



**NORTH CAROLINA
PUBLIC STAFF
UTILITIES COMMISSION**

December 22, 2020

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

Re: Docket No. E-2, Sub 1262 and E-7, Sub 1243
Petition for Storm Securitization

Dear Ms. Campbell:

In connection with the above-referenced docket, I transmit herewith for filing on behalf of the Public Staff the joint testimony and exhibits of Michael C. Maness, Director, Accounting Division and Michelle M. Boswell, Manager, Electric Section, Accounting Division.

By copy of this letter, I am forwarding a copy to all parties of record by electronic delivery.

Sincerely,

Electronically submitted
/s/ William E. H. Creech
Staff Attorney
zeke.creech@psncuc.nc.gov

Attachments

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BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1262

DOCKET NO. E-7, SUB 1243

In the Matter of)	
Joint Petition of Duke Energy Carolinas,)	JOINT TESTIMONY OF
LLC, and Duke Energy Progress, LLC)	MICHAEL C. MANESS
for Issuance of Storm Recovery)	AND
Financing Orders)	MICHELLE M. BOSWELL
)	PUBLIC STAFF – NORTH
)	CAROLINA UTILITIES
)	COMMISSION

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1262

DOCKET NO. E-7, SUB 1243

Joint Testimony of Michael C. Maness and Michelle M. Boswell

On Behalf of the Public Staff

North Carolina Utilities Commission

December 22, 2020

1 **Q. MR. MANESS, PLEASE STATE YOUR NAME, BUSINESS**
2 **ADDRESS, AND PRESENT POSITION.**

3 A. My name is Michael C. Maness. My business address is 430 North
4 Salisbury Street, Dobbs Building, Raleigh, North Carolina. I am
5 Director of the Accounting Division of the Public Staff – North
6 Carolina Utilities Commission (Public Staff).

7 **Q. BRIEFLY STATE YOUR QUALIFICATIONS AND DUTIES.**

8 A. My qualifications and duties are included in Appendix A.

9 **Q. MS. BOSWELL, PLEASE STATE YOUR NAME, BUSINESS**
10 **ADDRESS, AND PRESENT POSITION.**

11 A. My name is Michelle M. Boswell. My business address is 430 North
12 Salisbury Street, Dobbs Building, Raleigh, North Carolina. I am

1 Manager of the Electric Section of the Accounting Division of the
2 Public Staff – North Carolina Utilities Commission (Public Staff).

3 **Q. BRIEFLY STATE YOUR QUALIFICATIONS AND DUTIES.**

4 A. My qualifications and duties are included in Appendix B.

5 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

6 A. The purpose of our testimony is to present the Public Staff’s position
7 on certain matters related to Docket No. E-7, Sub 1243 and Docket
8 E-2, Sub 1262, the Joint Petition for Financing Orders (Petition) filed
9 with the Commission by Duke Energy Carolinas, LLC (DEC) and
10 Duke Energy Progress, LLC (DEP) (collectively, the Companies), on
11 October 26, 2020. By way of the Petition, the Companies request
12 that the Commission issue a Financing Order that will authorize and
13 enable each of the Companies to engage in securitization of the
14 expenses and capital costs associated with certain major storms
15 experienced in 2018 and 2019. Our testimony is filed in conjunction
16 with testimony filed in this proceeding by Calvin C. Craig, III,
17 Financial Analyst, Public Staff Economic Research Division, and on
18 behalf of the Public Staff by consultants from Saber Partners, LLC.

19 **Q. PLEASE BRIEFLY EXPLAIN WHAT YOU MEAN BY THE TERM**
20 **“SECURITIZATION.”**

1 A. Securitization, as the term is used in this proceeding, is a process by
2 which a utility takes a large, specifically identified set of incurred
3 costs subject to being recovered over time through depreciation or
4 amortization, and instead of including the unamortized balance in
5 rate base, finances it with debt-only securities financially and legally
6 segregated from the capital structure used for ratemaking purposes.
7 Therefore, because the undepreciated or unamortized balance is
8 subject to only a debt return during the depreciation/amortization
9 period, instead of the utility's full weighted average cost of capital
10 (WACC) (both debt and equity components), the securitization
11 process potentially reduces the overall cost to ratepayers principally
12 by the difference between the WACC and the significantly lower
13 interest rate. If a large amount of principal is securitized, this process
14 can save ratepayers many millions of dollars.

15 **Q. PLEASE DESCRIBE THE TOPICS YOU WILL COVER IN YOUR**
16 **TESTIMONY.**

- 17 A. In our testimony, we will address four basic topics:
- 18 1. Statutory Basis for the Petition and Specific Relevance to
19 our Testimony.
 - 20 2. Relevant General Rate Case Proceedings.
 - 21 3. Costs to be Securitized.
 - 22 4. Conditions of the General Rate Case Stipulations Affecting
23 Test of Quantifiable Benefits.
 - 24 5. Application of the net benefit test.

**STATUTORY BASIS FOR PETITION AND SPECIFIC
RELEVANCE TO THIS TESTIMONY**

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Q. WHAT IS THE BASIS FOR THE PETITION?

A. The Petition has been filed with the Commission pursuant to N.C. Gen. Stat. § 62-172. *Financing for certain storm recovery costs* (G.S. § 62-172). This statute enables DEC and DEP to utilize the process of securitization for certain operations and maintenance expenses and capital expenditures associated with significant weather events and natural disasters. It contains provisions addressing, among other matters, the types of storms that may be considered for securitization, the nature of storm recovery costs that may be securitized, the determination of the storm recovery bonds and the resulting charges that may be charged to ratepayers, the financial comparison that must be made to determine if the proposed securitization provides quantifiable benefits to the ratepayers, the manner in which certain adjustments to storm recovery costs may be addressed and trued up during the process, and several measures intended to secure and ensure the non-bypassable charges to ratepayers that will be used to satisfy the payment of bond principal and financing costs. For purposes of our testimony, we are focusing particularly on (1) the portions of the statute that deal with the quantification and true-up of costs to be securitized (2) deferral accounts that will track items to be addressed in future rate cases,

1 and (3) the net present value comparison required by G.S. § 62-
2 172(b)(1)g that measures quantifiable benefits.

3 **REVIEW OF RELEVANT GENERAL RATE CASE**
4 **PROCEEDINGS**

5 **Q. HOW DO THE COMPANIES' CURRENTLY PENDING GENERAL**
6 **RATE CASES AFFECT THIS PROCEEDING?**

7 A. As discussed in the Petition and the testimony of DEC and DEP
8 witness Abernathy, in their general rate cases filed in 2019 [for DEC,
9 Docket No. E-7, Sub 1214 (Sub 1214); for DEP, Docket No. E-2, Sub
10 1219 (Sub 1219)], prior to G.S. § 62-172 being enacted into law, DEC
11 and DEP included proposals to defer and amortize the costs of
12 several major storms experienced in 2018 and 2019. However, DEC
13 and DEP witnesses testified that if the then-proposed securitization
14 statute was passed, the Companies would consider removing the
15 impacts of the deferred storm costs from the cases and pursuing
16 securitization instead.

17 G.S. § 62-172 became law in the fall of 2019. Subsequently, on
18 March 25, 2020 for DEC, and on June 2, 2020 for DEP, each of the
19 Companies filed Partial Settlement Agreements (First Partial
20 Stipulations) between it and the Public Staff, which, among other
21 things, contained an agreement that each of the Companies would
22 remove the capital and O&M impacts of the major storms from the

1 cost of service in the general rate cases, and pursue recovery
2 through securitization pursuant to G.S. § 62-172. The First Partial
3 Stipulations contain several provisions to protect the interests of the
4 parties should securitization not be ultimately pursued or approved,
5 and also provided for the effects of appeal of the Commission's rate
6 case orders and the future filing of a petition for rulemaking to
7 establish standards for future securitization proposals. Most
8 significantly for our testimony, the First Partial Stipulations contain
9 agreed-to assumptions that would be used in performing the net
10 present value tests of quantified benefits in the securitization
11 proceedings. These assumptions are discussed later in our
12 testimony.

13 The Sub 1214 and Sub 1219 general rate cases remain pending
14 before the Commission. However, we have proceeded in this
15 securitization proceeding under the provisional assumption that the
16 securitization-related proceedings of the First Partial Stipulations will
17 be approved. The First Partial Stipulations in Sub 1214 and Sub
18 1219 are filed with our testimony as Maness Boswell Exhibit 1 and
19 Maness Boswell Exhibit 2, respectively.

1 **COSTS TO BE SECURITIZED**

2 **Storm Costs**

3 **Q. PLEASE PROVIDE A DESCRIPTION OF THE COMPANIES’**
4 **STORM COSTS INCLUDED IN THE PRESENT SECURITIZATION**
5 **FILING.**

6 A. In the present securitization filing, the Companies have included
7 storm costs for Hurricanes Florence and Michael from 2018, Winter
8 Storm Diego from 2018, and, for DEP only, Hurricane Dorian from
9 2019. These were the same three and four storms for DEC and DEP,
10 respectively, which were removed from the cost of service as part of
11 the First Partial Stipulations between the Companies and the Public
12 Staff in each of their currently pending general rate cases. The
13 Companies have included incremental O&M and capital costs of
14 \$739,008,000 (for DEP) and \$225,570,000 (for DEC), as depicted on
15 witness Abernathy’s Exhibit 2 for each of the Companies. These
16 amounts include O&M expenses and capital expenditures
17 associated with the 2018 and 2019 storms, and carrying costs on all
18 storm expenditures through May 31, 2021 at the net-of-tax weighted
19 average cost of capital (WACC) either approved by the Commission
20 in each of the Companies’ most recent general rate cases or
21 proposed in the current general rate cases’ stipulations with the
22 Public Staff.

