

INFORMATION SHEET

PRESIDING: Chair Mitchell, Presiding; Commissioners Brown-Bland, Gray, Clodfelter, Duffley, Hughes, McKissick

PLACE: Held Via Videoconference

DATE: Thursday, September 3, 2020

TIME: 1:30 p.m. – 4:32 p.m.

DOCKET NOS.: E-7, Sub 1214; E-7, Sub 1213; E-7, Sub 1187

COMPANY: Duke Energy Carolinas, LLC; Duke Energy Progress, LLC

DESCRIPTION: E-7, Sub 1213, In the Matter of Petition of Duke Energy Carolinas, LLC, for Approval of Prepaid Advantage Program; E-7, Sub 1214, In the Matter of Application of Duke Energy Carolinas, LLC, for Adjustment of Rates and Charges Applicable to Electric Utility Service in North Carolina; E-7, Sub 1187, In the Matter of Application of Duke Energy Carolinas, LLC, for an Accounting Order to Defer Incremental Storm Damage Expenses Incurred as a Result of Hurricane Florence and Michael and Winter Storm Diego

VOLUME NUMBER: 12

APPEARANCES

(See attached.)

WITNESSES

(See attached.)

EXHIBITS

(See attached.)

COPIES ORDERED: Downey, Culpepper, Holt, Cummings, Edmondson, Grantmyre, Dodge, Jost, Little, Luhr, Force, Townsend, Robinson, Kells, Mehta, Lee, Cress, Ross, Ledford, Smith, Schauer, Heslin, Su, Crystal and Beverly

CONFIDENTIAL TRANSCRIPTS and EXHIBITS ORDERED: Robinson, Heslin, Somers, Kells, Jagannathan, Mehta, Lee, Cress, Ross, Jenkins, Beverly, Ledford, Smith, Crystal, Su, Force, Townsend, Downey, Culpepper, Cummings, Dodge, Edmondson, Grantmyre, Holt, Jost, Little, and Luhr

REPORTED BY: Joann Bunze

TRANSCRIBED BY: Joann Bunze

DATE FILED: September 9, 2020

TRANSCRIPT PAGES: 137

PREFILED PAGES: 171

TOTAL PAGES: 308

PLACE: Held via Videoconference

DATE: Thursday, September 3, 2020

TIME: 1:31 P.M. - 4:31 P.M.

DOCKET NO.: E-7, Sub 1214

E-7, Sub 1213

E-7, Sub 1187

BEFORE: Chair Charlotte A. Mitchell, Presiding

Commissioner Tolola D. Brown-Bland

Commissioner Lyons Gray

Commissioner Daniel G. Clodfelter

Commissioner Kimberly W. Duffley

Commissioner Jeffrey A. Hughes

Commissioner Floyd B. McKissick, Jr.

IN THE MATTER OF:

DOCKET NO. E-7, SUB 1214

Application of Duke Energy Carolinas, LLC,
for Adjustment of Rates and Charges Applicable to
Electric Utility Service in North Carolina



DOCKET NO. E-7, SUB 1213

Petition of Duke Energy Carolinas, LLC,
for Approval of Prepaid Advantage Program

DOCKET NO. E-7, SUB 1187

Application of Duke Energy Carolinas, LLC,
for an Accounting Order to Defer Incremental Storm
Damage Expenses Incurred as a Result of Hurricanes
Florence and Michael and Winter Storm Diego

VOLUME 12

1 A P P E A R A N C E S:

2 FOR DUKE ENERGY CAROLINAS, LLC:

3 Camal Robinson, Esq., Associate General Counsel

4 Brian Heslin, Esq., Deputy General Counsel

5 Duke Energy Corporation

6 550 South Tryon Street

7 Charlotte, North Carolina 28202

8

9 Lawrence B. Somers, Esq., Deputy General Counsel

10 Duke Energy Corporation

11 410 South Wilmington Street

12 Raleigh, North Carolina 27601

13

14 James H. Jeffries, IV, Esq.

15 McGuireWoods LLP

16 201 North Tryon Street, Suite 3000

17 Charlotte, North Carolina 28202

18

19 Andrea Kells, Esq.

20 McGuireWoods LLP

21 501 Fayetteville Street, Suite 500

22 Raleigh, North Carolina 27601

23

24

1 A P P E A R A N C E S Cont'd:
2 Molly JAGANNATHAN, Esq., Partner
3 Kiran H. Mehta, Esq., Partner
4 Troutman Pepper Hamilton Sanders LLP
5 301 South College Street, Suite 3400
6 Charlotte, North Carolina 28202
7
8 Brandon F. Marzo, Esq.
9 Troutman Pepper
10 600 Peachtree Street, NE, Suite 3000
11 Atlanta, Georgia 30308
12
13 FOR SIERRA CLUB:
14 Bridget Lee, Esq.
15 Sierra Club
16 9 Pine Street
17 New York, New York 10005
18
19 Catherine Cralle Jones, Esq.
20 Law Office of F. Bryan Brice, Jr.
21 127 W. Hargett Street
22 Raleigh, North Carolina 27601
23
24

1 A P P E A R A N C E S Cont'd:
2 FOR NC JUSTICE CENTER, NC HOUSING COALITION, NATURAL
3 RESOURCES DEFENSE COUNCIL and SIERRA CLUB:
4 Gudrun Thompson, Esq., Senior Attorney
5 David L. Neal, Esq., Senior Attorney
6 Tirri III Moore, Esq., Associate Attorney
7 Southern Environmental Law Center
8 601 West Rosemary Street, Suite 220
9 Chapel Hill, North Carolina 27516
10
11 FOR CAROLINA INDUSTRIAL GROUP FOR FAIR UTILITY
12 RATES III:
13 Christina D. Cress, Esq.
14 Bailey & Dixon, LLP
15 Post Office Box 1351
16 Raleigh, North Carolina 27602
17
18 FOR CAROLINA UTILITY CUSTOMERS ASSOCIATION, INC.:
19 Robert F. Page, Esq.
20 Crisp & Page, PLLC
21 4010 Barrett Drive, Suite 205
22 Raleigh, North Carolina 27609
23
24

1 A P P E A R A N C E S Cont'd:

2 FOR NC WARN:

3 Matthew D. Quinn, Esq.

4 Lewis & Roberts PLLC

5 3700 Glenwood Avenue, Suite 410

6 Raleigh, North Carolina 27612

7

8 FOR VOTE SOLAR:

9 Thadeus B. Culley, Esq., Regulatory Counsel

10 Senior Regional Director

11 1911 Ephesus Church Road

12 Chapel Hill, North Carolina 27517

13

14 FOR NORTH CAROLINA LEAGUE OF MUNICIPALITIES:

15 Deborah Ross, Esq.

16 Fox Rothschild LLP

17 434 Fayetteville Street, Suite 2800

18 Raleigh, North Carolina 27601

19

20 FOR NORTH CAROLINA CLEAN ENERGY BUSINESS ALLIANCE:

21 Karen Kemerait, Esq.

22 Fox Rothschild LLP

23 434 Fayetteville Street, Suite 2800

24 Raleigh, North Carolina 27601

1 A P P E A R A N C E S Cont'd:

2 FOR THE COMMERCIAL GROUP:

3 Al an R. Jenki ns, Esq.

4 Jenki ns At Law, LLC

5 2950 Yel lowtai l Avenue

6 Marathon, Fl ori da 33050

7

8 Bri an O. Beverl y, Esq.

9 Young Moore and Henderson, P.A.

10 3101 Gl enwood Avenue

11 Ral ei gh, North Carol i na 27622

12

13 FOR NORTH CAROLINA SUSTAINABLE ENERGY ASSOCIATION:

14 Peter H. Ledford, Esq., General Counsel

15 Benj ami n Smi th, Esq., Regul atory Counsel

16 North Carol i na Sustai nabl e Energy Associ ation

17 4800 Si x Forks Road, Sui te 300

18 Ral ei gh, North Carol i na 27609

19

20

21

22

23

24

1 A P P E A R A N C E S Cont'd:

2 FOR THE TECH CUSTOMERS:

3 Marcus W. Trathen, Esq.

4 Craig D. Schauer, Esq.

5 Matthew B. Tynan, Esq.

6 Charles E. Coble, Esq.

7 Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.

8 150 Fayetteville Street, Suite 1700

9 Raleigh, North Carolina 27601

10
11 FOR BIOLOGICAL DIVERSITY AND APPALACHIAN VOICES:

12 Howard M. Crystal, Esq.

13 Senior Attorney

14 Jean Su, Esq.

15 Staff Attorney and Energy Director

16 Biological Diversity

17 1411 K Street NW, Suite 1300

18 Washington, DC 20005

1 A P P E A R A N C E S Cont'd:

2 FOR HARRIS TEETER:

3 Kurt J. Boehm, Esq.

4 Jody Kyler Cohn, Esq.

5 Boehm, Kurtz, & Lowry

6 36 East Seventh Street, Suite 1510

7 Cincinnati, Ohio 45202

8

9 Benjamin M. Royster, Esq.

10 Royster and Royster, PLLC

11 851 Marshall Street

12 Mount Airy, North Carolina 27030

13

14 FOR THE USING AND CONSUMING PUBLIC AND ON BEHALF OF

15 THE STATE AND ITS CITIZENS IN THIS MATTER THAT AFFECTS

16 THE PUBLIC INTEREST:

17 Margaret A. Force, Esq., Assistant Attorney General

18 Teresa Townsend, Esq., Special Deputy Attorney General

19 North Carolina Department of Justice

20 Post Office Box 629

21 Raleigh, North Carolina 27603

22

23

24

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Kendrick C. Fentress
Associate General Counsel

Mailing Address:
NCRH 20/P. O. Box 1551
Raleigh, North Carolina 27602

o: 919.546.6733

f: 919.546.2694

Kendrick.Fentress@duke-energy.com

OFFICIAL COPY

Sep 04 2020

February 10, 2020

VIA ELECTRONIC FILING

Ms. Kimberley A. Campbell
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

**RE: Initial Comments of Duke Energy Carolinas, LLC and Duke Energy
Progress, LLC
Docket No. E-100, Sub 161**

Dear Ms. Campbell:

Pursuant to the Commission's *Order Requiring Information, Requesting Comments, and Initiating Rulemaking* issued February 4, 2019 and the subsequent extensions of time granted by the Commission in the above-referenced docket, enclosed for filing are the Initial Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC.

