordingly, the Submitting Parties propose that the Commission choose Option A as described above, unless the Commission determines that additional evidence is needed, in which case the Submitting Parties propose Option B. The Submitting Parties further request the Commission establish a schedule under which all parties will have the opportunity to submit briefs and/or proposed orders implementing the Supreme Court's remand instructions.

The Submitting Parties' detailed comments are as follows:

1. The 2018 DEP Rate Order was appealed by the AGO and Sierra Club on April 25, 2018. The Public Staff filed a Notice of Cross-Appeal on May 15, 2018. The 2018 DEC Rate Order was appealed by the AGO on July 20, 2018. Sierra Club appealed on July 23, 2018, and the Public Staff filed a Notice of Cross-Appeal on August 8, 2018.³

2. On November 29, 2018, the AGO, the Public Staff, Sierra Club and the Companies jointly moved the Supreme Court to consolidate the appeals, and indicated in their joint motion that the appeals involve common issues of law, specifically, the proper application of N.C.G.S. § 62-133 to costs associated with coal ash. The moving parties noted further that as a result, their arguments were likely to overlap significantly. The Supreme Court granted the motion and issued an order consolidating the appeals on the date that the joint motion was filed.

3. On December 11, 2020, the Supreme Court issued its decision in *Stein*. With respect to coal ash issues, the Supreme Court held, *inter alia*, that the Commission did not err by: (1) allowing the inclusion of a large majority of the Companies' coal ash

³ A further appeal from the 2018 DEC Rate Order was taken by intervenors NC Justice Center, et al., challenging the Commission's decision to increase DEC's Basic Facilities Charge. The Supreme Court affirmed the Commission's decision and that part of the appeal is not before the Commission upon remand.

management costs in the cost of service used for the purpose of establishing the Companies' North Carolina retail rates; and (2) interpreting N.C.G.S. § 62-133(d) to authorize the Commission, in the exercise of its discretion, to allow a return on the unamortized balance of the deferred coal ash costs authorized for recovery. However, the Court held that the Commission erred by rejecting the Public Staff's equitable sharing proposal without properly considering and making specific findings and conclusions concerning "all other material facts" as required by N.C.G.S. § 62-133(d) and remanded that issue back to the Commission.

4. As noted by the Commission in the Order, "Specifically, the Supreme Court directed the Commission, in reconsidering the Public Staff's equitable sharing proposal, 'to consider *all* material facts of record in making that determination including, in these cases, facts pertaining to alleged environmental violations such as non-compliance with NPDES permit conditions, unauthorized discharges, and groundwater contamination from the coal ash basins in violation of the 2L Rules and to incorporate its decision with respect to the nature and extent of the utilities' violations, if any, in determining the appropriate ratemaking treatment for the challenged coal ash costs.'" (Order, at 1, citing Stein at *35, slip op. at 97.) This is the sole issue to be dealt with by the Commission upon remand.

5. Extensive testimony and evidence bearing on equitable sharing is already in the evidentiary record of the 2017 Rate Cases. Extensive additional evidence, some of which largely duplicates evidence from the prior cases, is also in the evidentiary record before the Commission in the 2019 Rate Cases.

6. The Submitting Parties understand and support the Commission's need to reopen the evidentiary records in the 2017 Rate Cases, inasmuch as only three Commissioners – insufficient for a quorum – remain from the Commission that issued the 2018 Rate Orders. (See Order, at 1.) However, given the extensive evidence already in the record of the 2017 Rate Cases, duplicated to some extent in the 2019 Rate Cases, the Commission may proceed on that evidence rather than hold additional live hearings to introduce new evidence. Given the unique circumstances, either (a) the Commission could decide the remand issues on the basis of the existing record in the 2017 Rate Cases, which the Submitting Parties agree that for purposes of the remand, the Commission as currently constituted has heard inasmuch as it took judicial notice of such evidence in the 2019 Rate Cases, or (b) if the Commission believes additional evidence is required, it could simply take judicial notice of testimony and evidence bearing upon equitable sharing from the 2019 Rate Cases, because all Commissioners very recently heard that evidence, and all Commissioners are currently considering that evidence in connection with the Commission's forthcoming decisions in the 2019 Rate Cases. A listing of the testimony and exhibits to be judicially noticed under Option B is attached to this Submission as Exhibit A.⁴

