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November 21, 2017

VIA ELECTRONIC FILING

M. Lynn Jarvis, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

RE: Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's Reply Comments and Amended Proposed Rule Docket No. E-100, Sub 155

Dear Ms. Jarvis:

Enclosed for filing with the North Carolina Utilities Commission please find Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's Reply Comments and Amended Proposed Rule to Implement N.C. Gen. Stat. § 62-126.8. This filing is made pursuant to the Commission's August 30, 2017 *Order Initiating Rulemaking Proceeding* and the October 24, 2017 *Order Granting Extension of Time*.

If you have any questions, please let me know.

Sincerely,

Kendrick C. Fentress

Enclosure

cc: Parties of Record

CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's Reply Comments and Amended Proposed Rule to Implement N.C. Gen. Stat. § 62-126.8, in Docket No. E-100, Sub 155, has been served by electronic mail, hand delivery, or by depositing a copy in the United States Mail, 1st Class Postage Prepaid, properly addressed to parties of record.

This the 21st day of November, 2017.

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BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-100, SUB 155

In the Matter of Rulemaking Proceeding to Implement G.S. § 62-126.8	)))))	**DUKE ENERGY CAROLINAS, LLC'S AND DUKE ENERGY PROGRESS, LLC'S REPLY COMMENTS AND AMENDED PROPOSED RULE TO IMPLEMENT N.C. GEN. STAT. § 62-126.8**

NOW COME Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") (collectively, the "Companies") and hereby respectfully submit reply comments to the North Carolina Utilities Commission ("Commission") pursuant to the Commission's *Order Initiating Rulemaking Proceeding* issued on August 30, 2017 and the *Order Granting Extension of Time* issued October 24, 2017 in the above-captioned docket. With these reply comments and amended proposed rule implementing N.C. Gen. Stat. ("G.S") § 62-126.8 ("Community Solar Rule"), the Companies respond to the initial comments offered by the Public Staff of the North Carolina Utilities Commission ("Public Staff"), the North Carolina Sustainable Energy Association ("NCSEA"), the Sierra Club, the North Carolina Waste Awareness and Reduction Network ("NC WARN")[1], the City of Asheville and the Hillsborough Town Board.

General Reply Comments

The Companies are continuing to develop the framework and plan for implementation of the Community Solar Energy Facility Program ("Program") to be filed for approval with the Commission on January 23, 2018 (the "Plan") as required by Section 6(d) of S.L. 2017-192 (the "Act"). The Plan will contain additional details regarding the proposed Program, its scope, development, and implementation, for the Commission's review and approval. The Companies have already had preliminary discussions with the Sierra Club and the Public Staff regarding the

[1] The Companies in large part responded to NC WARN's initial comments in their November 6, 2017 filing.

Program, and they intend to further discuss the parameters of their proposed Program with these and other stakeholders, as indicated in the Companies' initial comments filed on November 6, 2017. The Companies appreciate the input received in intervenors' initial comments as they consider how they can develop this new Program to be successful and in compliance with the requirements of the law.

As noted in the Companies' initial comments, they intend to develop their Program in stages or tranches less than the statutory total of 20 MW per Company, until the 20 MW cap is achieved in each service territory. The Companies continue to contemplate the first tranche of the Program being relatively small, one (1) to two (2) MW, to allow the Companies room to evolve the Program in the future, incorporating lessons learned as well as responding to participating customers' experiences. They further intend to procure energy for the Program through 20-year purchase power agreements ("PPAs") with qualified small solar power producers for the first tranche of the Program. To preserve their ability to develop their Programs in more detail in advance of the January 2018 Plan filing and to propose future modifications to those Programs by incorporating lessons learned and subscribers' experiences from the first tranche, the Companies have not included in their proposed Rule the prescriptive details regarding the form that the Program must take at its inception, as recommended in some of the intervenors' initial comments. Instead, the Companies may propose to change subsequent tranches with respect to design, facility ownership, or scale, based on lessons learned from the first tranche.[2] Accordingly, the Companies' proposed Rule allows for: (i) the filing of sufficient information to allow the Commission to determine whether the Programs are in the public

[2] *See Order Granting Approval of a Five-Year Community Solar Pilot Program*, Docket No. 150248- EG, Order No. PSC-16-0119-TRF-EG, issued March 21, 2016 (Fla. Pub. Serv. Comm'n.) at 2 (Gulf Community Solar Order) (explaining that the solar community pilot program will provide "opportunity to collect and analyze data including customer interest, continuity of customer participation, customer satisfaction, actual program costs and sustainability.")

interest and consistent with G.S. § 62-126.8, (ii) the filing of subsequent Plans, outlining modifications to subsequent tranches as appropriate, and (iii) reporting on the implementation, status, and sustainability of the Program within one year of the Plan's approval by the Commission.

These elements of the proposed Rule and current Plan for the Program remain essentially the same as described in the initial comments. In these reply comments, the Companies first address recommendations offered by Intervenors that were, for the most part, addressed in the Companies' initial comments and proposed Community Solar Rule. Next, the Companies address those recommendations not addressed in the Companies' initial comments, and provide comments as to the appropriate scope of the Community Solar Rule as opposed to the Plan to be filed in January.

