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June 24, 2022

**VIA ELECTRONIC FILING**

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

**Re: Duke Energy Progress, LLC and Duke Energy Carolinas, LLC's  
Response in Opposition to Environmental Working Group's Petition to  
Intervene  
Docket No. E-100, Sub 179**

Dear Ms. Dunston:

Duke Energy Progress, LLC and Duke Energy Carolinas, LLC hereby file their Response in Opposition to Environmental Working Group's Petition to Intervene in the above-named proceeding.

If you have any questions, please do not hesitate to contact me. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Jirak", written in a cursive style.

Jack E. Jirak

Enclosure

cc: Parties of Record

OFFICIAL COPY

JUN 24 2022

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-100, SUB 179

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Duke Energy Progress, LLC, and	)	RESPONSE IN
Duke Energy Carolinas, LLC, 2022	)	OPPOSITION TO ENVIRONMENTAL
Biennial Integrated Resource Plans	)	WORKING GROUP'S PETITION TO
And Carbon Plan	)	INTERVENE
	)	

NOW COMES Duke Energy Progress, LLC (“DEP”) and Duke Energy Carolinas, LLC (“DEC”) and, together with DEP, the “Companies), through counsel, and pursuant to Rules R1-7 and R1-19 of the Rules and Regulations of the North Carolina Utilities Commission (“Commission”) and the Commission’s Order Requiring Answers to Commission Questions on Petition to Intervene by Environmental Working Group (“Order”), and hereby submit this Response in Opposition requesting that the Commission deny the Petition to Intervene in this proceeding (“Petition”) filed by Environmental Working Group (“EWG”). As further addressed in this Response in Opposition, the Commission should deny the Petition because EWG does not have a “real interest” in the proceeding. The Commission should deny intervention where, at a minimum, a party is unable to (1) demonstrate any meaningful and relevant connection to the state of North Carolina and (2) provide concrete evidence regarding the amount of its real (and not alleged) North Carolina members. Such denial is particularly appropriate where the supposed interests of a party are already well represented by other parties to the proceeding, and where the other parties and the party seeking intervention are members of the same voluntary, common-interest association.

In support of this Response in Opposition, the Companies state as follows:

**Standard for Intervention in Commission Proceedings**

1. Commission Rule R1-19(d) provides that the Commission will grant leave to intervene when, in addition to otherwise meeting the requirements of this rule, the petition “show[s] a real interest in the subject matter of the proceeding.”

2. The Commission has held that “[a]lthough the right of intervention under Rule R1-19 is generous, it is not unlimited. Intervention requires a real interest in the proceeding.” *Order Denying Petition to Intervene* at 3-4, Docket Nos. E-7, Sub 828 (Sept. 13, 2007) (denying intervention where petitioner power agency’s obligations and interest in nuclear station operating agreement did not provide a real interest in proceeding). “[M]ore than an incidental or casual interest in the subject matter is necessary for the Commission to find a nexus on which to grant a party the right to intervene.” *Order Denying Petition to Intervene* at 2, Docket No. W-274, Sub 160 (Nov. 18, 1997). The Commission has clarified that “the issue in each instance in which intervention is sought is whether the petitioning party has a real interest in the subject matter of the proceeding.” *Order*, Docket No. E-7, Sub 828, at 4. Intervention should be denied where a petitioner does not establish a “real interest” to participate in the proceeding. *Order Denying Petition to Intervene* at 1, Docket No. E-22, Sub 412 (May 13, 2004); *Order Denying Petition to Intervene and Granting Limited Amicus Curiae Status* at 5-6, Docket No. EC-82, Sub 19 (Aug. 9, 2016) (denying intervention where petitioner Electricities argued that decision could ultimately affect its members, and where intervention would “needlessly inject issues which are not central to the resolution” of the case).

**Response in Opposition to EWG Petition to Intervene**

3. EWG's asserted interest in this proceeding is indirect, incidental, and casual. EWG does not have a "real interest" in this proceeding.

4. The Petition states three reasons why EWG should be allowed to intervene in this proceeding on behalf of its supporters: (1) its "strong presence in North Carolina," Pet. ¶ 2; (2) its "history of working with North Carolina organizations to protect the environmental and health of all North Carolinians," Pet. ¶ 3; and (3) its purported "significant interest in the outcome of Duke Energy's Proposed Biennial Integrated Resource Plans and Carbon Plan," Pet. ¶ 4. Yet these conclusory statements are not supported by the underlying facts and cannot justify EWG's intervention in this proceeding.

