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May 25, 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: Duke Energy Progress, LLC's Motion for Clarification
Docket Nos. E-2, Sub 1262 and E-7, Sub 1243**

Dear Ms. Campbell:

Enclosed for filing in the above-referenced proceedings on behalf of Duke Energy Progress, LLC ("DEP"), (the "Company"), please find the *Motion for Clarification*.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Camal O. Robinson".

Camal O. Robinson

COR:sjg

Enclosure

OFFICIAL COPY

MAY 25 2021

1. On October 26, 2020, DEP and Duke Energy Carolinas, LLC (DEC, and together with DEP, the Companies) filed a Joint Petition for Financing Orders in the above-captioned dockets, requesting the Commission to grant authorization for the financing of the Companies' storm recovery costs incurred as a result of Hurricanes Florence, Michael, Dorian, and Winter Storm Diego, as a cost-saving measure for the benefit of the Companies' customers. The Companies further requested that the Commission find that their storm recovery costs and related financing costs are appropriately financed by debt secured by storm recovery property, and that the Commission issue financing orders for DEC and DEP by which each utility may accomplish such financing using a securitization structure authorized by N.C. Gen. Stat. § 62-172, so that the Companies may recover their prudently incurred storm recovery costs (Joint Petition).

2. From January 28, 2021 through January 29, 2021, a hearing was held on the Companies' Joint Petition.

3. On February 28, 2021, the Companies filed updated proposed financing orders and a post-hearing brief in the above-captioned dockets. On that same day, the Public Staff also filed proposed financing orders and a post-hearing brief

4. On May 10, 2021, the Commission issued a Financing Order for DEP in Docket No. E-2, Sub 1262 and a Financing Order for DEC in Docket No. E-7, Sub 1243.

REQUEST FOR CLARIFICATION ON CLERICAL ERRORS

5. The Company has performed a review of the Commission's DEP Financing Order. Through this review, DEP has identified several perceived clerical errors in the Financing Order which warrant revision. DEP notes that some of these clerical errors were contained in its initial and updated proposed financing orders. DEP apologizes for those clerical errors, and any inconvenience caused to the Commission by such errors.

6. DEP has specifically identified perceived clerical errors in the Financing Order on pages 4, 7, 10, 18, 19, 20, 22, 25, 29, 35, 37, 38, 46, and 47. DEP has also identified clerical errors in Appendices A, B and C of the Financing Order. Each of these errors are either formatting errors or references to the wrong docket number, utility, defined term, Ordering Paragraph or provision of N.C. Gen. Stat. § 62-172. No other errors were identified.

7. As stated, DEP considers each of these errors to be clerical and non-substantive in nature. However, due to the importance of, and anticipated reliance on the Financing Order throughout the securitization process, DEP believes revisions to the Financing Order to correct these clerical errors are appropriate. Moreover, these clerical errors have the potential, if not corrected, to cause confusion amongst persons involved in the securitization process who are not also parties to this docket.

8. Accordingly, DEP requests that the Commission clarify the Financing Order to address the clerical errors included on pages 4, 7, 10, 18, 19, 20, 22, 25, 29, 35, 37, 38, 46, and 47, and in Appendices A, B, and C of the

Financing Order. Attachment A to this Motion includes a proposed errata to the Financing Order detailing the necessary revisions in redline format.

**REQUEST FOR CLARIFICATION ON LEAD UNDERWRITERS'
CERTIFICATION REQUIREMENTS**

9. During its review of the Financing Order, DEP also identified a perceived and most likely inadvertent inconsistency in the requirements for lead underwriters' certifications.

10. Finding of Fact No. 49, the underlying Evidence and Conclusions to that finding on page 66, and Ordering Paragraph No. 30 regarding Certifications and Opinions to require each lead underwriter "to file an independent certification with the Commission confirming only that the structuring, marketing, and pricing of the Storm Recovery Bonds and any associated SRB Securities in fact resulted in the lowest Storm Recovery Charges consistent with market conditions at the time the Storm Recovery Bonds were price and the terms set forth in the Financing Order." However, in the Statutory Cost Objectives Evidence and Conclusions section found on page 70 of the Financing Order, the Commission's brief summary of the certification requirements of DEP, the lead underwriters, and the Commission's financial consultant could be interpreted to require the lead underwriters to certify that all of the Statutory Cost Objectives¹ have been met instead of just those articulated in Finding of Fact No. 49.