I. Reply Comments on Areas of Commonality

Several intervenors made recommendations that are already reflected in the Companies' proposed Community Solar Rule, as amended and attached to these reply comments as Attachment A, or with which the Companies otherwise agree. For example, the Sierra Club recommended that the Companies offer their Community Solar Program for a term of 20-25 years or more. (Sierra Club at 11). As noted in the initial comments, the Companies are proposing a Program with a duration of 20 years with a 20-year PPA, which they expect will allow Subscribers to receive the financial benefit of their Subscriptions. (Attachment A, Rule R8-XX(b)(10)). For this reason, the Program also meets the City of Asheville's and the Hillsborough Town Board's suggestion that the Program should provide economic benefits for participants over the course of the Program. (City of Asheville at 2; Hillsborough Town Board at 1).

The Sierra Club also offered with its comments a proposed rule, including a subsection (e), Review of Community Solar Program Applications, that contained procedural rules regarding the process for Commission review and approval of the Companies' proposed Plan. (Sierra Club at 14). Although the Companies believe that the Commission may establish a review process on its own discretion after the filing of a Plan for approval in January, they generally do not object to the process for review outlined by the Sierra Club and have incorporated certain provisions of the Sierra Club's proposed rule allowing for intervention and comment on the Program filing in the amended Rule attached hereto, at new subsection (d), Review of Community Solar Plans. The Companies do not, however, believe that the Rule should expressly require a public hearing on the Plan filing, as the Sierra Club's proposed rule provides (Sierra Club at 14). The Companies are not opposed to public comment or review of their proposed Community Solar Programs or Plans, and they specifically allowed for a potential comment period in their proposed Program implementation schedule included in their initial comments. (Companies' Comments at 7). The Companies disagree, however, that a public hearing should be a required component of the Commission's approval process. As noted in their initial comments, community outreach events may be coordinated to promote the Program. The Companies believe these events may occur after the test phase where potential subscribers are identified and the request for proposals ("RFPs") from small solar power producers are received. Therefore, the Companies contemplate these outreach events would occur after Commission approval of the Plan, so that they could focus on areas where the Companies have identified potential subscribers. Furthermore, the Companies note that, although a mandatory public hearing exceeds the requirements of the Act, the Commission always has the discretion to order one if necessary to make its decision on a proposed Plan. A

mandated public hearing on the filed Plans, however, may not always be necessary to receive public comment in advance of identifying potential subscribers.

The Sierra Club also specifically proposed a process for dispute resolution in its proposed rule. (Sierra Club at 15). Although the Company does not necessarily disagree with this proposal to address dispute resolution in the Community Solar Rule, the procedure laid out by this proposal appears to mirror the existing, customary Commission practice for consumer complaints against a public utility. The Companies have, however, incorporated a dispute resolution provision, at subsection (g) of the Proposed Rule, that is similar to the dispute resolution rule proposed by the Sierra Club.[3] The Companies' addition preserves their ability to suspend or close a Program to new Subscribers if necessary during this process.

The Public Staff also made several recommendations with which the Companies agree and that are consistent with the proposed Rule. First, Public Staff recommended that the Program be designed to establish a standard contract for subscriber payments in exchange for a credit on the subscriber's bill. (Public Staff at 3). As noted in subsection (c)(6)(j) of the proposed Community Solar Rule, the Companies contemplate that the Plan filed in January will include a tariff, standard contract, statement of terms and conditions, or some combination of any or all of these. The Public Staff also states that the Community Solar Rule should include a list of disclosures that the Companies will be required to provide subscribers including, at a minimum, proposed rules and charges. (Public Staff at 5). Consistent with the requirement of G.S. § 62-126.8(e)(5) that proposed rules and charges be addressed in the Program, the

[3] The Companies note that the Commission has previously interpreted G.S. § 62-74 as limiting its subject matter jurisdiction to "any act or thing done or omitted to be done by any public utility." *Order on Jurisdiction and Dismissal of Complaint*, Docket No. E-7, Sub 1038 (March 5, 2014) at 15. This interpretation appears to prohibit public utilities offering Community Solar Programs from filing complaints at the Commission against participating customers. The Companies have not analyzed the Act to determine if it alters the Commission's interpretation in any way; accordingly, the Sierra Club's recommendation for dispute resolution may require revision in order to limit the party filing a formal complaint at the Commission to customers only.

Companies plan to include this information in the January 2018 Plan filing, but also consider this requirement to be covered by subsection (c)(6)(g) of their proposed Community Solar Rule. In addition, Public Staff, as well as NCSEA and the Sierra Club, recommend that the rule require the utility to report on the Community Solar Program status, including whether the Program implementation schedule has been modified or delayed. (Public Staff at 6; NCSEA at 5; Sierra Club at 15). The Companies agree that filing reports on the implementation of the Community Solar Program would be informative to the Commission, the stakeholders, and the public. Moreover, the Companies do not object to including the types of information outlined by the Sierra Club's proposed reporting requirement and have added similar language to their proposed Rule. (Attachment A, Rule R8-XX, Subsection (f)). Along these lines, the Companies have added the requirement that they include in their report whether subscriptions are sufficient for the Program to advance or continue. The Companies do not believe requiring semiannual reports is necessary, however. Instead, based on the Companies' proposed implementation schedule[4], a report filed no later than a year after the Commission has approved the Companies' Plan should contain more complete, helpful information. The Companies' proposed Subsection (f) then allows the Commission the flexibility to direct if and when a subsequent report or reports are needed, based on the progress shown in the first report.