1 Q. ARE THE AMOUNTS OF STORM COSTS PRESENTED BY THE
2 COMPANIES IN THIS PROCEEDING THE SAME AMOUNTS THAT
3 WERE REMOVED FROM THE COST OF SERVICE IN EACH OF
4 THE COMPANIES' CURRENT PENDING GENERAL RATE
5 CASES?

6 A. The costs included by the Companies in the present securitization
7 filing incorporate the costs included in each of the Companies'
8 respective general rate cases currently pending before the
9 Commission. However, the Companies have updated certain
10 amounts of the O&M storm expenses included in the general rate
11 cases. DEC's O&M storm expenses have decreased by the very
12 small amount of \$31,000, although there are several upward and
13 downward adjustments that net out to this amount. DEP's O&M
14 storm expenses have decreased by the larger amount of
15 approximately \$10.7 million, again by way of several upward and
16 downward adjustments. Capital expenditures are unchanged from
17 the amounts set forth in the general rate cases, while the carrying
18 cost balances have been updated through May 31, 2021, and have
19 also been adjusted to reflect, on and after January 1, 2021 for DEC
20 and February 1, 2021 for DEP, the net-of-tax WACC stipulated to by
21 the Public Staff and each of the Companies currently pending
22 general rate cases.

1 DEC and DEP witness Abernathy confirms in her testimony that there
2 will be no additional costs associated with the 2018 storms recorded
3 after June 30, 2020, the period through which the Companies have
4 included costs in the filing. Witness Abernathy further testifies that
5 no further adjustments to incremental O&M or capital costs included
6 in the securitization financing are expected for the 2019 storms,
7 which have been updated through September 30, 2020.

8 **Q. WHAT ARE THE PUBLIC STAFF'S RECOMMENDATIONS**
9 **REGARDING THE STORM COSTS INCLUDED IN THE STORM**
10 **SECURITIZATION FILING?**

11 A. In the course of the Companies' respective general rate cases, the
12 Public Staff reviewed the 2018 and 2019 storm costs, and concluded
13 that overall they were prudently incurred and reasonable for
14 ratemaking purposes. In this proceeding, the Public Staff has
15 gathered certain supporting documentation for the net reduction in
16 storm-related O&M expenses, and has verified the calculation of
17 carrying costs, assuming a storm recovery bond issuance date of
18 June 1, 2021 and Commission approval of the stipulated net-of-tax
19 WACC rates as of January 1, 2021 (for DEC) and February 1, 2021
20 (for DEP). However, due to the time constraints of this proceeding,
21 the Public Staff has not been able to fully review all the changes in
22 recorded O&M expenses since the general rate cases. Therefore,

1 those changes in expenses remain subject to future review.
2 Likewise, the final carrying cost amount remains subject to the actual
3 bond issuance date and the Commission's final decision in each
4 case regarding the net-of-tax WACC. With regard to storm-related
5 O&M expenses, the Public Staff recommends that the Companies be
6 required to provide any further supporting documentation requested
7 by the Public Staff to complete its review of the changes in storm
8 costs recorded since each of the Companies' general rate cases, and
9 that any differences between the final actual, prudent, and
10 reasonable amounts and the amounts included in securitized storm
11 recovery charges be addressed in each of the Companies' next
12 general rate cases, as provided for in G.S. § 62-172(a)(14)c.
13 Likewise, any difference between the final, accurately calculated
14 carrying costs and the amounts included in securitized storm
15 recovery charges should be addressed in each of the Companies'
16 next general rate cases, as provided for in the statute.

17 **Upfront and Ongoing Financing Costs**

18 **Q. PLEASE DESCRIBE THE FINANCING COSTS INCLUDED BY THE**
19 **COMPANIES IN THE FILING.**

20 A. The Companies have proposed that proceeds of storm recovery
21 bonds be used to finance their total storm securitization costs as well
22 as their up-front financing costs. The Companies also have proposed

1 that storm recovery charges be set and adjusted from time-to-time to
2 pay their ongoing financing costs. Up-front financing costs are the
3 fees and expenses incurred to obtain the Financing Orders, as well as
4 the expenses for structuring, marketing, and issuing each series of the
5 ratepayer-funded storm securitization bonds. According to DEC and
6 DEP witness Heath, these expenses include external and internal
7 legal fees, structuring advisory fees and expenses, interest rate swap
8 or lock fees, underwriting fees and original issue discount, rating
9 agency and trustee fees, accounting fees, information technology
10 programming costs, servicer's set-up costs, printing and marketing
11 expenses, stock exchange listing and compliance fees, filing and
12 registration fees, and expenses of outside consultants and/or counsel
13 if sought by the Commission or the Public Staff. The Companies have
14 estimated these costs at \$5.2 million for DEC and \$8.9 million for DEP.
15 Most of the up-front financing costs will not be determined until the
16 issuance advice letter process.

17 Ongoing financing costs are expenses incurred throughout the life of
18 the ratepayer-funded storm recovery bonds to support the ongoing
19 operations of the special purpose entity (SPE). According to DEC and
20 DEP witness Heath, ongoing financing costs include servicing fees,
21 return on invested capital, administration fees, accounting and
22 auditing fees, legal fees, rating agency surveillance fees, trustee fees,
23 independent director or manager fees, and other miscellaneous fees

1 associated with servicing the ratepayer-funded storm recovery bonds.
2 The Companies have estimated the annual ongoing financing costs at
3 approximately \$0.44 million for DEC and \$0.91 million for DEP. A
4 portion of the ongoing financing costs will be known by the issuance
5 of a series of ratepayer-funded storm recovery bonds, while other
6 costs will vary over the term of the bonds.

7 **Q. DOES THE PUBLIC STAFF BELIEVE IT REASONABLE TO**
8 **INCLUDE THE UP-FRONT AND ONGOING FINANCING FEES IN**
9 **THE OVERALL COSTS OF THE STORM SECURITIZATION**
10 **BONDS?**

11 A. The Public Staff believes the Companies will incur some costs
12 associated with originating the bonds as well as the ongoing
13 maintenance of the bonds, and it is reasonable to include an estimate
14 of those costs in the overall costs of the ratepayer-funded storm
15 securitization bonds.

16 **Q. PLEASE EXPLAIN ANY TRUE-UPS AND DEFERRALS THAT**
17 **WOULD BE NEEDED IN ORDER TO REFLECT ACTUAL COSTS.**

18 A. In its filing, the Companies have proposed estimated costs for both
19 the up-front and ongoing financing costs, and the costs will need to be
20 updated for actual known and measurable costs. In addition, the
21 Companies acknowledge that fees payable to the Companies
22 pursuant to their Servicing Agreements and Administration

1 Agreements are expected to exceed the Companies' direct and
2 incremental costs of providing those services. The differences
3 between the actual prudently incurred and properly accounted for
4 costs and the estimated costs included by the Companies, or the
5 differences between the fees payable to the Companies pursuant to
6 their Servicing Agreements and Administration Agreements in fact
7 exceed the Companies' direct and incremental costs of providing
8 those services, in the present filing will either need to be refunded to
9 or collected from ratepayers.

10 The Companies have proposed that if the actual up-front financing
11 costs are less than the estimated costs (resulting in an overrecovery
12 of financing costs), the difference in the costs will be credited back to
13 ratepayers in a manner to be determined in the Financing Orders,
14 provided that adjustments are not made to storm recovery charges for
15 such excess as prohibited by G.S. § 62-172. However, if the actual
16 up-front fees are more than the estimate included by the Companies
17 (resulting in an underrecovery), the Companies are requesting that a
18 regulatory asset be established to allow the Companies to collect such
19 costs through the normal ratemaking process. The Public Staff does
20 not oppose establishing a regulatory asset for prudently incurred and
21 properly accounted for underrecoveries of up-front costs. The Public
22 Staff believes the regulatory asset should include only the excess
23 costs, adjusted if appropriate for income taxes, and accrued carrying

1 costs at the Companies' respective net-of-tax WACC, and collected
2 from ratepayers in an appropriate manner in each of the Companies'
3 next general rate cases.

4 In regards to the overrecovery of up-front financing costs, the Public
5 Staff believes that these amounts should be credited back to the
6 ratepayers through use of a deferred regulatory liability and
7 subsequent credit to the cost of service as part of the normal
8 ratemaking process, returning the monies to the ratepayers in an
9 appropriate manner in each of the Companies' next general rate
10 cases. The Public Staff does not believe that this approach would
11 violate the terms of G.S. § 62-172. The deferred regulatory liability
12 for up-front financing costs could be combined with the regulatory
13 asset for the same type of costs, but should not be combined with
14 the regulatory assets and liabilities for other types of securitization-
15 related costs and benefits.