¹ Finding of Fact No. 20 defines the Statutory Cost Objectives as: (i) the proposed issuance of Storm Recovery Bonds and the imposition of Storm Recovery Charges will provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of Storm Recovery Bonds; and (ii) the structuring, marketing, and pricing of the Storm Recovery Bonds are reasonably expected to result in the lowest Storm Recovery Charges consistent with market conditions at the time the Storm Recovery Bonds are priced and the terms set forth in this Financing Order (collectively, the Statutory Cost Objectives).

11. To avoid confusion and for the sake of clarity, DEP requests the Commission clarify the conclusion on page 70 of the Financing Order to be consistent with Finding of Fact No. 49, the underlying Evidence and Conclusions to that finding on page 66, and Ordering Paragraph No. 30 regarding Certifications and Opinions. The proposed errata included as Attachment A to this Motion includes redlined revisions to the page 70 conclusion to make it otherwise consistent with the terms of the Financing Order.

12. Counsel for the Company has contacted counsel for other parties to this proceeding regarding this Motion. No party has advised that it objects to this Motion.

CONCLUSION

THEREFORE, Duke Energy Progress, LLC respectfully moves:

- (1) That the Commission clarify the Company's Financing Order to address the clerical errors identified on pages 4, 7, 10, 18, 19, 20, 22, 25, 29, 35, 37, 38, 46, and 47, and in Appendices A, B, and C, as outlined in Attachment A to this Motion.
- (2) That the Commission clarify the perceived inconsistent conclusion on page 70 of the Financing Order to be otherwise consistent with Finding of Fact No. 49, the underlying Evidence and Conclusions to that finding, and Ordering Paragraph No. 30 regarding Certifications and Opinions, as outlined in Attachment A to this Motion.

Respectfully submitted this, the 25th day of May, 2021.



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**Proposed Errata to Duke Energy Progress, LLC's
Financing Order issued May 10, 2021
in Docket No. E-2, Sub 1262**

Page 4, at Paragraph 4:

On January 27, 2021, in the [DEP Rate Case in Docket Nos. E-2, Sub 1262 and E-7, Sub 1243](#), DEP, [DEC](#) and the Public Staff entered into and filed an Agreement and Stipulation of Partial Settlement (Securitization Stipulation) settling some issues in ~~that~~ [this](#) case.

Page 7, at Finding of Fact No. 13:

13. The ongoing Financing Costs identified in DEP's Joint Petition and in Attachment 4 of the form Issuance Advice Letter (Appendix C hereto), estimated to be approximately \$910,000 annually, subject to update and adjustment in the Issuance Advice Letter as described in this Order, are reasonable and prudent and qualify as Financing Costs eligible for recovery pursuant to N.C.G.S. § 62-172(a)([64](#)).

Page 10, at Finding of Fact No. 28:

28. DEP should strive for the Storm [Recovery](#) ~~Security~~ Bonds or SRB Securities to achieve AAA credit ratings or the equivalent highest credit ratings given for the type of securities the DEP SPE issues consistent with its overarching obligation to meet the Statutory Cost Objectives. DEP should agree to the necessary credit enhancements, with recovery of related costs as ongoing Financing Costs, to achieve such ratings, if and to the extent such credit enhancements and corresponding credit ratings are warranted in order to meet the Statutory Cost Objectives. The cost of any such credit enhancements shall be included in the determination whether the Statutory Cost Objectives are met.

Page 18, at Paragraph 2:

Section 62-172(a)([164](#)) requires that DEP's Storm Recovery Costs eligible for financing be reasonable and prudent. Except for the Carrying Costs to be calculated as described herein and the adjustments to the Storm Recovery Costs made since the Public Staff's audit in the 2019 rate cases, the Storm Recovery Costs that were included in the Company's rate case application in the DEP Rate Case have been the subject of discovery and audit by the Public Staff and other interested parties to that proceeding.

