LAW OFFICE OF
ROBERT W. KAYLOR, P.A.
353 EAST SIX FORKS ROAD, SUITE 260
RALEIGH, NORTH CAROLINA 27609
(919) 828-5250
FACSIMILE (919) 828-5240

November 5, 2020

Via email to GStyers@Foxrothschild.com and First Class Mail

Gray Styers, Esq,
Fox Rothschild, LLP
434 Fayetteville St.
Site 2800
Raleigh, NC 27601

Re: Fifth Restated and Amended Renewable Power Purchase Agreement dated 21st day of June 2016 (the "Agreement") between North Carolina Renewable Power-Lumberton LLC ("Seller") and Duke Energy Progress, LLC ("Buyer"), Docket No. SP-5640, Sub 0

Dear Gray:

As you know, I am Buyer's counsel with respect to the above-referenced Agreement. On May 28, 2020, Buyer demanded Seller provide Performance Assurance in accordance with the Agreement. Seller did not do so. On October 15, Buyer notified Seller that with respect to Seller's Events of Default under the Agreement, including without limitation Seller's failure to provide the Performance Assurance, Seller's misrepresentations, and Seller's breaches of warranties, Buyer reserved all rights and remedies, and exercised the right and remedy of "suspending any and all further payments of any amounts that may otherwise be payable from Buyer to Seller under the Agreement or otherwise."

On October 20, you wrote to me, advising me that Seller was prepared to perform the Agreement as demanded by Buyer in its May 28, 2020 letter, and post the required increase of Performance Assurance as set forth therein. Based on your letter, I noted for you Buyer's projected damages and that the demanded Performance Assurance secured a mere fraction thereof. Further, I noted that absent further developments or changes in facts or circumstances, within five business days following Buyer's receipt of the original Letter of Credit increased to the required amount, Buyer would defer its suspension of payments and pay the outstanding invoices, without interest, and continue paying future invoices through December 2020, subject to Buyer's rights to suspend payments as provided in the Agreement and under North Carolina law, and its rights to set off and

deduct amounts damages payable by Seller under Section 7.10.1 "from any amounts otherwise payable to Seller," none of which are waived in any respect.

Seller still did not provide the Performance Assurance. Instead, on October 28, Steve Dailey of Seller told David Johnson of Buyer that Seller would shut down the Facility. We understand that as of 12:30 a.m. November 2, 2020, Seller ceased generation from the Facility. This is a breach of Seller's covenant to "operate" the Facility, as set forth in Section 6.1 of the Agreement, and Section 20.12 provides a further Event of Default with respect to Seller's abandonment of operations.

Seller has accumulated Events of Default. These include various failures to perform, and intentional misrepresentations and concealments of critical facts. For example, Seller attempted to operate in violation of the Facility's air permit, as described in Exhibit 4 to the Complaint in federal civil action 5-16-cv-00907-BO, Eastern District of North Carolina, *NRG Energy Services v. Georgia Renewable Power, et al.* Buyer at no time was aware of this conduct, and did not authorize, and does not consent to, Seller operating in violation of the Facility air permit, or in violation of any other permit or legal requirement. Further, according to Paragraph 105 of the Amended Complaint in civil action 1:2016-cv-03690, Northern District of Georgia, *Five on Fifty v. Bean et al.*, Seller, but not Buyer, was in possession of an independent "Milbank" due diligence report that reported it was impossible for the Facility to meet the guaranteed production obligations. Buyer at no time was aware of, and did not authorize, and does not consent to, any of Seller's conduct as alleged in the *Five on Fifty* litigation.

Without limiting Buyer's declarations and notices of these and other Events of Default of Seller, please take notice that the following Events of Default have occurred and are continuing for Seller: Section 20.2, any representation or warranty is false in any material respect when made; Section 20.9, Seller fails to provide the Performance Assurance, and any such failure is not cured within five Business Days; Section 20.12, Seller abandons operation of the Facility for more than thirty consecutive days; and Section 20.17, Seller fails to perform any material covenant or obligation not remedied within thirty days of notice. Sections 8.4 and 8.7 of the Agreement provide Buyer a lien and rights of netting, recoupment, and setoff against any Performance Assurance, which would include any unpaid amounts thereof.

Without limiting the foregoing, we believe an appropriate next step should be to discuss an orderly termination of the Agreement, taking into account Seller's defaults and accumulated damages owed to Buyer. If Seller desires to engage in discussions with Buyer for purposes of an orderly termination and liquidation of obligations under the Agreement, please contact me.

We intend to file this letter in Docket No. SP-5640, Sub 0 at the North Carolina Utilities Commission. This letter is without prejudice to and not in limitation of any and all rights and remedies of Buyer under the Agreement and applicable law, and does not in any respect waive any remedies for any period or for any purpose. All rights and remedies are reserved. Please advise at your earliest convenience if any of the foregoing is not clear.

Very truly yours.

/Robert W. Kaylor

Robert W. Kaylor

cc: North Carolina Utilities Commission, Docket No. SP-5640, Sub 0
Tim R. Dodge, Public Staff-North Carolina Utilities Commission