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

Sincerely,

A handwritten signature in dark ink that reads "Kendrick C. Fentress". The signature is written in a cursive, flowing style.

Kendrick C. Fentress

Enclosure

cc: Parties of Record

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-100, SUB 161

In the Matter of)	
Commission Rules Related to Customer)	INITIAL JOINT COMMENTS OF
Billing Data)	DUKE ENERGY CAROLINAS, LLC
)	AND DUKE ENERGY PROGRESS,
)	LLC

NOW COME Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP” and together with DEC, “the Companies”), who, pursuant to the North Carolina Utilities Commission’s (“Commission” or “NCUC”) February 4, 2019 *Order Requiring Information, Requesting Comments, and Initiating Rulemaking* in the above-captioned docket, submit their initial comments on the proposed Commission Rules R8-7, R8-8 and R8-51 filed by the Public Staff of the North Carolina Utilities Commission (“Public Staff”). For the reasons set forth below, the Companies generally support the Public Staff’s proposed Rules; however, the Companies do not support the Public Staff’s proposal to impose additional requirements that go into effect January 1, 2022, on the Companies.

A. Commission Rule R8-7 – Information for Customers and Rule R8-8 – Meter Readings, Bill Forms and Meter Data

The Companies generally agree with the Public Staff’s proposed revisions to Commission Rule R8-7 and R8-8. For the most part, these proposed revisions and proposed revisions to Rule R8-51 refer to energy “usage” data. Therefore, with respect to the Public Staff’s proposed Rule R8-7(b)(2), the Companies suggest that the word “consumption” be struck and replaced with the word “usage” to maintain consistency with the other provisions of this Rule, Rule R8-8 and R8-51.

The Companies additionally note that, as proposed, Commission Rule R8-7(b) states that the utility annually shall provide its customers certain information, either by mail or electronically, including instructions on how to access their billing records pursuant to Rule R8-8(f). Specifically, Rule R8-7(c) provides that once metering and billing technology required for such analysis is in place, each electric utility shall annually inform its customers that they may request from the utility a rate analysis of applicable rate schedules for the customer upon establishing a sufficient usage history at a premise or provide the customer a mechanism from which to obtain this information. Moreover, the Public Staff's proposed Commission Rule R8-8(b) directs the utilities to minimize the frequency of estimated bills. Rule R8-8(b)(3) provides that:

In the event the utility is unable to provide a bill based on metered service for more than three consecutive billing cycles, the utility shall inform the customer that it is unable to provide a bill for metered service and that the customer may request the reason for estimating the bill and how the utility plans to resolve the problem causing the bill to be estimated.

The Companies do not object to these proposed revisions, but note in these Joint Comments that to comply with them, the Companies must complete implementation of their Customer Connect Program. They project that Customer Connect will be implemented for DEC in April 2021 and for DEP in April 2022. Once Customer Connect is deployed, the Companies will need to accumulate 13 months of interval data per customer/per account in the new system before they can offer the Annual Rate Review and the Rate comparison capabilities as described in the Rules. If these Rules are made effective prior to full deployment of Customer Connect, the Companies may seek of waiver of their application during the interim.

Proposed Commission Rule R8-8(d) states that:

The utility shall strive to maintain consistency between the data observed at the meter face and that maintained in the billing and customer data systems, such that the customer can reasonably understand any discrepancy between the data that is observable at the meter face with the data that is available through an electronic platform provided by the utility to communicate said data with the customer.

This provision is inconsistent with DEC's service regulations that are currently approved and on file at the NCUC. These regulations provide that:

Meters will be read and bills rendered monthly. Meter readings may be obtained manually on the customer's premises, or remotely using radio frequency or other automated meter reading technology. Billing statements will show the readings of the meter at the beginning and end of the billing period, except; however, when interval load data is used to determine the bill under certain rate schedules or riders, only the billing units may be shown.

This service regulation reflects that, for accounts billed with detailed information by rating period, such as Time of Use rates, the Companies do not have the ability to show all components on the face of the meter. Therefore, the Companies recommend that this provision be clarified to ensure that the Companies remain compliant with the NCUC's Rules.

B. Commission Rule R8-51

As with Commission Rules R8-7 and R8-8, the Companies are generally supportive of the Public Staff's proposed Rule R8-51, and they appreciate the Public Staff's willingness to work toward striking a balance between protecting the customers' data and implementing an efficient and workable administrative process for the utilities to provide access that does not impose additional, unnecessary costs on ratepayers. The proposed Rule is consistent with procedures that the Companies have already had in place because of the requirements of their Code of Conduct. The Companies do not support, however,

the portions of the Public Staff's revisions to R8-51 that they propose to go into effect in two years for several reasons. Specifically, the Public Staff has proposed the following:

Effective January 1, 2022, subsection (d) of Commission Rule R8-51 is amended to read:

- (d) A utility shall maintain at least 24 months of customer data in sufficient detail to assist customers in understanding their energy usage. The frequency interval of the data must be commensurate with the meter or network technology used to serve the customer. Customer data shall be maintained and provided—made available to customers and customer-authorized third parties in electronic machine-readable format that conforms to the latest version of the North American Energy Standard Board's (NAESB) Reg 21, the Energy Services Provider Interface (ESPI), or a Commission approved electronic machine readable format that conforms to nationally recognized standards and best practices ~~commensurate with the meter or network technology use to serve the customer.~~

Effective January 1, 2022, subsections (g) and (h) of R8-51 are amended to read:

- (g) A utility shall not disclose customer data to a third party unless the customer provides consent by either submits submitting a paper or electronically signed consent form or through the utility's electronic consent process. The utility shall conspicuously post the form on the utility's website in either electronic or printable format. The utility must authenticate the customer identity and consent to release customer data before acting upon the consent form.
- (h) A utility ~~may~~ shall make available an electronic customer consent process for disclosure of customer data to a third party, provided that the utility authenticates the customer's identity and consent to release customer data. The contents of the electronic consent process must generally follow the format of the Commission-prescribed consent form, and include the elements to be provided pursuant to this rule.

As an initial matter, and, as noted throughout these Joint Comments, the Companies are in the process of implementing their Customer Connect Program. Implementation of these proposed Rule amendments in January 2022 will add risk to the deployment of the

Customer Connect Program for DEC (April 2021) and DEP (April 2022). To allow for successful testing, training, conversion and implementation of the core solution, the Companies must freeze changes to many IT systems and business applications starting in 2020. Therefore, from a practical and technical standpoint, the Companies believe these proposed amendments would jeopardize their deployment of the benefits of Customer Connect to their customers.

Additionally, as the Companies notified the Commission on October 15, 2019, in Docket No. E-100, Sub 157, the Companies are currently implementing customer data access functionality like the access provided by “Green Button: Download My Data” functionality. The Companies’ web platforms are being migrated to the cloud and upgraded for stability and scalability to support multiple efforts across the Duke Energy Corporation enterprise with projected conclusion to the implementation scheduled for first quarter 2020. Additionally, DEC and DEP customers with smart meters are already able to view and download their electric usage data from the Companies’ websites in a standardized format. These customers can view and download their hourly and daily electric usage information from the online customer portal and through mid-cycle notifications with the Usage Alerts program.

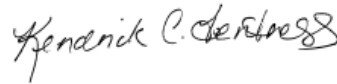
The Companies have previously reviewed the Green Button Connect functionality contemplated by these amendments. First, the Companies’ survey of their customers did not reveal a customer demand that outweighed the projected costs to implement. Second, as discussed, the Companies already have a process to field third-party data requests for customer usage data and billing information. The potential risks of third-party involvement in that process should be fully vetted before a Commission Rule requires it, even if the

requirement begins in 23 months. Third-party access could require a stringent approval process with significant security requirements, leading to potential resource challenges as requests line up in a queue for data. Therefore, the proposed amendments do not serve the Companies' customers' best interests as they introduce security and other risks, as well as additional administrative costs and burdens into this process. The Companies respectfully request that they be struck from the Rule.

Conclusion

The Companies understand that the Public Staff intends to request that the Commission allow the parties to file reply comments on these proposed Rules. The Companies agree and join in this request because of the importance of these Rules to their customers and to the Companies' own compliance efforts.

Respectfully submitted, this the 10th day of February, 2020.



Kendrick C. Fentress
Associate General Counsel
Duke Energy Corporation
P.O. Box 1551/ NCRH 20
Raleigh, North Carolina 27602
Tel: 919.546.6733
Kendrick.Fentress@duke-energy.com

*ATTORNEY FOR DUKE ENERGY
CAROLINAS, LLC AND DUKE ENERGY
PROGRESS, LLC*

**Duke Energy Carolinas, LLC (DEC) and Duke Energy Progress, LLC (DEP) (jointly,
the Companies)**

Docket No. E-100, Sub 161

Public Staff Data Request No. 1

Date Sent: April 18, 2019

Due Date: April 29, 2019

Requested By: Jack Floyd

Phone #: 919-715-9018

Email: jack.floyd@psncuc.nc.gov

Public Staff Legal Contact: Heather Fennell

Phone #: 919- 715-0970

Email: heather.fennell@psncuc.nc.gov

10. Please explain how "My Duke Data Download" program compares to the Green Button Alliance's "Green Button Connect My Data (CMD) standard."¹ The response should specifically identify the any inconsistencies between the Duke program and the CMD standard.