Page 19, at Paragraph 3:

In the Joint Petition, DEP requested that its up-front Financing Costs associated with the securitization process be included in the principal amount of storm recovery bonds in accordance with N.C.G.S. § 62-172(a)(142). Company witness Heath testified that such costs include the fees and expenses to obtain the financing orders, as well as the fees and expenses associated with the structuring, marketing, and pricing of each series of Storm Recovery Bonds, including the following: external and incremental internal legal fees, structuring advisory fees and expenses, any interest rate lock or swap fees and costs, underwriting fees and original issue discount, rating agency and trustee fees (including trustee's counsel), accounting fees, information technology programming costs, servicer's set-up costs, printing and marketing expenses, stock exchange listing fees and compliance fees, filing and registration fees, and the costs of any outside consultant and counsel retained by the Commission or the Public Staff. Tr. vol. 1, 48. A complete list of all up-front Financing Costs will be included on Attachment 2 of the Issuance Advice Letter, a form of such letter with preliminary estimates of up-front Financing Costs, is included in Appendix C of this Financing Order. Witness Heath further stated that up-front Financing Costs include reimbursement to DEP for amounts advanced for payment of such costs. *Id.* Witness Heath provided a range of estimates of the up-front Financing Costs in Heath Exhibit 1, and explained based on those figures DEP estimated the up-front Financing Costs would be \$9 million. He stated that the estimates will be updated to actual up-front Financing Costs incurred during the proposed Issuance Advice Letter process. Tr. vol. 1, 48.

Page 20, at Paragraph 5:

Section 62-172(a)(64) defines Financing Costs. The Commission finds that DEP's proposed up-front Financing Costs fall squarely within this definition, and that these issuance costs are therefore Financing Costs eligible for recovery pursuant to the...

Page 22, at Paragraph 1:

Having reviewed DEP's proposal, the Public Staff testimonies of Maness and Boswell, and the Securitization Stipulation, the Commission determines that the proposed ongoing Financing Costs identified in DEP's Joint Petition and Attachment 4 of the form of Issuance Advice Letter qualify as Financing Costs pursuant to N.C.G.S. § 62-172(a)(64) and are therefore eligible for recovery through a Storm Recovery Charge.

Page 25, at Paragraph 1:

In rebuttal testimony, Company witness Abernathy stated that the Company agreed with the Public Staff's recommendation. Tr. vol. 3, 49. Witness Abernathy further

stated that the Tail-end Collections will stay with the DEP SPE trustee until the Storm Recovery Charge is set at \$0 and no more cash from the Storm Recovery Charge is being collected. *Id. at*, 49-50. At that point in time, all cash in the care of the trustee (i.e. the excess funds and capital subaccounts) will be distributed to DEP. *Id.* Once the cash from the Tail-end Collections is received by DEP, the regulatory liability discussed above would be recorded. *Id.* Until DEP actually receives the cash from the DEP SPE trustee, there is no actual liability to customers. *Id.*

Page 29, at Paragraph 2:

The Commission determines, consistent with N.C.G.S. § 62-172(a)(175), that Storm Recovery Property consists of the following: (1) all rights and interests of DEP or any successor or assignee of DEP under this Financing Order, including the right to impose, bill, charge, collect, and receive Storm Recovery Charges authorized in this Financing Order and to obtain true-up adjustments to such Storm Recovery Charges as provided in this Financing Order and (2) all revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in this Financing Order, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds.

Pages 34-35, beginning at Paragraph 4 on Page 34:

