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July 9, 2020

VIA ELECTRONIC FILING

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

RE: Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Joint Reply to the Public Staff's Responses to the Companies' Second Supplemental Direct Testimony and Exhibits
Docket No. E-7, Sub 1214
Docket No. E-7, Sub 1213
Docket No. E-7, Sub 1187
Docket No. E-2, Sub 1219

Dear Ms. Campbell:

On behalf of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (collectively, the "Companies"), please find enclosed for electronic filing the Companies' *Joint Reply to the Public Staff's Responses to the Companies Second Supplemental Direct Testimony and Exhibits*.

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-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)
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 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)
)
)
 In the Matter of)
 Application of Duke Energy Progress, LLC)
 For Adjustment of Rates and Charges)
 Applicable to Electric Service in North)
 Carolina)
)
 DOCKET NO. E-7, SUB 1213)
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 In the Matter of)
 Application for Approval of Proposed Prepaid)
 Advantage Program)
)
)
 DOCKET NO. E-7, SUB 1187)
)
)
 In the Matter of)
 Application 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)

**DUKE ENERGY CAROLINAS,
LLC AND DUKE ENERGY
PROGRESS, LLC’S JOINT
REPLY TO THE PUBLIC
STAFF’S RESPONSES TO THE
COMPANIES’ SECOND
SUPPLEMENTAL DIRECT
TESTIMONY AND EXHIBITS**

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 hereby jointly reply to the Public Staff’s Response to Duke Energy Carolinas’ Second Supplemental Direct

Testimony and Exhibits filed in Docket Nos. E-7, Sub 1214, E-7, Sub 1213, and E-7, Sub 1187 on July 7, 2020, as well as the Public Staff's Response to Duke Energy Progress's Second Supplemental Direct Testimony and Exhibits in Docket No. E-2, Sub 1219 also filed on July 7, 2020.

The Public Staff objects to the Second Supplemental Direct Testimony and Exhibits filed by the Companies on July 2, 2020 to update the Companies' proposed revenue increases requested in their pending rate cases to incorporate known and measurable changes through May 31, 2020 (the "May Updates") primarily on the grounds that (1) the original extended period dates for the rate cases were January 31, 2020 and February 29, 2020, for DE Carolinas and DE Progress, respectively; (2) the Companies and the Public Staff entered into Partial Settlements in each rate case resolving certain revenue requirement issues between the Companies and the Public Staff; and (3) there is not sufficient time prior to the evidentiary hearings for the Public Staff to conduct a review and respond to the Companies' proposed updates.

The Companies submit that it is appropriate to provide the May Updates in light of the unforeseen delay in the evidentiary hearings, and corresponding delay in the Commission's orders establishing new rates, caused by extraordinary circumstances relating to the COVID-19 pandemic. N.C. Gen. Stat. § 62-133(c) provides that the Commission "shall consider such relevant, material, and competent evidence as may be offered by any party to the proceeding tending to show actual changes in costs, revenues or the cost of the utility's property used and useful... which is based on circumstances and events occurring up to the time the hearing is closed." Updating the Companies' costs closer in time to the start of the evidentiary hearing gives a more recent and accurate

depiction of the Companies' actual costs to serve its customers, which should be reflected in the rates approved in this proceeding. The change in the Companies' revenue requirements is material, as described in more detail below. Thus, the Companies submit that it is appropriate for the Commission to consider these changes in setting rates to provide the Companies a reasonable opportunity to earn the return on equity ("ROE") approved by the Commission in these proceedings.

In addition, the Companies' May Updates are limited to those items materially impacted since the end of the extended period and, as such, only impact 8 of the 37 total adjustments to operating revenues and expenses for DE Carolinas and 8 of the 39 total adjustments to operating revenues and expenses for DE Progress. While the Public Staff implies that the limited nature of the May Updates is evidence of cherry picking, to the contrary, not all of the updates are advantageous to the Companies, as discussed further below. The other adjustments included in the Companies' May Updates are related to the ROE and capital structure, and are items the Companies agreed to in the settlement agreements reached with other intervenors that were previously filed in May and June 2020 and of which the Public Staff is already aware. Moreover, the Company limited the updates to material items for the specific purpose of minimizing the amount of work it would take for parties to review and audit prior to the hearing. In any event, the Companies are already proactively providing supplemental responses to previously-issued Public Staff discovery requests for the Public Staff to audit the limited May Updates.