Response provided by Joe Thomas, Director of Enhanced Customer Solutions

Response: This request is asking to compare two very different programs. The My Duke Data Download will allow customers to download their data, in a standardized format, and use it however they choose. This functionality would more appropriate compare with the Green Button Download My Data and will be available to customers in late 2019. The Green Button Connect My Data utilizes the same the same data format standard, but the data would be automatically provided to approved 3rd parties. Duke Energy does not plan to offer this functionality.

¹ <https://www.greenbuttonalliance.org/assets/docs/Collateral/2018-08%20Green%20Button%20CMD%20and%20Certification%20Data%20Sheet.pdf>

Executive Summary

The Green Button initiative enables electric utility customers to download detailed electric usage information from their utility website in a standardized format. Proponents claim the Green Button initiative will accelerate the development of tools that energy consumers can utilize to analyze and monitor usage information.

Duke Energy currently enables its electric utility customers to view and download detailed electric usage information from its own website in a standardized format. This functionality has been in place since Duke Energy Carolinas ("DEC") began installing its Advanced Metering Infrastructure (AMI) several years ago. DEC and Duke Energy Progress ("DEP") customers with AMI meters can further access their detailed electric usage information through the Usage Alerts program. It is important to note that Duke Energy's customers are already capable of using the detailed usage information made available by the Companies to change their usage patterns and reduce their bills.

As Duke Energy assesses its compatibility with Green Button Download and Green Button Connect functionalities, the organization continues to evaluate the following:

- 1) Could Green Button adversely impact the relationship between Duke Energy and its customers?
- 2) Will customers' information be protected and does the utility have responsibility and or liability if customers' information is misused?
- 3) Who bears the burden of supporting customers and app developers when questions arise around energy usage information and the use of Green Button?
- 4) How does the utility recover costs for a continually evolving standard like the Green Button?
- 5) How to differentiate between customer conservation enabled by the utility and conservation enabled by third parties?
- 6) Can the utility claim impacts for customer conservation on Green Button activity?

The below analysis explores Duke Energy's 1) decision to enable functionality consistent with the Green Button Download protocols and 2) the cost-benefit analysis as it relates to implementing and offering Green Button Connect functionality.

Green Button Download

By late 2019, customers will be able to log into 'MyAccount' on the Duke Energy website and click the "My Duke Data Download" to download energy consumption data in the standardized format defined by the Green Button standard. This functionality is available if the customer has historical AMI usage data available. Thirteen months of data is permitted to be downloaded and customers are then permitted to use the data as they desire.

It is critical to weigh customer demand for standardized usage data download functionality. To do this, Duke Energy reviewed customers in the Carolinas, between two jurisdictions – DEC and DEP - to understand how many customers viewed their "Usage Analysis" since early 2018. As noted previously, this data regarding current customers viewing their detailed energy usage is possible because Duke Energy's customers already have access to download their usage data through the on-line Service Portal. While the current data format does not match the standardized Green Button format, the data does aim to provide customers with historical data to be used in similar ways.

Of approximately 2.9 million customers in the DEC and DEP jurisdictions with access to their Usage Analysis report in 2018, only a small number of customers viewed their usage – approx. 140,700 in DEC and 12,500 in DEP (see tables below). Note: the numbers below reflect view by session, not unique users, and correlate with availability of Usage Analysis to the customers.

I/A
Duke Energy Green Button Position and Cost-Benefit Analysis
Corrected April 12, 2019

DEC			DEP		
Month	Session views of Usage Analysis page	Sessions using graph drop down*	Month	Session views of Usage Analysis page	Sessions using graph drop down*
Feb-18	1,540	704	Feb-18		
Mar-18	2,195	897	Mar-18		
Apr-18	2,197	781	Apr-18		
May-18	8,192	2,909	May-18		
Jun-18	13,994	5,374	Jun-18		
Jul-18	15,089	5,985	Jul-18		
Aug-18	14,322	5,418	Aug-18	690	271
Sep-18	8,570	3,260	Sep-18	833	399
Oct-18	12,981	5,003	Oct-18	1,052	467
Nov-18	16,439	6,334	Nov-18	2,051	1,006
Dec-18	17,155	6,919	Dec-18	2,829	1,393
Jan-19	28,058	10,739	Jan-19	5,064	2,314
Total	140,732	54,323	Total	12,519	5,850

*This may indicate that these customers further engage with their usage analysis.

Green Button Connect

Cost-Benefit Analysis¹

	Year 1	Year 2	Year 3	Year 4	Year 5	5 Year Summary
Total Costs	\$1,502,000	\$52,000	\$52,000	\$52,000	\$52,000	\$1,710,000
Set-up	\$250,000	\$0	\$0	\$0	\$0	\$250,000
Integration - Download My Data	\$600,000	\$0	\$0	\$0	\$0	\$600,000
Integration - Connect My Data	\$600,000	\$0	\$0	\$0	\$0	\$600,000
Maintenance & Operations	\$52,000	\$52,000	\$52,000	\$52,000	\$52,000	\$260,000
Benefit /cost savings to customers*	\$281,610	\$281,610	\$281,610	\$281,610	\$281,610	\$1,408,050
Net Benefit	(\$1,220,390)	\$229,610	\$229,610	\$229,610	\$229,610	(\$301,950)

*Based on 2018 (see above), DEC and DEP saw approx. 60,173 sessions in which customers further engaged with their usage analysis. For estimation purposes, and while 60,173 does not represent unique customers, this analysis assumes 10 percent of the 60,173 (6,017) would be likely to use Green Button Connect. Based on an average monthly bill of \$130 and a three percent bill savings for this customer population of 6,017, customers may experience a bill reduction of approximately \$281,610 per year. See sensitivity analysis below:

¹ As discussed in more detail below, this analysis is preliminary as several inputs are difficult to quantify.

I/A
Duke Energy Green Button Position and Cost-Benefit Analysis
Corrected April 12, 2019

Bill Reduction Sensitivity Analysis:

			Bill Savings		
			5%	3%	1%
Customers	100%	60,173	\$4,693,494	\$2,816,096	\$938,699
	75%	45,130	\$3,520,121	\$2,112,072	\$704,024
	50%	30,087	\$2,346,747	\$1,408,048	\$469,349
	25%	15,043	\$1,173,374	\$704,024	\$234,675
	10%	6,017	\$469,349	\$281,610	\$93,870
	5%	3,009	\$234,675	\$140,805	\$46,935

Cost Benefit Detail

Item name	Timeframe	Estimated cost	Notes
Set-up (Download & Connect)	One-time	<ul style="list-style-type: none"> \$50,000 per platform (3-5 platforms estimated) \$250,000 max cost 	Includes costs related to developing a similar Green Button functionality, including but not limited to: <ul style="list-style-type: none"> Front-end solutions: interfaces and applications that users interact with directly Cloud services: computing resources and services that support deployment of Green Button and provide access to its applications, resources and services Green Button platform: technical foundation that allows multiple products to be built within the same framework and executed successfully Developing & testing: management of integration, registration, risk, assessment, issues, etc. Testing of security and privacy mechanisms and protocols
Integration (Download only)	One-time	\$600,000	Costs required to integrate Green Button with Duke Energy's data systems and processes, including but not limited to: <ul style="list-style-type: none"> Customer information system extract, transform, load (ETL) protocols Other integration costs: integration with customer portals, meter data, external testing and validation, etc. Note: timeframe may necessitate "two pies" (note: one pie is equivalent to four, three-week sprints at \$300,000 each).
Integration (Connect only)	One-time	\$300,000	Costs required to integrate Green Button with Duke Energy's data systems and processes, including but not limited to: <ul style="list-style-type: none"> Customer information system extract, transform, load (ETL) protocols Other integration costs: integration with customer portals, meter data, external testing and validation, etc. Note: timeframe may necessitate "one pie" at \$300,000.

I/A
Duke Energy Green Button Position and Cost-Benefit Analysis
Corrected April 12, 2019

Maintenance & Operations	Annual	<ul style="list-style-type: none"> • \$1 per customer • \$50,000 (estimate of 50,000 customers) 	<p>Costs required to maintain the functionality and manage third-party solution provider application registration, including but not limited to:</p> <ul style="list-style-type: none"> • Maintenance and on-going operations, which address issues to improve performance and or incorporate changes to the standard • Miscellaneous <p>Note: In DEC, there are approx. 2.5M customers with AMI meters. Of these, only approx. 52,000 customers engaged with their usage analysis within a year's time.</p>
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As stated above, there are many unknowns regarding the Green Button Connect platform, making estimation of such functionality difficult to assess. For this effort, we have assumed an agile methodology approach, and the estimate has been determined by the number of sprints ("pies") needed to achieve the desired outcome. The architectural approach is currently unknown and may impact the estimate dramatically. There are also many unknowns surrounding the application, approval, monitoring, and maintenance of 3rd parties. Decisions in this area will impact the estimate for on-going expenses. Moreover, the capabilities for a customer to authorize and deauthorize have also not been included in this estimate.

The Company will need several refinement sessions to further estimate this effort, and these sessions should conclude late in Q3, 2019.

Duke Energy's Position

Duke Energy has decided to defer Green Button Connect functionality for the immediate future; the Company does not believe there is adequate customer demand associated with the projected costs to implement. Additionally, given the North Carolina Utilities Commission's February 4, 2019, Order opening a docket (Docket No. E-100, Sub 161) to establish rules related to electric customer billing data, the Company believes that it would be premature to make a decision or even consider its cost benefit analysis complete at this time. Without fully understanding the rules pertaining to data access, it is not prepared to assume the risks associated with the automated transfer of energy consumption data from customers to third parties. A summary of risks is provided below.

