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January 27, 2021

VIA Electronic Filing

Ms. Kimberley A. Campbell
Office of the Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4335

**Re: Joint Petition of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC for Issuance of Storm Recovery Financing Orders
Docket Nos. E-7, Sub 1243 and E-2, Sub 1262**

Dear Ms. Campbell:

Enclosed for filing in the above-referenced proceedings on behalf of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (the “Companies”) please find the Agreement and Stipulation of Partial Settlement between the Companies and the Public Staff – North Carolina Utilities Commission.

Please feel free to contact me with any questions or concerns, and thank you for your assistance in this matter.

Sincerely,

Camal O. Robinson

COR:kjg

Enclosure

OFFICIAL COPY

Jan 27 2021

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-7, SUB 1243
DOCKET NO E-2, SUB 1262

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Joint Petition of Duke Energy Carolinas, LLC)	AGREEMENT AND
and Duke Energy Progress, LLC for Issuance of)	STIPULATION OF PARTIAL
Storm Recovery Financing Orders)	SETTLEMENT

Duke Energy Carolinas, LLC (“DEC”), Duke Energy Progress, LLC (“DEP”) (individually, each a “Company” and collectively, the “Companies”), and the Public Staff – North Carolina Utilities Commission (the “Public Staff”) (collectively referred to herein as the “Stipulating Parties” or either individually, a “Stipulating Party”), 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

A. On October 26, 2020, the Companies filed their Joint Petition for Financing Orders (“Joint Petition”) pursuant to N.C. Gen. Stat. § 62-172 (the “Securitization Statute”) requesting the Commission grant authorization for the financing of the Companies’ storm recovery costs due to storm recovery activities required as a result of Hurricanes Florence, Michael, and Dorian, and Winter Storm Diego (collectively, the “Storms”). The Companies’ Joint Petition additionally requested that the Commission find that their storm

recovery costs¹ and related financing costs are appropriately financed by debt secured by storm recovery property, and that the Commission issue orders for DEC and DEP by which each utility may accomplish such financing using a securitization structure authorized by the Securitization Statute (“Financing Orders”), so that the Companies may recover their prudently incurred storm recovery costs.

B. On November 6, 2020, the Commission issued its *Order Scheduling Hearing, Requiring Filing of Testimony, and Establishing Discovery Guidelines*, scheduling an evidentiary hearing on the Companies’ Joint Petition for January 28, 2021.

C. On December 17, 2020, Carolina Industrial Group for Fair Utility Rates II and III (“CIGFUR”) filed a Petition to Intervene. The Commission granted CIGFUR’s Petition to Intervene by order issued December 18, 2020.

D. On December 21, 2020, the Public Staff filed testimony and exhibits as well as a Motion for Extension to file the joint testimony and exhibits of Public Staff witnesses Michael C. Maness and Michelle M. Boswell. The Public Staff’s Motion for Extension was granted on December 22, 2020, and on that same day, the Public Staff filed the Public Staff Joint Testimony and Exhibits of witnesses Maness and Boswell.

E. On January 11, 2021, the Companies filed their rebuttal testimony and exhibits.

F. The parties to this proceeding have conducted substantial discovery on the issues raised in the Joint Petition, as well as on the direct and rebuttal testimonies of the

¹ The “storm recovery costs” consist of DEC’s and DEP’s incremental operation and maintenance (“O&M”) expenses deferred as regulatory assets, as well as the associated capital costs incurred due to the Storms and accrued carrying charges as presented in Docket No. E-7, Sub 1214 and Docket No. E-2, Sub 1219, (through January 31, 2020 and February 29, 2020, respectively), which were considered reasonable and prudent by the Public Staff in testimony and acknowledged as such in each Company’s Agreement and Stipulation of Partial Settlement with the North Carolina Utilities Commission Public Staff (“Public Staff”), as well as certain post-rate case costs and credits remaining to be audited in the future, as further explained herein.