16 For ongoing financing costs, the Companies propose to resolve any
17 over- or underrecoveries of actual costs through the semi-annual,
18 quarterly, and or optional interim true-up mechanism. While the Public
19 Staff understands the administrative ease that this approach would
20 afford the Companies, as well as the need to periodically adjust storm
21 recovery charges to reflect true-up of these over- and
22 underrecoveries, we are not sure that allowing all changes in ongoing

1 financing costs to avoid Commission oversight would be in keeping
2 with the provisions of G.S. § 62-172(b)(3)d, which states, with regard
3 to the investigation of the true-up filings, “The review of the filing shall
4 be limited to determining whether there are any mathematical or
5 clerical errors in the application of the formula-based mechanism
6 relating to the appropriate amount of any overcollection or
7 undercollection of storm recovery charges and the amount of an
8 adjustment.” Changes in financing costs might well create the need
9 for review and investigation that could not be accomplished within
10 the 30-day window established by the statute for review of these
11 filings. The Public Staff believes that the changes in costs to be
12 charged or refunded to ratepayers should be subject to audit and
13 review for prudence and proper accounting prior to finalizing the
14 amounts to be collected from or returned to ratepayers. Therefore,
15 the Public Staff recommends that adjustments to ongoing financial
16 costs that are passed through to the non-bypassable storm recovery
17 charges be matched with an offsetting regulatory asset or liability in
18 the Companies’ traditional ratemaking cost of service. If upon later
19 review, the changes in costs prove to be imprudently incurred or
20 otherwise unreasonable, appropriate adjustments can be made to the
21 cost of service in a future general rate case proceeding. These
22 deferred regulatory assets or liabilities for ongoing financing costs
23 could be combined, but should not be combined with the regulatory

1 assets and liabilities for other types of securitization-related costs
2 and benefits.

3 We also recommend that in the periodic true-ups DEC and DEP each
4 be required to inform the Commission in the filing of any changes to
5 the ongoing financing costs from the previous filing, and the
6 cumulative balance of all changes since the most recent general rate
7 case.

8 **Service Fees Paid to DEC and DEP**

9 **Q. PLEASE DESCRIBE THE TREATMENT OF THE SERVICER FEES**
10 **AND ADMINISTRATION FEES BETWEEN THE COMPANIES AND**
11 **THE SPE.**

12 A. The Companies have included a servicing fee of 0.05 percent of the
13 total ratepayer-funded storm securitization bond issuance, plus out-
14 of-pocket expenses. The servicing fee will be charged by DEC and
15 DEP to the SPEs, collected through the storm recovery charges by
16 the SPEs, and then passed by the SEPs to DEC and DEP, where it
17 will be recorded as revenue on each of the respective Companies'
18 books and where the Companies' actual and direct expenses
19 incurred in providing those services will be included in the cost of
20 service. The servicing fee is designed to recover the Companies'
21 direct and incremental costs associated with billing, monitoring,
22 collecting, and remitting securitization charges; complying with the

1 reporting requirements imposed by the servicing agreement;
2 implementing the true-up mechanism; conducting procedures
3 required to coordinate required audits related to the Companies' role
4 as servicers; performing legal and accounting functions related to the
5 servicing obligation; and communicating with rating agencies. All of
6 the above costs will be recorded as expenses on the Companies'
7 books, and also included in the cost of service.

8 Similarly, the Companies have included an administration fee of
9 \$50,000 per annum, plus out-of-pocket expenses. The
10 administration fee will be charged by DEC and DEP to the SPEs,
11 collected through the storm recovery charges by the SPEs, and then
12 passed by the SPEs to DEC and DEP, where it will be recorded as
13 revenue on each of the respective Companies' books, and where the
14 Companies' actual and direct expenses incurred in providing those
15 services will be included in the cost of service. The administration
16 fee is designed to recover the Companies' direct and incremental
17 costs associated administering the SPE. The above costs will be
18 recorded as expenses on the Companies' books, and also included
19 in the cost of service.

20 **Q. PLEASE DESCRIBE ANY DEFERRALS PROPOSED BY THE**
21 **COMPANIES REGARDING THE SERVICING FEE AND THE**
22 **ADMINISTRATION FEE.**

1 A. In the proposed form of Financing Order attached as Appendix C to
2 the Joint Petition, the Companies request that servicing and
3 administration fees collected by the Companies be included in the
4 Companies' cost of service, and that the Companies credit back the
5 fees to the ratepayers as part of the Companies' cost of service in
6 the next general rate case, along with all of the incremental costs of
7 performing servicing and administration functions, as well as the
8 expenses incurred by the Companies to perform obligations under
9 the Servicing Agreement or Administrative Agreement not otherwise
10 recovered through the storm recovery charge.

11 **Q. PLEASE EXPLAIN THE PUBLIC STAFF'S RECOMMENDATION**
12 **REGARDING THE SERVICING FEE AND ADMINISTRATION FEE.**

13 A. Because general rate cases do not occur every year, and sometimes
14 several years can pass between them, the Public Staff believes the
15 servicing and administrative fees collected on behalf of the
16 Companies in excess of the actual direct and incremental costs
17 associated with providing those services should, instead of simply
18 being passed annually through the cost of service, be held in a
19 regulatory liability account, separate from the regulatory assets and
20 liabilities for other types of securitization-related costs and benefits,
21 adjusted if appropriate for income taxes and accrued carrying costs
22 at the Companies' respective net-of-tax WACC, and refunded to

1 ratepayers in an appropriate manner in the next general rate case.
2 This methodology will ensure the Companies recover the actual
3 costs they incur to service the storm recovery bonds and to
4 administer the SPEs while providing assurance to ratepayers that the
5 actual excess amounts collected by the Companies' will be passed
6 through to them, even if they are collected from the SEPs in years
7 between general rate cases, thus avoiding any windfalls associated
8 with the storm securitization. It should be noted that this approach
9 does not preclude setting a normalized net revenue amount during
10 general rate cases, and then truing up over- or underrecoveries in
11 future general rate cases.

12 **Tail-End Collections**

13 **Q. PLEASE EXPLAIN THE TAIL-END COLLECTIONS.**

14 A. The Companies, through the SPE, will collect storm recovery
15 charges until such time the entire storm recovery bonds and ongoing
16 financing charges are paid in full. Since it is not possible to know the
17 exact billing or collections before they are made, the Companies will
18 continue to bill and collect from ratepayers the storm recovery charge
19 for a period of typically 60 to 90 days after the storm recovery bonds
20 would have been fully recovered. The overcollection is due to the
21 timing difference of when billing and collections cease and the storm
22 recovery bonds are fully recovered.

1 **Q. PLEASE EXPLAIN THE COMPANIES' RECOMMENDATION AS**
2 **TO HOW TO REFUND THE OVERCOLLECTION TO**
3 **RATEPAYERS.**

4 A. In the present case, the Companies have proposed to credit a
5 regulatory liability account for any amounts remaining in each
6 Collection Account, less the amount of any Capital Subaccount, and
7 credit the net amount back to ratepayers in the Companies' next
8 general rate case following maturity of the storm recovery bonds.

9 **Q. PLEASE EXPLAIN THE PUBLIC STAFF'S RECOMMENDATION**
10 **AS TO HOW TO REFUND THE TAIL-END CREDIT.**

11 A. The Public Staff believes the overcollection due to all tail-end
12 collections of storm recovery charges should be held in a regulatory
13 liability account, separate from other securitization-related regulatory
14 assets and liabilities, adjusted if appropriate for income taxes and
15 accrued carrying costs at the Companies' respective net-of-tax
16 WACC, and then refunded to ratepayers in an appropriate manner in
17 the next general rate case. The Public Staff believes this
18 methodology is reasonable, as the Companies' have not historically
19 filed rate cases on an annual basis. Separating this regulatory
20 liability from other amounts receiving deferral treatment for
21 securitization that occurred in years prior to the tail-end credit would

1 avoid delay in collecting or refunding any of those other regulatory
2 assets or liabilities.

3 **Capital Contributions**

4 **Q. PLEASE EXPLAIN THE CAPITAL CONTRIBUTIONS INCLUDED**
5 **IN THE COMPANIES' FILING.**

6 A. In the present filing, the Companies propose to each make a capital
7 contribution of at least 0.50 percent of the original principal amount
8 of the storm recovery bonds for their utility to their respective SPE.
9 The SPE will deposit the contributions into a Capital Subaccount,
10 which will be used as collateral to facilitate timely payment of
11 principal and interest on the storm recovery bonds. The Capital
12 Subaccount will be invested in short-term high-quality investments,
13 and any remaining amounts in the Capital Subaccount will be
14 returned to the Companies upon full payment of the storm recovery
15 bonds.

16 **Q. PLEASE EXPLAIN THE RETURN THE COMPANIES ARE**
17 **SEEKING ON THE CAPITAL CONTRIBUTIONS.**

18 A. The Companies are requesting a return on the capital contributions
19 made to the Capital Subaccount based upon the interest rate of the
20 longest maturing tranche of storm recovery bonds. The Companies

1 are requesting the return on capital be treated much like ongoing
2 finance costs, and be recovered through the storm recovery charges.

3 **Q. WHAT IS THE PUBLIC STAFF'S RECOMMENDATION**
4 **REGARDING THE RETURN ON CAPITAL CONTRIBUTIONS?**

5 A. The Public Staff believes the Companies should not earn an
6 additional return on the contributed capital over and above what the
7 SPE actually earns on its investments and returns to the Companies.
8 Public Staff witness Sutherland addresses this issue in detail in his
9 testimony, pointing out that the Companies' capital is not at risk. In
10 addition to what is included in his testimony, we would like to point
11 out that securitization is a process that, pursuant to G.S. § 62-172, is
12 entirely at the discretion of the Companies to propose undertaking.
13 Any opportunity cost incurred by the Companies as a result of not
14 having "free" capital is incurred by their choice to pursue
15 securitization, which, as witness Sutherland points out, has its own
16 benefits to the Company.