The Public Staff also proposes that the rule include consumer protection provisions if door-to-door agents will be used to promote the Program. (Public Staff at 6). The Companies do not intend to use door-to-door agents to promote the Program, but instead intend to promote the Programs using digital and printed communications via the Duke Energy website, email, press releases, newsletters, social media and/or direct mail. As such, the Companies do not believe that adoption of consumer protection provisions within the Community Solar Rule are necessary

[4] The Companies' proposed implementation schedule is provided in their initial comments at 7.

at this time and may instead be addressed, as necessary, if the Companies propose such promotional methods in their Plans or in subsequent Plans. Finally, the Companies agree with the Public Staff's statement that a delay in program implementation should be allowed if there is not enough participation at the proposed time of commencement. (Id. at 7).

NCSEA commented that the Commission should make clear in the rule that subscribers to the Community Solar Program "may keep their existing rate tariff" and analogized this to the NC Greenpower Program. (NCSEA at 4). If NCSEA's comment simply is directed at ensuring that retail customers who participate in the Program will remain on their existing rate schedule, and will not be shifted completely onto a community solar-specific schedule alone, the Companies agree that customers that subscribe to Community Solar will maintain their existing rate tariff, and do not see a need to specify this in the Rule.

II. Low- and Moderate-Income Participation

Several parties advocate that the Companies include in the Program one or more components focused on facilitating participation by low- and moderate-income ("LMI") customers. NCSEA commented that the Program "presents an excellent opportunity to provide low- to moderate-income North Carolinians with access to clean energy, and the Commission should strive to keep these ratepayers in mind when adopting rules governing the program." (NCSEA at 4). NC WARN stated that "[t]o be consistent with the public interest, every effort should be made to make the program attractive to low-income and moderate-income participants. One way to accomplish this is by allowing for payment of subscription fees in installments over time." (NC WARN at 5). The City of Asheville and Hillsborough Town Board asked that the Commission consider, "to the maximum extent allowed by the legislation," "[e]quity to ensure that low income participants can also afford to participate." (City of Asheville at 2; Hillsborough

Town Board at 1). And the Sierra Club offered that the Companies should "include in their program filings a set-aside or other program feature that is designed to provide access for customers of low-to-moderate means." (Sierra Club at 5). The Sierra Club noted program designs that can help facilitate LMI customer participation in community solar programs, including carve-outs or set-asides to ensure that some portion of the program, or a project, is available to LMI customers; incentives or other financing mechanisms to help these customers overcome financial barriers to participation; and offering small subscription size options. (Id. at 5-6). Sierra Club commented that the Companies should provide a plan in their initial program filings for LMI engagement, access, and participation. Several of these parties also referenced background resources published by the Interstate Renewable Energy Council ("IREC") and other organizations that discuss options for encouraging and facilitating LMI customer participation in community solar initiatives generally.

The Companies appreciate the resources and recommendations offered by these parties on the topic of LMI participation in community solar programs. Although the Act does not mandate a low-income component to the Program, the Companies recognize the value of facilitating participation by these customers in community solar efforts. For instance, as stated by the Sierra Club, offering a subscription size of 200 watts can enable a wider range of customers to participate by allowing for subscription at relatively modest cost as compared to larger subscription requirements. Consistent with the Act, the Companies' proposed Rule implements a subscription size as small as 200 watts. (Attachment A, Rule R8-XX (e)(4)).

As with other aspects of the Community Solar Program, however, the prohibition on subsidization of the Program by non-participating customers contained at G.S. § 62-126.8(e)(7) adds some complexity to the Companies' ability to include components like LMI participation

encouragement that do not either cause the subscription fee to increase to a level that is no longer attractive to potential participants, impose costs on non-participating customers, or both. Community solar initiatives that include LMI components in other states also often are not subject to the prohibition on subsidization that applies to the Companies under the Act. The Colorado, Oregon, and Maryland programs cited by the Sierra Club, for example, that have carve-outs or set-asides of community solar facilities or programs for LMI customers, are not subject to such an outright prohibition. One of the resources cited by the Sierra Club and others specifically notes that the statute that established California's Enhanced Community Renewables option "sets a 'non-participating ratepayer indifference' requirement, which mandates that non-participants cannot bear any of the costs of the program," and that this program will likely be offered at a premium rate, therefore presenting a challenge to LMI participation.[5]

As noted in the Companies' initial comments, DEC and DEP continue to work diligently to develop the framework and plan for implementation of the Program to be filed with the Commission in January 2018, as required by the Act. The Companies have met with organizations, including the Sierra Club, to get their initial ideas, and plan additional discussions with them to keep them up-to-date and informed on the Companies' consideration and evaluation of future options for the Program design. Additionally, the Companies believe that their implementation of the first tranche of the Program will yield lessons learned and informative experiences for modifying and, potentially, expanding the Community Solar Program in the future. The Companies would like the opportunity to explore the possible avenues to include a LMI component in subsequent tranches of the Program that are consistent with the requirements

[5] IREC, Shared Renewable Energy for Low- to Moderate-Income Consumers: Policy Guidelines and Model Provisions at p. 13 (available at http://www.irecusa.org/wp-content/uploads/2016/03/IREC-LMI-Guidelines-Model-Provisions_FINAL.pdf).

of G.S. § 62-126.8. For the foregoing reasons, however, and given the lack of an LMI mandate in the Act, the Companies do not believe it would be appropriate to include a LMI requirement in the Community Solar Rule itself.

