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September 12, 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's Performance-Based Regulation Application; Duke Energy Carolinas, LLC's Performance-Based Regulation Application  
Docket Nos. E-2, Sub 1300 and E-7, Sub 1276**

Dear Ms. Dunston:

Please find enclosed for filing in the above-referenced dockets the Agreement and Stipulation of Partial Settlement between Duke Energy Progress, LLC, Duke Energy Carolinas, LLC, the Public Staff – North Carolina Utilities Commission, Carolina Industrial Group for Fair Utility Rates II, and Carolina Industrial Group for Fair Utility Rates III.

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

Sincerely,

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

Jack E. Jirak

cc: Christopher J. Ayers, Executive Director, Public Staff  
Lucy Edmondson, Chief Counsel, Public Staff  
Christina D. Cress, Esq.

OFFICIAL COPY

Sep 12 2022

## BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1300

DOCKET NO. E-7, SUB 1276

In the Matter of:	)	
	)	
Application of Duke Energy Progress, LLC	)	
For Adjustment of Rates and Charges	)	
Applicable to Electric Service in North Carolina	)	<b>AGREEMENT AND</b>
and Performance-Based Regulation	)	<b>STIPULATION OF</b>
	)	<b>PARTIAL SETTLEMENT</b>
	)	
In the Matter of:	)	
	)	
Application of Duke Energy Carolinas, LLC	)	
For Adjustment of Rates and Charges	)	
Applicable to Electric Service in North Carolina	)	
and Performance-Based Regulation	)	
	)	

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Duke Energy Progress, LLC (“DEP”) and Duke Energy Carolinas, LLC (“DEC”) (collectively, the “Companies”); the Public Staff, North Carolina Utilities Commission (the “Public Staff”); and the Carolina Industrial Group for Fair Utility Rates II (“CIGFUR II”) and Carolina Industrial Group for Fair Utility Rates III (“CIGFUR III”) (collectively, “CIGFUR”),<sup>1</sup> 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. Pursuant to the Commission’s March 31, 2021 *Order Accepting Stipulations, Granting Partial Rate Increase, and Requiring Customer Notice* in Docket

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<sup>1</sup> The Companies, the Public Staff, and CIGFUR are collectively referred to herein as the “Stipulating Parties” and any one of which, a “Party.”

No. E-7, Sub 1214 and its April 16, 2021 *Order Accepting Stipulations, Granting Partial Rate Increase, and Requiring Customer Notice* in Docket No. E-2, Sub 1219, the Companies undertook an analysis of various cost of service study methodologies consistent with the terms of the Second Agreement and Stipulation of Partial Settlement entered into between the Public Staff and DEC and DEP, respectively (“Second Partial Stipulations”). The Companies invited parties of record in Docket Nos. E-7, Sub 1214 and E-2, Sub 1219 to participate in a series of stakeholder meetings on the topic, in accordance with the Second Partial Stipulations which required the Companies to consult with the Public Staff and other interested parties throughout the study process. Stakeholders met throughout 2021, and the resulting Cost of Service Study, dated January 25, 2022, was filed with the Commission in both dockets on January 26, 2022. The parties to the stakeholder process did not reach a consensus as to the appropriate cost allocation methodology for the Companies.

2. On September 6, 2022, in Docket No. E-2, Sub 1300, pursuant to Rule R1-17(a) of the Rules of Practice and Procedure of the Commission, DEP notified the Commission that it intends to file a general rate application that includes a performance-based regulation application (“PBR Application”) as authorized under N.C. Gen. Stat. §62-133.16, on or about October 6, 2022 (“DEP Upcoming Rate Case”).

3. On September 8, 2022, in Docket No. E-7, Sub 1276, DEC notified the Commission that it intends to file a general rate application that includes a PBR application as authorized under N.C. Gen. Stat. §62-133.16, no earlier than January 6, 2023 (“DEC Upcoming Rate Case,” and together with the DEP Upcoming Rate Case, “Upcoming Rate Cases”).

4. Following the conclusion of the cost of service study, the Companies, the Public Staff, and CIGFUR engaged in a series of settlement discussions to see if an agreement could be reached as to the appropriate cost allocation methodology for the Companies' production and transmission demand costs to be used in the Upcoming Rate Cases.

5. Prior to the Companies filing the Upcoming Rate Cases, the Stipulating Parties reached a settlement with respect to the methodology for allocating the Companies' production and transmission demand related costs ("Resolved Issues"). The Stipulating Parties agree and stipulate as follows:

## **II. RESOLVED ISSUES**

1. With respect to production demand and transmission demand costs, the Stipulating Parties agree that in the Upcoming Rate Cases the Companies shall use, and the Stipulating Parties shall support, the twelve coincident peak ("12 CP") method for jurisdictional allocations and the modified Average & Excess ("Modified A&E")<sup>2</sup> method for North Carolina retail customer class allocations. Because transmission demand does not have average or excess energy components, the transmission demand factors at the customer class level will be equivalent to the 12 CP calculation.