Finally, the Companies have no objection to leaving the record open through the duration of the hearing to allow for limited discovery and additional testimony on the updates. Indeed, this is exactly how the Commission and the parties handled a similar

situation that arose in DE Carolinas' last rate case (E-7, Sub 1146) when DE Carolinas' presented its proposal to incorporate the impact of the Tax Cuts and Jobs Act during the course of the evidentiary hearing.¹

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

BACKGROUND

1. On September 30, 2019, DE Carolinas filed its Application in Docket No. E-7, Sub 1214 (the "DE Carolinas Rate Case").² The Company based its Application on a 2018 test year and noted that its request included post-test year additions, including capital costs incurred and estimated through January 31, 2020.

2. On October 30, 2019, DE Progress filed its Application³ in Docket No. E-2, Sub 1219 (the "DE Progress Rate Case"). DE Progress based its Application on a 2018 test year and noted that its request included post-test year additions, including capital costs incurred and estimated through February 29, 2020.

3. On October 29, 2019, the Commission issued an order in Docket No. E-7, Sub 1214, declaring a general rate case, suspending the proposed new rates for up to 270

¹ The Company introduced its EDIT proposal on the first day of the hearing, filed revised exhibits during the hearing, responded to data requests during the hearing, and the Public Staff and Tech Customers filed testimony responding to the Company's proposal during the hearing.

² On November 20, 2019, the Commission issued an *Order Consolidating Dockets*, consolidating DE Carolinas' 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.

³ 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.

days pursuant to N.C. Gen. Stat. § 62-134, and establishing the twelve-month period ending December 31, 2018 as the test year period in the DE Carolinas Rate Case. In addition, the scheduling/suspension order provided DE Carolinas with the opportunity to file supplemental testimony and exhibits updating its actual revenues, expenses, rate base, and cost of capital for the period ending January 31, 2020, and scheduled the evidentiary hearing to commence on March 23, 2020.

4. On November 14, 2019, the Commission issued an order in Docket No. E-2, Sub 1219, declaring a general rate case, suspending the proposed new rates for up to 270 days pursuant to N.C. Gen. Stat. § 62-134, and establishing the twelve-month period ending December 31, 2018 as the test year period in the DE Progress Rate Case. On December 6, 2019, the Commission issued the scheduling order, which provided DE Progress with the opportunity to file supplemental testimony and exhibits updating its actual revenues, expenses, rate base, and cost of capital for the period ending February 29, 2020 and scheduled the evidentiary hearing to commence on May 4, 2020.

5. On February 14, 2020, DE Carolinas filed supplemental testimony and exhibits updating its actual revenues, expenses, rate base, and cost of capital for the period ending January 31, 2020.

6. On March 13, 2020, DE Progress filed supplemental testimony and exhibits updating its actual revenues, expenses, rate base, and cost of capital for the period ending February 29, 2020.

7. On March 16, 2020, DE Carolinas filed a motion in the DE Carolinas Rate Case⁴ requesting that the Commission postpone the expert witness hearing for up to sixty

⁴ *Duke Energy Carolinas, LLC's Motion to Suspend Procedural Schedule and for Postponement of Evidentiary Hearing*, Docket No. E-7, Sub 1214 (March 16, 2020).

(60) days and suspend the procedural schedule. In summary, DE Carolinas discussed the state of emergency declared by the Governor of North Carolina due to the COVID-19 pandemic and the suspension of multiple activities throughout the state and country. DE Carolinas expressed concern regarding the extensive travel by the parties and their witnesses and the gathering of interested members of the public, parties, witnesses, and the Commission and its staff together for the multi-day hearings. DE Carolinas explained that postponement of the hearing would be consistent with the steps being taken to protect the health and safety of the general public. Further, subject to its right to implement temporary rates under N.C. Gen. Stat. § 62-135 and to seek appropriate accounting treatment relief, DE Carolinas' motion included notice of its prospective waiver of its right to seek to implement its original proposed rates by operation of N.C. Gen. Stat. § 62-134(b) if the postponement of the hearing renders it infeasible for the Commission to issue an order prior to the conclusion of the rate suspension period under N.C. Gen. Stat. § 62-134.

8. Later on March 16, 2020, the Commission entered an order in the DE Carolinas Rate Case which, *inter alia*, postponed the evidentiary hearings in the DE Carolinas Rate Case pending further orders of the Commission and accepted DE Carolinas' prospective waiver.

