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August 16, 2018

**VIA ELECTRONIC FILING**

M. Lynn Jarvis, Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, North Carolina 27699-4300

**Re: Agreement and Stipulation of Partial Settlement  
Docket Nos. E-2, Sub 1170 and E-7, Sub 1169**

Dear Ms. Jarvis:

Please find enclosed the Agreement and Stipulation of Partial Settlement by and between Duke Energy Carolinas, LLC ("DEC"), Duke Energy Progress, LLC ("DEP" and together with DEC, the "Companies"), and Wal-Mart Stores East, LP and Sam's East, Inc. ("Settlement") in Docket Nos. E-2, Sub 1170 and E-7, Sub 1169. All capitalized terms not otherwise defined herein shall have the meaning given to them in the Settlement.

Per the direction of the North Carolina Utilities Commission's ("Commission") July 16, 2018 order in the above referenced dockets, the Companies have sought and plan to continue to engage stakeholders to seek to obtain agreement on various aspects of the Green Source Advantage ("GSA") Program. The Settlement memorializes one such agreement with a GSA customer and provides for an alternative Self-Supply Bill Credit mechanism that is based on the Companies' marginal energy costs. If approved by the Commission, this Bill Credit option would be available to participating customers in addition to the Bill Credit options proposed in the Company's initial filing and reply comments. The Companies note that the concept behind the alternative Bill Credit mechanism was mentioned as a potential compromise solution in the comments of the Public Staff and is substantially similar to a commercial and industrial green energy

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purchase program that was approved by the Georgia Public Service Commission and was subsequently fully subscribed.

The Settlement speaks for itself in terms of the manner in which the Bill Credit will be calculated, but the Companies offer the following additional background regarding the manner in which this alternative Bill Credit will be implemented.

As specified in the Settlement, the price specified in the Power Purchase Agreement (“PPA”) shall be equal to the Hourly Rate of the applicable Company. However, the Settlement requires a revised GSA Service Agreement with the following modifications (for purposes of the marginal energy costs Bill Credit arrangement only).

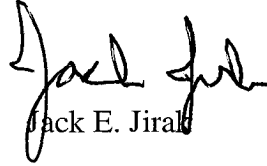
- The GSA Service Agreement shall be a three-party agreement between the applicable Company, the GSA customer (“GSA Customer”) and the GSA Renewable Supplier. The GSA Customer may elect any length of term between 1-20 years (but the term of the PPA must be equal to the term of the GSA Service Agreement).
- The price paid by the GSA Customer (“GSA Product Charge”) shall be equal to the levelized \$/MWh price negotiated by the GSA Customer with the GSA Renewable Supplier (“Negotiated Price”).
- The GSA Renewable Supplier shall assign their right to payment under the power purchase agreement (“PPA”) to the GSA Customer, which the GSA Customer would receive as the Bill Credit.
- The applicable Company would agree to assign the right to the GSA Product Charge (which is equal to the Negotiated Price) to the GSA Renewable Supplier.
- For the avoidance of doubt, in the event of termination of the GSA Service Agreement due to an event of default on the part of the GSA Customer, the PPA shall remain in place.

A copy of the GSA Service Agreement modified for use in this arrangement will be provided as soon as possible.

The Companies are available to discuss the Settlement with other interested parties at any time. In addition, the Companies have scheduled an open meeting on August 21, 2018 for all stakeholders. The meeting is intended to allow for all stakeholders to share ideas about potential areas of agreement but will also provide a venue for any further discussion regarding the Settlement.

Please feel free to contact me with any questions. Thank you for your assistance in this matter.