While Duke Energy has a process to field third party data requests for customer usage and billing information, potential risks of third-party involvement need to be fully vetted. Customers and utilities may be subjected to unauthorized data access by third parties. Usage data is highly coveted by competitors in similar markets because they can perform analysis which enables them to market different products and services to Duke Energy customers. For example, SDG&E explained that third parties email SDG&E customers asking for their account information to provide free analysis and then build automated routines (bots) to access the "Download My Data" capability on the site. With authorized access to customer data, Duke Energy is subjected to potential mishandling and misuse of data and any associated legal ramifications.

Additionally, third party access could require a stringent approval process with significant security requirements, leading to potential resource challenges. For example, a similarly-sized utility noted that they have five Green Button Connect Enabled Third Parties and another three in queue. Each of the third parties in the queue require significant development and testing time from their resources.

Other risks could include:

- Regulatory ramification and costs associated with keeping pace with evolving regulations;
- Regulatory impacts regarding the appropriate vetting and approval of third-party access to data;
- Lack of customer demand

I/A
Duke Energy Green Button Position and Cost-Benefit Analysis
Corrected April 12, 2019

In summation, Duke Energy believes it is in the best interest of customers to offer usage data download functionality consistent with the Green Button protocols at this time, however, given uncertainty regarding regulatory rules pertaining to data access and the customer benefit associated with this functionality, the Company is not moving forward with implementing the Green Button Connect platform at this time. The Company will continue to monitor and track customer demand for the Green Button Connect functionality and will potentially revisit the Green Button Connect functionality in the future.



Kendrick C. Fentress
Associate General Counsel

Mailing Address:
NCRH 20/P. O. Box 1551
Raleigh, North Carolina 27602

o: 919.546.6733

f: 919.546.2694

Kendrick.Fentress@duke-energy.com

OFFICIAL COPY

Sep 04 2020

July 17, 2020

VIA ELECTRONIC FILING

Ms. Kimberley A. Campbell
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

**RE: Joint Reply Comments of Duke Energy Carolinas, LLC and Duke
Energy Progress, LLC
Docket No. E-100, Sub 161**

Dear Ms. Campbell:

Pursuant to the Commission's *Order Requiring Information, Requesting Comments, and Initiating Rulemaking* issued February 4, 2019, the Commission's May 26, 2020 *Order Requesting Reply Comments*, and the subsequent extensions of time granted by the Commission in the above-referenced docket, enclosed for filing are the Joint Reply Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC.

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

Sincerely,

A handwritten signature in black ink that reads "Kendrick C. Fentress".

Kendrick C. Fentress

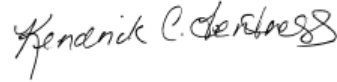
Enclosure

cc: Parties of Record

CERTIFICATE OF SERVICE

I certify that a copy of the Joint Reply Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC, in Docket No. E-100, Sub 161, has been served by electronic mail, hand delivery, or by depositing a copy in the United States Mail, 1st Class Postage Prepaid, properly addressed to parties of record.

This the 17th day of July, 2020.



Kendrick C. Fentress
Associate General Counsel
Duke Energy Corporation
P.O. Box 1551/NCRH20
Raleigh, North Carolina 27601
Telephone: 919.546.6733
Kendrick.Fentress@duke-energy.com

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-100, SUB 161

In the Matter of)	
Commission Rules Related to Electric)	JOINT REPLY COMMENTS OF DUKE
Customer Billing Data)	ENERGY CAROLINAS, LLC AND
)	DUKE ENERGY PROGRESS, LLC
)	

NOW COME Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP” and together with DEC, “the Companies”), pursuant to the North Carolina Utilities Commission’s (“Commission” or “NCUC”) February 4, 2019 *Order Requiring Information, Requesting Comments, and Initiating Rulemaking*, and May 26, 2020 *Order Requesting Reply Comments*, in the above-captioned docket, and submit their reply comments on the proposed Commission Rules R8-51, filed by the Public Staff of the North Carolina Utilities Commission (“Public Staff”), North Carolina Sustainable Energy Association (“NCSEA”), the Environmental Defense Fund (“EDF”), the North Carolina Attorney General’s Office (“AGO”), and Mission:data Coalition (“Mission:data”).

As discussed in more detail herein, the Companies endorse a Commission Rule that governs access to their customers’ nonpublic data that:

- Provides customers with control of their data;
- Provides the utilities subject to the Rule with clear, unambiguous terms to foster and promote ready compliance; and
- Does not impose additional costs and burdens on customers that outweigh any benefits to customers.

With limited exceptions discussed herein, the Companies respectfully submit that the Public Staff's proposed Rule R8-51 best meets those goals.

A. Introduction

The Companies recognize that with smart meters and greater digitization of electric utility services, the clarifying, expanding, and fortifying of existing Commission Rule R8-51 is vital. To that end, with limited exceptions, the Companies support the Public Staff's proposed revisions to Commission Rule R8-51. The Companies note that the proposed Rules of the Public Staff, the AGO, and Mission:Data are consistent with respect to certain critical concepts. For example, the proposed Rules stress the necessity of a customer's consent to disclosure of its data, expressly provide some limited protection to the utility at the Commission from third parties that might misuse customer data after receiving it from the utility, and contrast and clarify the difference between a utility's necessary usage of customer data to provide regulated, electric services to its customers and the disclosure of customer data to "third parties" for activities that are not regulated by the Commission. *Cf.* AGO's Rule R8-51(d)(1) and Public Staff's Rule R8-51(b); AGO's Rule R8-51(d)(6) and Public Staff's Rule R8-51(c).

The Public Staff's proposed Rule R8-51, however, strikes the necessary balance between protecting customers' nonpublic data and implementing a workable and efficient process for compliance with that Rule. The Companies have maintained and protected nonpublic customer information since prior to the 2012 merger of Duke Energy Corporation and Progress Energy, Inc. in Docket Nos. E-2, Sub 998 and E-7, Sub 986 ("Merger"), as approved by the Commission in the *Order Approving Merger Subject to Regulatory Conditions and Code of Conduct*, issued on July 2, 2012 ("Merger Order"). In

that Merger Order, the Commission approved a comprehensive framework of data protection, involving procedures for disclosure of data and self-reporting for violations of those procedures, as part of the Companies' Code of Conduct ("Code").¹ In the Merger Order, the Commission also directed that the Companies establish a Compliance officer and conduct annual trainings of their employees and the employees of their service companies on the provisions of the Code. *See* Regulatory Condition Nos. 14.1-14.4.²

The AGO's comment that the Code is primarily aimed at commercial competition between the Companies and their affiliates is accurate; the Companies agree that the Code's restrictions and limitations on the disclosure of nonpublic customer information were not intended for the singular purpose of protecting nonpublic customer data from disclosure. This does not mean the procedures that the Companies have developed to comply with the Code, however, have no value in the context of this Rulemaking. To the contrary, the Companies' Compliance team works to administer both the Commission-approved Code and the Companies' privacy policy, found online at <https://www.duke-energy.com/Legal/Privacy>. A review this policy shows that Duke Energy fully informs its customers about the customer information it collects and maintains and how that information is treated. The procedures and trainings that the Companies have established as a result of the Code restrictions and their privacy policies have already created a robust framework to protect nonpublic customer data from unauthorized or inappropriate

¹ This is not to say that DEC and DEP were not subject to Codes of Conduct that protected customers' data prior to the 2012 Merger; they were, and the Codes of Conduct were similar to the current one. However, the Companies will refer to the Code of Conduct approved in the 2012 Merger for ease of reference in these Reply Comments.

² The most recent Commission order containing these Regulatory Conditions is the *Order Granting Motion to Amend Regulatory Conditions*, Docket Nos. E-2, Sub 1095A, E-7, Sub 1100A, and G-9, Sub 682A, issued Aug. 24, 2018 ("2018 Reg. Con. Order").

disclosure to third parties by the Companies, their agents, and their affiliates, while also giving customers the ability to authorize disclosure to other third parties.³ Incorporating some of this pre-existing framework into this Rule fosters the Companies' compliance and serves customers' interests.

As the Companies diligently work to protect customers' nonpublic data from unauthorized or inappropriate disclosure, they also agree that allowing customers greater access to their own energy usage data empowers them to make informed decisions about their energy usage. To that end, as the Companies noted in their initial comments, they are currently implementing customer access functionality like the access provided by "Green Button: Download my Data" current functionality. DEC and DEP customers with smart meters are already able to view and download their electric usage data from the Companies' websites in a standardized format. These customers can view and download their hourly and daily electric usage information from the online customer portal and through mid-cycle notifications with the Usage Alerts program.

As discussed later herein, the Companies do not support the entirety of the Public Staff's proposed Rule R8-51 because it imposes costs on customers that outweigh the benefits; however, the Companies agree that the Public Staff's proposed Rule generally provides for electric public utilities to maintain nonpublic customer data as necessary and to provide access to that data without imposing additional complexities or unnecessary costs on ratepayers. Moreover, as previously stated, the Companies appreciate the willingness of the Public Staff to adapt and enhance the pre-existing framework for

³ With respect to disclosure of nonpublic Customer data to the Companies' affiliates or nonpublic utility operations, the Commission has approved a "script" found in Attachment A of the Code to obtain customer authorization. For disclosure to other non-affiliated third parties, the Companies use other forms for customer authorization.

protecting Customer data. Expanding this existing framework minimizes costs to customers and facilitates compliance because the Companies already have in place compliance procedures and practices in operating with their affiliates as well as outside contractors and vendors that they can build on if the Commission approves the Public Staff's proposed Rule. In contrast, as discussed in more detail below, the AGO's and Mission:Data's proposed Rules, which are each in excess of 12 pages, are generally more complex and, thus, more complicated to administer or to explain to customers. The Companies' Reply Comments discuss in Section B why they support the Public Staff's Proposed Rule (except for Subsections (d), (g), and (h) that go into effect on January 1, 2022). In Section C, the Companies' Reply Comments describe how the Public Staff's Rule conforms to the Commission's authority under Chapter 62 of the General Statutes. In Section D, the Companies discuss the Public Staff's proposed subsections (d), (g), and (h) and similar proposals by the intervenors, which relate to the provision of Customer data to third parties through direct, electronic methods.