17 **CONDITIONS OF THE GENERAL RATE CASE STIPULATIONS**
18 **AFFECTING TEST OF QUANTIFIABLE BENEFITS**

19 **Q. PLEASE DESCRIBE THE PORTIONS OF THE STIPULATIONS**
20 **THAT AFFECT THE NET PRESENT VALUE TESTS OF**
21 **QUANTIFIABLE BENEFITS?**

1 A. As previously noted, each of the First Partial Stipulations includes
2 agreed-to assumptions to be used in the net present value tests
3 applied pursuant to N.C.G.S. § 62-172(b)(1)g. For DEC, these
4 assumptions, as set forth in Section III.3 of the Sub 1214 First Partial
5 Stipulation, are as follows:

6 a. For traditional storm cost recovery, 12 months of amortization
7 for each Storm was expensed prior to the new rates going
8 into effect;

9 b. For traditional storm cost recovery, no capital costs incurred
10 due to the Storms during the 12-month period were included
11 in the deferred balance;

12 c. For traditional storm cost recovery, no carrying charges were
13 accrued on the deferred balance during the 12-month period
14 following the date(s) of the Storm(s);

15 d. For traditional cost recovery, the amortization period for the
16 Storms is a minimum of 10 years; and

17 e. For securitization, the imposition of the Storm recovery
18 charge begins nine months after the new rates go into effect.

19 For DEP, the assumptions set forth in Section III.3 of the Sub 1219
20 First Partial Stipulation are the same as those set forth for DEC,
21 except that assumption d. uses a minimum of 15 years instead of 10.

22 **Q. WHAT ARE THE REASONS FOR THESE ASSUMPTIONS?**

23 A. The reason that most of the assumptions were included is that there
24 are certain differences between the manner in which the deferral and
25 amortization of major storm costs has been generally treated for
26 traditional ratemaking purposes by the Commission and the manner

1 that storm recovery costs and charges are required to be treated for
2 securitization purposes pursuant to N.C.G.S. § 62-172, and the
3 Public Staff, in particular, believed that these differences should be
4 taken into account when determining whether securitization provides
5 quantifiable benefits for each of the Companies' ratepayers. For
6 example, under the traditional ratemaking method as generally
7 practiced by the Commission, any storm O&M amortization,
8 depreciation and return on capital investments, or carrying charges
9 on deferred costs are assumed to be recovered in then-existing rates
10 between the time the storms occur and the dates rates in the next
11 general rate case go into effect. Therefore, for purposes of this
12 proceeding, a 12-month period was assumed to occur in which no
13 impact of those items was assumed to affect current rates (thus
14 decreasing the net present value revenue requirement resulting from
15 the traditional method). Additionally, an assumption needed to be
16 made for the securitization option regarding how long after new rates
17 went into effect the non-bypassable charge would begin to be
18 collected, in order to reasonably calculate the net present value of
19 revenue requirements under that option. For purposes of this
20 proceeding, a nine-month lag was assumed in the First Partial
21 Stipulation. Finally, also in order to perform a proper net present
22 value comparison, at least a minimum hypothetical amortization
23 period needed to be assumed under the traditional ratemaking

1 approach. The parties decided that this period would be 10 years for
2 DEC and 15 years for DEP.

3 **Q. DO THESE ASSUMPTIONS APPLY FOR PURPOSES OTHER**
4 **THAN G.S. § 62-172(b)(1)g.?**

5 A. No. These assumptions apply solely for purposes of testing
6 compliance with the net present value tests in G.S. § 62-172(b)(1)g.
7 These assumptions do not apply for other purposes of this
8 proceeding.

9 For example, other Public Staff witnesses in this proceeding
10 recommend that the Commission exercise its authority under G.S. §
11 62-172(b)(3)b.12 to require that the structuring, marketing and
12 pricing of the storm recovery bonds result in the lowest storm
13 recovery charges consistent with market conditions at the time of
14 pricing and the terms of the Financing Order. The assumptions set
15 forth in Section III.3 of the Sub 1219 First Partial Stipulation would
16 not apply for this purpose.

17 **APPLICATION OF NET BENEFIT TEST**

18 **Q. HAVE YOU REVIEWED THE COMPANY'S APPLICATION OF THE**
19 **NET PRESENT VALUE COMPARISON IN THIS PROCEEDING?**

20 A. Yes. During the negotiations that led to the First Partial Stipulations,
21 the Companies and the Public Staff developed a model that

1 calculated the difference in the net present value of revenue
2 requirements between the securitization approach and the traditional
3 ratemaking approach. This model incorporated the assumptions
4 agreed to by the Companies and the Public Staff in the First Partial
5 Stipulations. DEC and DEP witness Abernathy presented these
6 analyses as part of her Exhibits filed in this proceeding. She
7 calculates net present value benefits of securitization in the amounts
8 of \$58,038,000 for DEC and \$199,019,000 for DEP.

9 **Q. HAVE THE COMPANIES CALCULATED THE NET PRESENT**
10 **VALUE BENEFITS OF SECURITIZATION IN A REASONABLE**
11 **MANNER, INCORPORATING THE ASSUMPTIONS AGREED TO**
12 **IN THE FIRST PARTIAL STIPULATIONS?**

13 A. In general, yes. The Company's calculations have been performed
14 in a generally reasonable manner, and demonstrate that in this
15 instance securitization does provide quantifiable benefits to
16 ratepayers. However, we agree with the testimony of the other
17 Public Staff witnesses in this case, who point out certain problems
18 with certain assumptions and calculations made by the Companies,
19 and also speak to ways in which the Companies can not only pass
20 the bar of justifying securitization, but also take steps to maximize
21 those benefits.

1 **Q. DO YOU HAVE ANY COMMENTS REGARDING THE TERMS OF**
2 **THE STORM RECOVERY BONDS?**

3 A. Yes. Other Public Staff witnesses, particularly witness Sutherland,
4 speak to the benefit that could be obtained by lengthening the term
5 of the storm recovery bonds from 15 years to 18 or even 20 years.
6 We agree with this recommendation in this proceeding, particularly
7 in this time of dramatically low interest rates. However, we would like
8 to sound a note of caution for the long term. If the recent pattern of
9 large storms with large dollar impacts occurring every two years or
10 so were to continue for the long term, it would be appropriate for the
11 Commission to take into consideration the potential “snowball effect”
12 on future rates that could develop from continuing to provide for long
13 bond amortization periods. That beneficial effect would need to be
14 measured against the dollar benefits that could arise from such
15 lengthened terms. However, in this proceeding, we believe that the
16 benefits of lengthening the amortization periods, as presented by
17 witness Sutherland, are clearly large enough to justify the
18 lengthening.

19 **Q. DO YOU HAVE ANY COMMENTS REGARDING THE**
20 **ASSUMPTIONS MADE IN THE ANALYSES REGARDING THE**
21 **WACC?**

1 A. Yes. For purposes of the analyses, DEC and DEP witness
2 Abernathy has used the WACC agreed to by the Companies and the
3 Public Staff in the Sub 1214 and Sub 1219 general rate cases. As
4 noted previously, these cases are still pending, and so this WACC is
5 not yet approved. However, the Public Staff considers the use of
6 these stipulated WACCs to be reasonable, given that neither the
7 actual approved WACC currently in effect nor any reasonable WACC
8 that the Commission might approve in the Sub 1214 and Sub 1219
9 proceedings would alter the conclusion that securitization does in
10 fact provide quantifiable benefits in this case.

11 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

12 A. Yes, it does.

MICHAEL C. MANESS

Qualifications and Experience

I am a graduate of the University of North Carolina at Chapel Hill with a Bachelor of Science degree in Business Administration with Accounting. I am a Certified Public Accountant and a member of both the North Carolina Association of Certified Public Accountants and the American Institute of Certified Public Accountants.

As Director of the Accounting Division of the Public Staff, I am responsible for the performance, supervision, and management of the following activities: (1) the examination and analysis of testimony, exhibits, books and records, and other data presented by utilities and other parties under the jurisdiction of the Commission or involved in Commission proceedings; and (2) the preparation and presentation to the Commission of testimony, exhibits, and other documents in those proceedings. I have been employed by the Public Staff since July 12, 1982.

Since joining the Public Staff, I have filed testimony or affidavits in several general, fuel, and demand-side management/energy efficiency rate cases of the utilities currently organized as Duke Energy Carolinas, LLC, Duke Energy Progress, LLC., and Virginia Electric and Power Company (Dominion Energy North Carolina) as well as in several water and sewer general rate cases. I have also

filed testimony or affidavits in other proceedings, including applications for certificates of public convenience and necessity for the construction of generating facilities, applications for approval of self-generation deferral rates, applications for approval of cost and incentive recovery mechanisms for electric utility demand-side management and energy efficiency (DSM/EE) efforts, and applications for approval of cost and incentive recovery pursuant to those mechanisms.

I have also been involved in several other matters that have come before this Commission, including the investigation undertaken by the Public Staff into the operations of the Brunswick Nuclear Plant as part of the 1993 Carolina Power & Light Company fuel rate case (Docket No. E-2, Sub 644), the Public Staff's investigation of Duke Power's relationship with its affiliates (Docket No. E-7, Sub 557), and several applications for business combinations involving electric utilities regulated by this Commission. Additionally, I was responsible for performing an examination of Carolina Power & Light Company's accounting for the cost of Harris Unit 1 in conjunction with the prudence audit performed by the Public Staff and its consultants in 1986 and 1987.