III. Subscription Payment Options

NCSEA and the Sierra Club urge the Commission to mandate through its Community Solar Rule that the Companies provide up to three options for Subscribers to pay for participation in the Program: (i) an upfront participation fee; (ii) an upfront participation fee financed across a specified timeframe; and (iii) a set monthly participation fee. (NCSEA at 3; Sierra Club at 3-4). In fact, the Sierra Club essentially argues that the Commission should require the Offering Utilities to include a participation option that includes no or minimal upfront costs. (Sierra Club at 4). In support of its assertion, the Sierra Club cites examples of two Community Solar programs that do not require an upfront subscription fee – the Orlando Utilities Commission's Community Solar program and the Blue Ridge Electric Membership Corporation's Community Solar program. The Sierra Club also proposes that one of the payment options include on-bill financing, including a "pay-as-you-go" option and that several of the North Carolina electric cooperatives currently offer this on-bill financing for the upfront costs to participate in their community solar programs. (Sierra Club at 3-4).

The Companies agree with the Public Staff and other intervenors that the encouragement of participation in Community Solar Programs is in the public interest because such programs provide a viable alternative to customers that do not have access to rooftop and outdoor facilities to participate in the production and consumption of renewable energy. The Companies intend to fully explore options for promoting and maximizing participation in their Community Solar Programs, and they are open to the consideration of payment options that involve a single

upfront payment or a monthly subscription fee. The Companies have discussed a monthly payment structure with the Sierra Club, as well, and intend to discuss the status of their plans for subscription fees with the Sierra Club further. As the Public Staff noted, however, for a Community Solar Program to be consistent with the public interest, not only should participation in the program be encouraged, but "cross subsidization should be avoided by holding harmless electric public utilities' customers that do not participate in such arrangements." (Public Staff at 7, *citing* G.S. § 62-126.2). The Public Staff further acknowledged in its comments that "designing a program that avoids cross-subsidization from non-participating customers may result in high up-front costs or subscription offerings for community solar energy facilities." (Public Staff at 7). The Companies are therefore considering payment options for subscriptions that balance the need to encourage participation in the Community Solar Program with the General Assembly's requirement that such a program "[h]old harmless customers of the electric public utility who do not subscribe to a community solar energy facility." G.S. § 62-126.8(e)(7).

The Companies oppose, however, the specific recommendation that the Commission direct them to include an on-bill financing option to pay for subscription costs. First, as noted, the Companies and the intervenors all agree that keeping subscription costs as low as possible is vital to attracting subscribers. The Companies are currently working to design their first tranches to minimize program management costs, which results in lower subscriber costs. If the Companies were to introduce on-bill financing, the overhead costs would increase, as the Companies would have to evaluate the credit risk of individuals in paying the extra costs of participation in a Community Solar Program and continue to collect on the "loan" to the subscribers. Additionally, if subscribers were using on-bill financing to pay for the program, the

Companies would be put in a position of having to collect on unpaid loans for subscribers that ended their participation in the program or moved out of the service area.

As such, the Companies respectfully recommend that the Commission's Community Solar Rule not mandate any particular form of subscription fee option, including on-bill financing, for inclusion in the January 23, 2018 Plan. The Companies agree, however, with the Sierra Club's recommendation that if the Offering Utilities propose "any participation options that include an upfront cost component, they should include a description and justification for the upfront costs, an explanation of how the upfront costs are likely to impact participation . . . ." (Sierra Club at 4-5). The Companies have amended their proposed Community Solar Rule Subsection (c)(6)(f) to include these requirements.

IV. Portability and Transfer of Subscriptions

Both NCSEA and the Sierra Club also recommended that the Community Solar Rule provide for the transfer and portability of subscriptions. Noting the geographic restrictions of G.S. § 62-126.8(c), the Sierra Club recommended that the Offering Utilities file a Program that allows the subscriber to take subscriptions with them if they move within a utility's service territory. (Sierra Club at 6-7). Both the Sierra Club and NCSEA recommended that if a subscriber moves out of the Offering Utility's service area or is otherwise unable to participate in the Program, there should be an option for transferring the subscription to another utility customer, back to the utility, or to any third party entity administering the program on behalf of the Offering Utility. (NCSEA at 3; Sierra Club at 7).

The Companies generally agree that allowing subscribers that move within a utility's service territory take their subscriptions with them, subject to the geographic limitations set forth in G.S. § 62-126.8(c), fosters and sustains participation in Community Solar Programs. For that

reason, the Companies' proposed Rule, Subsection (d)(6), provides for the petition of a waiver of the geographic restrictions on subscriptions that is consistent with G.S. § 62-126.8(c). Moreover, they agree that the Commission's Community Solar Rule should require Offering Utilities to provide information related to the portability of subscriptions in their January 23, 2018 filing, and have revised Subsection (c)(6)(d) of their proposed Community Solar Rule to include language similar to that proposed by the Sierra Club to so reflect.

With respect to the transfer of subscriptions, however, the Companies note that they are designing their subscription options to avoid or minimize the impact of any applicable securities regulations.[6] To that end, the Companies are investigating the legal and practical implications of transferability of the subscriptions but have not concluded the terms and conditions under which such a transfer could occur. Moreover, transferring the subscription back to the Offering Utility, as proposed by the Sierra Club, would likely result in the Offering Utility offering a Community Solar program that was not fully paid for by subscribers, unless there was a waiting list of subscribers that would reliably assume the subscription. For this reason, the Companies do not agree that the Community Solar Rule should require them to allow for transferability of subscriptions, but they do intend to provide additional information on whether and how such subscriptions could be transferred from one subscriber to another when they file their plans in January, and they have amended their proposed Rule accordingly. (Attachment A, Rule R8-XX (c)(6)(d)).