⁴ Exhibit A references all coal ash-related evidence from the 2019 Rate Cases with the exception of the pre-filed direct testimony of DEC/DEP witness Jessica Bednarcik, the pre-filed direct testimony of Public Staff witnesses Bernard Garrett and Vance Moore and all live testimony by witnesses Garrett and Moore, and the pre-filed rebuttal testimony and live testimony of witness Bednarcik, insofar as such testimony rebuts testimony of witnesses Garrett and Moore. This testimony is directed at the Companies' coal ash basin closure activities for the time period beginning January 1, 2018 (in the case of DEC) and September 1, 2017 (in the case of DEP). Exhibit A also assumes that the Commission will, as the Submitting Parties suggest (see ¶ 8, below), consolidate the 2017 Rate Cases for remand purposes. Should the Commission decide not to consolidate, then evidence stipulated and/or judicially noticed in the 2019 Rate Cases will need to be added to the evidence listed in Exhibit A, and the Submitting Parties will provide the Commission with a revised exhibit.

7. The Commission's decisions in the 2019 Rate Cases have been substantially delayed as a result of the COVID-19 pandemic and emergency measures undertaken to stem or restrict the spread of the coronavirus. To further prolong proceedings in 2017 Rate Cases for the taking of additional live evidence upon remand merely adds to the administrative burdens upon the Commission, without adding meaningful evidence in the record.

8. Finally, the Submitting Parties propose that the Commission deal with equitable sharing on remand on a consolidated basis. As noted above, there is substantial overlap in the evidence between and among all of the cases (both 2017 and 2019) on the issue of equitable sharing. In the 2019 Rate Cases the Commission approved evidentiary stipulations and employed judicial notice to streamline the separate DEC and DEP hearings. The gains in efficiency that resulted could and should be duplicated by consolidating the remand process as well.

9. The Stipulating Parties propose that any party to the 2017 Rate Cases be given the opportunity to file briefs and/or proposed orders, limited to the specific equitable sharing issue remanded by the Supreme Court, on or before a date set by the Commission.

10. The Submitting Parties have consulted with all other parties to these dockets concerning this Submission. No other party has indicated opposition to this Submission or to the proposals contained herein.

Respectfully submitted this 11th day of January, 2021.

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Exhibit A

<u>Witness</u>	<u>Consolidated or DEC Transcript References</u>	<u>DEC Exhibits</u>	<u>Consolidated or DEP Transcript References</u>	<u>DEP Exhibits</u>
Company Witnesses				
Bednarcik (Direct)	Vol. 13, 226:16-233 Vol. 14, 11-143 Vol. 15, 12-84	AGO Bednarcik Direct Cross Exs. 1-6 Sierra Club Bednarcik Direct Cross Ex. 1	Vol. 12, 287-388 Vol. 13, 21-117	Bednarcik Direct DEP Redirect Exs. 1-5 Bednarcik Direct AGO Cross Exs. 7-28 Bednarcik Direct Sierra Club Cross Ex. 1
Bednarcik (Rebuttal & Supplemental Rebuttal)	Vol. 24, 41-49:13, 91-139:4 Vol. 25, 92-138 Vol. 26, 12-49:2	Bednarcik Supp. Exs. 1-4 AGO Bednarcik Rebuttal Cross Ex. 1 Sierra Club Bednarcik Rebuttal Cross Ex. 1 Bednarcik Rebuttal Redirect Ex. 1	Vol. 17, 75-84:2, 130:3-162, 411-415:10, 464-84 Vol. 18, 12-50 Vol. 19, 17-38	Bednarcik Supp. Exs. 1-4 Bednarcik Rebuttal DEP Redirect Ex. 1 Bednarcik Rebuttal AGO Cross Ex. 2 Bednarcik Rebuttal Sierra Club DEP Cross Ex. 2
Bonaparte	Vol. 11, 819-22	Bonaparte Exs. 1-2	Vol. 11, 117-22	Bonaparte Exs. 1-2
Doss	Vol. 22, 216-54	Doss Rebuttal Ex. 1 Doss Supplemental Ex. 1	Vol. 16, 319:10-369	Doss Rebuttal Ex. 1 Doss DEP Supp. Ex. 1
Doss-Spanos Panel	Vol. 23, 12-67, 76-108	Public Staff Doss/Spanos Rebuttal Cross Exs. 4 & 5		
Doss-Riley-Spanos Panel			Vol. 16, 393:17-419 Vol. 17, 18-70	Doss/Spanos/Riley Rebuttal Public Staff Cross Exs. 1-8 Doss/Spanos/Riley Rebuttal AGO Cross Ex. 1
Fetter	Vol. 26, 57-156	Public Staff Fetter Rebuttal Cross Ex. 1	Vol. 19, 42-124:16	Fetter Rebuttal Public Staff Cross Exs. 1-5 Fetter Rebuttal DEP Redirect Exs. 1-2
Lioy	Vol. 22, 161-72		Vol. 11, 154-72	
McManeus	Vol. 11, 527-540			
McManeus-Speros Panel	Vol. 15, 86-90, 125:24-160	AGO McManeus/Speros Cross Exs. 1-5		
Newlin	Vol. 11, 400-434		Vol. 11, 653-94	

