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September 17, 2015

VIA ELECTRONIC FILING

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

Re: Docket No. E-100, Sub 140

Dear Ms. Mount:

This letter is in response to the letter filed in this docket on September 10, 2015, by the Public Staff of the North Carolina Utilities Commission ("Public Staff"). That letter indicated that the Public Staff had worked with several other parties to this Docket to resolve or narrow the differences regarding the development of a form that would establish that a qualifying facility ("QF") had made a commitment to sell its output to a utility, thereby clarifying satisfaction of the second prong of the Commission's two-prong test for a QF to establish a legally enforceable obligation ("LEO") under the Public Utility Regulatory Policies Act.

As noted by the Commission in its *Order Setting Avoided Cost Input Parameters,* issued in this Docket on December 31, 2014, a LEO is established when a QF has (1) obtained a Certificate of Public Convenience and Necessity ("CPCN") or filed a Report of Proposed Construction ("ROPC") and (2) indicated to the relevant North Carolina utility that it is seeking to commit itself to sell its output to that utility. Satisfaction of the second, commitment to sell, prong has proved difficult for Duke Energy Carolinas, LLC ("DEC"), Duke Energy Progress, LLC ("DEP") and Dominion North Carolina Power ("DNCP") (collectively "the Utilities") to determine, because there is no clear, standard method for that communication to occur. The Notice of Commitment ("Notice") form filed by DNCP in its March 2, 2015 initial filing in this docket, as amended by DNCP's

August 7, 2015 reply comments, presented a means of establishing such a clear, standard method for a QF to communicate its commitment to sell to a utility.

As noted by the Public Staff in its letter, DEC, DEP (collectively, the "Companies"), DNCP, the North Carolina Sustainable Energy Association and the Public Staff held discussions regarding the form and content of the Notice, using the form filed by DNCP as Exhibit E to its August 7, 2015 Reply Comments as a starting point. The Public Staff correctly reports that the parties were in agreement as to the contents of the first four sections of DNCP's form. The parties were unable, however, to come to any agreement on the fifth or sixth sections of the form.

Since the date that the Public Staff's letter was filed, the Utilities have engaged in additional discussions among themselves regarding the Notice form and have been able to reach agreement as to the content of Section 5 of the Notice form as discussed further below. With respect to Section 6, the language of that Section will be specific to the relevant utility, in order to reflect each of the Companies' and DNCP's distinct internal procedures for interacting with QFs, as also discussed further below. As such, Section 6 of the Companies' Notice form is proposed to differ from Section 6 of DNCP's Notice Form, with the latter being the same as was filed with DNCP's August 7 reply comments.

Section 5

Section 5 is intended to clarify the acknowledgments both for QFs with capacity of 5 MW and less and for QFs greater than 5 MW ("large QFs"). As the Commission concluded in its March 6, 2015 *Order of Clarification* in this docket, with respect to large QFs, the Utilities should use the most up-to-date data to calculate avoided cost rates. Therefore, the establishment of a LEO is vital for the Utilities to determine what rate schedule the smaller QF is eligible for or to calculate the rates using "up-to-date" data for large QFs. Section 5(a)-(c) outlines the interplay of the CPCN and the Notice to clearly explain the requirements to establish a LEO. New Section 5(d)-(f) explains that the Notice is not perpetual. An executed purchase power agreement ("PPA") with one of the Utilities replaces the need for the LEO. If a PPA is terminated or expires, then the relevant Utility should not be forced to assume the QF still intends to sell to it, and the QF should not be able to revive a potentially long-past given Notice to obtain rates more advantageous to it than the rates that are currently in effect. Therefore, the Notice does not survive a terminated or expired PPA, unless the termination is determined to be improper as outlined in Section 5(d). One of the purposes of the LEO is to entitle the QF to avoided cost rates calculated at the time of the LEO is established. Allowing the Notice to carry on indefinitely, even after a PPA has been executed and then terminated or has expired, would defeat the purpose of the LEO, and allow the QF to claim a LEO

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years after the relevant PPA. Such a LEO would enable the QF to enter into a long-term fixed rate contract that would not be aligned to the current avoided costs of the Utilities, to the potential detriment of the Utilities' customers.

Section 5(f) requires acknowledgement that the Notice applies to the proposed facility that is identified in the CPCN or in the ROPC. In the Utilities' experiences, the generating facilities have been subject to "flipping," which means one QF developer assigning or selling the facility to another. Changes in ownership can make tracking a Notice administratively impossible. Attaching the Notice to the facility described in the CPCN or ROPC, and not to the owners of the facility, accomplishes the Commission's goals by linking a CPCN (or RPOC) and a commitment to sell from that facility to the establishment of a LEO.

DEC, DEP and DNCP have agreed to include new Section 5(d)-(f) as discussed above in their respective proposed Notice forms attached hereto as Exhibits A (DEC/DEP) and B (DNCP).