[6] National Renewable Energy Laboratory, A Guide to Community Shared Solar: Utility, Private, and Nonprofit Project Development, at 5 (May 2012), https://www.nrel.gov/docs/fy12osti/54570.pdf. (Explaining that a security is "an investment instrument issued by a corporation, government, or other organization that offers evidence of debt or equity. Any transaction that involves an investment of money in an enterprise, with an expectation of profits to be earned through the efforts of someone other than the investor, is a transaction involving a security. Community shared solar programs must be sure to comply with both state and federal securities regulations, and avoid inadvertently offering a security.").

V. Siting

The Sierra Club's proposed Rule requires the Offering Utilities to provide "a description of siting considerations and a plan for local community engagement to determine community solar energy facility locations." (Sierra Club at 13). In support of its proposal, the Sierra Club recommended that the offering utilities should consider siting projects at locations that will provide program cost savings and grid benefits (such as siting close to load). The Sierra Club also recommended siting community solar energy facilities where projects are visible and close to communities that are likely to have subscribers, and stated that siting in communities that want and will benefit from the programs can help increase customer awareness and satisfaction with the program. (Sierra Club at 9). The Sierra Club then recommended that the Offering Utilities consider on-site rooftop facilities and brownfields or other locations that have been historically burdened with negative environmental benefits for siting community solar energy facilities. (Id.).

As discussed earlier, the Companies aim to maximize participation in their community solar programs and to minimize the costs of the programs to subscribers. To those ends, the Companies intend to site their programs in or around communities where their research indicates they will get the most participation. For this first tranche of their Community Solar Programs, the Companies intend to conduct a request for proposals ("RFP") from third-party, qualified small solar facilities. To ensure costs are minimized, the Companies will likely focus on proposals based on technical merit, energy production, and price. The RFP will have specific requirements that will be designed to keep costs low, including siting the facility in and near locations where the Companies have identified subscribers. To the extent developers of those solar facilities want to include a plan for local community engagement and rooftop or brownfield

siting in their proposals, the Companies do not object. As noted in their initial comments, the Companies are not opposed to community outreach events after the test phase and the RFP phase are completed. (Companies' Comments at 8). They do not believe, however, that the Commission's Community Solar Rule should require the Offering Utilities to file a plan for local community engagement or other siting requirements, as those requirements may increase costs and complexity. Moreover, the Companies' proposed Rule provides that the Offering Utility will provide information on how the Program will be promoted to potential subscribers. (Rule R8-XX(c)(6)(g)).

VI. Subscriber REC Ownership

In its initial comments, the Public Staff noted that G.S. § 62-126.8(e)(8) allows subscribers the option to retain the renewable energy certificates ("RECs") produced by the community solar energy facility and resulting from their subscriptions. The Public Staff recommended the adoption of a rule that requires the Offering Utility to issue a proportionate share of the RECs produced from the facility to the subscriber or provides that the utility will retire RECs on behalf of the customer, at the customer's election. The Public Staff also recommended that the subscriber may want a subscription plan option to sell all rights to the RECs in exchange for a reduction in up-front costs.

The Companies' proposed Community Solar Rule provides that the Plan filed for the Commission's approval will include a description of how subscribers may opt to own the RECs produced by the Community Solar Energy Facility. (R8-XX(c)(6)(k)). The Companies are currently developing their Program and have used the Community Solar Program approved in the Gulf Community Solar Order as a guide in this regard. To that end, the Companies will describe in their January 2018 Plan that they intend to retire the RECs resulting from the

Community Solar Program on behalf of program participants. The retirement of RECs on behalf of the Subscribers will enable them to represent that they are offsetting a portion of their energy use with renewable energy. Once retired in this regard, the RECs cannot be sold or transferred to another party.[7] This will lessen the administrative costs and burdens of tracking RECs for the Companies, thereby reducing costs to be passed on to Subscribers.

The Companies do not agree with the Public Staff's recommendation that the Commission require that a subscriber have the option to sell all rights to RECs in exchange for a reduction in the up-front costs. DEP, for example, has no current need for solar RECs, and so the purchase of these RECs would exceed DEP's compliance requirements. Moreover, it is unclear if DEP or DEC could recover the costs of such RECs through their REC cost recovery proceedings under G.S. § 62-133.8, because the Companies' ratepayers pay the costs of those RECs, thereby resulting in a potential subsidizing of the Programs by non-participating customers. For this reason, the Companies respectfully request that the Commission not include in its Community Solar Rule a requirement that subscribers have the option to selling the RECs back to the Companies to reduce subscription fees. Instead, the Companies will provide additional detail on REC ownership when they file their Plans for approval in January 2018.

WHEREFORE, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC respectfully submit these reply comments and ask that the Commission approve the revised proposed Community Solar Energy Facility Program Rule set forth in Attachment A as discussed herein.

[7] *See* Gulf Community Solar Order at 5.

Respectfully submitted, this the 21st day of November, 2017.

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R8-XX COMMUNITY SOLAR ENERGY FACILITY PROGRAM

(a) Purpose. The purpose of this rule is to implement the provisions of G.S. § 62-126.8 as they relate to the offering utilities' plan(s) for offering a Community Solar Energy Facility Program(s) for the participation of retail customers.

(b) Definitions. Unless listed below, the definitions of all terms used in this rule shall be as set forth in G.S. Chapter 62. The following terms shall be defined as:

(1) "Avoided cost rate" means an electric public utility's calculation of its avoided costs based upon the methodology most recently approved or established by the Commission as of the date that a Subscription commences for purchases of electricity from qualifying facilities pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978, as amended.