Witness	Consolidated or DEC Transcript References	DEC Exhibits	Consolidated or DEP Transcript References	DEP Exhibits
Newlin-D'Ascendis Panel	Vol. 1, 39, 49:18-114 Vol. 2, 31-100	Newlin Duke Redirect Exs. 1-8 Public Staff Newlin Rebuttal Cross Exs. 1-5	Vol. 1, 39, 49:18-114 Vol. 2, 31-100	Newlin Duke Redirect Exs. 1-8 Public Staff Newlin Rebuttal Cross Exs. 1-5
Riley	Vol. 23, 113-84 Vol. 24, 12-49	Riley Rebuttal Ex. 1	Vol. 13, 341-379	Riley Rebuttal Ex. 1
Smith			Vol. 13, 119:4-120:7, 195:14-209:2, 280-82, 319-335:10	Smith AGO Cross Ex. 6
Spanos	Vol. 22, 201-15		Vol. 16, 308:17-315	
Wells	Vol. 27, 16-72	Wells Rebuttal Exs. 1-2	Vol. 19, 127-199	Wells Rebuttal Exs. 1-4
Williams	Vol. 27, 73-188	Williams Rebuttal Ex. 1	Vol. 19, 200-341	Williams Rebuttal Exs. 1-2
Wells-Williams Panel	Vol. 27, 189-314 Vol. 28, 11-138 Vol. 29, 15-80	AGO Wells/Williams Rebuttal Cross Exs. 1-2 Public Staff Wells/Williams Rebuttal Cross Exs. 1-6	Vol. 19, 664-728 Vol. 20, 13-31:15	Williams/Wells Redirect Ex. 1
Young	Vol. 11, 440-60 Vol. 3, 35-86 Vol. 4, 15:18-57:9	Young Rebuttal Exs. 1-7 Public Staff Young Rebuttal Cross Ex. 1	Vol. 11, 701-29 Vol. 3, 35-86 Vol. 4, 15:18-57:9	Young Rebuttal Exs. 1-8
Public Staff Witnesses				
Lucas-Maness	Vol. 20, 378-392	Lucas and Maness Ex. 1-2		
Junis	Vol. 20, 397:16-478	Junis Exs. 1-20, including Corrected Junis Ex. 2 (filed March 3, 2020)		
Maness	Vol. 7, 36:5-22 Vol. 20, 479-80, 482:1-519:11, 522:15-525:19, 541:1-546:21, 547:1-548:2, 552-556:17	Maness Ex. 1 to direct testimony Maness Ex. 1 – Revised to second supplemental testimony Maness Second Revised and Second Stipulation Ex. 1 to third supplemental and settlement testimony	Vol. 7, 36:5-22 Vol. 15, 1539-40, 1543:1-1583:2, 1586:4-1592:8, 1606:1-1607:2, 1609:1-1611:2, 1614:1-1618:4, 1619:6-1623	Maness Ex. 1 to direct testimony Maness Supplemental Exhibit 1 to supplemental testimony Maness Second Revised Exhibit 1 to second supplemental coal ash testimony
Junis-Maness Panel	Vol. 20, 565-87 Vol. 21, 11-133 Vol. 22, 13-48:12	DEC Junis/Maness Cross Exs. 1-5 Public Staff Junis/Maness Redirect Ex. 1		