Section 6

Section 6 of the DNCP Notice form being submitted with this letter remains the same as it was filed at Exhibit E to DNCP's August 7 reply comments.

Section 6 of the DEC/DEP Notice form is designed to reflect the Companies' established internal procedures for interacting with QFs that differ from DNCP's own procedures. For DEC and DEP, Section 6 puts the timing of the Notice squarely in the control of the QF. As noted above, the Notice terminates upon execution of a PPA. For large QFs, the Notice should be completed on or about the time the QF completes the QF Template, which is located on DEC's and DEP's website. The QF Template has been used by DEC and DEP for some time now. The Notice will be accessible on-line as well and will actually contain a link to the QF Template. After the large QF has completed the QF Template and provided the Notice, the commitment to sell prong of the LEO test will be complete. If the QF also has a CPCN or ROPC at the time, the Companies are then able to calculate a rate for the large QF.

Section 6 further provides that if the QF does not request a PPA within 30 days of being provided that rate, then the Notice expires. Similarly, after being provided a PPA from the Companies, the QF has 90 days to execute it, or potentially extend it under the terms provided in Section 5(b)(iii). As demonstrated in Section 6, the QF is in control of the Notice; nothing the Companies can do will alter that date. Only the QF can cause the Notice to terminate by failing to act. In this respect, the LEO date remains aligned with the Companies' current avoided cost rates, and the time between the Notice date and the execution of the PPA does not stall indefinitely.

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For the foregoing reasons, the Utilities respectfully submit these Notice of Commitment to Sell forms to the Commission for its approval.

Sincerely,

Kendrick C. Fentress

Enclosures

cc: Parties of Record

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CERTIFICATE OF SERVICE

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

This the 17th day of September, 2015.

Kendrick C. Fentress

Kendrick C. Fentress
Associate General Counsel
Duke Energy Corporation
P.O. Box 1551/ NCRH 20
Raleigh, North Carolina 27602
Tel: 919.546.6733
kendrick.fentress@duke-energy.com

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NOTICE OF COMMITMENT TO SELL THE OUTPUT OF A QUALIFYING FACILITY TO Duke Energy Carolinas, LLC or Duke Energy Progress, LLC

Instructions to QF: The QF shall deliver, via certified mail, courier, hand delivery or email, its executed Notice of Commitment to:

Director – Power Contracts
400 South Tryon Street
Mail Code: ST 13A
Charlotte, North Carolina 28202
Attn.: Wholesale Renewable Manager
DERContracts@duke-energy.com

Any subsequent notice that a QF is required to provide to Company pursuant to this Notice of Commitment shall be delivered to the same address by one of the foregoing delivery methods.

1. [__________________] ("Seller") hereby commits to sell to Duke Energy Carolinas, LLC or Duke Energy Progress, LLC (the "Company") all of the electrical output of the Seller's qualifying facility ("QF") described in Seller's self-certification of QF status filed with the Federal Energy Regulatory Commission in Docket No. QF____________ (the "Facility").

2. The name, address, and contact information for Seller is:

__________________	Telephone: ________________________
__________________	Email: ____________________________

3. By execution and submittal of this commitment to sell the output of the Facility (the "Notice of Commitment"), Seller certifies as follows:

(Select the applicable certification below)

i. ____ Seller has received a certificate of public convenience and necessity ("CPCN") for the construction of its ____ kW (net capacity ac) Facility from the North Carolina Utilities Commission ("NCUC") pursuant to North Carolina General Statute § 62-110.1 and NCUC Rule R8-64, which CPCN was granted by NCUC on [insert date] in Docket No. _____________.

ii. ____ Seller is exempt from the CPCN requirements pursuant to North Carolina General Statute § 62-110.1(g) and has filed a report of proposed construction for its ____ kW (net capacity ac) Facility with the NCUC pursuant to NCUC Rule R8-65 ("Report of Proposed Construction") on

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[insert date] in Docket No. ________.

iii. ____Seller has applied or will apply for a CPCN for the construction of its____ kW (net capacity ac) Facility on [insert date] in Docket No. _____. If the Seller does not know the docket number on the date of submission of this Notice of Commitment, Seller shall notify the Company of the docket number when it is assigned by the NCUC. Seller shall notify the Company upon issuance of an order by the Commission granting the CPCN.

iv. ____ Seller is exempt from the CPCN requirements pursuant to North Carolina General Statute § 62-110.1(g) and will file a Report of Proposed Construction for its ____ kW (net capacity ac) Facility with the NCUC pursuant to NCUC Rule R8-65 and shall notify the Company at the address specified in paragraph 1 of the docket number of such filing when it is assigned by the NCUC.