In its Joint Petition, DEP requested the flexibility to determine which transaction structure is best tailored to then-existing rating agency considerations, market conditions, and investor preferences, so that the financing of the Storm Recovery Costs can achieve the Statutory Cost Objectives. Joint Petition at 23. DEP also proposed to issue the storm recovery bonds in either a registered public offering or unregistered exempt offering, in order to structure the transaction to achieve the highest possible credit rating from applicable rating agencies. Joint Petition at 21. Witness Atkins' direct testimony also proposed an optional, alternative Grantor Trust Structure, in which separate SPEs wholly owned by DEP and DEC, respectively, would simultaneously issue Storm Recovery Bonds to a third SPE, a grantor trust wholly owned by Duke Energy or jointly owned by DEP and DEC (SRB Issuer). Tr. vol. 2, 142. The structure of the DEP and DEC Storm Recovery Bonds and the SRB Securities would have the same tranching, payment dates, and maturity dates. Tr. vol. 2, 142-43. The true-up adjustment effective dates for the DEP and DEC Storm Recovery Bonds would be the same. Tr. vol. 2, 143. The debt service payments from the DEP and DEC bonds would be passed through to service the debt of the SRB Securities. *Id.* The SRB issuer would then issue to the market pass-through securities that are backed by the separate Storm Recovery Bonds issued by the DEP SPE and by the DEC SPE (the SRB Securities). Tr. vol. 2, 144. Witness Atkins explained that this structure has advantages to the ratepayers of both DEP and DEC. Because the Storm Recovery Bonds for both DEP and DEC would price on the same day, the interest

rates would be the same. *Id.* He testified that customers of both DEP and DEC would benefit from interest rates that are set by a larger and more liquid issuance. *Id.* Additionally, he stated that utilizing the Grantor Trust Structure would ensure the DECP Storm Recovery Bonds would qualify for inclusion in the Bloomberg Barclays Aggregate Bond Index (Index), which has an issuance size requirement, meaning a stand-alone DECP transaction would not qualify for inclusion in the Index. *Id.* He explained inclusion in the Index was preferred because many investors perceive bond issues that are included in the Index to be more tradeable or more liquid and therefore more attractive than bonds that are not so included. *Id.*

Page 37, at Paragraph 5:

The Commission agrees that combining the issuance of DEP's Storm Recovery Bonds and DEC's Sstorm Recovery Bbonds in one transaction through the use of the SRB Issuer may result in lower Storm Recovery Charges for customers, and help ensure that the Statutory Cost Objectives are met. At the same time, the Commission credits the testimony of Public Staff witness Fichera that the Grantor Trust Structure may be overly complex and cause investor confusion.

Pages 37-38, beginning at Paragraph 6 on Page 37:

As also described by witness Atkins, the Companies have committed to consider the potential costs and benefits associated with each proposed transaction structure and issuance strategy to determine the strategies that best enable the Companies to achieve the Statutory Cost Objectives. The Commission additionally agrees with the Company and Public Staff that it is too early to determine which structure best achieves the Statutory Cost Objectives. At the hearing, witnesses for the Public Staff agreed that issuers need flexibility in every transaction. Tr. vol. 3, 436. The Commission believes such flexibility will best ensure the Statutory Cost Objectives are achieved. By allowing the Company flexibility to determine which of the above issuance structures are best tailored to then existing rating agency considerations, market conditions, and investor preferences, the financing of Storm Recovery Costs can be reasonably expected to result in the lowest Storm Recovery Charges consistent with market conditions at the time the Storm Recovery Bonds are priced. At the same time, the Grantor Trust Structure may only be used if it achieves the lowest Storm Recovery Costs both for ratepayers of DEP and for ratepayers of DEC. Moreover, the additional up-front Financing Costs and the ongoing Financing Costs associated with utilizing the Grantor Trust Structure must be allocated between the SPEs of DEP and DEC in a manner that considers the benefits the ratepayers of each of DEP and DEC will receive from utilizing that structure.

Page 46, at Paragraph 3:

To repay the Storm Recovery Bonds and ongoing Financing Costs, DEP is hereby authorized to implement Storm Recovery Charges to be collected on a per-kWh basis from all applicable customer rate classes until the Storm Recovery Bonds and associated Financing Costs are paid in full. The Storm Recovery Charges are nonbypassable and must be paid by all existing or future retail customers receiving transmission or distribution services from DEP or its successors or assignees under Commission-approved rate schedules or under special contracts, even if the retail customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in this state. See N.C.G.S. § 62-172(a)(1~~53~~) and (b)(3)b.4. In the event there is a fundamental change in the regulation of public utilities, the Storm Recovery Charges shall be collected from retail electric customers in a manner that will not adversely affect the credit rating on the Storm Recovery Bonds.