Companies and the direct testimonies of the Public Staff. Since the filing of the Companies' rebuttal testimonies and exhibits, the Stipulating Parties have also conferred with each other on all areas of disagreement. As a result of these discussions, the Stipulating Parties have reached a settlement with respect to several areas of disagreement presented by the Companies' Joint Petition. Accordingly, the Stipulating Parties agree and stipulate as follows:

II. RESOLVED ISSUES

The Stipulating Parties have reached an agreement regarding the following issues ("Resolved Issues"). Except as specifically identified as being resolved in the Public Staff's testimony, the Companies' rebuttal testimony, or in this Stipulation, all other issues shall be considered unresolved. No Stipulating Party waives any right to assert a position on the Resolved Issues in any future proceeding or docket before the Commission or in any court, as the Resolved Issues agreed to in this Stipulation are strictly for purposes of compromise and are intended to show a rational basis for reaching a resolution without either party conceding any specific position. The Stipulating Parties agree that settlement on the Resolved Issues will not be used as a rationale for future adjustments on contested issues brought before the Commission. The areas of agreement are as follows:

Up-front Financing Costs

A. The Stipulating Parties agree that once up-front financing costs are known, if actual up-front financing costs are in excess of the amounts estimated, the Companies shall establish a regulatory asset to defer any excess amounts of up-front financing costs, and preserve those costs to consider for later recovery in DEC's and DEP's next respective

general rate cases. In addition, the regulatory asset shall accrue carrying costs at the Companies' respective net-of-tax weighted average cost of capital ("WACC") returns.

B. The Stipulating Parties agree that any excess or over-collection of up-front financing costs shall be set aside in a regulatory liability, accruing carrying costs at the Companies' respective net-of-tax WACC returns, to be considered for return to customers in DEC's and DEP's next respective general rate cases.

On-going Financing Costs

C. The Stipulating Parties agree that the on-going financing costs of each Company's respective Special Purpose Entity ("SPE") created for purposes of the storm securitization transaction shall be recovered from storm recovery charges, taking into account the Companies' proposed true-up mechanism per N.C.G.S. § 62-172(b) et. seq. ("True-Up Mechanism"), and in accordance with the Securitization Statute.

D. The Stipulating Parties further agree that the Companies will provide specific detailed invoices and other supporting documentation, if applicable, and narrative explanations for on-going financing charges on a monthly basis, fifteen (15) days after the end of the previous month. If the Companies did not receive any invoices in the previous month, the Companies will submit a letter notifying the Public Staff that no invoices were received.

E. The Stipulating Parties agree that the Public Staff shall have the opportunity to audit these on-going financing costs (including auditing through possible additional data requests) for mathematical or clerical errors, or charges incurred as a result of gross negligence, recklessness, or willful misconduct by either the Companies or the SPE, and

that the Public Staff shall complete said audit within forty-five (45) days of receipt of the supporting documentation.

F. The Stipulating Parties agree that the Public Staff shall have up to ten (10) days as of the day of receipt of supporting documentation to object to the Companies' supporting documentation, if such supporting documentation provided to the Public Staff does not rise to an adequate level of detail necessary for the Public Staff to perform its audit of on-going financing costs. An objection by the Public Staff shall suspend the above-described forty-five (45) day start date for the Public Staff's audit review to begin until adequate documentation is provided to the Public Staff by the Companies. Furthermore, for any expenses for which the forty-five (45) day window will not be complete by the filing of the Companies' true-up pursuant to the True-Up Mechanism, the Public Staff may choose to instead audit the expenses during review of the Companies' next True-Up Mechanism filing.

G. The Stipulating Parties additionally agree that the Public Staff shall discuss with the Companies any concerns or proposed changes to the on-going financing cost expenses in an effort to reach an appropriate resolution regarding such on-going financing costs to be trued-up through the Companies' True-Up Mechanism. In cases where a resolution cannot be reached between the parties, the Public Staff will file a recommendation with the Commission, at the time the dispute arises, that the disputed amount be returned to customers, with carrying costs at the Companies' respective net-of-tax WACC returns, in their respective next general rate cases, with the issue to be resolved by the Commission in those cases.