B. The Public Staff's Proposed Rule R8-51 Protects Customers' Nonpublic Data and Privacy in Clear and Easy to Understand Terms that Expand on the Commission's History and Procedures in Protecting Nonpublic Customer Data.

The Public Staff's Proposed Definitions are consistent with Chapter 62 of the North Carolina General Statutes and Commission Precedent.

The Companies generally agree with the Public Staff's proposed definitions of terms to be used in Rule R8-51. The definition of "Customer Data" is comprehensive and consistent with, although not identical to, the definition of "Customer Information" that the Commission approved in the Companies' Code. To illustrate, the Companies' Code defines "Customer Information" as

nonpublic information or data specific to a Customer or to a group of Customers, including but not limited to, electricity consumption, . . . load profile, billing history or credit history that has been obtained or compiled by DEC, [and] DEP, . . . in connection with the supplying of *Electric Services* . . . to that Customer or group of Customers.⁴

Code, Sec. I (Emphasis added.).⁵ “*Electric Services*” is further defined as “Commission-regulated electric power generation, transmission, distribution, delivery, and sales, and other related services, including but not limited to, administration of Customer accounts and rate schedules, metering, billing, standby service, backups, and changeovers of service to other suppliers.” Code, Sec. I. The Public Staff’s definition incorporates that definition and provides additional clarifying detail, such as that Customer data includes a customer’s participation in regulated utility programs, like energy efficiency programs. Public Staff’s Rule R8-51(a)(2) (i-iv).

The Public Staff’s proposed Rule also crucially and clearly defines the activities and parties that may be involved in the regulated utility’s potential disclosure of Customer data. First, the Public Staff defines “Nonpublic utility operations” as “all business enterprises engaged in by a utility that is not regulated by the Commission or otherwise subject to public utility regulation at a state or federal level.” Public Staff’s Rule R8-51(a)(3). This definition is consistent with the definition that the Commission approved in the Companies’ Code and in N.C. Gen. Stat. § 62-2(3)3. N.C. Gen. Stat. 62-(3)23 exempts enterprises that are not public utilities from Commission regulation, even if a “person” conducting a public utility also conducts that non-regulated enterprise. In other words,

⁴ The Companies have removed the references to Natural Gas Services related to Piedmont Natural Gas Company included in this definition for the Commission’s convenience.

⁵ Although this provision of the Code can be found in several Commission orders, including the Merger Order, the most recently-approved version of the Code was in 2018 Reg. Con. Order.

nonpublic utility operations are not subject to the provisions of Chapter 62, which establishes the Commission's jurisdiction over the Companies' public utility operations. The Public Staff also defines "third party" to be any person that is not the customer and clarifies that it does not include an agent of the customer (such as an adult child acting on behalf of an elderly parent), and a contracted agent for the utility. Additionally, "third party" includes both nonpublic utility operations and affiliates of the utility. This definition is likewise consistent with the Commission's distinctions in the Code and the Companies' practices that result from the Code's provisions.⁶ Finally, the Public Staff, further defines "aggregated data," "personal information" and "unique identifier" in simple, easy to understand terms. In sum, the definitions included in the Public Staff's proposed Rule collectively protect Customer Data and help guide how appropriate or authorized access to may be allowed.

In contrast, the AGO's and Mission:Data's proposed Definitions appear to be more complex and, therefore, may be more difficult for customers and utility employees to understand. For example, the AGO's rule includes at least four different categories of data in addition to aggregated data such as: (i) covered information; (ii) standard customer data, (iii) "unshareable personal data" and (iv) "usage data." Distinguishing between these various types of data may be confusing to customers and difficult to administer by the Companies' employees. Accordingly, the Companies respectfully believe that the Public Staff's distinctions between "personal information" and "Customer data" in its proposed

⁶ See Code at Sec. III(A)(2)(a)-(f). (In these provisions, the Commission approved essentially treating the nonpublic utility operations and affiliates of DEC and DEP as similarly situated to non-affiliated third parties for purposes of disclosing nonpublic Customer data.)

Rule are more easily understood and administered by utility employees, while still providing no less protection to customers' privacy.

The AGO and Mission:Data's proposed Rules also introduce new terms, such as "primary purposes" for definition. Primary purposes, however, appear to mirror "Electric Services" as included by the Public Staff and defined in the Code. "Secondary purpose or use" appears to correspond to the Public Staff's definition of "nonpublic utility operations," a well-established term that the Commission has employed since at least 2006 to refer to those activities carried out by the utility that are not subject to the Commission's jurisdiction under Chapter 62.⁷ The Companies respectfully submit that the Definitions sections of the Public Staff's, Mission:Data's and AGO's proposed Rules appear similar in concept; however, the Public Staff's version uses less complex and less novel terms that reflect prior Commission orders.⁸ The Companies' personnel are more accustomed to these terms in the context of their compliance efforts, and therefore can strengthen pre-existing compliance policies to conform to this Rule.

Customer Consent

The Companies continually work to maintain a culture of protecting nonpublic Customer data. Obtaining customer authorization prior to the disclosure of nonpublic Customer data is central to those efforts. In only limited circumstances, discussed later herein, do the Companies disclose nonpublic Customer data without customer authorization to do so. In short, as outlined in their Code, the Companies do not disclose

⁷ *Order Approving Merger Subject to Regulatory Conditions and Code of Conduct*, Docket No. E-7, Sub 795, Attachment B (Code of Conduct) at p. 2, issued March 6, 2006.

⁸ Merger Order, Code at Sec. I; *Order Approving Merger Subject to Regulatory Conditions and Code of Conduct*, Docket Nos. E-2, Sub 1095, E-7, Sub 1100, and G-9, Sub 682, issued Sept. 29, 2016.

nonpublic Customer Information to: (i) non-affiliated third parties, (ii) affiliates, or (iii) nonpublic utility operations without customer authorization to do so.⁹

The Companies support the Public Staff's proposed Rule R8-51(b)-(c) and (g) – (k) (except for the amendments to those subsections that the Public Staff propose to go into effect on January 1, 2022). These subsections clarify that the utilities may use Customer data for regulated purposes under N.C. Gen. Stat. § 62-3(23), further underscoring that the utilities may not disclose Customer data to their nonpublic utility operations or an affiliate without customer authorization. Public Staff's Rule R8-51(b).¹⁰ The Public Staff's Proposed Rule also provides that the utilities must inform the Commission of any disclosure of the customer's data without the customer's consent. *Id.* This is consistent with the Code's requirement that the Companies report any inappropriate disclosure of DEC or DEP Customer data, describing the circumstances of the disclosure, the Customer data disclosed, the results of the disclosure, and the steps taken to mitigate the effects of the disclosure and prevent future occurrences, to the Commission. Code Sec. III(A)(2)(k). The Companies have filed these reports in Docket Nos. E-7, Sub 986C, E-7, Sub 1100C and E-2, Sub 1095C. In short, the provisions in the Public Staff's Proposed Rule fortify and expand on the Companies' Code's requirements for customer authorization for

⁹ Code, Sec. III(A)(2)(b); *see also* Code Sec. III(A)(1) (DEC, DEP and other affiliates shall operate independently of each other and the Companies' nonpublic utility operations shall maintain separate records from public utility operations).

¹⁰ The AGO's initial comments state that the Code does not appear to require a utility to obtain consent to use customer information for "secondary purposes." AGO Comments at 26. Although the Code does not use the term "secondary purposes," it does unequivocally provide that the Companies may not disclose Customer Information (or as used in this context "Customer data") without customer authorization to nonpublic utility operations, which are business operations not related to the electric utility service that the Commission regulates. To the extent that prohibition was not clear in the Code (which the Companies do not concede), the Companies believe that the Public Staff's proposed Rule R8-51 fully accomplishes and explains this prohibition in terms that the Commission has previously used in the merger dockets and that are understandable to the affected utilities.

disclosure of nonpublic Customer data, without imposing additional complexity on the Companies' compliance efforts. Although the Companies support these subsections, they discuss certain aspects of them in more detail below.

1. Consent Form or Process

The Public Staff's proposed Rule requires that a utility shall not disclose Customer data to a third party unless the customer submits a paper or electronically signed consent form. The Public Staff's proposed Rule also provides that the contents of the electronic consent form must follow the format of a Commission-prescribed form, but does not require Commission approval of the form. This provides the customers with protection, but, by not requiring the Commission to approve the actual form itself, allows for less cumbersome administration of the process because it allows the Companies to compose their own forms, consistent with the Rules, but does not compel them to submit them to a Commission approval process for any subsequent alterations, material or not, to the form.

