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August 28, 2014

Via Electronic Filing

Ms. Gail L. Mount
Deputy Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4325

RE: Docket No. E-100, Sub 113

Ms. Mount:

Enclosed for filing please find Joint Motion of Duke Energy Carolinas, LLC, Duke Energy Progress, Inc., Virginia Electric and Power Company, d/b/a Dominion North Carolina Power, GreenCo. Solutions, Inc., Public Works Commission of the City of Fayetteville, EnergyUnited Electric Membership Corporation, Halifax Electric Membership Corporation, the Tennessee Valley Authority, North Carolina Eastern Municipal Power Agency, and North Carolina Municipal Power Agency Number 1 (collectively, the "Electric Suppliers") to Modify and Delay the 2014 Requirements of N.C. Gen. Stat. §62-133.8(e) Due to Lack of Sufficient Swine Waste Resources.

Please let me know, at your earliest convenience, if you have any questions regarding this matter.

Very truly yours,

Charles A. Castle

cc: Service List

Aug 28 2014 OFFICIAL COPY

CERTIFICATE OF SERVICE

Docket No. E-100, Sub 113

I hereby certify that a copy of Joint Motion of the Electric Suppliers to Modify and Delay the 2014 Requirements of N.C. Gen. Stat. §62-133.8(e) Due to Lack of Sufficient Swine Waste Resources has been served by electronic mail (e-mail), hand delivery or by depositing a copy in United States Mail, first class postage prepaid, properly addressed to the parties of record.

This the 28th day of August, 2014.



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COUNSEL FOR DUKE ENERGY CAROLINAS, LLC AND
DUKE ENERGY PROGRESS, INC.
Filing on Behalf of the Electric Suppliers

OFFICIAL COPY

Aug 28 2014

**BEFORE
THE NORTH CAROLINA UTILITIES COMMISSION**

DOCKET NO. E-100, SUB 113

In the Matter of:	)	JOINT MOTION OF DUKE ENERGY
	)	CAROLINAS, LLC, DUKE ENERGY
Rulemaking Proceeding to	)	PROGRESS, INC., VIRGINIA ELECTRIC
Implement Session Law 2007-397	)	AND POWER COMPANY D/B/A
	)	DOMINION NORTH CAROLINA POWER,
	)	GREENCO SOLUTIONS, PUBLIC
	)	WORKS COMMISSION OF THE CITY OF
	)	FAYETTEVILLE, ENERGYUNITED
	)	ELECTRIC MEMBERSHIP
	)	CORPORATION, HALIFAX ELECTRIC
	)	MEMBERSHIP CORPORATION, THE
	)	TENNESSEE VALLEY AUTHORITY,
	)	NORTH CAROLINA EASTERN
	)	MUNICIPAL POWER AGENCY AND
	)	NORTH CAROLINA MUNICIPAL
	)	POWER AGENCY NUMBER 1 TO
	)	MODIFY AND DELAY THE 2014
	)	REQUIREMENTS OF N.C. GEN. STAT. §
	)	62-133.8(e) DUE TO LACK OF
	)	SUFFICIENT SWINE WASTE
		RESOURCES

INTRODUCTION

Pursuant to Rules R1-5 and R1-7 and Rule R8-67(c)(5) of the North Carolina Utilities Commission's ("the Commission") Rules and Regulations and N.C. Gen. Stat. § 62-133.8(i)(2), Duke Energy Progress, Inc. ("DEP")¹, Duke Energy Carolinas LLC ("DEC")², Virginia Electric and Power Company d/b/a Dominion North Carolina Power

¹ DEP is also acting in its capacity as REPS compliance aggregator for Town of Sharpsburg, Town of Lucama, Town of Black Creek, City of Waynesville and Town of Stantonburg.

² DEC is also acting in its capacity as REPS compliance aggregator for Blue Ridge Electric Membership Corporation, Rutherford Electric Membership Corporation, City of Dallas, Forest City, City of Concord, Town of Highlands, and City of Kings Mountain.