9. On March 24, 2020, due to the continuing uncertainty posed by the COVID-19 pandemic, the Commission *sua sponte* issued its *Order Suspending Procedural Schedule and Continuing Hearing* suspending the procedural schedule in the DE Progress Rate Case.

10. On March 25, 2020, DE Carolinas filed with Commission its Partial Settlement Agreement reached with the Public Staff in DE Carolinas Rate Case. The DE

Carolinas Partial Settlement addressed the partial settlement of certain revenue requirement issues presented in DE Carolinas' Application, which included accounting adjustments for executive compensation, rate case expenses, aviation expenses, employee incentives, sponsorships and donation expenses, severance expenses, lobbying expenses, Board of Director expenses, retired hydro O&M, credit card fees and advertising expenses, weather normalization, growth, usage, and federal protected EDIT.

11. On April 3, 2020, DE Progress filed a motion requesting that the Commission issue an order addressing several procedural matters, including ordering the partial resumption of the procedural schedule to allow for revised dates of the filing of testimony and discovery. To alleviate any Commission concern regarding the 270-day suspension period and subject to its right to implement temporary rates under N.C. Gen. Stat. § 62-135, DE Progress's motion provided notice of the prospective waiver of its right to seek to implement its original proposed rates in this proceeding by operation of N.C. Gen. Stat. § 62-134(b) through December 31, 2020 if the postponement renders issuance of a Commission determination on just and reasonable rates in the DE Progress Rate Case prior to the end of the suspension period infeasible.

12. On April 7, 2020, the Commission issued its *Order Addressing Procedural Matters*, which provided for new filing deadlines for pre-filed direct and supplemental testimony for Public Staff and intervenors, DE Progress's pre-filed rebuttal testimony, and discovery.

13. On May 4, 2020, DE Progress filed its rebuttal testimony and exhibits. In the Rebuttal Testimony of Michael J. Pirro, the Company specifically noted as follows:

While the Company generally agrees with witness Saillor's calculation methodology and understands why he based his

customer growth projections on usage through February 2020, the Company is experiencing a significant reduction in its load and associated revenues due to many commercial and industrial customers as well as schools and colleges scaling back operations, if not closing completely, during the COVID-19 state of emergency. The Company believes that some of the changes in load we are currently experiencing may be permanent and reflecting these changes closer in time to the hearing will result in a more accurate depiction of the Company's load forecast. Accordingly, due to these significant, known and measurable kilowatt hour changes, the Company believes it is inappropriate to reflect the adjustments recommended in witness Saillor's supplemental testimony and exhibits at this time. For purposes of my rebuttal testimony, the Company's position is to support the adjustment as reflected in witness Kim Smith's supplemental testimony and exhibits filed on March 13, 2020. The Company will then update its customer growth, change in usage and weather normalization adjustments closer to the hearing.

14. On May 6, 2020, the Public Staff, DE Carolinas, and DE Progress jointly moved for the Commission to issue an order scheduling one consolidated evidentiary hearing to consider the Companies' rate case applications.

15. On June 2, 2020, DE Progress filed with the Commission its Partial Settlement Agreement with Public Staff in DE Progress's Rate Case. The DE Progress Partial Settlement addressed the partial settlement of certain revenue requirement issues presented in DE Progress's Application, which included accounting adjustments for executive compensation, rate case expenses, aviation expenses, employee incentives, sponsorships and donation expenses, outside services expenses, severance expenses, lobbying expenses, Board of Director expenses, the W. Asheville Vanderbilt 115kV project, credit card fees, end of life nuclear materials and supplies reserve expense, the Asheville CC project, federal protected EDIT, the CertainTeed payment obligation, and

accumulated depreciation for the Asheville CC plant not previously included in prior filings.

16. 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 set the consolidated portion of the evidentiary hearings to begin on July 27, 2020, to be followed by the DE Carolinas-specific hearing and DE Progress-specific hearing.