Page 47, at Paragraph 2:

DEP also submitted with its Joint Petition the supporting testimony of witness Byrd with respect to allocation of these periodic costs and the computation of the Storm Recovery Charges for each customer rate class for DEP. As discussed in the testimony of witness Abernathy and shown in Abernathy DEP Exhibits 1-4, DEP computed the estimated Storm Recovery Charges, as described in N.C.G.S. § 62-172(a)(1~~53~~).

Page 70, at Paragraph 2:

Additionally, the Commission finds and concludes that there is abundant evidence that the process established by DEP and as set forth in this Financing Order relative to the structuring and pricing of the Storm Recovery Bonds, along with the continued oversight of the Commission through the Bond Advisory Team, the Issuance Advice Letter process, and the certifications and letter required by Findings of Fact Nos. 48-50, are reasonably expected to result in the lowest Storm Recovery Charges consistent with market conditions at the time the storm recovery bonds are priced and the terms set forth in this Financing Order, as required by N.C.G.S. § 62-172(b)(3)b.3. The record in this case demonstrates that professionals who collectively possess decades of experience in pricing, structuring, and marketing complex securities—including ratepayer-backed securities—will provide their expertise to the pricing, structuring, and marketing of the Storm Recovery Bonds through their participation on the Bond Advisory Team. Many of them were involved in the successful \$1.3 billion securitization of DEF's nuclear plant retirement costs. The terms of this Financing Order are similar in many respects to the DEF financing order. The testimony of the witnesses for DEP and for the Public Staff manifests their intention and ability to achieve the lowest possible Storm Recovery Charges for North Carolina ratepayers. Importantly, this Financing Order establishes a robust and flexible procedure to allow DEP to address the requirements of market participants or any changes in market conditions as the issuance date approaches. After the bonds are priced, [and as otherwise provided for in this Order](#), the major participants

will report to the Commission—and ~~in the case of~~ DEP, the lead underwriters, and the Commission’s financial consultant—will give ~~the applicable~~ certifications—as to whether the Statutory Cost Objectives have been met. After participating in the Bond Advisory Team and reviewing the certifications, the Commission has a final opportunity to approve or disapprove issuance of the Storm Recovery Bonds.

Appendix A:

Estimated Carrying Costs through bond issuance date⁵¹

Estimated up-front Financing Costs⁶²

Appendix B, Page 1 of 2, at Paragraph 3:

Ordering Paragraph [2347](#) of the Financing Order describes how such True-up Adjustment Letters are to be handled. Upon the filing of a True-up Adjustment Letter made pursuant to this Financing Order, the Commission shall either administratively approve the requested true-up calculation in writing or inform the servicer of any mathematical or clerical errors in its calculation as expeditiously as possible but no later than 30 days following the servicer's true-up filing; and that notification and correction of any mathematical or clerical errors shall be made so that the true-up is implemented within 30 days of the servicer's filing of a True-up Adjustment Letter. No potential modification to correct an error in a True-up Adjustment Letter shall delay its effective date and any...

Appendix B, at Attachment 1:

DUKE ENERGY [CAROLINASPROGRESS](#), LLC
Storm Recovery Charge True-up Mechanism Form For the

Appendix C, Attachment 6, at Footnote 1:

(1) *Abernathy Exhibit 3 – Allocation of Storm Recovery Charge to Customer Classes as filed in Docket No. E-[27](#), Sub [124362](#). Revenue Requirements were grossed-up to reflect uncollectible account write-offs and regulatory fees.*

Appendix C, Attachment 8, Page 1 of 4, at Subject Line:

Re: Duke Energy Progress, LLC's Company Certification
Docket No. E-[27](#), Sub [126243](#)

Appendix C, Attachment 8, Page 1 of 4, at Paragraph 1:

Duke Energy Progress, LLC (the “Company”) submits this Certification pursuant to Ordering Paragraph 29 of the Financing Order in Docket No. E-~~27~~, Sub 12~~6243~~ (the “Financing Order”). All capitalized terms not defined in this letter shall have the meanings ascribed to them in the Financing Order.

CERTIFICATE OF SERVICE

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

This, the 25th day of May, 2021.

/s/Kristin M. Athens

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