(2) "Community Solar Energy Facility Program" or "Community Solar Program" means program(s) offered by Duke Energy Carolinas, LLC and Duke Energy Progress, LLC pursuant to G.S. § 62-126.8 for the procurement of electricity by an offering utility from community solar energy facility or facilities, that provides retail customer Subscribers the opportunity to share the costs and benefits associated with the generation of electricity by such facilities.

(3) "Community Solar Energy Facility" means one or more solar photovoltaic energy systems with a nameplate capacity of no more than five megawatts ("MW") that is located in the service territory of the Offering Utility filing the Community Solar Energy Facility Program Plan under which such Facility will be available for Subscription.

(4) "Nameplate capacity" means the maximum rated output of a solar photovoltaic energy system, measured by the rated output of system inverter(s) at 50 degrees Celsius and adjusted for any transformer step-up losses.

(5) "Offering Utility" is as defined at G.S. § 62-126.3(10).

(6) "Plan" means the plan for the implementation of Community Solar Energy Facility Program to be filed by the offering utilities as directed by G.S. § 62-126.8.

(7) "Renewable energy certificates" are defined as provided in G.S. § 62-133.8(a)(6).

(8) "Solar voltaic energy system" means equipment and devices that have the primary purpose of collecting solar energy and generating electricity by photovoltaic effect.

(9) "Subscriber" means the retail customer of Offering Utility who purchases one or more Subscriptions to the Community Solar Program and is located in the state of North Carolina in the same county or a county contiguous to where the facility is located, unless subject to exemption provided at G.S. § 62-126.8(c). The location

of a community solar energy facility for the purpose of customer eligibility shall be determined by the physical location of the electric meter of the facility.

(10) "Subscription" means the individual block of Community Solar Energy Facility generating capacity, which represents at least 200 watts of such generating capacity and supplies no more than 100% of the maximum annual peak demand of electricity of each Subscriber at the Subscriber's premises, purchased by a Subscriber for a term of up to twenty (20) years, which results in the Subscriber receiving credits during that term.

(11) "Subscription fee" means the charge paid by a retail customer in exchange for a Subscription.

(c) Community Solar Energy Facility Program and Plan

(1) Each Offering Utility shall file an initial Community Solar Energy Facility Program Plan ("Plan") requesting approval of its Community Solar Energy Facility Program ("Community Solar Program") by no later than January 23, 2018.

(2) The Plan shall meet the requirements of G.S. § 62-126.8(e).

(3) The Offering Utility may elect to own and operate Community Solar Energy Facilities for the Community Solar Program, procure energy for the program through power purchase agreements with qualifying small power production facilities as defined in 16 U.S.C. § 796, or both. The Plan shall describe the Offering Utility's election(s).

(4) Subscribers to the Community Solar Program will receive a credit for each Subscription purchased during the Plan. The credit will be based on the Offering Utility's avoided cost rates.

(5) The Offering Utility may implement the Community Solar Program in stages such that the total nameplate generating capacity of the early stage or stages of the Program is less than 20 MW.

(6) In addition to the above, the Plan shall include:

a. Uniform standards and processes for the Offering Utility to recover reasonable interconnection costs, administrative costs, fixed costs, and variable costs associated with each community solar energy facility, including purchase expenses if a power purchase agreement is elected as the method of energy procurement by the Offering Uutility;

b. A description of how the Offering Utility will develop and/or procure renewable solar power for the Community Solar Program and the procedures to implement such development and/or procurement. Such description shall include how the Offering Utility's proposed development and/or procurement and related procedures comply with the requirements of G.S. § 62-126.8;

c. An explanation of how customers of the electric public utility who do not subscribe to a community solar energy facility will be held harmless from the Program;

d. Process for participation by North Carolina retail customers on a first-come, first-served basis, including information on the treatment of subscriptions if

a subscriber moves within the Offering Utility's service territory, if a subscriber moves outside of the Offering Utility's service territory, and whether and how subscriptions may be transferred;

e. Program implementation schedule;

f. Methodology for determining the Subscription Fee, including a description and justification for any upfront costs proposed and projected impacts on participation;

g. A discussion of how the program will be promoted, including examples of communications or marketing materials to be used, if available, and including identification of information to be provided to potential subscribers to ensure fair disclosure of future costs and benefits of subscriptions and rules and charges associated with the Program;

h. An explanation of how subscribers will be credited the avoided cost rate;

i. Any rate schedules associated with the Community Solar Program, to the extent appropriate;

j. A tariff, pro forma contract between Subscriber and Offering Utility, an example of on-line offer of terms and conditions, or any or all of the above that contain terms and conditions regarding explanation of costs, risks and benefits, any one-time and ongoing fees, explanation of the concept of renewable energy certificates, and notifications regarding project status and performance; and

k. Description of how Subscribers may opt to own the renewable energy certificates produced by the Community Solar Energy Facility.

(d) Review of Community Solar Plans

(1) The Commission may approve, disapprove or modify the Community Solar Program proposed in the initial Plan or subsequent Plans.

(2) Unless the Commission orders otherwise, within 30 days after the Offering Utility files its Plan, any interested party may file initial comments on the proposed Plan.

(3) Unless the Commission orders otherwise, the Offering Utility and any other interested party may file reply comments addressing any substantive or procedural issue raised in initial comments.

(4) The Commission may direct each Offering Utility to make further filings with regard to each Community Solar Program approved under this Rule as the Commission determines to be appropriate. (5) The Offering Utility shall submit a revised Plan if it desires to modify the procedures or procurement approach outlined in the initial Plan.