5. First, contrary to its conclusory assertion, EWG has failed to demonstrate a "strong presence in North Carolina." EWG has no physical presence in North Carolina. EWG is located in Washington, D.C. Pet. ¶ 7. EWG has no physical offices in North Carolina. EWG Response at ¶ 9. A search of North Carolina's Secretary of State's website indicates that EWG is not registered to do business in North Carolina.

6. Having no *physical or legal* presence in North Carolina, EWG attempts to establish its presence in the State by pointing to its social media reach. Pet. ¶ 2. The Commission has never held that social media reach establishes a "real interest" in the proceeding, and, furthermore, EWG has made no attempt to demonstrate that its social media follower are, in fact, supporters (*i.e.*, a individuals could elect to "follow" an organization on social media that they do not support), that the followers are located in North Carolina, or that followers' interest in EWG has anything to do with this proceeding.

The amount of EWG's social media followers provides no information that is relevant for purposes of determining whether a party has a "real interest" in a Commission proceeding and should not be given any weight in this case.<sup>1</sup>

7. The Commission inquired into the nature of EWG's alleged "supporters" and "members" and whether such alleged supporters or members were required to pay dues. In response to the Commission's questions, EWG confirmed that the alleged "supporters" or "members" are only "active email subscribers" and are not required to pay any dues. Similar to social media followers, EWG has offered no evidence to demonstrate that "active email subscribers" actually support the mission and purpose of EWG or that the "active email subscribers" interest in EWG has anything whatsoever to do with this proceeding. In fact, EWG has failed to even support the assertion that an "active email subscriber" is fairly characterized as a "member" or "supporter."<sup>2</sup> EWG does not, nor could it, know what its "member-supporters'" interests are based simply on an email address and a zip code.<sup>3</sup> The fact that a small number of North Carolinians may visit EWG's website or sign up for EWG's newsletters does not confer on EWG a right to intervene in this proceeding.

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<sup>1</sup> Taken to its extreme, the position that the number of social media followers provides evidence of a "real interest" would justify intervention by a wide range of individuals and organizations that have no meaningful connection to the state or this proceeding.

<sup>2</sup> A new visitor to the EWG website is greeted with the invitation shown in Exhibit A, which invites individuals to submit email address and zip code in order to receive a "free copy of EWG's Guide to Avoiding PFAS Chemicals." See EWG, <https://www.ewg.org> (last visited June 24, 2022). If an individual enters their information in response to this invitation, such individual is thereby added as an email subscriber even though there is no indication that in doing so, an individual is being deemed an "member" or "supporter" of EWG.

<sup>3</sup> A screenshot of EWG's standard listserv sign-up form is attached to this Response as Exhibit B. See EWG, <https://www.ewg.org/news-insights> (last visited June 24, 2022). The subscription window does not require in any shape or form that a subscriber indicate support for EWG or a desire to be deemed a "member" of EWG.

8. Second, the vast majority of EWG's historical work in North Carolina has no relevance to the subject matter of this proceeding. The issues in this proceeding do not involve animal feeding operations, drinking water contamination, or PFAS pollution. Pet. ¶ 3. Further, the fact that EWG was allowed to intervene in the Commission's Net Metering Docket, Docket Number E-100, Sub 180, does not mean intervention is appropriate here. EWG states that its "interest in this proceeding interest in this proceeding is identical to the interests it has in the Net Metering proceeding," EWG's Response at ¶ 5. However, this ignores that the two proceedings involve substantially different issues.

9. The Net Metering Docket addresses Section 5 of HB 951 (2021), which requires the Commission to "revise net metering rates." If, as EWG asserts, its interest in this proceeding and the Net Metering Docket are "identical," EWG Response at ¶ 5, then that necessarily means that EWG's interest is sufficiently served by its intervention and participation in the Net Metering Docket, alone. In contrast to the Net Metering Docket, the General Assembly directed this proceeding be established under Part I of HB 951 for the Commission to achieve the complex and important State energy policy objectives set forth in the legislation. The interests stated in EWG's Response and Petition demonstrate that it would "needlessly inject issues which are not central to the resolution" of this Carbon Plan, such as EWG's interests related to the Net Metering Docket, into this separate proceeding. *See Order*, Docket No. EC-82, Sub 19.

10. Moreover, the Commission should reject EWG's contention that its unopposed intervention in a single Commission proceeding establishes a precedent that, in effect, guarantees EWG's right to intervene in other future Commission proceedings. Such a precedent would encourage persons or entities to opportunistically seek intervention in

Commission proceedings that could later be used to justify intervention in a subsequent proceeding if ever challenged.