I have had supervisory or management responsibility over the Electric Section of the Accounting Division since 1986, and also was assigned management duties over the Water Section of the Accounting Division during the 2009-2012 time frame. I was promoted to Director of the Accounting Division in late December 2016.

MICHELLE M. BOSWELL

Qualifications and Experience

I graduated from North Carolina State University in 2000 with a Bachelor of Science degree in Accounting. I am a Certified Public Accountant.

As Manager of the Electric Section of the Accounting Division of the Public Staff. I am responsible for the performance, supervision, and management of the following activities: (1) the examination and analysis of testimony, exhibits, books and records, and other data presented by utilities and other parties under the jurisdiction of the Commission or involved in Commission proceedings; and (2) the preparation and presentation to the Commission of testimony, exhibits, and other documents in those proceedings. I joined the Public Staff in September 2000.

I have performed numerous audits and/or presented testimony and exhibits before the Commission addressing a wide range of electric, natural gas, and water topics. I have performed audits and/or presented testimony in Duke Energy's 2010 REPS Cost Recovery Rider; the 2008 REPS Compliance Reports for North Carolina Municipal Power Agency 1, North Carolina Eastern Municipal Power Agency, GreenCo Solutions, Inc., and EnergyUnited Electric Membership; four recent Piedmont rate cases; PSNC's 2016 rate case, DNCP's 2012 rate case, DEP's 2013 rate case, several Piedmont, NUI, and Toccoa annual gas cost reviews; Piedmont and NUI's merger; and Piedmont and NCNG's merger.

Additionally, I have filed testimony and exhibits in numerous water rate cases and performed investigations addressing a wide range of topics and issues related to the water, electric, and telephone industries.



Camal O. Robinson
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March 25, 2020

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

**RE: Application of Duke Energy Carolinas, LLC for Adjustment of Rates and Charges Applicable to Electric Service in North Carolina, Request for an Accounting Order and to Consolidate Dockets
Docket No. E-7, Sub 1214**

Dear Clerk Campbell:

I enclose the Partial Settlement Agreement between Duke Energy Carolinas, LLC and the Public Staff – North Carolina Utilities Commission for filing in connection with the referenced matter.

If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to be "C. Robinson", written over a horizontal line.

Camal O. Robinson

Enclosures

cc: Parties of Record

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 1214
DOCKET NO. E-7, SUB 1213
DOCKET NO. E-7, SUB 1187

In the Matter of:
DOCKET NO. E-7, SUB 1214
Application of Duke Energy Carolinas, LLC
For Adjustment of Rates and Charges
Applicable to Electric Service in North Carolina
DOCKET NO. E-7, SUB 1213
In the matter of
Petition of Duke Energy Carolinas, LLC for
Approval of Prepaid Advantage Program
DOCKET NO. E-7, SUB 1187
Petition 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

AGREEMENT AND
STIPULATION OF
PARTIAL SETTLEMENT

Duke Energy Carolinas, LLC ("DEC" or the "Company") and the Public Staff, North Carolina Utilities Commission (the "Public Staff"), collectively referred to herein as the "Stipulating Parties" through counsel and pursuant to N.C. Gen. Stat. § 62-69, respectfully submit the following Agreement and Stipulation of Partial Settlement ("Stipulation") for consideration by the North Carolina Utilities Commission ("Commission") in the above captioned dockets.

I. BACKGROUND

1. In 2018, the Company incurred significant storm expenditures from Hurricanes Florence and Michael and Winter Storm Diego (individually, the "Storm" and collectively, the "Storms"). Subsequently, the Company filed a Petition for an Accounting

Order to Defer Incremental Storm Damage Expenses Incurred as a Result of Hurricanes Florence and Michael and Winter Storm Diego, in Docket No. E-7, Sub 1187 (“Storm Deferral Docket”).

2. On November 6, 2019, Senate Bill 559, An Act to Permit Financing for Certain Storm Recovery Costs (“SB 559”), was signed into law.¹ SB 559 amended Article 8 of Chapter 62 of the North Carolina General Statutes to create a new financing tool that an electric public utility may use to recover storm recovery costs. SB 559 established a process by which an electric public utility in the State may petition the Commission for a financing order authorizing the issuance of storm recovery bonds; the imposition, collection, and periodic adjustments of a storm recovery charge; the creation of storm recovery property; and the sale, assignment, or transfer of storm recovery property. Before issuing a financing order, the Commission must find that the issuance of the storm recovery bonds and the imposition of storm recovery charges are expected to provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of storm recovery bonds.

3. While SB 559 was pending before the General Assembly but not yet signed into law, on September 30, 2019, DEC filed an application (“Application”) with the Commission in Docket No. E-7, Sub 1214 requesting a general rate increase, pursuant to N.C. Gen. Stat. §§ 62-133 and -134 and Commission Rule R1-17, along with direct testimony and exhibits. The Application requests a non-fuel base rate increase of approximately 9.2 percent in retail revenues, or approximately \$445.3 million. DEC further proposes to partially offset the increase in revenues by refunding \$154.6 million

¹ S.L. 2019-244.

related to certain tax benefits resulting from the Federal Tax Cut and Jobs Act through a proposed rider. The net revenue increase with the rider is \$290.8 million, which represents an approximate overall 6.0% increase in annual revenues. The revenue increase is based upon a 10.30 percent return on equity (“ROE”) and a 53 percent equity component of the capital structure.

4. The Application also includes a request to consolidate the Storm Deferral Docket with the rate case. In the rate case, the Company seeks to amortize the incremental costs of the Storms over an eight-year period, including a return on the unrecovered balance, and with respect to the capital investments, a deferral of depreciation expense and a return on the investment. In his testimony, Company witness Stephen G. De May, North Carolina President, stated that if SB 559 was passed into law, the Company would pursue securitization if it provided a savings to its customers and would cease the recovery of the remaining storm costs in current rates, and instead begin recovering the remaining unrecovered storm costs as provided for in a securitization financing order.²

5. On October 29, 2019, the Commission issued an order establishing a general rate case, suspending rates, scheduling hearings and requiring public notice of the Company’s Application. On November 20, 2019, the Commission issued an order consolidating the general rate proceeding in Docket No. E-7, Sub 1214, with DEC’s request for approval of its Prepaid Advantage Program in Docket No. E-7, Sub 1213.

6. On February 14, 2020, the Company filed supplemental direct testimony and exhibits. On February 18, 2020, the Public Staff, and the other intervenors in this proceeding, filed testimony. Among other things, Public Staff witness Michelle M.

² *De May Direct Testimony* at 10-11.

Boswell made an adjustment to remove all capital and O&M costs associated with the Storms in the present case because the Company indicated that it would seek securitization if authorized by the General Assembly. Witness Boswell also stated that based upon the Public Staff's review of the costs the Company has included in the present case, the Public Staff believes the costs associated with these Storms were prudently incurred.³

7. The Public Staff filed first supplemental testimony and exhibits on February 25, 2020, and corrections to certain testimony on February 24, February 29, and March 4, 2020.

8. On March 4, 2020, the Company filed its rebuttal testimony. Among other things, Company witness De May stated in his testimony that the Company looked forward to pursuing securitization at the appropriate time but believed the cost of the Storms should remain a part of the Company's request in this proceeding until the Commission reaches the same determination of the Company and the Public Staff that the costs were prudently incurred, and the Commission subsequently approves a financing petition.

9. On March 25, 2020, the Public Staff filed supplemental testimony and exhibits.

10. The parties to this proceeding have conducted substantial discovery on the issues raised in the Application, as well as on the direct, supplemental and rebuttal testimonies of the Company and the direct and supplemental testimonies of the Public Staff. Prior to the evidentiary hearing, the Stipulating Parties reached a partial settlement with respect to some of the revenue requirement issues presented by the Company's Application, including those arising from the supplemental and rebuttal testimonies and

³ *Boswell Direct Testimony* at 27-28.

exhibits. In addition, the Stipulating Parties have reached a settlement as it relates to the ratemaking treatment of the cost of the Storms. The Stipulating Parties agree and stipulate as follows:

II. UNRESOLVED ISSUES

The Stipulating Parties have not reached a compromise on the following issues (“Unresolved Issues”):

1. Coal ash costs - Cost recovery of the Company’s coal ash costs, recovery amortization period and return during the amortization period.
2. Deferred Non-Asset Retirement Obligation (“ARO”) Environmental Costs Amortization Period – Whether the Company’s proposed amortization period of five (5) years should be approved versus the Public Staff’s proposed amortization period of (10) ten years.
3. Adjustment for Hydro Station Sale: - Whether the Company’s proposed amortization period of seven (7) years of the loss on the sale should be approved versus Public Staff’s recommendation of a twenty (20) year amortization period.
4. Excess Deferred Income Taxes (“EDIT”) – The following components of the Company’s EDIT rider proposal remain contested both in length of amortization period and method of recovery: Unprotected federal EDIT, North Carolina EDIT and Deferred Revenue. The parties agree on the treatment of federal

protected EDIT as described below in the Resolved Issues.

5. Return on Equity (“ROE”) – Whether the Company’s proposed ROE of 10.3% should be adopted versus the Public Staff’s proposed ROE of 9.0%.

6. Capital Structure – Whether the Company’s proposed equity ratio of 53% should be adopted versus the Public Staff’s proposed equity ratio of 50%.

7. Cost of Debt- The appropriate debt cost that should be adopted for the Company.

8. Cost of Service Allocation Methodology – The methodology for allocating the Company’s production demand related costs.