("Dominion")³, GreenCo Solutions, Inc. ("GreenCo"), Public Works Commission of the City of Fayetteville ("Fayetteville PWC"), EnergyUnited Electric Membership Corporation ("EnergyUnited EMC"), Halifax Electric Membership Corporation ("Halifax EMC"), the Tennessee Valley Authority ("TVA")⁴, North Carolina Eastern Municipal Power Agency ("NCEMPA")⁵ and North Carolina Municipal Power Agency Number 1⁶ ("NCMPA1" and together with NCEMPA, the "Power Agencies"), (collectively, the "Electric Suppliers"), submit the following joint motion for good cause to the Commission pursuant to Rule R8-67(c)(5) for approval of a joint request to relieve the Electric Suppliers from compliance with the requirements of N.C. Gen. Stat. §§ 62-133.8(e) in 2014; delay the Electric Suppliers' need to comply with the requirements of N.C. Gen. Stat. §§ 62-133.8(e) until calendar year 2015 by delaying all of the compliance obligations within that subsection for a one-year period; allow the Electric Suppliers to bank any swine renewable energy certificates ("RECs") previously or subsequently acquired for use in future compliance years; and allow the Electric Suppliers to replace compliance with such requirements in 2014 with compliance measures in accordance with N.C. Gen. Stat. §§ 62-133.8(b), (c) and (d). The Electric Suppliers submit they have individually and collectively made reasonable efforts to comply with this component of the North Carolina Renewable Energy and Energy Efficiency Portfolio Standard ("REPS") and that the relief requested herein is in the public interest. The Electric

³ Dominion is also acting in its capacity as REPS compliance aggregator for Town of Windsor.

⁴ TVA is not an electric power supplier under N.C. Gen. Stat. § 62-133.8, but is acting in its capacity as compliance aggregator for Blue Ridge Mountain Electric Membership Corporation, Mountain Electric Cooperative, Tri-State Electric Membership Corporation, and Murphy Electric Power Board, which are electric power suppliers.

⁵ NCEMPA is not an electric power supplier under N.C. Gen. Stat. § 62-133.8 but is acting in its capacity as REPS compliance aggregator for its 32 member municipalities which are electric power suppliers.

⁶ NCMPA1 is not an electric power supplier under N.C. Gen. Stat. § 62-133.8 but is acting in its capacity as REPS compliance aggregator for its 19 member municipalities which are electric power suppliers.

Suppliers are not seeking to modify or delay the requirements of N.C. Gen. Stat §§ 62-133.8(b), (c), (d) or (f) as part of this joint motion. The Electric Suppliers respectfully request that the Commission consider and approve their Joint Motion without the need for an evidentiary hearing, because the Electric Suppliers' 2014 collective swine set-aside compliance positions have not changed appreciably since the Commission's March 26, 2014 *Final Order Modifying the Poultry and Swine Set-Aside Requirements and Providing Other Relief* (hereinafter, "2013 Relief Order"); and because stakeholders and regulatory staff are now provided with ample information surrounding the status of the Electric Suppliers' compliance efforts through submission of the triannual reports required of the Electric Suppliers in the 2013 Relief Order, and opportunity to discuss and examine compliance strategies and alternatives in the stakeholder meetings also required by that Order.