2. Limited Disclosure to Utility Contractors Working on Behalf of the Companies

The Public Staff's proposed Rule also accurately reflects how the Companies operate with outside contractors or Duke Energy affiliates who provide services to the Companies or to the Companies' customers on behalf of the regulated utility. Under the Public Staff's Rule R8-51(c), "a utility may, . . . in its provision of regulated utility service, disclose Customer data to a third party, consistent with the utility's most recently approved Commission Code of Conduct, to the extent necessary for the third party to provide goods or services to the utility and upon written agreement by that third party to protect the confidentiality of such Customer data." This provision is consistent with the Commission's

2011 approval of an amendment to Dominion’s North Carolina Code of Conduct, where Dominion requested to use non-affiliated vendors and consultants in implementing, evaluating, measuring, and verifying Dominion’s energy efficiency and demand-side management programs. *Order Approving Code of Conduct Amendment*, Docket No. E-22, Sub 380A, issued May 10, 2011 at p. 2. The Public Staff’s Rule additionally provides a workable method for Duke Energy affiliates, such as the Duke Energy service company, Duke Energy Business Services (“DEBS”), to provide services, such as legal representation, to the Companies. Under the Public Staff’s proposed Rule, DEBS, other affiliates and non-affiliated third parties will have limited access to the Customer Information necessary to provide services to the regulated utility, while protecting that Customer Information from any additional disclosure.¹¹ This process has been in place for the Companies since at least 2012. The Companies require their outside contractors and their affiliates to maintain the confidentiality of Customer data needed to perform the service.

The AGO’s and Mission:Data’s proposed Rule also appears to allow for the disclosure of Customer data to “utility contractors” in certain circumstances, but imposes limits on that disclosure that both may harm customers and impede effective administration. For example, the AGO’s and Mission:Data’s proposed Rule states that utilities are always prohibited from providing “unshareable personal data to any other party other than the customer.” AGO’s Proposed Rule R8-51(d)(9). “Unshareable” personal data includes, for example, credit reporting information, health information, or the network

¹¹ The Companies’ Code imposes restrictions on DEBS’ use of DEC’s and DEP’s nonpublic Customer data that protect Customer data from inappropriate disclosure and complement the Public Staff’s proposed Rule R8-51.

or internet protocol address of the customer. As noted, the Companies treat this type of information currently as nonpublic “Customer Information” under their Code and would continue to treat it as nonpublic Customer data or personal information under the Public Staff’s proposed Rule R8-51, if it is approved. The Companies, however, typically after receiving customer authorization to do so, have on occasion shared limited health information (such as a customer’s requirements for electric medical devices) about their customers with a social assistance agency (or the Public Staff) to the extent necessary to help obtain assistance for those customers. Under this provision of the AGO’s and Mission:Data’s Proposed Rule, it appears that the Companies would never be allowed to share such information with any third party - Public Staff or otherwise - even with customer authorization. Additionally, as noted above, the Companies’ attorneys work for a third-party affiliate that provides services to the utility under a contract with that utility —DEBS. Therefore, a blanket prohibition on sharing such information may impede the Companies’ attorneys from defending the Companies against complaints at the Commission, as they would not have access to certain potentially relevant information. If a customer had an excellent credit history with one Duke affiliate, that affiliate would be unable to share that credit history with another affiliate, if the customer wanted to initiate service in the affiliate’s service territory. For example, customers may not understand why they must undergo a separate and new credit check to establish new service in the Companies’ North Carolina service territories when they have had an excellent payment record with the Companies’ affiliate, Duke Energy Florida, LLC. Under the AGO’s proposed Rule, it is not clear that Duke Energy Florida, LLC could validate a customer’s good payment record

or credit history for DEC or DEP.¹² Finally, as noted above, the Companies have engaged outside contractors to assist in the evaluation, measurement, and verification of energy efficiency and demand-side management measures. Accordingly, it appears in these instances listed above that the AGO's and Mission:Data's proposed Rule would never allow for the sharing of potentially relevant information (notwithstanding the customer's authorization), which works to the detriment of customers seeking assistance and participating in energy efficiency and demand-side management programs and the Companies' ability to receive necessary services. Therefore, the Public Staff's proposed Rule better protects customers in a workable, straightforward manner.

C. The Public Staff's Proposed Rule R8-51 Comports with the Commission's Authority to Protect Customer Data and Regulate Electric Utilities.

As noted above, with limited exceptions, the Companies support the Public Staff's proposed R8-51 as a comprehensive framework to protect Customer data while providing the utilities the circumstances under which they may allow customers and third parties access to nonpublic Customer data. The Companies note that the AGO's and Mission:Data's proposed Rule R8-51(h) and (k)-(u) impose requirements that are: (i) beyond the Commission's authority under Chapter 62 and potentially superfluous because of requirements already in place.

1. Rule R8-51 does not require its own Complaint Procedure in Addition to the Commission's Complaint Procedure outlined in Rule R1-9.

¹² The Companies have shared with the Public Staff that under their Customer Connect platform, which they are currently implementing, they will expressly seek authorization to use a customer's good credit history with one Duke affiliate to establish credit for that customer in other Duke Energy affiliate's service territory. The Companies will not, however, use customer's poor credit history with a Duke Energy affiliate against the customer in any circumstances.

The AGO's proposed Rule provides that complaints under this Rule shall be treated as Complaints under R1-9. Commission Rule R1-9 provides a sufficient and well-established procedure for customers to raise complaints against public utilities. The AGO's and Mission:Data's proposed Rule further provides, however, that "If a utility has a reasonable suspicion that an authorized third party has engaged in conduct rendering it ineligible to access information under [Rule R8-51], the utility shall expeditiously inform the Commission and the Public Staff of any information regarding possible ineligibility." The proposed Rule does not explain how this report to the Public Staff or the Commission is helpful to either, and, indeed, the Commission has stated that its complaint jurisdiction does not extend to third parties that are not public utilities:

As stated in G.S. 62-73 and G.S. 62-74, the subject matter of any complaint may only relate to "any act or thing done or omitted to be done by any public utility." This subject matter jurisdiction does not include acts done by persons . . . that are not a public utility. Subject matter jurisdiction cannot be agreed upon by the parties, nor waived, as it may be raised as a defense at any time. Time Warner Entertainment Advance/Newhouse Partnership v. Town of Landis, N.C. App., 747 S.E.2d 601 (2013). Therefore, the Commission does not have jurisdiction over the subject matter of a potential complaint by Duke[.]

Order on Jurisdiction and Dismissal of Complaint, Docket No. E-7, Sub 1038, issued March 5, 2014 (DEC and the City of Greensboro had agreed that DEC could file a complaint against customers living in Greensboro that refused to allow DEC to carry out its tree trimming obligations to provide electric utility service as approved by the Commission, but the Commission concluded such an agreement was outside the Commissions' jurisdiction) (Emphasis in the original). Therefore, it is unclear what authority the Public Staff and the Commission have over these reported third parties under this provision of the AGO's and Mission:Data's R8-51(h)(2) or (3).

The proposal above appears to link the utilities' obligations to report this type of information to the Commission and Public Staff to the Commission's confirmation that a third party is or has become ineligible for receipt of nonpublic Customer data. It does not explain how the Commission would make such a determination, however, or how the Public Staff would police such matters with information provided by the utility. Moreover, it is unclear with respect to the utility's ability to contract with third parties regarding the provision of nonpublic Customer data. For example, the AGO's proposed Rule R8-51(h)(2) provides that if a utility believes it is necessary to terminate an authorized third party's access to Customer data, the utility shall file a request to do so. Rule R8-51(h)(4) provides that the Commission shall allow the utility to refrain from providing Customer data to that third party. Neither subsection, however, explains how the Commission would make such a determination or provides a time frame for such a determination to be made. Therefore, the Companies respectfully request that the Commission decline to adopt the AGO's and Mission:Data's proposed Rule R8-51 with respect to Complaints.

2. The Companies are already Subject to Reporting and Auditing Requirements Related to their Maintenance of Nonpublic Customer Data; therefore, Additional Requirements are Unnecessary and Impose Unnecessary Costs on Customers.

Mission:Data's proposed R8-51(k) and (q) impose reporting requirements on the utilities with respect to the provision of Customer data. According to the AGO's Rule R8-51(k)(1), for example, the utilities shall report the Commission the number of demands received for the disclosure of Customer data and the number of customers whose records were disclosed. Under the AGO's Rule R8-51(p)(3), the utility shall file an annual report with the Commission that notifies it of all the security breaches (which appears undefined) within the calendar year affecting the covered information directly or indirectly through

one of its contractors. The proposed rule does not provide, however, what the Commission would do with the information contained in these reports or how these reports would benefit customers. The AGO's and Mission:Data's proposed Rule also requires the utilities to be accountable for complying with the requirements here and imposes additional auditing and reporting requirements upon them.

The Companies are always accountable for complying with the requirements of the Commissions' Rules and orders and are always willing to provide information to the Public Staff and Commission regarding how they maintain, protect, and provide access to Customer data. The Commission has already provided that the Companies shall report to the Commission any inappropriate disclosure of nonpublic Customer data to a non-affiliated third party, an affiliate or to nonpublic utility operations in the Code.¹³ In the past, because of the Code, the Companies have notified the Public Staff when an inappropriate disclosure of nonpublic Customer data has occurred prior to filing the self-report. Additionally, the Companies' Regulatory Condition No. 5.1 provides unequivocally that the Commission and the Public Staff shall continue to have access to the books and records of the Companies, the Companies' affiliates and nonpublic utility operations. Accordingly, the reporting and auditing requirements included in the AGO's and Mission:Data's proposed Rule R8-51 are not necessary because of the Commission directives already in place. Additional reporting requirements imposed on the Companies will result in additional costs being imposed on customers without clearly providing any additional benefit. For this reason, the Companies respectfully request that the

¹³ Code at Sec. III(A)(2)(k).

Commission decline to adopt the auditing and reporting requirements in the AGO's and Mission:Data's proposals in this context.