17. Both Companies’ cost of service and projected revenues have changed substantially since the respective updates in the first quarter. In addition, both Companies’ evidentiary hearings have been delayed for several months. As such, on July 2, 2020, DE Carolinas filed the Second Supplemental Direct Testimony and Exhibits of Jane L. McManeus and Second Supplemental Direct Testimony of Michael J. Pirro, and DE Progress filed the Second Supplemental Direct Testimony and Exhibits of Kim H. Smith and Second Supplemental Direct Testimony of Michael J. Pirro, to update each Company’s cost of service and projected revenues with actuals through May 2020. The May Updates provide the Commission with a more recent and accurate picture of the Companies’ respective financial situations. The Companies’ updates were predominately to revenue amounts for additional plant placed in service, customer growth, and labor and non-labor operations and maintenance (“O&M”).⁵

18. On July 7, 2020, the Public Staff filed its Responses to the Companies’ Second Supplemental Direct Testimony and Exhibits. Among other things, the Public Staff

⁵ The Companies also updated merger costs, storm costs, and three pro forma adjustments, which were impacted by carry through effects from other updated pro forma adjustments.

argues that the Companies' decision to update its requested revenue requirements through May 31, 2020 breaches the Partial Settlement Agreements, and if this "breach" is permitted, the Public Staff asserts that the Partial Settlements should be voided in their entirety. The Public Staff submits that it has not had sufficient time to adequately audit and review the Companies' May Updates. Therefore, the Public Staff requests that if the Commission allows the Companies to update their requests, the Commission should postpone the evidentiary hearing scheduled to commence on July 27, 2020 to allow the Public Staff at least 60 days to audit the updates and provide further supplemental testimony to the Commission. As an alternative to postponing the hearings, the Public Staff requests that the Commission leave the record open for the parties to file testimony and for further hearings. In addition, the Public Staff argues that the updates are not necessary to maintain the Company's financial position as Public Staff asserts that "the Company has represented to its investors that it will be able to maintain its financial position during the COVID-19 pandemic." Next, the Public Staff argues that if the Companies are allowed to update through May 2020, the update should include all revenues and expenses and that failure to do so does not present an actual and fair picture. Finally, the Public Staff argues that given the uncertainty of the effects of the COVID-19 pandemic on the revenues and expense of the Company, the "Commission should be skeptical as to whether the amounts provided in the update are representative of amounts going forward." In its responses, the Public Staff has asked the Commission to determine (1) whether the Companies' further updates of their cases violate the Partial Settlements with the Public Staff, and (2) if the Companies are permitted to update their cases, whether the Commission's current procedural schedule will stand, allowing the parties to continue

to proceed to prepare for hearing, or should be revised, and (3) for such other and further relief as the Commission may deem just and proper.

19. For the reasons set forth herein, the Companies respectfully requests that the Commission find that: (1) the May Updates do not violate the Partial Settlements; (2) the May Updates do not warrant any change to the current procedural schedule; and (3) the May Updates are proper evidence for the Commission to consider in determining the appropriate rates to set in the DE Carolinas Rate Case and the DE Progress Rate Case.

**THE COMPANY'S UPDATE IS PERMITTED BY STATUTE, APPROPRIATE
GIVEN THE DELAY DUE TO THE COVID-19 PANDEMIC AND NECESSARY
FOR COMMISSION CONSIDERATION TO AVOID IMPAIRING THE
COMPANIES' ABILITY TO REASONABLY EARN ANY ROE AUTHORIZED
IN THESE RATE CASES**

North Carolina General Statute Section 62-133(c) permits the Commission to consider actual changes in utility costs or revenues after the prescribed test period based on circumstances and events occurring up to the time the hearings have closed. More specifically, N.C. Gen. Stat. § 62-133(c), in relevant part, provides as follows:

(c) ...The test period shall consist of 12 months' historical operating experience prior to the date the rates are proposed to become effective, but the **Commission shall consider such relevant, material and competent evidence as may be offered by any party to the proceeding tending to show actual changes in costs, revenues or the cost of the public utility's property used and useful**, or to be used and useful within a reasonable time after the test period, in providing the service rendered to the public within this State, including its construction work in progress, **which is based upon circumstances and events occurring up to the time the hearing is closed.**

(Emphasis added). Commission Rule R1-17(c) further directs that:

(c) Supplemental Data. — The Commission shall consider such relevant, material, and competent evidence as may be offered by any party to the proceeding tending to show actual changes in costs, revenues, or the cost of the public utility's

property used and useful, or to be used and useful within a reasonable time after the test period, in providing the service rendered to the public within this State, including its construction work in progress, **which is based upon circumstances and events occurring up to the time the hearing is closed.**

Information relating to the change(s) referred to above relied upon by the applicant shall be filed with the Commission ten (10) working days prior to the date that the testimony of the Public Staff and other intervenors is due to be filed **to the extent said change(s) are known by the applicant at that time.**

To the extent that additional information becomes available subsequent to ten (10) working days prior to the filing of testimony by the Public Staff and other intervenors, such information which will be offered to support change(s) shall be made available to the Commission and other parties as soon as practicable. Under such circumstances the Public Staff and other intervenors shall have the right to address said evidence through additional direct testimony, such option to be exercised at the discretion of the Public Staff and other intervenors.