(6) To the extent the Offering Utility seeks an exemption of the requirement in G.S. § 62-126.8(c) that Subscribers be located in the State of North Carolina and in the same county or county contiguous to where the facility is located, the Offering Utility may file a request for such an exemption with the Commission. If the Commission deems the request to be in the public interest, it shall approve the request, provided that the facility is located no more than 75 miles from the county of the Subscribers.

(e) Subscriber Requirements and Procedures

(1) Retail customers of each Offering Utility may voluntarily subscribe to the Community Solar Program on a first-come, first served basis subject to subscription availability.
(2) The Offering Utility may suspend or close the program to new Subscribers at any time during the Community Solar Program term, even if the relevant capacity limitation has not been met, based on a determination that such suspension or closure is appropriate.
(3) No single Subscriber shall have more than a forty percent (40%) interest in its Offering Utility's Community Solar Energy Program.
(4) Subscribers may subscribe to individual blocks, sized to represent at least 200 watts of the Community Solar facility's generating capacity.
(5) Subscribers are responsible for payment for each block of Community Solar Energy Facility capacity to which they subscribe.
(6) Subscribers may purchase multiple subscriptions consistent with G.S. § 62-126.8; however, each Offering Utility will define a cap for residential, commercial, and industrial customers limited to no more than one hundred percent (100%) of the maximum annual peak demand of electricity of each Subscriber at the Subscriber's premises.
(7) A Subscriber will be notified of program enrollment prior to first billing and credits.
(8) If enrollment exceeds availability, then potential Subscribers are automatically added to a Subscriber waiting list maintained by the Offering Utility.

(f) Reporting Requirements
(1) No later than one year after the Commission's approval of the initial Plan, the Offering Utility shall update the Commission on the status of the Program, including updates on program implementation, marketing, the number of participants subscribed, whether the number of participants subscribed is sufficient to continue or sustain the program, and capacity installed. The Offering Utility shall provide subsequent updates if requested by the Commission or the Public Staff of the North Carolina Utilities Commission.

(g) Dispute Resolution – If there is a dispute between an Offering Utility and Subscriber(s), either party shall provide the other with written notice of the dispute. If the dispute is not resolved within ten (10) business days after receipt of notice, either party may contact the Public Staff for assistance informally resolving the dispute. If the parties are unable to informally resolve the dispute, either party may file a formal complaint at the Commission. This procedure does not limit the Offering Utility's ability to suspend or close the Program to new subscribers, if the Offering Utility determines that suspension or closure is appropriate and justified.

R8-XX COMMUNITY SOLAR ENERGY FACILITY PROGRAM

(a) Purpose. The purpose of this rule is to implement the provisions of G.S. § 62-126.8 as they relate to the offering utilities' plan(s) for offering a Community Solar Energy Facility Program(s) for the participation of retail customers.

(b) Definitions. Unless listed below, the definitions of all terms used in this rule shall be as set forth in G.S. Chapter 62. The following terms shall be defined as:

(1) "Avoided cost rate" –means an electric public utility's calculation of its avoided costs based upon the methodology most recently approved or established by the Commission as of the date that a Subscription commences for purchases of electricity from qualifying facilities pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978, as amended.

(2) "Community Solar Energy Facility Program" or "Community Solar Program" means —Pprogram(s) offered by Duke Energy Carolinas, LLC and Duke Energy Progress, LLC pursuant to G.S. § 62-126.8 for the procurement of electricity by an offering utility from community solar energy facility or facilities, that provides retail customer Subscribers the opportunity to share the costs and benefits associated with the generation of electricity by such facilities.

(3) "Community Solar Energy Facility" means —Oone or more solar photovoltaic energy systems with a nameplate capacity of no more than five megawatts ("MW") that is located in the service territory of the Offering Utility filing the Community Solar Energy Facility Program Plan under which such Facility will be available for Subscription.

(4) "Nameplate capacity" —means the maximum rated output of a solar photovoltaic energy system, measured by the rated output of system inverter(s) at 50 degrees Celsius and adjusted for any transformer step-up losses.

(5) "Offering Uutility" is —as defined at G.S. § 62-126.3(10).

(6) "Plan" means the —plan for the implementation of Community Solar Energy Facility Program to be filed by the offering utilities as directed by G.S. § 62-126.8.

(7) "Renewable energy certificates" are defined as provided in G.S. § 62-133.8(a)(6).

(8) "Solar voltaic energy system" means —equipment and devices that have the primary purpose of collecting solar energy and generating electricity by photovoltaic effect.

(9) "Subscriber" means the —retail customer of Ooffering Uutility who purchases one or more Subscriptions to the Community Solar Program and is located in the state of North Carolina in the same county or a county contiguous to where the facility is located, unless subject to exemption provided at G.S. § 62-126.8(c). The location

of a community solar energy facility for the purpose of customer eligibility shall be determined by the physical location of the electric meter of the facility.

(10) "Subscription" means the individual block of Community Solar Energy Facility generating capacity, which represents at least 200 watts of such generating capacity and supplies no more than 100% of the maximum annual peak demand of electricity of each Subscriber at the Subscriber's premises, purchased by a Subscriber for a term of up to twenty (20) years, which results in the Subscriber receiving credits during that term.

(11) "Subscription fee" means the charge paid by a retail customer in exchange for a Subscription.

(c) Community Solar Energy Facility Program and Plan

(1) Each Offering Utility shall file an initial Community Solar Energy Facility Program Plan ("Plan") requesting approval of its Community Solar Energy Facility Program ("Community Solar Program") by no later than January 23, 2018.