**REQUEST TO DELAY COMPLIANCE WITH THE REQUIREMENTS OF
N.C. GEN. STAT. §§ 62-133.8(e)**

1. The Electric Suppliers, directly or indirectly, represent a substantial majority of the "electric power suppliers" (as defined in N.C. Gen. Stat. § 62-133.8(a)(3)) subject to the requirements of N.C. Gen. Stat. § 62-133.8. Duke and Progress are electric public utilities providing service to customers in North and South Carolina. Dominion is an electric public utility providing service to customers in Virginia and North Carolina. GreenCo is a North Carolina corporation operating as a cooperative, organized on behalf of twenty-two (22) North Carolina electric membership corporations ("EMCs") for the purpose of providing assistance to the participating EMCs in meeting their respective compliance obligations pursuant to N.C. Gen. Stat. § 62-133.8. EnergyUnited EMC and Halifax EMC are North Carolina electric membership corporations not complying

through GreenCo. Fayetteville PWC is a municipality that sells electric power to retail customers. TVA is a corporate agency and instrumentality of the United States created by and existing under the Tennessee Valley Authority Act of 1933, as amended, acting as compliance aggregator for four (4) municipal and cooperative distributors of TVA power that serve retail customers in North Carolina. NCEMPA and NCMPA1 are joint agencies created pursuant to Chapter 159B of the North Carolina General Statutes to provide wholesale power and related services to their 51 participating North Carolina municipal members (19 municipal members of NCMPA1 and 32 municipal members of NCEMPA). ElectriCities of North Carolina, Inc. is a joint municipal assistance agency organized pursuant to N.C. Gen. Stat. § 159B-43 by the Power Agencies it provides management services to them.

2. Subsection (e) of N.C. Gen. Stat. § 62-133.8, as modified by the 2013 Relief Order, requires that the following percentages of total electric power in kilowatt hours (“kWh”) sold to retail electric customers in North Carolina by electric power suppliers in the aggregate be supplied by swine waste (the “Swine Set-Aside”): 0.07% in 2014-2015; 0.14% in 2016-2018; and 0.20% in 2019 and thereafter.

3. Commission Rule R8-67(c)(5) provides that:

In any year, an electric power supplier or other interested party may petition the Commission to modify or delay the provisions of G.S. 62-133.8(b), (c), (d), (e) and (f), in whole or in part. The Commission may grant such petition upon a finding that it is in the public interest to do so. If an electric power supplier is the petitioner, it shall demonstrate that it has made a reasonable effort to meet the requirements of such provisions. . . . The Commission shall allow a modification or delay only with respect to the electric power supplier or group of electric power suppliers for which a need for the modification or delay has been demonstrated.

4. The Commission has ordered that compliance with the set-aside requirements of N.C. Gen. Stat § 62-133.8, including the Swine Set-Asides, is an aggregate obligation of electric power suppliers. See *Order on Duke Energy Carolinas, LLC, Motion for Clarification*, Docket No. E-100, Sub 113 (May 7, 2009). Further, in its *Order on Pro Rata Allocation of Aggregate Swine and Poultry Waste Set Aside Requirements and Motion for Clarification* in Docket No. E-100, Sub 113 (March 31, 2010) (“Pro-Rata Order”), the Commission approved the proposal supported by Dominion, DEC, NCEMC, GreenCo and DEP as a means for meeting the requirements of the statewide aggregate Swine and Poultry Set-Aside requirements, such that the aggregate requirements will be allocated among the Electric Suppliers based on the ratio of each respective Electric Suppliers’ prior year retail sales to the total statewide retail sales and that an electric power supplier shall be deemed in compliance with the Swine and Poultry Set-Aside requirements once it has reached its allocable share of the statewide aggregate requirement or has reached its incremental cost cap pursuant to N.C. Gen. Stat. § 62-133.8(h). In its 2013 Relief Order, the Commission held that it was in the public interest for all electric power suppliers to be held to the same compliance schedule for the Swine Set-Aside requirements. See 2013 Relief Order at 13.

