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December 22, 2022

VIA ELECTRONIC FILING

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

**RE: Letter in Lieu of Comments on Implementation of Demand
Response and Demand Flexibility Standards
Docket No. E-100, Sub 189**

Dear Ms. Dunston:

Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP” and together with DEC, the “Companies”) hereby submit this letter to the North Carolina Utilities Commission (“Commission”) in lieu of written comments pursuant to the Commission’s *Order Allowing Comments*, issued November 10, 2022 in the above-captioned docket (“*Order*”).

The Commission’s *Order* referred to the Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021) (“IIJA”), which, among other things, amended the Public Utility Regulatory Policies Act of 1978 (“PURPA”) by adding Section 111(d)(20), 16 U.S.C. § 2621(d)(20). Section 111(d)(20) provides in subparagraph (A) that “each electric utility shall promote the use of demand-response and demand flexibility practices by commercial, residential, and industrial customers to reduce electricity consumption during period of unusually high demand.” Subparagraph B of Section 111(d)(20), 16 U.S.C. § 2621(d)(20) requires that each “State regulatory authority shall consider establishing rate mechanisms allowing an electric utility with respect to which the State regulatory authority has ratemaking authority to timely recover the costs of promoting demand-response and demand flexibility practices in accordance with subparagraph (A).”

The *Order* further detailed that Section 40104(a)(2) of the IIJA amended Section 112 of PURPA to require each state regulatory authority with ratemaking authority over electric utilities to set a hearing to consider the standard set forth Section 111(d)(20) of PURPA within one year of the enactment of the IIJA and to complete the consideration and make the determination with respect to the new standard within two years of enactment

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of the IJJA. However, the Commission noted in its *Order* that if a state has previously undertaken consideration of the same or equivalent standards before the date of the IJJA's enactment through one of three listed methods, the IJJA provides that such consideration is not required. *Order* at 1-2.

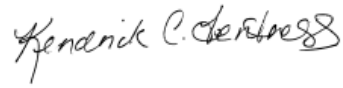
The Commission made a "preliminary conclusion" in its *Order* that it has, prior to the enactment of the IJJA, considered or implemented the demand response and demand flexibility standards (or comparable standards) as required by the IJJA Section 40104 and that it has fully complied with the IJJA with respect to those standards. *Order* at 4. In so concluding, the Commission recognized that the public policy of North Carolina, its statutory laws, and the orders and policies of the Commission promote demand response and demand flexibility by retail customers. *Order* at 2. Citing in particular N.C. Gen. Stat. § 62-133.9(c) and Commission Rule R8-60, the Commission concluded that North Carolina's public electric utilities are expected to continually review and assess their demand-side resources. *Id.* The Commission noted Virginia Electric and Power Company d/b/a Dominion Energy North Carolina's twenty-four demand-side management ("DSM") and energy efficiency ("EE") programs and rate schedules including variable demand charges for on-peak or off-peak hours and summarized DEP's and DEC's extensive and numerous residential and nonresidential DSM/EE programs and respective time-of-use rate schedules. *Order* at 2-3. The Commission also stated that DEC and DEP are presently involved in a comprehensive rate design study that includes leveraging the functionality of Advanced Metering Infrastructure to design new time-of-use periods that will better reflect cost causation, more accurately reflect the benefits of distributed energy technologies, and ease customers' modification of energy consumption patterns. *Id.*, citing *Comprehensive Rate Design Study Roadmap*, Docket Nos. E-7, Sub 1214, and E-2, Sub 1219 (March 31, 2022).

Lastly, the Commission recounted in its *Order* that prior to the enactment of the IJJA, the Commission had promulgated rules creating "rate mechanisms that allowed an electric utility with respect to which the State regulatory authority has rate ratemaking authority to timely recover the cost of promoting demand-response and demand flexibility practices." *Order* at 3-4. The Commission specifically cited its procedures for establishing a DSM/EE rider that allows for the electric public utility to recover all reasonable and prudent costs incurred in adopting and implementing DSM and EE measures after August 20, 2007, as well as, if appropriate, utility incentives, including net lost revenues. The Commission further cited its Rule R8-69, which outlines the procedures for these annual cost recovery proceedings. *Id.* at 4.

Based on the foregoing, the Companies agree with the Commission's preliminary conclusion that it has, prior to the enactment of the IJJA, considered or implemented the demand response and demand flexibility standards (or comparable standards) as required by IJJA Section 40104 and that it has fully complied with the IJJA with respect to those standards. The Companies respectfully submit that the Commission is not required to take any further action with regard to the Companies' utility demand response standards set forth in section 40104 of the IJJA.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Kendrick C. Fentress". The signature is written in a cursive, slightly stylized font.

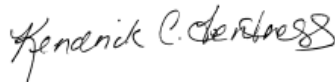
Kendrick C. Fentress

cc: Parties of Record

CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Letter in Lieu of Comments on Implementation of Demand Response and Demand Flexibility Standards, in Docket No. E-100, Sub 189, has been served by electronic mail, hand delivery or by depositing a copy in the United States mail, postage prepaid to the parties of record.

This, the 22nd day of December, 2022.



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