Servicing and Administration Fees

H. The Stipulating Parties agree that the Companies will establish regulatory asset or regulatory liability accounts for, separate and apart from the regulatory assets and liabilities of other types of securitization-related costs and benefits, for the purpose of tracking (as received and incurred) servicing and administrative fees received by the Companies from the SPEs and the incremental costs incurred by the Companies in fulfilling the required functions under the servicing and administrative agreements. Any regulatory asset or liability account established pursuant to this paragraph shall accrue carrying costs at the Companies' respective net-of-tax WACC, and be considered for recovery from or returned to customers in the Companies' next respective general rate cases.

Tail-end Collections

I. The Stipulating Parties agree that any tail-end collections will be tracked separately and placed into a regulatory liability, and accrue carrying costs at the Companies' net-of-tax WACC, to be considered for recovery in DEC's and DEP's next respective general rate cases.

Capital Contributions

J. The Stipulating Parties agree that the Companies' capital contributions to each respective SPE shall earn a return at the interest rate of the highest tranche of the storm recovery bonds, which is expected to be less than the Companies' WACC.

III. AUDIT OF STORM RECOVERY COSTS

The Stipulating Parties agree that the Public Staff shall be able to audit the Companies' storm recovery costs, provided that:

A. The Public Staff will conduct an audit of the Companies' storm recovery costs and report their findings to the Commission within sixty (60) days of the date of receipt of any requested documents, with such sixty (60) day period beginning upon the Public Staff's receipt of documents from the Companies responsive to the Public Staff's initial data request. The initial data request will be submitted by March 5, 2021.

B. The Public Staff's audit shall be limited to the adjustments made since the Public Staff's audit in the 2019 rate cases (*i.e.* beginning February 2020 for DEC and beginning March 2020 for DEP).

IV. LENGTH OF BOND PERIOD

The Stipulating Parties agree that the length of the bond period shall be a scheduled final maturity of between, and inclusive of, eighteen (18) and twenty (20) year period from the date of issuance, to achieve higher net present value savings to customers compared to traditional cost recovery and based upon market conditions at the time of pricing, all in a manner consistent with the Commission's financing order.

V. RECEIPT OF TESTIMONY AND WAIVER OF CROSS-EXAMINATION

The pre-filed testimony and exhibits of the following witnesses of the Stipulating Parties: the Joint Testimony and Exhibits of Michael C. Maness and Michelle M. Boswell, the Direct Testimony of Calvin C. Craig, the Direct and Rebuttal Testimony and Exhibits of Melissa Abernathy, the Direct Testimony of Jonathan L. Byrd, and the Direct Testimony and Exhibits of Shana W. Angers, may be received in evidence without objection, and each Party waives all right to cross examine any witness with respect to the portions of their pre-filed testimony and exhibits that address the Resolved Issues. If, however, questions are asked by any Commissioner, or if questions are asked or positions are taken by any

person who is not a Stipulating Party, then any Stipulating Party may respond to such questions by presenting additional testimony or exhibits and cross-examining any witness with respect to such additional testimony and exhibits.

VI. AGREEMENT IN SUPPORT OF SETTLEMENT; NON-WAIVER

A. 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 a financing of storm recovery costs and Financing Orders 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 or enforcement of this Stipulation.

B. 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 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.

C. 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.

D. 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.

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

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

IX. MERGER CLAUSE

This Stipulation supersedes all prior agreements and understandings between the Stipulating Parties. This Stipulation 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 21st day of January, 2021.

Duke Energy Carolinas, LLC
Duke Energy Progress, LLC

By: 

Camal O. Robinson
Associate General Counsel

Public Staff – North Carolina Utilities Commission

By: 

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Agreement and Stipulation of Partial Settlement as filed in Docket Nos. E-7, Sub 1243 and E-2, Sub 1262, were served via electronic delivery or mailed, first-class, postage prepaid, upon all parties of record.

This, the 27th day of January, 2021.

/s/Kristin M. Athens

Kristin M. Athens

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