9. Depreciation Rates – The depreciation rates appropriate for use in this case, including whether the Company’s proposal to shorten the lives of certain coal-fired generating facilities should be approved.

10. Grid Improvement Plan - Whether the Company’s request to defer certain categories of costs should be approved as appropriate costs under the Company’s proposed Grid Improvement Plan and whether those costs are eligible for deferral under the Commission’s deferral standards.

11. Clemson Combined Heat and Power facility- Whether it is appropriate for DEC to recover the costs of this facility from North Carolina customers.

12. Any other revenue requirement or non-revenue requirement issue other than those issues specifically addressed in this Stipulation or agreed upon in the testimony of the Stipulating Parties.

III. RESOLVED ISSUES

The Stipulating Parties have reached an agreement regarding the following revenue requirement issues (“Resolved Issues”). The actual amount of the agreed-upon adjustments may differ due to the effects of the Unresolved Issues. The revenue requirement effects of the agreed-upon issues are shown on Boswell Supplemental and Stipulation Exhibit 1. The revenue requirement impacts of this Stipulation provide sufficient support for the annual revenue required on the issues agreed to in this Stipulation. No Stipulating Party waives any right to assert a position in any future proceeding or docket before the Commission or in any court, as 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. The Stipulating Parties agree that settlement on these issues will not be used as a rationale for future adjustments on contested issues brought before the Commission. The areas of agreement are as follows:

Storm Costs

1. DEC hereby accepts Public Staff’s adjustments to remove the capital and O&M costs associated with the Storms and to reflect a 10-year normalized level of storm expense for storms that would not otherwise be large enough for the Company to securitize.
2. DEC agrees to file a petition for a financing order under N.C. Gen. Stat. §

62-172 no later than 120 days from the issuance of an Order by the Commission in this rate case in which the Commission makes findings and conclusions regarding the costs of the Storms and this Stipulation, unless a party in the rate case appeals the Commission's order as it relates to costs of the Storms or the provisions of this Stipulation related to the costs of the Storms and securitization. If an appeal is filed, the 120-day limit shall be suspended until the Commission decision is affirmed, or if not affirmed, until the issuance of a Commission Order on remand following the decision on the appeal, unless the Company chooses before that time to pursue recovery under subsection (5), in which case the original 120-day limit shall be deemed to have applied. Should DEC fail to file a petition within the time period specified in this paragraph, the parties agree that in any subsequent ratemaking proceeding held to provide for recovery of the costs of the Storms, the parties reserve the right to assert their respective positions regarding the appropriate ratemaking treatment of the cost of the Storms.

3. The Stipulating Parties agree that to demonstrate quantifiable benefits to customers in accordance with N.C. Gen. Stat. § 62-172(b)(1)g., the Company must show that the net present value of the costs to customers using securitization is less than the net present value of the costs that would result under traditional storm cost recovery. For purposes of settlement for the cost of these Storms only, the Stipulating Parties agree that when conducting this comparison in the subsequent securitization docket for the Storms, the following assumptions shall be made:

- a. For traditional storm cost recovery, 12 months of amortization for each Storm was expensed prior to the new rates going into effect;
- b. For traditional storm cost recovery, no capital costs incurred due to the Storms during the 12-month period were included in the deferred balance;

- c. For traditional storm cost recovery, no carrying charges were accrued on the deferred balance during the 12-month period following the date(s) of the Storm(s);
 - d. For traditional cost recovery, the amortization period for the Storms is a minimum of 10 years; and
 - e. For securitization, the imposition of the Storm recovery charge begins nine months after the new rates go into effect
4. The Stipulating Parties agree that pursuant to N.C. Gen. Stat. § 62-172, the amortization of securitized costs of the Storms shall not begin until the date the storm recovery bonds are issued.
5. The Stipulating Parties agree that a storm cost recovery rider in this proceeding that will be initially set at \$0 should be established in the rate case. Should the Company not file a petition for a financing order or is unable to recover the costs of the Storms through N.C. Gen. Stat. § 62-172, the Company may request recovery of the costs of the Storms from the Commission by filing a petition requesting an adjustment to this rider. In such case, the Stipulating Parties reserve the right to argue their respective positions regarding the appropriate ratemaking treatment for recovering the costs of the Storms.
6. The Stipulating Parties agree to file a joint petition for rulemaking to establish the standards and procedures that will govern future financing petitions under N.C. Gen. Stat. § 62-172 upon the issuance of storm recovery bonds for the Storms.

Accounting Adjustments

7. The Company accepts the Public Staff's proposed adjustment to executive compensation to remove 50 percent of the benefits associated with the five Duke Energy executives with the highest amounts of compensation, in addition to the 50 percent of their

compensation removed in the Company's initial application.

8. The Stipulating Parties agree to amortize rate case expenses over a five-year period, but the unamortized balance will not be included in rate base.

9. The Stipulating Parties agree to remove aviation expenses associated with international flights, in addition to the 50 percent of the aviation expenses removed in the Company's initial application.

10. The Stipulating Parties agree that Company employee incentives should be adjusted to remove incentive pay related to earnings per share and total shareholder returns for the top levels of Company leadership.

11. The Stipulating Parties agree that certain sponsorships and donations expenses, including amounts paid to the U.S. Chamber of Commerce, should be excluded.

12. The Stipulating Parties agree that severance expenses should be amortized over a three-year period, but the unamortized balance will not be included in rate base.

13. The Company accepts the Public Staff's recommended adjustments to lobbying, Board of Directors, and retired hydro O&M expenses.

14. The Public Staff agrees to the Company's rebuttal position on credit card fees and advertising expenses.

15. The Company accepts the Public Staff's updated recommended adjustments to weather normalization, growth, and usage as reflected in Boswell Supplemental and Stipulation Exhibit 1.

16. The Stipulating Parties agree to remove the protected federal EDIT from the Company's proposed EDIT rider and return these amounts to customers through base rates.

IV. AGREEMENT IN SUPPORT OF SETTLEMENT; NON-WAIVER.

1. The Stipulating Parties shall act in good faith and use their best efforts to recommend to the Commission that this Stipulation be accepted and approved. The Stipulating Parties further agree that this Stipulation is in the public interest because it reflects a give-and take of contested issues and results in rates (with respect to the stipulated issues) that are just and reasonable. The Stipulating Parties agree that they will support the reasonableness of this Stipulation before the Commission, and in any appeal from the Commission's adoption and/or enforcement of this Stipulation.

2. Neither this Stipulation nor any of the terms shall be admissible in any court or Commission except insofar as such court or Commission is addressing litigation arising out of the implementation of the terms herein or the approval of this Stipulation. This Stipulation shall not be cited as precedent by any of the Parties regarding any issue in any other proceeding or docket before this Commission or in any court.

3. The provisions of this Stipulation do not reflect any position asserted by any of the Stipulating Parties but reflect instead the compromise and settlement among the Stipulating Parties as to all the issues covered hereby. No Party waives any right to assert any position in any future proceeding or docket before the Commission or in any court.

4. This Stipulation is a product of negotiation among the Stipulating Parties, and no provision of this Stipulation shall be strictly construed in favor of or against any Party.

V. RECEIPT OF TESTIMONY AND WAIVER OF CROSS-EXAMINATION

The pre-filed testimony and exhibits of the Stipulating Parties on Resolved Issues may be received in evidence without objection, and each Party waives all right to cross

examine any witness with respect to such pre-filed testimony and exhibits. If, however, questions are asked by any Commissioner, or if questions are asked or positions are taken by any person who is not a Party, then any Party may respond to such questions by presenting testimony or exhibits and cross-examining any witness with respect to such testimony and exhibits.

VI. STIPULATION BINDING ONLY IF ACCEPTED IN ITS ENTIRETY.

This Stipulation is the product of negotiation and compromise of a complex set of issues, and no portion of this Stipulation is or will be binding on any of the Stipulating Parties unless the entire Agreement and Stipulation is accepted by the Commission. If the Commission rejects any part of this Stipulation or approves this Stipulation subject to any change or condition or if the Commission's approval of this Stipulation is rejected or conditioned by a reviewing court, the Stipulating Parties agree to meet and discuss the applicable Commission or court order within five business days of its issuance and to attempt in good faith to determine if they are willing to modify the Stipulation consistent with the order. No Party shall withdraw from the Stipulation prior to complying with the foregoing sentence. If any Party withdraws from the Stipulation, each Party retains the right to seek additional procedures before the Commission, including cross-examination of witnesses, with respect to issues addressed by the Stipulation and shall be bound or prejudiced by the terms and conditions of the Stipulation.

VII. COUNTERPARTS.

This Stipulation may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same

instrument. Execution by facsimile signature shall be deemed to be, and shall have the same effect as, execution by original signature.

VIII. MERGER CLAUSE

This Stipulation supersedes all prior agreements and understandings between the Stipulating Parties and may not be changed or terminated orally, and no attempted change, termination or waiver of any of the provisions hereof shall be binding unless in writing and signed by the parties hereto.

The foregoing is agreed and stipulated this the 25th day of March 2020.

Duke Energy Carolinas, LLC

By: /s/ Stephen G. De May

Public Staff – North Carolina Utilities Commission

By: 

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Agreement and Stipulation of Partial Settlement, filed in Docket Nos. E-7, Sub 1214; E-7, Sub 1213; and E-7, Sub 1187, was served electronically or via U.S. mail, first-class postage prepaid, upon all parties of record.