Very truly yours,



Jack E. Jiral

Enclosure

cc: Parties of Record

## BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1170

DOCKET NO. E-7, SUB 1169

<b>In the Matter of</b> <b>Petition for Approval of Green Source</b> <b>Advantage Program and Rider GSA to</b> <b>Implement N.C. Gen. Stat. § 62.159.2</b>	) ) ) ) )	<b>Agreement and Stipulation of</b> <b>Partial Settlement by and between</b> <b>Duke Energy Carolinas, LLC, Duke</b> <b>Energy Progress, LLC, and Wal-</b> <b>Mart Stores East, LP and Sam's</b> <b>East, Inc.</b>
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Duke Energy Carolinas, LLC ("DEC") Duke Energy Progress, LLC ("DEP" and together with DEC, the "Companies") and Wal-Mart Stores East, LP and Sam's East, Inc. ("Walmart" and, together with the Companies, the "Stipulating Parties") through counsel and pursuant to N.C. Gen. Stat. § 62-69 respectfully submit this Agreement and Stipulation of Partial Settlement ("Stipulation") for consideration by the North Carolina Utilities Commission ("Commission") in the above-captioned proceeding.

The Stipulating Parties agree and stipulate as follows:

1. **Background.** On January 23, 2018, the Companies jointly filed a *Petition for Approval of Green Source Advantage Program and Rider GSA* in the above-captioned dockets ("Petition"), as required by Section 3.(c) of Session Law 2017-192. The Petition requested Commission approval of a customer-directed renewable energy procurement program designed to implement the requirements of N.C. Gen. Stat. § 62-159.2 ("GSA Program"). On February 23, 2018, Walmart, along with certain other parties, filed comments on the Companies' GSA Program. On April 20, 2018, the Companies along with certain other parties filed reply comments.
2. **Bill Credit.** The Companies' Petition, as well as the comments and other filings by the Stipulating Parties, have presented differing positions on the structure of and methodology for calculating the bill credit ("Bill Credit") to be used under the Companies' GSA Program. The Stipulating Parties hereby agree that they would support a Bill Credit for the Self-Supply option of the GSA Program that is calculated in the following manner:

- a. The Bill Credit will be an hourly, day-ahead projection determined by DEC or DEP on a daily basis ("Hourly Rate") and calculated as described in subsection 2.b or 2.c below.
- b. For GSA customers located in the DEP retail service territory and served by a facility located in the DEP retail service territory:
  - i. The Hourly Rate shall be determined based upon the following formula:  
$$\text{Hourly Rate} = (\text{MENERGY} + \text{CAP})$$
  - ii. MENERGY = Marginal Energy Cost per kilowatt-hour including marginal fuel and variable operating and maintenance expenses.
  - iii. CAP = Tiered Capacity Charge per kilowatt-hour whenever the day-ahead forecast of the ratio of hourly available generation to hourly demand is equal or less than 1.15
  - iv. The Hourly Rate will not, under any circumstance, be lower than zero.
- c. For GSA customers located in the DEC retail service territory and served by a facility located in the DEC retail service territory:
  - i. The Hourly Rate shall be determined based upon the following formula:  
$$\text{Hourly Rate} = (\text{Hourly Energy Charges} + \text{Rationing Charges}).$$
  - ii. Hourly Energy Charge = Expected marginal production cost, and other directly-related costs.
  - iii. Rationing Charge = marginal capacity cost during hours with generation constraint.
  - iv. The Hourly Rate will not, under any circumstance, be lower than zero.
- d. Allocation of Program Capacity and Rates for Customers with Multiple Participating Accounts.
  - i. In any instance in which a single GSA Service Agreement covers multiple accounts under the control of a single GSA customer, the GSA customer shall be permitted to allocate the total capacity elected by the GSA customer, and the associated GSA Product Charge and Bill Credit, between the various accounts under the control of the GSA customer. The GSA Customer shall be entitled to re-designate the allocation upon 60 days written notice to the applicable Company.



- ii. The sum of the fixed GSA administrative charge for all applicable accounts shall be allocated based on the same allocated proportions as are used to allocate the capacity, GSA Product Charge, and Bill Credit.
- iii. On a quarterly, the Companies shall provide to the GSA customer documentation of the calculation of the Bill Credit.