4. This Notice of Commitment shall take effect on its "Submittal Date" as hereinafter defined. "Submittal Date" means (a) the receipted date of deposit of this Notice of Commitment with the U.S. Postal Service for certified mail delivery to the Company, (b) the receipted date of deposit of this Notice of Commitment with a third-party courier (e.g., Federal Express, United Parcel Service) for trackable delivery to the Company, (c) the receipted date of hand delivery of this Notice of Commitment to the Company at the address set forth in paragraph 1, above, or (d) the date on which an electronic copy of this Notice of Commitment is sent via email to the Company if such email is sent during regular business hours (9:00 a.m. to 5:00 p.m.) on a business day ((Monday through Friday excluding federal and state holidays). Emails sent after regular business hours or on days that are not business days shall be deemed submitted on the next business day.

5. By execution and submittal of this Notice of Commitment Seller acknowledges that:

a. The legally enforceable obligation date ("LEO Date") for the Facility will be determined in accordance with subsections (c) or (d) below. For QFs of 5 MW or less, the LEO Date will be used to determine Seller's eligibility for the rates, terms and conditions of the Company's currently effective Schedule PP. If the Seller's Facility does not qualify for Schedule PP, rates for purchases from the Facility will be based on the Company's avoided costs as of the LEO Date, calculated using data current as of the LEO Date.

b. If on the Submittal Date, Seller has a CPCN from or has filed a Report of Proposed Construction with NCUC for the Facility, the LEO Date will be the Submittal Date.

c. If on the Submittal Date, Seller does not have a CPCN for the Facility or has not filed a Report of Proposed Construction with the NCUC for the Facility, the LEO

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Date will be the date on which the NCUC issues a CPCN for the Facility or the filing date of the Report of Proposed Construction for the Facility, as applicable.

d. The Seller shall be required to establish a new Commitment to Sell for any terminated purchase arrangement, unless the termination of the purchase arrangement is rescinded or determined to be improper under the purchase arrangement's contractual dispute resolution provisions.

e. The Seller shall be required to establish a new Commitment to Sell for any expired purchase arrangement.

f. These requirements shall apply to the proposed facility or any other facility that may be sited at the location identified in the CPCN/ROPC, and shall apply to and be binding against any successor, assignee, transferee, or person or entity in interest that may own, operate, or desire to construct any QF facility at the location described in the CPCN/ROPC.

6. With respect to DEC and DEP, this Notice of Commitment shall automatically terminate and be of no further force and effect in the following circumstances :

a. Upon execution of a PPA between Seller and Company.

b. For a Seller that is not eligible for Schedule PP:

(i) If such Seller does not complete the QF Negotiated Pricing Template, available online at: https://www.progress-energy.com/carolinas/business/renewable-energy/sell/index.page within 10 days of providing the completed Notice of Commitment to Sell to DEC or DEP;

(ii) If such Seller does not request a PPA within 30 days of being provided the applicable avoided cost rate by DEC or DEP; or

(iii) If such Seller does not execute a PPA within ninety (90) days after DEC or DEP has (i) provided the applicable avoided cost rate to Seller and (ii) provided DEC and DEC customary form power purchase agreement to the Seller. DEC or DEP and Seller may mutually agree to extend the 90-day expiration period, subject to the engagement and continuation of good faith negotiations.

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The undersigned is duly authorized to execute this Notice of Commitment for the Seller:

____
[Name]

____
[Title]

____
[Company]

____
Date

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NOTICE OF COMMITMENT TO SELL THE OUTPUT OF A QUALIFYING FACILITY TO DOMINION NORTH CAROLINA POWER COMPANY

Instructions to QF: The QF shall deliver, via certified mail, courier, hand delivery or email, its executed Notice of Commitment to:

Director – Power Contracts
Dominion North Carolina Power
5000 Dominion
Boulevard
Innsbrook 3 SE
Glen Allen, Virginia
23060
powercontracts@dom.com

Any subsequent notice that a QF is required to provide to Company pursuant to this Notice of Commitment shall be delivered to the same address by one of the foregoing delivery methods.

1. [____________________] ("Seller") hereby commits to sell to Virginia Electric and Power Company d/b/a Dominion North Carolina Power (the "Company") all of the electrical output of the Seller's qualifying facility ("QF") described in Seller's self-certification of QF status filed with the Federal Energy Regulatory Commission in Docket No. QF____________ (the "Facility").

2. The name, address, and contact information for Seller is:

____________________	Telephone:
__________________________	
____________________	Email:
______________________________	

3. By execution and submittal of this commitment to sell the output of the Facility (the "Notice of Commitment"), Seller certifies as follows:

(Select the applicable certification below)

i. ____ Seller has received a certificate of public convenience and necessity ("CPCN") for the construction of its ____ kW (net capacity ac) Facility from the North Carolina Utilities Commission ("NCUC") pursuant to North Carolina General Statute § 62-110.1 and NCUC Rule R8-64, which CPCN was granted by NCUC on [insert date] in Docket No. _____________.