(Emphasis added.) As previously explained, both Companies' cost of service and projected revenues have changed substantially since the respective updates in the first quarter. Updating the Company's costs closer in time to the start of the hearing gives a more recent depiction of the Company's actual costs to serve its customers, which should be reflected in the Company's rates. Consistent with that policy, the Companies filed information for the most recent available period, May 2020, to reflect material known and measurable changes in revenues, costs, and rate base that are based on changed circumstances and events leading up to the hearing. The key drivers of the May Updates consist of additions to plant in service, revenues for customer growth, and O&M labor expenses. As a result, the Companies submit that it is appropriate for the Commission to consider these material changes as part of the evidence used to determine what are just and reasonable rates in

these rate cases. The May Updates are appropriate and fully consistent and compliant with the statute and Commission Rules.

The update or extended period is typically based on the expected timeline of the evidentiary hearing. The evidentiary hearing for DE Carolinas was scheduled to commence March 23, 2020, approximately five weeks after DE Carolinas filed its February 14 update to reflect changes through the extended period of January 31, 2020. For DE Progress, the evidentiary hearing was originally scheduled to commence May 4, 2020, approximately seven weeks after DE Progress filed its March 13 update for changes through the February 29, 2020 extended period. However, as a result of the unprecedented COVID-19 pandemic, more than 23 weeks for DE Carolinas and more than 19 weeks for DE Progress will have passed since the Companies' respective extended period updates were filed and the commencement of the partially consolidated evidentiary hearing. In both rate cases, the evidentiary hearings have been unavoidably re-scheduled to begin well beyond the timeframe initially contemplated in the Commission's Scheduling Orders issued last year. Thus, it is appropriate for the Commission to consider the Companies' May Updates in light of the unforeseen delay in the hearings caused by the extraordinary circumstances relating to the COVID-19 pandemic.

Since the end of the extended periods in each case, the Companies' revenue requirements, based on known and measurable changes through May 31, 2020, have increased significantly primarily due to additions to plant in service: approximately \$48.4 million for DE Carolinas and approximately \$25.4 million for DE Progress. These additional costs will be part of the Companies' cost of service for years to come. N.C. Gen. Stat. § 62-133(d) provides that "[t]he Commission shall consider all other material facts of

record that will enable it to determine what are reasonable and just rates.” If the Commission were to set rates in the proceeding without taking into consideration the material changes to the Company’s revenue requirements, it could impair the Companies’ ability to earn the ROE authorized by the Commission in these rate cases. The unprecedented delay occasioned by these unprecedented circumstances exacerbates the inherent lag between the time the Companies make new investments and expenditures and the time when they recover these costs in rates. Allowing the Companies to update for known and measurable changes through May 2020 is crucial to mitigate this regulatory lag and prevent further erosion to the Companies’ ability to earn their authorized returns.

The Public Staff further asserts that the update is not necessary to maintain the Companies’ financial positions. The mere fact that both Companies are in rate case proceedings requesting rate increases indicates that the Companies’ financial positions are not sustainable under current rates. The material changes reflected in the May Updates show the threat to the Companies’ financial positions has increased significantly since the first quarter of 2020. The Public Staff cites statements made by Duke Energy CEO Lynn Good in Duke Energy’s First Quarter Earnings Call and an announcement of an increase in the cash quarterly dividend as support for their contention. However, the Public Staff fails to acknowledge in its discussion of that earnings call that Ms. Good goes on to explain that some of the “levers” Duke Energy may pull to mitigate impacts from the COVID-19 pandemic are not sustainable in the long-term. For example, Ms. Good cites the hiring freeze and outage deferrals, both examples of temporary cost reductions that if carried out in the long-term could negatively impact the Companies’ ability to continue providing reliable service.