2. For purposes of allocating production demand costs on a jurisdictional basis as well as to North Carolina retail rate classes, the Companies agree to make, and the Stipulating Parties agree to support, an adjustment to exclude curtailable/interruptible

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<sup>2</sup> The Modified A&E method is used by Dominion Energy to allocate production demand costs among its Virginia retail customers. Average & Excess methods consider that generation facilities are needed to serve a utility's "average load," as well as its "excess or peak load," in assigning responsibility for the recovery of production fixed costs.

loads for the following riders if they were not curtailed at the twelve monthly system peak hours during the test year: LGS-CUR-TOU–Large General Service–Curtable Schedule LGS-CUR-TOU, Rider LLC–Large Load Curtable Rider LLC, Rider 57–Supplementary & Interruptible Standby Service Rider, Rider IPS–Incremental Power Service Rider IPS, Rider 68–Dispatched Power Rider No. 68 and Rider NFS–Supplementary and Non-Firm Standby Service Rider NFS for DEP and for DEC – Rider SG–Standby Generator Control and Rider IS–Interruptible Power Service.

3. The Stipulating Parties agree that the Companies will utilize the cost of service methodology set forth in the Resolved Issues to calculate rates in the Upcoming Rate Cases. The Stipulating Parties agree Exhibit A to this Stipulation reflects DEP’s allocation factors for the DEP Upcoming Rate Case calculated in accordance with the Resolved Issues. The Stipulating Parties agree Exhibit B to this Stipulation reflects DEC’s allocation factors for the DEC Upcoming Rate Case calculated in accordance with the Resolved Issues.

4. Aside from the Resolved Issues, the Stipulating Parties have not reached a compromise on any other issues relating to the Upcoming Rate Cases at this time. This Stipulation applies to the Upcoming Rate Cases only. The Stipulating Parties reserve the right to propose any cost allocation method they choose in any future rate cases following the conclusion of the Upcoming Rate Cases.

### **III. AGREEMENT IN SUPPORT OF SETTLEMENT; NON-WAIVER.**

1. The Stipulating Parties agree to file testimony (and exhibits, if applicable) in support of the Resolved Issues in the Upcoming Rate Cases.

2. 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 jurisdictional and class allocations of costs (with respect to the Resolved 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.

3. 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 or the Commission's acceptance of this Stipulation and approval of the cost allocation methodology 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.

4. 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.

5. 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.

#### **IV. RECEIPT OF TESTIMONY AND WAIVER OF CROSS-EXAMINATION**

In the Upcoming Rate cases, 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 on Resolved Issues. If, however, questions are asked by any Commissioner, or if questions are asked or positions are taken by any party who is not a Stipulating Party, then any Stipulating Party may respond to such questions by presenting testimony or exhibits and/or cross-examining any witness with respect to such testimony and exhibits.

**V. 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 such order. No Stipulating Party shall withdraw from the Stipulation prior to complying with the foregoing sentence. If any Stipulating Party withdraws from the Stipulation, each Stipulating 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.

**VI. 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 electronic or facsimile signature shall be deemed to be, and shall have the same effect as, execution by original signature.

## **VII. 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 9th day of September, 2022.

Duke Energy Progress, LLC

By:   
Stephen De May, State President – North Carolina

Duke Energy Carolinas, LLC

By:   
Stephen De May, State President – North Carolina

Public Staff – North Carolina Utilities Commission

By:   
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Christopher J. Ayers

Executive Director

CIGFUR II

By: /s/ Christina D. Cress

Christina D. Cress, Counsel for CIGFUR II

CIGFUR III

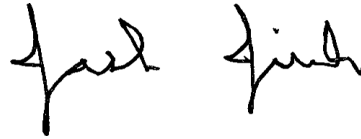
By: /s/ Christina D. Cress

Christina D. Cress, Counsel for CIGFUR III

**CERTIFICATE OF SERVICE**

I certify that a copy of the Agreement and Stipulation of Partial Settlement between Duke Energy Progress, LLC, Duke Energy Carolinas, LLC, the Public Staff – North Carolina Utilities Commission, Carolina Industrial Group for Fair Utility Rates II, and Carolina Industrial Group for Fair Utility Rates III, 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 12<sup>th</sup> day of September, 2022.

A handwritten signature in black ink, appearing to read "Jack Jirak".

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Jack E. Jirak  
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