D. The Companies Currently Provide for Customers to Download Their Energy Usage Data and Provide it to Third Parties.

As noted in their initial comments, the Companies oppose the Public Staff's proposed revisions to Commission Rule R8-51(d), (g) and (h), which mandate a "Green Button Connect" functionality where third parties, other than the customer, may access customer energy usage data electronically through the North American Energy Standard's Board ("NAESB") Reg. 21, the Energy Services Provider Interfact ("ESPI") or a Commission-approved electronic machine-readable format. Other intervenors, such as the AGO and Mission:Data, have espoused the same position and have included similar requirements in their proposed Rules, although unlike the Public Staff's proposal, these proposed requirements appear to be effective immediately. Although the Companies fully support allowing customers access to their energy usage data to better inform their energy usage in the future, the Companies oppose these proposed mandates because, by authorizing third parties to have ready access to customers' energy usage data, they impose costs on customers that outweigh any benefit customers may obtain.

As noted, the Companies are implementing Customer Connect, a program designed to bring new capabilities to the Companies' customers. Delivering Customer Connect is foundational to transforming the Companies' customers' experience. To allow for successful testing, training, conversion and implementation of the core solution, in March 2020 the Companies stopped ingesting changes to many IT systems and business applications. Although the Companies recently updated the Commission to indicate that they will accelerate the program timeline to deliver the new customer service platform five

months earlier than originally reported and planned for DEP, the new Customer Connect deployment date for DEP is November 2021. The time frame remains April 2021 for DEC. Even with this change in the time frame for DEP, the Companies have already invested resources in delivering these new customer capabilities. Additionally, if the Commission approves the Public Staff's proposed revisions, the Companies note that they could not begin such a project until late 2022 or early 2023, after full implementation and stabilization of Customer Connect. Moreover, they already have a process to field third-party data requests for customer usage and billing information, and they are prepared to comply with all other provisions of the Public Staff's proposed Rule R8-51.

This proposal also appears to potentially place on the Companies considerable responsibility (and costs) in implementing this capability for third parties. *See e.g.* the AGO's proposed R8-51(f) (2)-(9) (describing, among other things, the utilities' obligations with respect to providing third parties access to Customer data through electronic means). Furthermore, the Companies would be required to secure the transfer of this data to third parties. The numerous obligations in the AGO's proposed Rule create administrative burdens and would likely increase the cost of compliance to provide third parties direct electronic access to Customer data that they may already request through the existing processes.

Notably, the Companies are already providing Customer data access functionality to their customers like the access currently provided by Green Button: Download my Data functionality. Customers with smart meters are already able to view and download their electric usage data from the Companies' websites in a standardized format. These customers can view and download their hourly and daily electric usage information from

the online customer portal. Additionally, the following table shows that from February 26, 2020 until July 14, 2020, relatively few of the Companies' North Carolina customers accessing their accounts online chose to use this feature:

Jurisdiction	February 2, 2020 through July 14, 2020	"Download My Data" Sessions	% of Sessions using Feature
DEC NC	2,591,840	2,782	0.11%
DEP NC	1,895,693	1,766	0.09%

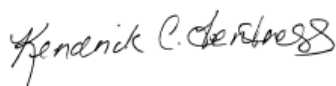
Because their customers have demonstrated minimal demand for this information themselves, the Companies are reluctant to invest the required additional resources and time adding functionalities to their Customer Connect platforms that are not responsive to customer needs and demands and that will benefit third parties. There would be operational implications including ongoing administration costs to support the scaled collection and management of customer consent, the cost to assemble requirements and build, test, and maintain the capability annually and support required within customer services to manage customer inquiries related to the capability. Based on the foregoing, and contrary to EDF's initial comments, it would be "costly and duplicative" to adopt the "Green Button Connect My Data" as urged by the Public Staff and other intervenors.¹⁴ As such, the Companies do not believe that the Commission should mandate this investment of resources and time to deliver a product that customers would have to pay for, when there has been no demonstration of customer demand.

¹⁴ EDF Initial Comments at 3.

Accordingly, the Companies respectfully request that the Commission approve the Public Staff's proposed Rule R8-51, excepting the Public Staff's proposals that go into effect in the 2021.

Respectfully submitted this the 17th day of July 2020.

DUKE ENERGY CAROLINAS, LLC
DUKE ENERGY PROGRESS, LLC



Counsel

Kendrick C. Fentress
Associate General Counsel
Duke Energy Corporation
P.O. Box 1551 / NCRH 20
Raleigh, North Carolina 27602
Tel (919) 546-6733
Kendrick.Fentress@duke-energy.com

EDITED TRANSCRIPT

Q1 2020 Duke Energy Corporation Earnings Call

May 12, 2020 / 10:00AM

THIS TRANSCRIPT HAS BEEN EDITED FOR BREVITY AND CLARITY.

CORPORATE PARTICIPANTS

Bryan Buckler – Duke Energy Corporation, Vice President Investor Relations

Lynn Good – Duke Energy Corporation, Chair, President & CEO

Steve Young – Duke Energy Corporation, Executive Vice President & CFO

CONFERENCE CALL PARTICIPANTS

Shar Pourreza – Guggenheim, Analyst

Stephen Byrd – Morgan Stanley, Analyst

Steve Fleishman – Wolfe Research, Analyst

Jonathan Arnold – Vertical Research, Analyst

Julien Dumoulin-Smith – BAML, Analyst

Michael Weinstein – Credit Suisse, Analyst

Jeremy Tonet – JP Morgan, Analyst

PRESENTATION

Operator

Good day and welcome to the Duke Energy First Quarter Earnings Call. Today's conference is being recorded. And at this time, I'd like to turn the conference over to Mr. Bryan Buckler, Vice President of Investor Relations. Please go ahead, sir.

Bryan Buckler – Duke Energy Corporation, Vice President Investor Relations

Thank you, Derrick. Good morning, everyone. And welcome to Duke Energy's first quarter 2020 earnings review and business update. Leading our call today is Lynn Good, Chair, President and Chief Executive Officer, along with Steve Young, Executive Vice President and CFO.

Today's discussion will include the use of non-GAAP financial measures and forward-looking information within the meaning of the securities laws. Actual results may differ materially from such forward-looking statements and those factors are outlined herein and disclosed in Duke Energy's SEC filings. A reconciliation of non-GAAP financial measures can be found in today's materials and on duke-energy.com. Please note the appendix for today's presentation includes supplemental information and additional disclosures.

As summarized on slide 4, during today's call, Lynn, will provide an update on our response to COVID-19. She will also discuss progress on our strategic initiatives and the company's long-term outlook. Steve will then provide an overview of our first quarter financial results and share an update on key regulatory activity. He will also provide insights into our economic and load growth outlook before closing with key investor considerations.

With that, let me turn the call over to Lynn.

Lynn Good – Duke Energy Corporation, Chair, President & CEO

Bryan, thank you. And good morning, everyone. Let me open our call today by focusing first on our response to COVID-19. I know it is top of mind for all of you. First and foremost, our thoughts are with those who have been personally affected. I also want to express my heartfelt thanks to the healthcare and government workers as well as those working countless hours to support the frontline professionals. This pandemic has no barriers - it has permeated

the globe, our country and the state in which we operate. It has altered our day-to-day lives – from how we interact to the way we operate and serve our customers.

But despite the dynamic conditions, Duke Energy and its employees have risen to the challenge, continuing to provide reliable service to our nearly 24 million electric and gas customers. The safety of our communities, customers and employees is our top priority, and we took a number of steps to protect them. In March, we shifted nearly 18,000 teammates to remote operations. For our teammates in critical roles that could not work remotely, we deployed the best available personal protection equipment, increased disinfecting between shifts, initiated split operation between primary and alternate locations to limit exposure, placed additional restrictions on those accessing our facilities, and implemented social distancing policies.

These new safety protocols were particularly important during spring storm restoration, and generation outages. So far, our teams have completed three nuclear outages and more than 30 fossil/hydro generation outages all while maintaining focus on safety and delivering on time and on budget. And in mid-April, our transmission and distribution team quickly responded more than 900,000 outages across the Midwest and the Carolinas after severe thunderstorms and tornadoes.

The Duke Energy response has gone well beyond supporting our internal team. We were one of the first utilities in the country to suspend service disconnections for nonpayment and waive late payment and other fees for our customers. In addition, we donated nearly \$6 million to support relief efforts across our jurisdictions and provided critical PPE to several community organizations within our territory. We also accelerated the flow back of fuel adjustments and overcollections in Florida resulting in a 20% reduction in residential bills in May. And we are working directly with our commercial and industrial customers to provide assistance with payment options for those most impacted by current economic conditions.

Our employees have been steadfast in ensuring our communities have power as they also respond and adapt to this changing time. The collective work of the healthcare and government professionals as well as utility and other essential workers demonstrate the power of working together to serve our communities.

Now, let me take a moment to walk you through slide 6 which summarizes where our company stands financially during these uncertain economic times. Today, we announced first quarter adjusted earnings per share of \$1.14 in-line with our expectations, but reflecting milder weather compared to normal and storm costs this winter totaling approximately \$0.15 per share. We began to take cost mitigation actions in February as we saw the impact of the mild winter and we are building on those actions to address COVID-19.

Our communities are experiencing a slowdown and we are beginning to see the impact on electric load in our jurisdictions. In a few minutes, Steve will share more on these customer load trends, focusing on the month of April and a range of potential load trends over the balance of 2020. We are presently projecting a \$0.25 to \$0.35 reduction in revenue from COVID-19 which is consistent with stay-at-home policies through mid-summer and a gradual economic recovery beginning in the third quarter and continuing over the balance of the year.