Witness	Consolidated or DEC Transcript References	DEC Exhibits	Consolidated or DEP Transcript References	DEP Exhibits
Lucas			Vol. 15, 1432-1434:9, 1436-1526, 1534-38	Lucas Exs. 1-24, including Updated Lucas Exhibit 19 (filed April 23, 2020), and Second Corrected Lucas Exhibit 18 (filed October 5, 2020)
Lucas testimony in Dominion 2019 Rate Case (E-22, Sub 562), judicially noticed by NCUC in the 2019 DEC and DEP Rate Cases	Direct testimony and exhibits filed in E-22, Sub 562 on August 23, 2019		Direct testimony and exhibits filed in E-22, Sub 562 on August 23, 2019	
Lucas-Maness Panel			Vol. 15, 1818:20-1823:22	Lucas/Maness Public Staff Redirect Ex. 2
Intervenor Witnesses				
Hart (AGO)	Vol. 16, 695:12-944 Vol. 17, 15-80:5	Hart Exs. 1- 39, 40A-46A, 40B-46B, 47-55 DEC Hart Cross Exs. 1-9	Vol. 13, 525-715, 890-902 (public and confidential) Vol. 14, 23-42	Hart Exs. 1-24, 24A-B, 25-30, 31-41, 42A-50A, 42B-50B, 42C, 51-68 Hart DEP Cross Ex. 10-11
Quarles (Sierra Club)	Vol. 18, 22-141	Quarles Exs. 1-4 DEC Quarles Cross Ex. 1	Vol. 14, 585-627, 711-752	Quarles Exs. 1-7 Quarles DEP Cross Ex. 2
Exhibits not tied to any specific Witness				
Joint Exhibits		Joint Exs. 1-13		Joint Exs. 1-13
Late Filed Exhibits (Consolidated Hearing)		Duke LFE No. 1 Duke LFE No. 1 Supp.		Duke LFE No. 1 Duke LFE No. 1 Supp.
Late-Filed Exhibits (DEC- and DEP-specific hearings)		DEC LFE No. 1 DEC LFE No. 2 DEC LFE No. 4 DEC LFE No. 5 DEC LFE No. 6 DEC LFE No. 7 DEC LFE No. 8 DEC LFE No. 9 DEC LFE No. 10 DEC LFE No. 11 DEC LFE No. 12 DEC LFE No. 13		DEP LFE No. 1 DEP LFE No. 2 DEP LFE No. 3 DEP LFE No. 4 DEP LFE No. 5 DEP LFE No. 6 DEP LFE No. 7 DEP LFE No. 8 DEP LFE No. 9 DEP LFE No. 10 DEP LFE No. 11 DEP LFE No. 12

<u>Witness</u>	<u>Consolidated or DEC Transcript References</u>	<u>DEC Exhibits</u>	<u>Consolidated or DEP Transcript References</u>	<u>DEP Exhibits</u>
		DEC LFE No. 14 DEC LFE No. 16 DEC LFE No. 17 DEC LFE No. 18 DEC LFE No. 19 DEC LFE No. 20 DEC LFE No. 21 Public Staff LFE No. 1		DEP LFE No. 13 DEP LFE No. 14 DEP LFE No. 16 DEP LFE No. 17 DEP LFE No. 18 DEP LFE No. 19 DEP LFE No. 20 DEP LFE No. 21 DEP LFE No. 22 DEP LFE No. 23 DEP LFE No. 24 Public Staff LFE No. 1

CERTIFICATE OF SERVICE

DOCKET NO. E-2, SUB 1131
DOCKET NO. E-2, SUB 1142
DOCKET NO. E-2, SUB 1103
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DOCKET NO. E-7, SUB 1146
DOCKET NO. E-7, SUB 819
DOCKET NO. E-7, SUB 1152
DOCKET NO. E-7, SUB 1110

I hereby certify that a copy of the foregoing **JOINT SUBMISSION REGARDING PROCEDURE UPON REMAND** 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 11th day of January 2021.

/s/ Kiran H. Mehta

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