11. EWG also relies on its status as “founding member of the Duke Energy Accountability Coalition that consists of advocacy organizations in each state where Duke Energy operates a monopoly utility subsidiary,” but this acknowledgement actually undermines its Petition. Pet. ¶ 3. Importantly, the Duke Energy Accountability Coalition is not a registered entity in North Carolina. Furthermore, the in-State members of the Duke Energy Accountability Coalition, rather than EWG, would be more likely to have a “real interest” in the proceeding. Indeed, two of the member-organizations of the Duke Energy Accountability Coalition, NC WARN and Appalachian Voices, sought and were granted to the right to intervene in this proceeding. *See Order Granting Petition to Intervene of NC WARN*, Docket Number E-100, Sub 179 (June 13, 2022) and *Order Granting Petition to Intervene of Appalachian Voices*, Docket Number E-100, Sub 179 (Feb. 2, 2022).<sup>4</sup> Thus, any interest EWG may have in this proceeding would be fully represented by these environmental advocacy organizations that actually have a presence in North Carolina.

12. Third, EWG’s purported “significant interest” in climate policy is no different than the interests of any customer or citizen of North Carolina. EWG states that it represents the interest of “its supporters, who are both customers and non-customers of North Carolina’s regulated electric utilities.” Pet. ¶ 4. EWG asserts that it wants to help its supporters “avoid unequal increase of retail rates, continued reliance on natural gas, and minimal incorporation of distributed energy resources.” *Id.* EWG also wants to encourage “residential and commercial customers to make critical investments in Distributed Energy

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<sup>4</sup> EWG’s attorney of record, Ms. Andrea C. Bonvecchio, is the same attorney of record for Intervenor Appalachian Voices.

Resources.” *Id.* Putting aside the fact that EWG has offered no meaningful evidence that email subscribers or social media followers could even be accurately characterized as members, the generalized interests of North Carolinians, broadly, are already represented by the Public Staff and the Attorney General’s Office in this proceeding.

13. Finally, as directed by the General Assembly and the Commission, the Companies have provided robust opportunities for public stakeholder engagement in advance of filing the Carbon Plan, and the Commission has provided opportunity for the submission of written consumer comments and established public hearings around the State to hear from interested citizens on the issue presented by this docket. To the extent EWG’s supporters who are Duke Energy customers or otherwise citizens of North Carolina seek to provide input into the policy discussions relating to the Carbon Plan, the Commission has established a meaningful and open public comment process for them to do so.

### **Conclusion**

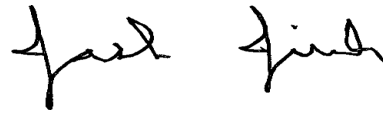
14. Based on the information presented, EWG has presented only indirect, incidental, and casual interests and has not demonstrated that it has a real interest in this proceeding to support its intervention. If the grounds articulated in EWG’s Petition and Response are sufficient to justify the EWG’s intervention in this case, then every non-governmental organization in the United States, wherever located, that is concerned about climate change policy and that has social media pages and a website accessible to North Carolinians would likewise have the right to intervene in this Docket, even where those views are already well-represented by other intervenors. Such a meaningless intervention standard is inconsistent with the Commission’s “real interest” standard, which requires a



substantially more concrete and tangible connection to the proceeding and the state than has been demonstrated by EWG.

WHEREFORE, DEP and DEC respectfully request that the Commission deny EWG's Petition to Intervene and prohibit EWG from participating as a party in this proceeding.

Respectfully submitted this the 24<sup>th</sup> day of June, 2022.



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*Counsel for Duke Energy Carolinas,  
LLC and Duke Energy Progress,  
LLC*

# **EXHIBIT A**

Docket No. E-100, Sub 179

Duke Energy Progress, LLC and Duke Energy  
Carolinas, LLC's Response in Opposition to  
Environmental Working Group's Petition to Intervene