The Public Staff further cautions that “given the uncertainty of the effects of the COVID-19 pandemic on the revenues and expenses of the Company, the Commission should be skeptical as to whether the amounts provided in the update are representative of amounts going forward.” While the Companies certainly agree there is continued uncertainty concerning the COVID-19 pandemic, the Companies submit that it is still appropriate for the Commission to consider the adjustments in the May Updates and how those adjustments, based on recent events and circumstances, may continue to impact the Companies’ revenues and expenses. There is ample evidence that the economic impacts of the pandemic will continue for a significant duration. Recently, positive confirmed cases have increased in several states and several experts argue that the United States is still only in the first wave.⁶ In addition, some experts have advised that economic conditions may not improve to pre-pandemic levels for several years.⁷ Thus, the Company maintains that it is entirely appropriate for the Commission to consider these factors and current impacts in authorizing a just and reasonable return for the Companies to earn in these cases and for the Commission to determine the appropriate weight to afford the impacts of the COVID-

⁶*Fauci: US is ‘still knee-deep in first wave’ of pandemic as it passes 130,000 deaths*, The Guardian, July 7, 2020 available at <https://www.theguardian.com/world/2020/jul/07/fauci-first-wave-coronavirus-us-nears-130000-deaths> (last visited July 7, 2020) (“The United States is ‘still knee-deep in the first wave’ of the coronavirus pandemic, one of the country’s top public health experts [Dr. Anthony Fauci] has warned... And I would say, this would not be considered a wave. It was a surge, or a resurgence of infections superimposed upon a baseline.”); *A Devastating New Surge of the Pandemic*, The Atlantic (June 25, 2020) available at <https://www.theatlantic.com/science/archive/2020/06/second-coronavirus-surge-here/613522/> (last visited July 7, 2020) (“The seven-day average of new cases has now risen to levels last seen 11 weeks ago, during the worst of the outbreak in New York. The U.S. has seen more cases in the past week than in any week since the pandemic began.”)

⁷ *“US, Europe GDP unlikely to return to pre-pandemic levels before mid-2022 – Fitch”* May 26, 2020, S&P Global Market Intelligence, available at <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/us-europe-gdp-unlikely-to-return-to-pre-pandemic-levels-before-mid-2022-8211-fitch-58792812> (last visited July 7, 2020) (“[I]t will take a long time to return to normality: we are unlikely to reach pre-virus levels of GDP before mid-2022 in the U.S. and significantly later in Europe,” Fitch said in its latest Global Economic Outlook report published May 26.”)

19 pandemic in setting revised rates. Finally, as discussed above, the biggest driver of the change in revenue requirement resulting from the May Updates comes from additions to plant in service, which are unquestionably enduring and not impacted by uncertainty relating to the COVID-19 pandemic. As such, the Companies are confident that these amounts are representative of amounts going forward.

THE COMPANIES' UPDATE FILINGS DO NOT IMPACT THE PARTIAL SETTLEMENT AGREEMENTS WITH PUBLIC STAFF NOR IS THE COMPANY "CHERRY PICKING" CERTAIN ADJUSTMENTS

Public Staff argues that the May Updates that revise the Companies' respective revenue requirements violate the Partial Settlement Agreements by seeking to update items settled between the parties and that the amounts agreed to therein should be binding on the Companies. The Public Staff argues that if the Companies are permitted to "breach" the agreements the Commission should consider the Partial Settlements void in their entirety. As discussed in the testimony of Witnesses McManeus and Smith, the May Updates do not impact the Partial Settlement Agreements with the Public Staff; therefore, there is no breach. To the extent that the Companies agreed to use a certain methodology for an adjustment in the Partial Settlements, the Companies employed that same methodology in calculating the adjustment for purposes of the May Updates. In other words, the Companies' May Updates do not alter any of the calculations or methodology agreed to in the Partial Settlements; rather, they simply present new, material adjustments based on current facts and circumstances for the Commission to consider in addition to the terms agreed upon in the Partial Stipulations reached with the Public Staff. The Commission may consider and accept the terms of the Partial Settlements with Public Staff, the terms of the settlement agreements with the other intervenors, and/or some or all of the additional

numerical adjustments included in the Companies' May Updates. In other words, it is not an "either/or" proposition. The May Updates are evidence appropriate for this Commission to consider as part of the totality of the circumstances when determining what are just and reasonable rates in these proceedings. This is precisely the type of circumstance that N.C. Gen. Stat. § 62-133(c) contemplates when permitting parties to introduce evidence up through the end of the hearing. The May Updates appropriately provide the Commission with evidence of known and measurable changes to the Companies' cost of service and projected revenues.