I. THE ELECTRIC SUPPLIERS HAVE MADE REASONABLE, GOOD FAITH EFFORTS TO COMPLY WITH THE SWINE SET-ASIDE.

5. Since the passage of Session Law 2007-397 (“Senate Bill 3”), the Electric Suppliers, both individually and collectively, have made reasonable, good faith efforts to meet the requirements of the Swine Set-Aside, including but not limited to, actively engaging swine waste-to-energy developers, issuing requests for proposals (“RFPs”),

evaluating bids received, negotiating and executing long-term REC purchase agreements for these resources, processing interconnection requests from these generators, actively monitoring executed agreements, and, in some cases, further modifying REC purchase agreements to provide developers reasonable opportunity for successful project execution. Nonetheless, because of the continuing issues discussed in greater detail below, which parallel the reasons underlying the Commission's 2013 Relief Order, as well as in the Commission's *Order Modifying the Poultry and Swine Set-Aside Requirements and Granting Other Relief*, issued on November 29, 2012 in this docket ("2012 Relief Order"), the Electric Suppliers will collectively be unable to secure the RECs necessary to meet the aggregate Swine Set-Aside requirements in 2014.

SWINE SET-ASIDE PROCUREMENT EFFORTS

6. As noted above, since the enactment of Senate Bill 3, the Electric Suppliers have actively and diligently pursued opportunities to procure RECs to comply with their Swine Set-Aside requirements. However, the Electric Suppliers' procurement efforts with respect to swine waste-to-energy resources have been challenging from the outset, due to the small numbers of existing market participants in the United States and the fact that few, if any, of those market participants have direct experience developing or operating those biomass technologies used to generate electric power from swine waste. These factors have contributed to delays in development of this resource as well as the relatively high cost that will likely be required to ultimately develop and deliver RECs from swine waste fuel.

7. Since the 2013 Relief Order was issued, the Electric Suppliers have diligently pursued the acquisition of additional swine waste RECs through ongoing market assessments, RFPs, negotiation with potential suppliers and/or execution of

additional contracts. Despite their continuing reasonable and diligent efforts, the Electric Suppliers are now certain that they will be unable to meet the 2014 aggregate Swine Set-Aside compliance requirements. The Electric Suppliers remain committed to taking all reasonable actions to achieve compliance with the Swine Set-Aside over both the short and long term, and are actively monitoring the development of swine waste-to-energy projects and evaluating additional possible future compliance measures.

8. Additional details regarding the efforts of DEP, DEC, Dominion, GreenCo, Fayetteville PWC, EnergyUnited EMC, Halifax EMC, and the Power Agencies to meet the Swine-Waste Set-Aside requirements since the 2013 Relief Order was issued can be found in the confidential triannual progress reports, filed in Docket No. E-100, Sub113A.

9. Some Electric Suppliers have sought additional swine RECs, outside of the joint procurement efforts, either through spot purchase or through execution of long term REC purchase agreements. In spite of these additional procurement efforts, the Electric Suppliers are still unable to meet the aggregate 2014 Swine Set-Aside requirements.

II. THE REQUESTED DELAY OF COMPLIANCE WITH THE SWINE SET-ASIDE REQUIREMENT IS IN THE PUBLIC INTEREST.

10. The Electric Suppliers submit that given their reasonable efforts to comply with the Swine Set-Aside since the enactment of Senate Bill 3, and since the Commission's issuance of the 2012 and 2013 Relief Orders, the granting of the relief requested in this motion is in the public interest. The Electric Suppliers continue to diligently pursue opportunities to procure RECs to comply with the statewide aggregate

Swine Set-Aside requirement. Importantly, over the long term, the Electric Suppliers expect to reach full compliance with these requirements; however, over the short term, sufficient development of these new and unique resources to allow for such compliance will require additional time.

11. As stated above, the Swine Set-Aside has presented the Electric Suppliers with unique challenges. Primary among these challenges has been the lack of existing market participants in the United States and the fact that few, if any, of those market participants have actual or direct experience developing or operating those biomass technologies used to generate electric power from poultry waste or swine waste. Through Senate Bill 3, North Carolina has essentially become the test case for the scalable potential, limited or otherwise, for this biomass fuel. As the first and only state requiring the large-scale development of swine waste-to-energy generation projects, significant obstacles and hurdles have been encountered from the outset. The Electric Suppliers continue to support the development of qualifying resources to meet these set-aside requirements, as demonstrated by the long term REC purchase agreements they have executed, while still attempting to insulate their respective customers from the new and unique risks relating to capital costs, fuel and fuel transportation costs, environmental permitting, and operational challenges inherent in the development of new and different generation technologies.