(2) The Plan shall meet the requirements of G.S. § 62-126.8(e).

(3) The Offering Utility may elect to own and operate Community Solar Energy Facilities for the Community Solar ~~Energy Facility~~ Program, ~~("Community Solar Program"),~~ procure energy for the program through power purchase agreements with qualifying small power production facilities as defined in 16 U.S.C. § 796, or both. The Plan shall describe the Offering Utility's election(s).

(4) Subscribers to the Community Solar Program will receive a credit for each Subscription purchased during the Plan. The credit will be based on the Offering Utility's avoided cost rates.

(5) The Offering Utility may implement the Community Solar Program in stages such that the total nameplate generating capacity of the early stage or stages of the Program is less than 20 MW.

(6) In addition to the above, the Plan shall include:

a. Uniform standards and processes for the Offering Utility to recover reasonable interconnection costs, administrative costs, fixed costs, and variable costs associated with each community solar energy facility, including purchase expenses if a power purchase agreement is elected as the method of energy procurement by the O~~o~~ffering Utility;

b. A description of how the Offering Utility will develop and/or procure renewable solar power for the Community Solar Program and the procedures to implement such development and/or procurement. Such description shall include how the Offering Utility's proposed development and/or procurement and related procedures comply with the requirements of G.S. § 62-126.8;

c. An explanation of how customers of the electric public utility who do not subscribe to a community solar energy facility will be held harmless from the Program;

d. Process for participation by North Carolina retail customers on a first-come, first-served basis, including information on the treatment of subscriptions if

a subscriber moves within the Offering Utility's service territory, if a subscriber moves outside of the Offering Utility's service territory, and whether and how subscriptions may be transferred;

e. Program implementation schedule;

f. Methodology for determining the Subscription Fee, including a description and justification for any upfront costs proposed and projected impacts on participation;

g. A discussion of how the program will be promoted, including examples of communications or marketing materials to be used, if available, and including identification of information to be provided to potential subscribers to ensure fair disclosure of future costs and benefits of subscriptions and rules and charges associated with the Program;

h. An explanation of how subscribers will be credited the avoided cost rate;

i. Any rate schedules associated with the Community Solar Program, to the extent appropriate;

j. A tariff, pro forma contract between Subscriber and Offering Utility, an example of on-line offer of terms and conditions, or any or all of the above that contain terms and conditions regarding explanation of costs, risks and benefits, any one-time and ongoing fees, explanation of the concept of renewable energy certificates, and notifications regarding project status and performance; and

k. Description of how Subscribers may opt to own the renewable energy certificates produced by the Community Solar Energy Facility.

(d) Review of Community Solar Plans

(1) The Commission may approve, disapprove or modify the Community Solar Program proposed in the initial Plan or subsequent Plans.

(2) Unless the Commission orders otherwise, within 30 days after the Offering Utility files its Plan, any interested party may file initial comments on the proposed Plan.

(3) Unless the Commission orders otherwise, the Offering Utility and any other interested party may file reply comments addressing any substantive or procedural issue raised in initial comments.

(4) The Commission may direct each Offering Utility to make further filings with regard to each Community Solar Program approved under this Rule as the Commission determines to be appropriate.

(5) The Offering Utility shall submit a revised Plan if it desires to modify the procedures or procurement approach outlined in the initial Plan.

(6) To the extent the Offering Utility seeks an exemption of the requirement in G.S. § 62-126.8(c) that Subscribers be located in the State of North Carolina and in the same county or county contiguous to where the facility is located, the Offering Utility may file a request for such an exemption with the Commission. If the Commission deems the request to be in the public interest, it shall approve the request, provided that the facility is located no more than 75 miles from the county of the Subscribers.

(ed) Subscriber Requirements and Procedures

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(3) No single Subscriber shall have more than a forty percent (40%) interest in its Offering Utility's Community Solar Energy Program.
(4) Subscribers may subscribe to individual blocks, sized to represent at least 200 watts of the Community Solar facility's generating capacity.
(5) Subscribers are responsible for payment for each block of Community Solar Energy Facility capacity to which they subscribe.
(6) Subscribers may purchase multiple subscriptions consistent with G.S. § 62-126.8; however, each Offering Utility will define a cap for residential, commercial, and industrial customers limited to no more than one hundred percent (100%) of the maximum annual peak demand of electricity of each Subscriber at the Subscriber's premises.
(7) A Subscriber will be notified of program enrollment prior to first billing and credits.
(8) If enrollment exceeds availability, then potential Subscribers are automatically added to a Subscriber waiting list maintained by the Offering Utility.

(fe) Reporting Requirements

(1) No later than one year after the Commission's approval of the initial Plan, the Offering Utility shall update the Commission on the status of the Program, including updates on program implementation, marketing, the number of participants subscribed, whether the number of participants subscribed is sufficient to continue or sustain the program, and capacity installed. The Offering Utility shall provide subsequent updates if requested by the Commission or the Public Staff of the North Carolina Utilities Commission.

(g) Dispute Resolution – If there is a dispute between an Offering Utility and Subscriber(s), either party shall provide the other with written notice of the dispute. If the dispute is not resolved within ten (10) business days after receipt of notice, either party may contact the Public Staff for assistance informally resolving the dispute. If the parties are unable to informally resolve the dispute, either party may file a formal complaint at the Commission. This procedure does not limit the Offering Utility's ability to suspend or close the Program to new subscribers, if the Offering Utility determines that suspension or closure is appropriate and justified.