Further, non-unanimous settlement agreements such as the Partial Settlement Agreements reached with Public Staff are one piece of evidence the Commission can and should consider in reaching its ultimate conclusion in these cases. The May Updates simply provide additional, more up-to-date evidence for the Commission to consider. The May Updates do not alter the adjustments agreed to in the Partial Settlement Agreements that were reached through negotiation and compromise. The terms of the Partial Settlement Agreements provide "the adjustments agreed to in this Stipulation are strictly for purposes of compromise and are intended to show a rational basis for reaching the agreed-upon revenue requirement adjustments without either party conceding any specific adjustment." Nothing in the May Updates disturbs the rational basis underlying the agreed upon revenue requirement adjustments in either Partial Settlement Agreement. In fact, to the extent a calculation methodology for a pro forma adjustment was agreed to in the Partial Settlement Agreements, DE Carolinas and DE Progress applied the same methodology to the May Updates.

Moreover, the Partial Settlements state that “the actual amount of the agreed-upon adjustments may differ due to the effects of the Unresolved Issues.” In addition to specific items like ROE and cost of service allocation methodology,⁸ the Partial Settlements include on the list of “Unresolved Issues” the following category: “Any other revenue requirement or non-revenue requirement issue other than those specifically addressed in this Stipulation or agreed upon in the testimony of the Stipulating Parties.” Just like ROE and the appropriate cost allocation methodology, the Companies view the issue of whether they should be permitted to update certain adjustments through May 2020 as an “Unresolved Issue” for the Commission to decide, which may impact the ultimate amount of an agreed upon adjustment, but that does not disturb the Public Staff and Companies’ agreement to the methodology for calculating that adjustment. In other words, the impacts of the May Updates may cause the *amount* of the agreed-upon adjustments to differ – depending upon whether the Commission accepts the Companies’ or the Public Staff’s position on this Unresolved Issue – but not the negotiated adjustments themselves. Indeed, the fact that the parties did not intend for the Partial Settlements to be “pencils down” on all items is supported by the Public Staff’s own actions. The Public Staff filed supplemental testimony opposing the inclusion of the Clemson CHP project in DE Carolinas’ cost of service on the *same day* the DE Carolinas Partial Settlement was filed and the *same day* the Public Staff filed testimony supporting the DE Carolinas Partial Settlement. Accordingly, the

⁸ In the DE Progress Partial Settlement, which was filed on June 2, 2020, the parties also specifically listed one of the May Updates as an Unresolved Issue as follows: “Update revenues, customer growth and weather to February 29, 2020 - Whether revenues, customer growth and weather should be updated beyond February 29, 2020, as described in Company witness Michael Pirro's rebuttal testimony.” As noted above, witness Pirro’s DE Progress rebuttal testimony (filed May 4, 2020) indicated that the Company would seek to update its customer growth/change in usage adjustments closer to the hearing.

Commission can and should consider both the Partial Settlement Agreements and the Companies' updated cost to serve customers included in the May Updates in its consideration of the Companies' respective rate cases.

Finally, the Companies take the Partial Settlements with the Public Staff, as well as the settlement agreements they have entered into with other intervenors, very seriously and obviously view them as binding. As detailed at length herein, the Companies do not believe that the May Updates violate any of the terms of the Partial Settlement Agreements with the Public Staff. Nevertheless, were the Commission to consider any of the May Updates to be a violation of the terms of either Partial Settlement, the Companies would request that rather than automatically void the Partial Settlement Agreements, the Commission afford the Companies and the Public Staff the opportunity to discuss which of the May Updates would be covered by the language of the Partial Settlements and determine how they would like to proceed.