This the 25th day of March, 2020.

/s/Mary Lynne Grigg

Mary Lynne Grigg

McGuireWoods LLP

501 Fayetteville Street, Suite 500

PO Box 27507 (27611)

Raleigh, North Carolina 27601

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June 2, 2020

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

**RE: Application of Duke Energy Progress, LLC for Adjustment of Rates and Charges Applicable to Electric Service in North Carolina, Request for an Accounting Order and to Consolidate Dockets
Docket No. E-2, Sub 1219 and Docket No. E-7, Sub 1193**

Dear Clerk Campbell:

I enclose the Partial Settlement Agreement between Duke Energy Progress, LLC and the Public Staff – North Carolina Utilities Commission for filing in connection with the referenced matter.

If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to be "Camal O. Robinson", written in a cursive style.

Camal O. Robinson

Enclosures

cc: Parties of Record

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1219

DOCKET NO. E-2, SUB 1193

In the Matter of:

DOCKET NO. E-2, SUB 1219

Application of Duke Energy Progress, LLC For
Adjustment of Rates and Charges Applicable to
Electric Service in North Carolina

DOCKET NO. E-2, SUB 1193

Petition of Duke Energy Progress, LLC for an
Accounting Order to Defer Incremental Storm
Damage Expenses Incurred as a Result of
Hurricanes Florence and Michael and Winter
Storm Diego

**AGREEMENT AND
STIPULATION OF
PARTIAL SETTLEMENT**

Duke Energy Progress, LLC (“DEP” or the “Company”) and the Public Staff, North Carolina Utilities Commission (the “Public Staff”), collectively referred to herein as the “Stipulating Parties” through counsel and pursuant to N.C. Gen. Stat. § 62-69, respectfully submit the following Agreement and Stipulation of Partial Settlement (“Stipulation”) for consideration by the North Carolina Utilities Commission (“Commission”) in the above captioned dockets.

I. BACKGROUND

1. The Company incurred significant storm expenditures from Hurricanes Florence and Michael and Winter Storm Diego in 2018, and from Hurricane Dorian in 2019 (individually, the “Storm” and collectively, the “Storms”). On December 21, 2018, the Company filed a Petition for an Accounting Order to Defer Incremental Storm Damage

Expenses Incurred as a Result of Hurricanes Florence and Michael and Winter Storm Diego, in Docket No. E-2, Sub 1193 (“Storm Deferral Docket”).

2. On November 6, 2019, Senate Bill 559, An Act to Permit Financing for Certain Storm Recovery Costs (“SB 559”), was signed into law.¹ SB 559 amended Article 8 of Chapter 62 of the North Carolina General Statutes to create a new financing tool that an electric public utility may use to recover storm recovery costs. SB 559 established a process by which an electric public utility in the State may petition the Commission for a financing order authorizing the issuance of storm recovery bonds; the imposition, collection, and periodic adjustments of a storm recovery charge; the creation of storm recovery property; and the sale, assignment, or transfer of storm recovery property. Before issuing a financing order, the Commission must find that the issuance of the storm recovery bonds and the imposition of storm recovery charges are expected to provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of storm recovery bonds.

3. While SB 559 was pending before the General Assembly but not yet signed into law, on October 30, 2019, DEP filed an application (“Application”) with the Commission in Docket No. E-2, Sub 1219 requesting a general rate increase, pursuant to N.C. Gen. Stat. §§ 62-133 and -134 and Commission Rule R1-17, along with direct testimony and exhibits. The Application requests a non-fuel base rate increase of approximately 15.6 percent in retail revenues, or approximately \$585.9 million. DEP further proposes to partially offset the increase in revenues by refunding (a) \$120.2 million related to certain tax benefits resulting from the Federal Tax Cut and Jobs Act through a

¹ S.L. 2019-244.

proposed rider and the reduction in North Carolina's state-corporate tax rate, through a change to the existing excess deferred income taxes ("EDIT") rider ("EDIT-1") and the proposed implementation of a new EDIT rider ("EDIT-2"); and (b) a rate reduction of \$2.1 million related to the proposed Regulatory Asset and Liability Rider, which results in a proposed net revenue increase of \$463.6 million, or approximately 12.3 percent.. The revenue increase is based upon a 10.30 percent return on equity ("ROE") and a 53 percent equity component of the capital structure.

4. The Application also includes requests (a) for an accounting order to defer incremental storm expenditures from Hurricane Dorian and (b) to consolidate the Storm Deferral Docket with the rate case. In the rate case, the Company seeks to amortize the incremental costs of the Storms over a 15-year period, including a return on the unrecovered balance, and with respect to the capital investments, a deferral of depreciation expense and a return on the investment. In his testimony, Company witness Stephen G. De May, North Carolina President, stated that if SB 559 was passed into law, the Company would pursue securitization if it provided a savings to its customers and would cease the recovery of the remaining storm costs in current rates, and instead begin recovering the remaining unrecovered storm costs as provided for in a securitization financing order.²

5. On November 14, 2019, the Commission issued an order establishing a general rate case and suspending rates. On December 6, 2019, the Commission entered an order scheduling hearings, establishing due dates for intervention, discovery, and testimony, and requiring public notice of the Company's Application.

6. On March 13, 2020, the Company filed supplemental direct testimony and

² *De May Direct Testimony* at 10-11.

exhibits. On April 13, 2020, the Public Staff, and the other intervenors in this proceeding, filed testimony. Among other things, Public Staff witness Shawn L. Dorgan made an adjustment to remove all capital and O&M costs associated with the Storms in the present case because the Company indicated that it would seek securitization if authorized by the General Assembly. Witness Dorgan also stated that based upon the Public Staff's review of the costs the Company has included in the present case, the Public Staff believes the costs associated with Hurricanes Florence, Michael, and Winter Storm Diego were prudently incurred.³ The Public Staff subsequently filed supplemental testimony and exhibits on April 23, 2020. In his supplemental testimony, witness Dorgan stated that based upon the Public Staff's review, the costs associated with Hurricane Dorian were also prudently incurred.⁴

7. On May 4, 2020, the Company filed its rebuttal testimony. Among other things, Company witness De May stated in his testimony that the Company looked forward to pursuing securitization at the appropriate time but believed the cost of the Storms should remain a part of the Company's request in this proceeding until the Commission reaches the same determination as reached by the Company and the Public Staff that the costs were prudently incurred, and the Commission subsequently approves a financing petition.

8. The parties to this proceeding have conducted substantial discovery on the issues raised in the Application, as well as on the direct, supplemental and rebuttal testimonies of the Company and the direct and supplemental testimonies of the Public Staff. Prior to the evidentiary hearing, the Stipulating Parties reached a partial settlement with respect to some of the revenue requirement issues presented by the Company's

³ *Dorgan Direct Testimony* at 32.

⁴ *Dorgan Supplemental Direct Testimony* at 9.

Application, including those arising from the supplemental and rebuttal testimonies and exhibits. In addition, the Stipulating Parties have reached a settlement as it relates to the ratemaking treatment of the cost of the Storms. The Stipulating Parties agree and stipulate as follows:

II. UNRESOLVED ISSUES

The Stipulating Parties have not reached a compromise on the following issues (“Unresolved Issues”):

1. Coal ash costs - Cost recovery of the Company’s coal ash costs, recovery amortization period and return during the amortization period.
2. Deferred Non-Asset Retirement Obligation (“ARO”)
Environmental Costs Amortization Period – Whether the Company’s proposed amortization period of five (5) years should be approved versus the Public Staff’s proposed amortization period of (10) ten years.
3. Excess Deferred Income Taxes (“EDIT”) – The following components of the Company’s EDIT rider proposal remain contested both in length of amortization period and method of recovery: Unprotected federal EDIT, North Carolina EDIT, and Deferred Revenue. The parties agree on the treatment of federal protected EDIT as described below in the Resolved Issues.
4. Return on Equity (“ROE”) – Whether the Company’s proposed ROE of 10.3% should be adopted versus the Public Staff’s

proposed ROE of 9.0%.

5. Capital Structure – Whether the Company’s proposed equity ratio of 53% should be adopted versus the Public Staff’s proposed equity ratio of 50%.

6. Cost of Service Allocation Methodology – The methodology for allocating the Company’s production demand related costs.

7. 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.

8. Depreciation Rates – The depreciation rates appropriate for use in this case, including whether the Company’s proposal to shorten the lives of certain coal-fired generating facilities should be approved.

9. Grid Improvement Plan - Whether the Company’s request to defer certain categories of costs should be approved as appropriate costs under the Company’s proposed Grid Improvement Plan and whether those costs are eligible for deferral under the Commission’s deferral standards.

10. Nuclear Decommissioning Expense – The appropriate level of nuclear decommissioning expense.

11. Any other revenue requirement or non-revenue requirement issue other than those issues specifically addressed in this

Stipulation or agreed upon in the testimony of the Stipulating Parties.

III. RESOLVED ISSUES

The Stipulating Parties have reached an agreement regarding the following revenue requirement issues (“Resolved Issues”). The actual amount of the agreed-upon adjustments may differ due to the effects of the Unresolved Issues. The revenue requirement effects of the agreed-upon issues are shown on Maness Stipulation Exhibit 1 and Smith Partial Settlement Exhibit 1. The revenue requirement impacts of this Stipulation provide sufficient support for the annual revenue required on the issues agreed to in this Stipulation. No Stipulating Party waives any right to assert a position in any future proceeding or docket before the Commission or in any court, as 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. The Stipulating Parties agree that settlement on these issues will not be used as a rationale for future adjustments on contested issues brought before the Commission. The areas of agreement are as follows:

Storm Costs

1. The Stipulating Parties agree to remove the capital and O&M costs associated with the Storms and to reflect a 10-year normalized level of storm expense for storms that would not otherwise be large enough for the Company to securitize.