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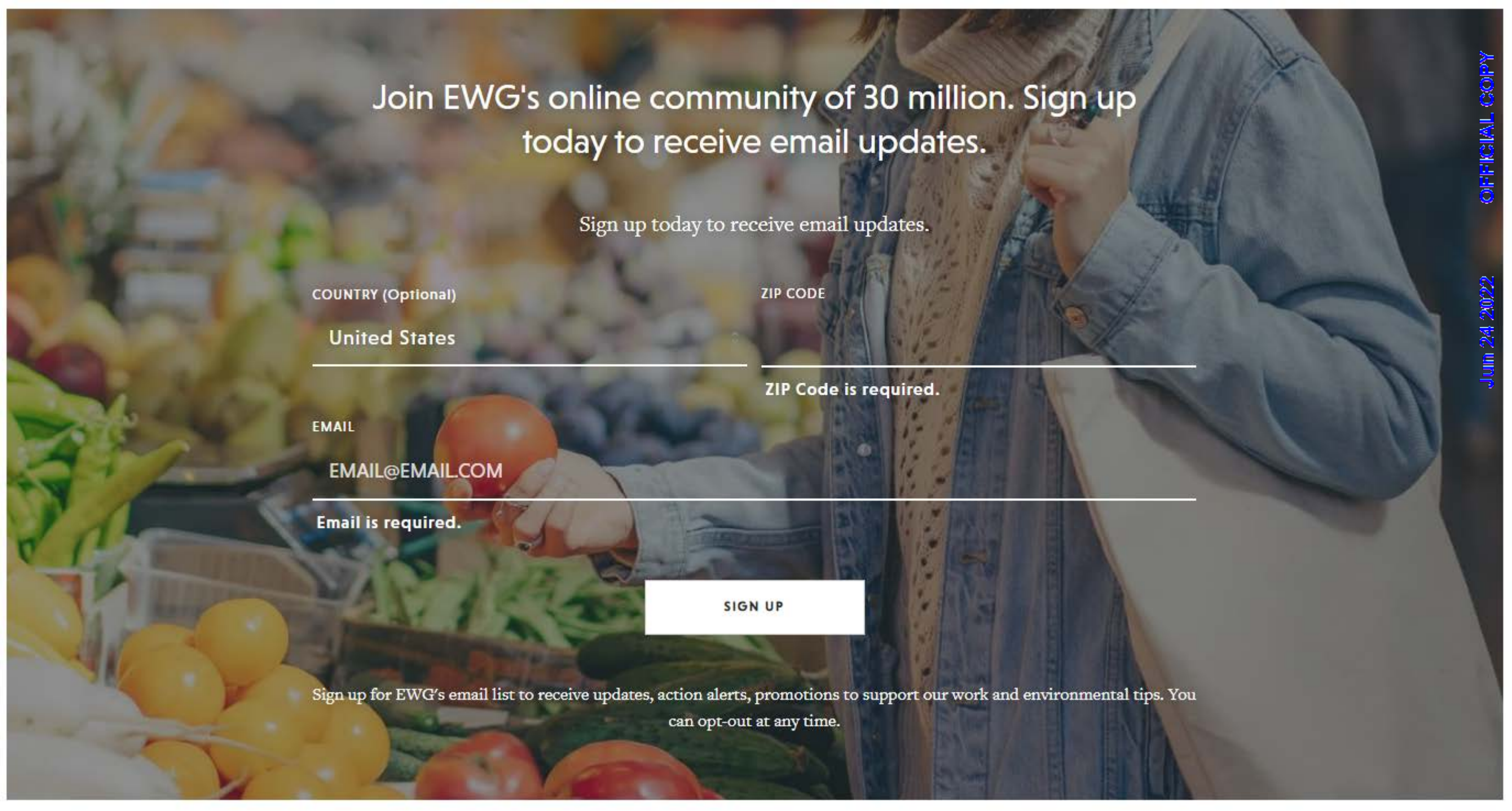
*By submitting your email address, you'll be subscribed to EWG's email list. You may opt-out at any time.*

## **EXHIBIT B**

Docket No. E-100, Sub 179

Duke Energy Progress, LLC and Duke Energy  
Carolinas, LLC's Response in Opposition to  
Environmental Working Group's Petition to Intervene



A person wearing a denim jacket and a light-colored apron is shown from the chest down, reaching into a bin of produce. The background is filled with various fruits and vegetables, including yellow cherry tomatoes, green beans, and leafy greens. The scene is brightly lit, typical of a grocery store.

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Sign up today to receive email updates.

COUNTRY (Optional)

United States

ZIP CODE

ZIP Code is required.

EMAIL

EMAIL@EMAIL.COM

Email is required.

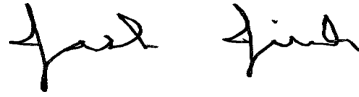
SIGN UP

Sign up for EWG's email list to receive updates, action alerts, promotions to support our work and environmental tips. You can opt-out at any time.

**CERTIFICATE OF SERVICE**

I certify that a copy of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Response in Opposition to Environmental Working Group's Petition, in Docket No. E-100, Sub 179, has been served by electronic mail, hand delivery or by depositing a copy in the United States mail, postage prepaid, to parties of record.

This the 24<sup>th</sup> day of June, 2022.



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