The Public Staff also accuses the Companies of selectively updating certain adjustments and thus not presenting "an actual and fair picture" – also known as "cherry-picking." This is absolutely not the case. First, the adjustments themselves demonstrate that the Companies are *not* selectively updating to their own benefit – some of the May Updates result in an increase to each Company's revenue requirement, while some of the updates result in a decrease to each Company's revenue requirement. The Companies' general approach to the May Updates was to revise only material pro forma adjustments. For example, the biggest driver behind each Company's entire rate case is significant plant additions, so it would be logical for the Companies to continue to update this item when the cases were delayed. The pro forma adjustments the Companies did not update through

May 2020 normally either do not change at all or have a very minimal impact on the revenue requirement.⁹ A notable exception is deferred environmental costs – i.e., coal ash compliance costs. The Companies elected not to update this item due to the controversy around this issue. Had the Companies elected to update their pro forma adjustments relating to deferred environmental costs, it would have resulted in an increase to the requested revenue requirement in each case. Second, updating all adjustments – even those that had not significantly changed – would have increased the amount of work the Public Staff would need to do to audit the updates. Accordingly, the Companies focused on only the significant items in order to avoid unnecessary review and discovery.

Finally, Public Staff asserts that “in an Order on Motions for Clarification dated July 2, 2018, in Docket No. E-7, Sub 1146, DEC’s previous general rate case, the Commission held that selective company updates are inappropriate.” The Companies disagree with the Public Staff’s interpretation of that Order. While the Public Staff certainly took the position that selective updates are inappropriate as noted in that Order,¹⁰ there is no language in the Order where the Commission expressly agreed with the Public Staff on that point. In fact, to the contrary, the Order notes that:

N.C. Gen. Stat. § 62-133 authorizes known and measurable adjustments to the test year investments **through the conclusion of the hearing**. Indeed, without authorization for such post test period adjustments adding the W.S. Lee Combined Cycle Facility to the Company’s rate base would not have been permissible.

⁹ For example, there have been no material true ups to the 2018 severance charge, and an update to rate case expenses would not change the total revenue requirement.

¹⁰ “The Public Staff argues that failure to update depreciation expense and other expenses related to plant additions would create a mismatch where the Company is allowed to update items advantageous to it, but not those items that benefit customers.” *Order on Motions for Clarification at 2.*

Order on Motions for Clarification at 3 (emphasis added). Notably, in the prior DE Carolinas rate case *Order Accepting Stipulation, Deciding Contested Issues, and Requiring Revenue Reduction*, the Commission determined that the test period was the twelve months ended December 31, 2016, adjusted for **certain** known changes in revenue, expenses and rate base through December 31, 2017, and the costs for the W.S. Lee Combined Cycle (Lee CC) **updated through February 28, 2018.**” (Emphasis added.) *Id.* at 1. Thus, the Commission has the discretion to accept certain adjustments through extended time periods in determining what is appropriate in setting rates based on a representative test year.

The Companies are aware of no language under N.C. Gen. Stat. § 62-133(c) or otherwise, that would require the Companies to update their entire cases in the event they elect to offer evidence “tending to show actual changes in costs, revenues or the cost of the utility’s property used and useful... which is based on circumstances and events occurring up to the time the hearing is closed.” The fact that the Companies identified in their direct testimony accompanying their Applications that they would make updates to certain pro formas, but not *all* pro formas, is consistent with this interpretation and was not previously disputed by the Public Staff or any other party.

CONCLUSION

It bears repeating that these are extraordinary times. The Public Staff’s objection to the May Updates fails to acknowledge that the state of the world when the Companies filed their last round of updates in January and February is very different than the state of the world we find ourselves in today. Neither the Public Staff nor the Companies could have anticipated this dramatic change in circumstances. Fortunately, the North Carolina legislature has provided a mechanism for addressing changed circumstances, and that is all

the Companies are seeking to do in filing their May Updates.

For the foregoing reasons, the Companies respectfully request:

1. That the Commission consider the May Updates filed by the Companies' on July 2, 2020 as evidence in considering the appropriate rates to set in the DE Carolinas Rate Case and the DE Progress Rate Case;
2. That the Commission find that the May Updates do not violate either of the Partial Settlement Agreements between each Company and the Public Staff and
3. That the Commission find that the May Updates do not warrant any change to the current hearing dates or procedural schedule¹¹ in either of the Companies' pending rate cases.

This the 9th day of July, 2020.

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

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¹¹ As noted above, the Companies have no objection to leaving the record open through the duration of the hearing to allow for limited discovery and additional testimony on the May Updates.

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 **JOINT REPLY TO THE PUBLIC STAFF'S RESPONSES TO THE COMPANIES' SECOND SUPPLEMENTAL DIRECT TESTIMONY AND EXHIBITS** 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 9th day of July, 2020.

/s/ Kiran H. Mehta

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