12. This motion is not intended to address the Electric Suppliers' compliance with any REPS requirements beyond the 2014 compliance year for purposes of requesting relief under Rule R8-67(c)(5) and N.C. Gen. Stat. § 62-133.8(i)(2).

CONCLUSION

13. For the reasons set forth above, pursuant to N.C. Gen Stat. § 62-133.8(i)(2) and Commission Rules R1-5, R1-7 and R8-67(c)(5), the Electric Suppliers respectfully submit that the requested modification and delay of the Swine Set-Aside is reasonable and justified as a matter of law. The Electric Suppliers have reasonably and prudently attempted to comply with the requirements of the Swine Set-Aside since the enactment of Senate Bill 3. Despite those efforts, compliance with the aggregate requirements of the Swine Set-Aside cannot be achieved in 2014. The Electric Suppliers continue to make every reasonable effort to comply with the Swine Set-Aside and other REPS requirements. In view of the demonstrated past and continuing reasonable efforts to comply, the relief requested by the Electric Suppliers is in the public interest.

14. To the extent that any Electric Supplier has acquired swine REC's, given the escalation in the level of the aggregate Swine Set-Aside requirements applicable to the Electric Suppliers in the initial years of the compliance schedule under N.C. Gen Stat. § 62-133.8 (e), the Electric Suppliers submit that it is in the public interest, in connection with the relief requested herein, that they be allowed to bank any such REC's for use in future compliance years in order to better facilitate their efforts to collectively comply with these aggregate requirements in future compliance years.

WHEREFORE, the Electric Suppliers respectfully request that the Commission grant this joint motion and relieve the Electric Suppliers from compliance with the requirements of N.C. Gen. Stat. §§ 62-133.8(e) in 2014; delay the Electric Suppliers' need to comply with the requirements of N.C. Gen. Stat. §§ 62-133.8(e) until calendar year 2015 by delaying all of the compliance obligations within those subsections for one

year; allow the Electric Suppliers to bank any swine RECs previously or subsequently acquired for use in future compliance years; and allow the Electric Suppliers to replace compliance with such requirements in 2014 with compliance measures in accordance with N.C. Gen. Stat. §§ 62-133.8(b), (c) and (d). Furthermore, in light of the information contained herein and the essentially unchanged aggregate Swine Set-Aside compliance status since the issuance of the 2013 Relief Order, and the triannual reports filed in 2014, the Electric Suppliers respectfully request that the Commission approve the Joint Motion upon the basis of written submission of the parties without the need for an evidentiary hearing.

Respectfully submitted, this the 28th day of August 2014.

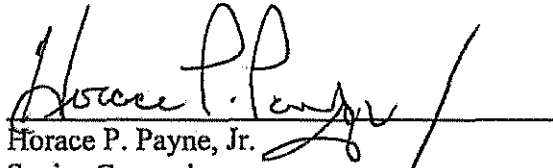
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A handwritten signature in black ink, appearing to read "Horace P. Payne, Jr.", written over a horizontal line.

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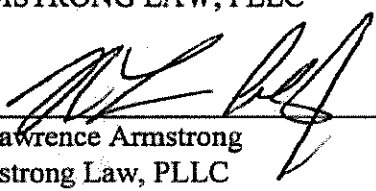
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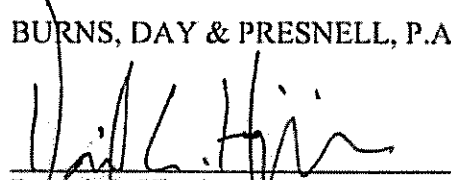
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