3. **PPA.**

- a. The GSA customer shall negotiate a levelized \$/MWh with the third-party developer ("GSA Renewable Supplier") to set the GSA Product Charge. Notwithstanding the foregoing, the price specified in the power purchase agreement ("PPA") by and between DEP or DEC (as applicable) and the GSA Renewable Suppliers shall be equal to the Hourly Rate (as calculated above). In periods in which the PPA price is less than the GSA Product Charge, additional amounts may be due from the applicable Company to the GSA Renewable Supplier under the terms of the GSA service agreement ("GSA Service Agreement").
- b. The term of the PPA agreement shall be equal in length to the term of GSA Service Agreement.
- c. Pursuant to the PPA, the GSA Renewable Supplier shall transfer all renewable energy certificates ("RECs") associated with such facility to the applicable GSA customer.

4. **Non-Participating Customers Held Neutral.** The Stipulating Parties agree that the Bill Credit design described in Section 2 is appropriate to ensure that non-participating customers are held neutral, neither advantaged nor disadvantaged, from the impact of the renewable electricity procured on behalf of the program customer, as required by N.C. Gen. Stat. § 62-159.2(e).

5. **Other GSA Program Issues.** This Stipulation does not address any GSA Program issues other than the issues addressed in Sections 2-3 of this Settlement Agreement for the Self-Supply option under the GSA Program and, for the sake of clarity, the

Stipulating Parties are not withdrawing, amending or otherwise modifying their respective positions regarding other GSA Program issues in the above captioned dockets.

6. **Miscellaneous Provisions.**

- a. **Effectiveness of Agreement.** This Stipulation shall be binding upon the Stipulating Parties upon the execution hereof but its substantive terms shall be effective only upon the approval of the Stipulation, in its entirety, by the Commission.
- b. **Support of Stipulation.** The Stipulating Parties will support this Stipulation and take any actions necessary in good faith to support the Stipulation before the Commission.
- c. **Execution in Counterparts.** This Settlement Agreement may be executed by the Stipulating Parties in any number of counterparts, each of which shall be deemed to be an original document, but all of which taken together shall constitute one and the same document and agreement.
- d. **Authority.** The Stipulating Parties and their respective signatories warrant that each has the power and authority to execute this Settlement Agreement, and that the Stipulating Parties have voluntarily executed this Settlement Agreement based on their own independent investigations.
- e. **Choice of Law.** This Stipulation shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of North Carolina.
- f. **Waiver or Modification.** Neither this Stipulation, nor any provision hereof, may be waived, modified, amended, discharged or terminated except by written instrument signed by the Stipulating Party against whom the enforcement of such waiver, modification, amendment, discharge, or termination is sought, and then only to the extent set forth in such instrument.
- g. **Partial Invalidity; Severability.** If any provision of this Stipulation is held to be illegal, invalid, or unenforceable under any present or future laws, such provision shall be fully severable and the remainder of the Stipulation shall continue in full force. In lieu of any severed provision, there shall be added a provision with such terms and effect, as similar as possible to such illegal, invalid or unenforceable provision as may be possible, legal, valid and enforceable.

This Agreement and Stipulation of Partial Settlement is executed as of the 15<sup>th</sup> day of August, 2018.

DUKE ENERGY CAROLINAS, LLC

By: Melisa Johns  
[VP DET Business & Product Development]  
[ ]

DUKE ENERGY PROGRESS, LLC

By: Melisa Johns  
[VP DET Business & Product Development]  
[ ]

WAL-MART STORES EAST, LP

SAM'S EAST, INC.


By: [Signature]  
[Counsel]  
[ ]



**CERTIFICATE OF SERVICE**

I certify that a copy of the Agreement and Stipulation of Partial Settlement by and between Duke Energy Carolinas, LLC, Duke Energy Progress, LLC and Wal-Mart Stores East, LP and Sam's East, Inc. in Docket Nos. E-2, Sub 1170 and E-7, Sub 1169, 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 16<sup>th</sup> day of August, 2018.

  
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