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**VIA ELECTRONIC FILING**

Ms. Gail L. Mount  
Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, North Carolina 27699-4300

**Re: Docket No. E-100, Sub 140**

Dear Ms. Mount:

This letter is to inform the Commission that Duke Energy Carolinas, LLC (“DEC”), Duke Energy Progress, LLC (“DEP”) (collectively, the “Companies”) and the North Carolina Sustainable Energy Association (“NCSEA”) have resolved several issues related to each Company’s Standard Purchase Power Agreements (“PPAs”), Terms and Conditions and Purchased Power Schedule PP in advance of the filing date of the Proposed Orders in the above-captioned docket. These issues, and the resulting settlements, are as follows:

1. Termination Rights and Right to Terminate Based in Inability to Deliver

The Companies and NCSEA have agreed that, for termination issues that are included in both the interconnection agreements and the PPA, there will be a five (5) day cure period in Section (i) of its Terms and Conditions. For termination issues that are not covered by the interconnection agreement, the Terms and Conditions will contain a 30 day cure period, except for fraudulent or unauthorized use of Company's meter where termination is immediate. The agreed-upon language is as follows:

- (i) Company’s Right to Terminate or Suspend Agreement - Company, in addition to all other legal remedies, may either terminate the Agreement or

suspend purchases of electricity from Seller (1) for any default or breach of Agreement by Seller, (2) for fraudulent or unauthorized use of Company's meter, (3) for failure to pay any applicable bills when due and payable, (4) for a condition on Seller's side of the point of delivery actually known by Company to be, or which Company reasonably anticipates may be, dangerous to life or property, or (5) due to Seller's inability to deliver to Company the quality and/or quantity of electricity mutually agreed to in the Purchase Agreement. Termination of the contract is at the Company's sole option and is only appropriate when the Seller either cannot or will not cure its default or if the Seller fails to deliver energy to the Company for more than six months.

- (ii) No such termination or suspension, however, will be made by Company without written notice delivered to Seller, personally or by mail, stating what in particular in the Agreement has been violated, except that no notice need to be given in instances set forth in 1.(i)(2) and ~~1.(i)(4)~~ above. Company shall give Seller 30 calendar days prior written notice before suspending or terminating the Agreement pursuant to provisions 1.(i)(1), (3), and (5). Company shall give Seller five (5) calendar days prior written notice before suspending or terminating the Agreement pursuant to provision 1.(i)(4).

The Companies and NCSEA have discussed interpretation of (i)(5) above, which provides that the Seller's inability to deliver to the Company the quality and/or quantity of electricity mutually agreed to in the Purchase Agreement is a condition for termination or suspension. The Companies and NCSEA agree that this provision does not mean that if the Seller was unable to deliver due to circumstances beyond its control, such as weather conditions, the Companies would terminate or suspend under this provision. The intent of (i)(5) is to allow for termination or suspension when events or circumstances *within* the Seller's control, e.g. unrepaired equipment, result in the Seller not delivering as mutually agreed to in the Purchase Agreement.

## 2. Deadline for Achieving Commercial Operation and Commencement of Term

As discussed in the Companies' Reply Comments, the Companies and NCSEA have agreed that the Companies would clarify that the 30-month deadline for achieving commercial operation can be extended in both their Purchased Power Agreement and their Purchased Power Schedule. Additionally, the Companies agreed that the beginning date of an agreement in the Purchased Power Agreement would occur on the date energy is first generated and delivered rather than the date the Company's facilities are first available. The agreed upon language is as follows:

### **Initial Delivery Date (included in the Purchased Power Agreement)**

The term of this Agreement shall begin upon the first date when energy is generated by the Facility and delivered to Company and continuing for the term specified in the Rate Schedule paragraph above and shall automatically extend thereafter unless terminated by either party by giving not less than thirty (30) days prior written notice. The extension will be at the Variable Rates in effect at the time of extension. The term shall begin no earlier than the date Company's Interconnection Facilities are installed and are ready to accept electricity from Seller which is requested to be \_\_\_\_\_, 20\_\_. Company at its sole discretion may terminate this Agreement on \_\_\_\_\_, 20\_\_ (30 months following the date of the order initially approving the rates selection shown above which may be extended beyond 30 months if construction is nearly complete and the Seller demonstrates that it is making a good faith effort to complete its project in a timely manner) if Seller is unable to provide generation capacity and energy production consistent with the energy production levels specified in Provision No. 2 above.

### **AVAILABILITY (included in the Purchased Power Schedule)**

All qualifying facilities have the option to sell energy to the Company on an "as available" basis and receive energy credits only calculated using the Variable Rates identified in this Schedule for the delivered energy. The Variable Energy Credit shall constitute the "as available" avoided cost credit for Non-Eligible Qualifying Facilities. The Fixed Long Term Credit rates on this schedule are available only to otherwise eligible Sellers that establish a Legally Enforceable Obligation on or before the filing date of proposed rates in the next biennial avoided cost proceeding, provided eligible Seller begins delivery of power no later than thirty (30) months from the date of the order approving avoided cost rates in Docket No. E-100, Sub 140, but may be extended beyond 30 months if construction is nearly complete and Seller demonstrates that it is making a good faith effort to complete its project in a timely manner.

### **3. Inclusion of Interconnection Terms**

The Companies and NCSEA have discussed the Companies' concern that they have some "grandfathered" Sellers that do not have interconnection agreements. Therefore, the Companies and NCSEA agree to inclusion of the interconnection terms in the Terms and Conditions for transparency and clarity. The Companies have included in their Reply Comments a statement that, in the unlikely event of a conflict between the Terms and Conditions and the interconnection agreement, the interconnection agreement

will control. Therefore, the Companies' Terms and Conditions will include the following language:

If Seller is not subject to the terms and conditions of the North Carolina Interconnection Procedures, Forms and Agreements for State-Jurisdictional Interconnection, as approved by the Commission in Docket No. E-100, Sub 101, the following conditions shall apply to Interconnection Facilities necessary to deliver Seller's electricity to Company. Otherwise, the terms and conditions of the North Carolina Interconnection Procedures, Forms and Agreements for State-Jurisdictional Interconnection, as approved by the Commission in Docket No. E-100, Sub 101 govern.

4. Conclusion

The Companies and NCSEA have agreed to reference this letter notifying the Commission of settlement and resolution of these issues in their Proposed Orders to be filed in this docket on September 18, 2015. NCSEA has agreed that the Company may file this letter on its behalf. The Public Staff has also reviewed this letter prior to filing, and it had no objection to it.

Finally, the Companies appreciate NCSEA's willingness to discuss and resolve these issues prior to the filing of the Proposed Orders in this docket, and they respectfully request that the Commission take these settlements into consideration in making its final determination in this matter.

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

Sincerely,



Kendrick C. Fentress

cc: Parties of Record

CERTIFICATE OF SERVICE

I certify that a copy of the Duke Energy Carolinas, LLC and Duke Energy Progress, LLC Letter Resolving Issues in Docket No. E-100, Sub 140 has been served on all parties of record either by electronic mail, hand delivery or by depositing a copy in the United States mail, postage prepaid.

This the 17<sup>th</sup> day of September, 2015.



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