2. DEP agrees to file a petition for a financing order under N.C. Gen. Stat. § 62-172 no later than 120 days from the issuance of an Order by the Commission in this rate case in which the Commission makes findings and conclusions regarding the costs of

the Storms and this Stipulation, unless a party in the rate case appeals the Commission's order as it relates to costs of the Storms or the provisions of this Stipulation related to the costs of the Storms and securitization. If an appeal is filed, the 120-day limit shall be suspended until the Commission decision is affirmed, or if not affirmed, until the issuance of a Commission Order on remand following the decision on the appeal, unless the Company chooses before that time to pursue recovery under subsection (5), in which case the original 120-day limit shall be deemed to have applied. Should DEP fail to file a petition within the time period specified in this paragraph, the parties agree that in any subsequent ratemaking proceeding held to provide for recovery of the costs of the Storms, the parties reserve the right to assert their respective positions regarding the appropriate ratemaking treatment of the cost of the Storms.

3. The Stipulating Parties agree that to demonstrate quantifiable benefits to customers in accordance with N.C. Gen. Stat. § 62-172(b)(1)g., the Company must show that the net present value of the costs to customers using securitization is less than the net present value of the costs that would result under traditional storm cost recovery. For purposes of settlement for the cost of these Storms only, the Stipulating Parties agree that when conducting this comparison in the subsequent securitization docket for the Storms, the following assumptions shall be made:

- a. For traditional storm cost recovery, 12 months of amortization for each Storm was expensed prior to the new rates going into effect;
- b. For traditional storm cost recovery, no capital costs incurred due to the Storms during the 12-month period were included in the deferred balance;
- c. For traditional storm cost recovery, no carrying charges were accrued on the deferred balance during the 12-month period following the date(s) of the Storm(s);

- d. For traditional cost recovery, the amortization period for the Storms is a minimum of 15 years; and
- e. For securitization, the imposition of the Storm recovery charge begins nine months after the new rates go into effect

4. The Stipulating Parties agree that pursuant to N.C. Gen. Stat. § 62-172, the amortization of securitized costs of the Storms shall not begin until the date the storm recovery bonds are issued.

5. The Stipulating Parties agree that a storm cost recovery rider in this proceeding that will be initially set at \$0 should be established in the rate case. Should the Company not file a petition for a financing order or is unable to recover the costs of the Storms through N.C. Gen. Stat. § 62-172, the Company may request recovery of the costs of the Storms from the Commission by filing a petition requesting an adjustment to this rider. In such case, the Stipulating Parties reserve the right to argue their respective positions regarding the appropriate ratemaking treatment for recovering the costs of the Storms.

6. The Stipulating Parties agree to file a joint petition for rulemaking to establish the standards and procedures that will govern future financing petitions under N.C. Gen. Stat. § 62-172 upon the issuance of storm recovery bonds for the Storms.

Accounting Adjustments

7. The Company accepts the Public Staff's proposed adjustment to executive compensation to remove 50 percent of the benefits associated with the five Duke Energy executives with the highest amounts of compensation, in addition to the 50 percent of their compensation removed in the Company's initial application.

8. The Public Staff agrees to the rate case expenses in the Company's rebuttal

filing. The Stipulating Parties agree to amortize the rate case expenses over a five-year period, but the unamortized balance will not be included in rate base.

9. The Stipulating Parties agree to remove aviation expenses associated with international flights, in addition to the 50 percent of the aviation expenses removed in the Company's initial application.

10. The Stipulating Parties agree that Company employee incentives should be adjusted to remove incentive pay related to earnings per share and total shareholder returns for the top levels of Company leadership.

11. The Stipulating Parties agree that certain sponsorships and donations expenses as well as certain outside service expenses should be excluded.

12. The Stipulating Parties agree that severance expenses should be amortized over a three-year period, but the unamortized balance will not be included in rate base.

13. The Stipulating Parties agree to remove certain lobbying and Board of Directors expenses.

14. The Stipulating Parties agree to the adjustment to the W. Asheville Vanderbilt 115kV project as reflected in Maness Stipulation Exhibit 1 and Smith Partial Settlement Exhibit 1 (subject to unsettled jurisdictional and class allocation factor methodology differences). The Company appropriately classified the line as transmission in its supplemental filing. The settlement adjustment makes a small correction to the Company's adjustment in its supplemental filing.

15. The Public Staff agrees to the Company's rebuttal position on credit card fees.

16. The Company accepts the Public Staff's adjustment to end-of-life nuclear

materials and supplies reserve expense, reduced as described in the direct testimony of Public Staff witness Dustin Metz.

17. The Asheville CC project is complete, placed in service, and available for economic dispatch. The Stipulating Parties agree to the following:

- a. The appropriate amortization period for the deferred expenses is four years with a levelized return.
- b. The Company's non-fuel variable O&M expense amount should be reduced to account for a production displacement adjustment.
- c. The amount of Asheville CC plant in service appropriate to include in rate base and used for the deferral calculation in this proceeding is the amount reflected in the Company's rebuttal testimony (subject to unsettled jurisdictional and class allocation factor methodology differences). The Public Staff reserves the right to review any actual reimbursements received from the EPC contractor in a subsequent rate case.

18. The Stipulating Parties agree to remove the protected federal EDIT from the Company's proposed EDIT rider and return these amounts to customers through base rates.

19. The Public Staff agrees to withdraw its adjustment related to CertainTeed payment obligation. The Company removed this expense from this proceeding in its supplemental filing. The Stipulating Parties maintain their respective positions on this item in the DEP fuel proceeding in Docket No. E-2, Sub 1204.

20. The Stipulating Parties agree to include annualized accumulated depreciation for the Asheville CC plant not previously included in supplemental or rebuttal

filings.

IV. AGREEMENT IN SUPPORT OF SETTLEMENT; NON-WAIVER.

1. The Stipulating Parties shall act in good faith and use their best efforts to recommend to the Commission that this Stipulation be accepted and approved. The Stipulating Parties further agree that this Stipulation is in the public interest because it reflects a give-and take of contested issues and results in rates (with respect to the stipulated issues) that are just and reasonable. The Stipulating Parties agree that they will support the reasonableness of this Stipulation before the Commission, and in any appeal from the Commission's adoption and/or enforcement of this Stipulation.

2. Neither this Stipulation nor any of the terms shall be admissible in any court or Commission except insofar as such court or Commission is addressing litigation arising out of the implementation of the terms herein or the approval of this Stipulation. This Stipulation shall not be cited as precedent by any of the Parties regarding any issue in any other proceeding or docket before this Commission or in any court.

3. The provisions of this Stipulation do not reflect any position asserted by any of the Stipulating Parties but reflect instead the compromise and settlement among the Stipulating Parties as to all the issues covered hereby. No Party waives any right to assert any position in any future proceeding or docket before the Commission or in any court.

4. This Stipulation is a product of negotiation among the Stipulating Parties, and no provision of this Stipulation shall be strictly construed in favor of or against any Party.

V. RECEIPT OF TESTIMONY AND WAIVER OF CROSS-EXAMINATION

The pre-filed testimony and exhibits of the Stipulating Parties on Resolved Issues

may be received in evidence without objection, and each Party waives all right to cross examine any witness with respect to such pre-filed testimony and exhibits. If, however, questions are asked by any Commissioner, or if questions are asked or positions are taken by any person who is not a Party, then any Party may respond to such questions by presenting testimony or exhibits and cross-examining any witness with respect to such testimony and exhibits.

VI. STIPULATION BINDING ONLY IF ACCEPTED IN ITS ENTIRETY.

This Stipulation is the product of negotiation and compromise of a complex set of issues, and no portion of this Stipulation is or will be binding on any of the Stipulating Parties unless the entire Agreement and Stipulation is accepted by the Commission. If the Commission rejects any part of this Stipulation or approves this Stipulation subject to any change or condition or if the Commission's approval of this Stipulation is rejected or conditioned by a reviewing court, the Stipulating Parties agree to meet and discuss the applicable Commission or court order within five business days of its issuance and to attempt in good faith to determine if they are willing to modify the Stipulation consistent with the order. No Party shall withdraw from the Stipulation prior to complying with the foregoing sentence. If any Party withdraws from the Stipulation, each Party retains the right to seek additional procedures before the Commission, including cross-examination of witnesses, with respect to issues addressed by the Stipulation and shall be bound or prejudiced by the terms and conditions of the Stipulation.

VII. COUNTERPARTS.

This Stipulation may be executed in one or more counterparts, each of which shall

be deemed an original, but all of which together shall constitute one and the same instrument. Execution by facsimile signature shall be deemed to be, and shall have the same effect as, execution by original signature.

VIII. MERGER CLAUSE

This Stipulation supersedes all prior agreements and understandings between the Stipulating Parties and may not be changed or terminated orally, and no attempted change, termination or waiver of any of the provisions hereof shall be binding unless in writing and signed by the parties hereto.

The foregoing is agreed and stipulated this the 2nd day of June, 2020.

Duke Energy Progress, LLC

By: /s/ Stephen G. De May

Public Staff – North Carolina Utilities Commission

By: 