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ii. ____ Seller is exempt from the CPCN requirements pursuant to North Carolina General Statute § 62-110.1(g) and has filed a report of proposed construction for its ____ kW (net capacity ac) Facility with the NCUC pursuant to NCUC Rule R8-65 ("Report of Proposed Construction") on [insert date] in Docket No. _________.

iii. ____Seller has applied or will apply for a CPCN for the construction of its____ kW (net capacity ac) Facility on [insert date] in Docket No. _____. If the Seller does not know the docket number on the date of submission of this Notice of Commitment, Seller shall notify the Company of the docket number when it is assigned by the NCUC. Seller shall notify the Company upon issuance of an order by the Commission granting the CPCN.

iv. ____ Seller is exempt from the CPCN requirements pursuant to North Carolina General Statute § 62-110.1(g) and will file a Report of Proposed Construction for its ____ kW (net capacity ac) Facility with the NCUC pursuant to NCUC Rule R8-65 and shall notify the Company at the address specified in paragraph 1 of the docket number of such filing when it is assigned by the NCUC.

4. This Notice of Commitment shall take effect on its "Submittal Date" as hereinafter defined. "Submittal Date" means (a) the receipted date of deposit of this Notice of Commitment with the U.S. Postal Service for certified mail delivery to the Company, (b) the receipted date of deposit of this Notice of Commitment with a third-party courier (e.g., Federal Express, United Parcel Service) for trackable delivery to the Company, (c) the receipted date of hand delivery of this Notice of Commitment to the Company at the address set forth in paragraph 1, above, or (d) the date on which an electronic copy of this Notice of Commitment is sent via email to the Company if such email is sent during regular business hours (9:00 a.m. to 5:00 p.m.) on a business day ((Monday through Friday excluding federal and state holidays). Emails sent after regular business hours or on days that are not business days shall be deemed submitted on the next business day.

5. By execution and submittal of this Notice of Commitment Seller acknowledges that:

a. The legally enforceable obligation date ("LEO Date") for the Facility will be determined in accordance with subsections (c) or (d) below. For QFs of 5 MW or less, the LEO Date will be used to determine Seller's eligibility for the rates, terms and conditions of the Company's currently effective Schedule 19. If the Seller's Facility does not qualify for Schedule 19, rates for purchases from the Facility will be based on the Company's avoided costs as of the LEO Date, calculated using data current as of the LEO Date.

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b. If on the Submittal Date, Seller has a CPCN from or has filed a Report of Proposed Construction with NCUC for the Facility, the LEO Date will be the Submittal Date.

c. If on the Submittal Date, Seller does not have a CPCN for the Facility or has not filed a Report of Proposed Construction with the NCUC for the Facility, the LEO Date will be the date on which the NCUC issues a CPCN for the Facility or the filing date of the Report of Proposed Construction for the Facility, as applicable.

d. The Seller shall be required to establish a new Commitment to Sell for any terminated purchase arrangement, unless the termination of the purchase arrangement is rescinded or determined to be improper under the purchase arrangement's contractual dispute resolution provisions.

e. The Seller shall be required to establish a new Commitment to Sell for any expired purchase arrangement.

f. These requirements shall apply to the proposed facility or any other facility that may be sited at the location identified in the CPCN/ROPC, and shall apply to and be binding against any successor, assignee, transferee, or person or entity in interest that may own, operate, or desire to construct any QF facility at the location described in the CPCN/ROPC.

6. This Notice of Commitment shall automatically terminate and be of no further force and effect in the following circumstances:

a. Upon execution of a PPA between Seller and Company;

b. For a Seller eligible for Schedule 19, if such Seller does not execute a PPA within thirty (30) days of the Company's delivery of an "executable" PPA. An executable PPA shall mean a PPA delivered to the QF by the Company that contains all information necessary for execution and that the Company has requested that the QF execute and return.

c. For a Seller that is not eligible for Schedule 19, if such Seller does not execute a PPA within six months (as such period may be extended by mutual agreement of Seller and Company) after the Company's submittal of the PPA to the QF, provided, however, that if no interconnection agreement for the Facility has been tendered to Seller prior to the expiration of such deadline, the deadline for execution of the PPA shall be automatically extended until the date that is five days after the date that the interconnection agreement is tendered to the Seller. Notwithstanding the foregoing, if the PPA proposed by the Company becomes the subject of

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an arbitration or complaint proceeding, the six month deadline for execution of the PPA shall be tolled upon the filing of the pleading commencing such proceeding and thereafter the deadline for execution of the PPA will be as directed by the NCUC.

The undersigned is duly authorized to execute this Notice of Commitment for the Seller:

____
[Name]

____
[Title]

____
[Company]

____
Date