In response to the pandemic and in recognition of mild weather entering the year, we are executing on a series of cost saving initiatives totaling approximately \$350 million to \$450 million or \$0.35 to \$0.45 per share. We're also keeping our regulators informed about this specific cost we are incurring related to COVID-19. For example, a potential increase in bad debt expense and we'll seek recovery of these thoughts at the appropriate time. Taking these measures into consideration, we are affirming our 2020 adjusted earnings per share guidance range of \$5.05 to \$5.45. We will continue to update you as we move forward.

It's important to recognize that we are only two months into this event. We are and we will continue planning for a range of outcomes and we will know more as the economies that we serve reopen. The third quarter, which is our most significant one, is also still ahead of us. Over the long term, we maintain our confidence in the strength of the communities we serve and in our ability to deliver on this \$56 billion infrastructure investment plan that is critical to our customers and community. I will speak more to our business fundamentals in a moment.

Turning to slide 7, we remain committed to our long-term vision and value creation for our communities and our shareholders. We're putting our five-year \$56 billion capital plan to work as we generate cleaner energy, modernizing strength in the energy grid and expand natural gas infrastructure. Since announcing this updated plan in February, we've made progress advancing these goals. Last September, we announced our comprehensive plan to address carbon across our footprint reaching at least the 50% reduction by 2030 and net-zero by 2050.

Our updated climate and sustainability report issued in April provide more clarity and detail around the measures we're taking to achieve these milestones, including doubling our renewables portfolio over the next five years. Our climate report outlines our plans over the longer term to retire more coal, further expand renewables, energy storage and natural gas. We also emphasized the importance of research and development, focused on load following carbon-free resource. We believe these new technologies are essential to reach our net zero goal by 2050 and plan to share more updates to this area when we host our ESG Day later this year.

On the grid, in April, we filed our 10-year, \$6 billion Florida Storm Protection Plan. These investments will generate meaningful customer benefit by enhancing the reliability, while reducing restoration costs and outage times associated with extreme weather events. Further, details of the progress we're making in these areas are outlined on the slide.

Before I close, let me touch on the Atlantic Coast pipeline. You can reference the status summary on slide 18 in the Appendix. We expect a decision from the Supreme Court regarding the Appalachian Trail crossing in the coming weeks. We're also awaiting the Biological Opinion and Incidental Take Statement from the US Fish and Wildlife Service as their detailed analysis continues to ensure that a durable permit is issued.

We expect the agency to reissue permit in mid-2020, and to-date have not seen any significant delays in the progress of the work from COVID-19. Successful resolution of both of these items will be important to restart construction. Importantly, ACP has finalized revised commercial terms with major pipeline off-takers balancing value to customers and a fair return to project owners. Finally, we are also closely monitoring developments on the Nationwide Permit 12. The recent decision related to the Keystone pipeline by the district court in Montana has potential implications to ACP. Just yesterday, the judge amended the April 15 ruling limiting the vacatur to new oil and gas pipeline projects. He also denied a stay, pending appeal. We are evaluating this ruling and the impact it will have on the existing timing and cost of the project. Assuming the issue is resolved in a timely manner and we can take advantage of the November to March tree-felling season we believe ACP can maintain the existing schedule and cost estimate. We remain committed to this important infrastructure project and the economic benefits we expect will drive for our communities in the Carolinas, and we'll continue to update you as progress is made.

As I reflect on our long-term strategy, I'm confident in our investment priorities that continue to deliver value, capitalizing on the complementary nature of our electric and gas franchises, to meet our customers growing and evolving energy needs. Looking ahead and in the context of the uncertain economic environment in our country we will be thoughtful on the pace at which we deploy capital, balancing affordability for our customers, and value creation for our investors.

Turning to slide 8, even in the midst of the economic impact of the stay-at-home orders, the fundamentals of our business remain strong. Importantly, our employees' commitments to our customers and community shines through during the hardest times as we generate and deliver reliable, increasingly clean energy across our service territories.

There are several distinguishing factors to make our company an ideal long-term investment for shareholders. First, our size and scale and diversity of operations is unmatched, allowing us to deliver consistent short-term returns and long-term investment opportunities. Furthermore, we operate in constructive regulatory jurisdictions that oversee our operations and arguably the most attractive communities on the East Coast. And our five-year \$56 billion plan to invest in cleaner energy, grid improvements, and other infrastructure is critical to the customers and communities we serve and will create meaningful shareholder value for many years to come. These are the strong business fundamentals that give us confidence to deliver on our long-term earnings growth rate of 4% to 6%.

And with that, I'll turn it over to Steve.

Steve Young – Duke Energy Corporation, Executive Vice President & CFO

Thanks, Lynn, and good morning, everyone. I'll start with a brief discussion on our quarterly results, highlighting a few of the key variances to the prior year. For more detailed information on variance drivers and a reconciliation of reported to adjusted results, please refer to the supporting materials that accompany today's press release and presentation. As shown on slide 9, our first quarter reported earnings per share were \$1.24 and our adjusted earnings per share were \$1.14 as this compared to reported and adjusted earnings per share of \$1.24 last year. The difference between reported and adjusted earnings was due to the partial settlement in the DEC North Carolina rate case permitting recovery of 2018 severance costs.

Within the segment, Electric Utilities and Infrastructure was down \$0.06 compared to the prior year. We saw the expected benefits from base rate increases in South Carolina and Florida and higher rider revenues in the Midwest, along with forecasted regulatory lag in North Carolina. However, these fundamental improvements in our segment results were offset by mild winter weather along with severe storms that impacted much of the Carolinas. Shifting to Gas Utilities and Infrastructure results were \$0.03 higher driven primarily by new retail rates in North Carolina and higher margins at the LDC. These items were partially offset by one-time income tax adjustment related to ACP was favorably impacted the prior period results.

In our Commercial Renewable segment, results were up \$0.06 for the quarter. The increase was primarily due to ongoing benefits from projects brought on line in 2019, as well as favorable wind resource and pricing this year. Finally, Other was down \$0.12 for the quarter, principally due to planned cost of borrowings and lower investment returns on non-qualified benefit plans, causing an approximate \$0.06 year-over-year difference. Returns on these plan assets partially rebounded for the month of April. Overall, our first quarter financial results were not materially affected by the COVID-19 pandemic.

Aside from the unseasonable weather and related storm cost, the first quarter was consistent with our internal plan. Given the softer weather, we began planning mitigation actions in February and further enhanced and accelerated those plans upon the full onset of COVID-19, which I'll describe in detail in a few moments.

Turning to slide 10, we continue to execute on our regulatory agenda. As Lynn mentioned, we recently filed our Storm Protection Plan in Florida that provides much needed storm hardening in the state. We also have modernized regulatory mechanisms for investments in both Florida and Ohio that are providing timely recovery for our investments in clean generation and a more modernized grid. We currently have three rate cases underway.

Our Duke Energy Indiana case continues as planned and hearings were held in January and the record is now closed and we expect the order around mid-year.

For Duke Energy Carolinas and Duke Energy Progress, the written pre-hearing record is substantially closed. DEC case, we reached a partial settlement for storm cost, allowing us to pursue securitization, as well as other adjustment. The hearings for both cases have been delayed. We continue to work with all stakeholders to identify options to safely and efficiently conduct the hearings and we expect a revised procedural schedule to be released in the coming weeks.

Just last week, we filed with the commission a proposal to combine the hearings of the two cases in July, which is supported by the public staff. If this procedural schedule is approved, it will help to limit the delay in obtaining the general rate case orders. A slight delay in the decisions for both of the North Carolina cases is not expected to have a significant impact on our 2020 financial plan and the commission has a variety of mechanisms that they can implement to help balance the interests of customers and shareholders.

With regard to COVID-19 and the expected impacts across our jurisdiction, we are tracking the financial effects on our utilities, including elevated bad debt expense and waived fees for customers. This is an extraordinary time that has and will continue to require our utilities to incur cost on behalf of our customers and the employees who operate our business. Similar to what others are doing across the country, we will work with our regulators to identify the best solutions to recover these costs, to support the ongoing financial health of our utilities, while also recognizing the unique needs of our customers during this unprecedented time.

Shifting now to our response to the COVID pandemic, slide 11 highlights the well-timed steps we've taken to bolster our liquidity and financial strength to position us to manage through a variety of potential outcomes. As of April 30, we have a strong available liquidity position of \$8.2 billion which provides the company valuable flexibility to plan our remaining capital markets transactions in 2020. In addition, provisions within the recently enacted CARES Act provide meaningful cash benefits in 2020 by accelerating our remaining AMT credit of approximately \$285 million into the current year. This additional cash benefit will help to mitigate lower revenues and give us added confidence in our ability to deliver our consolidated credit metric targets for the year. Finally, our 2020 capital and financing plan remains on track. We will closely monitor the capital markets and strategically time our issuances to achieve the best outcomes possible to both our customers and shareholders.

Moving to slide 12. In addition to our large size and scale, our retail customer mix is diverse and anchored by our growing residential customer volumes. The Southeast remains a very attractive part of the country that continues to experience strong growth of new residential customers at a rate of approximately 1.7% year-over-year.

With the recent stay-at-home policies, volumes in our residential customer front has been strong, particularly in Florida, and we expect this trend continue into the summer cooling season. The higher residential volumes provide a partial offset to declines in the commercial and industrial clients. Within commercial, much of the service sector has been closed or limited operationally, including schools and universities, bars and restaurants and other retail establishments. Certain sectors within commercial remain resilient, such as data centers and hospitals that continue to provide frontline services to fight against the pandemic. The temporary closures and curtailments of certain industrial customers are beginning to give way the plans to restart production, as states in our service territories are relaxing stay-at-home policies and workers are preparing to come back to work gradually.

Turning to slide 13, as we compare billed sales in April to the prior year, we were able to see how a full stay-at-home policies have impacted retail electric volumes across each of our customer classes. Commercial and industrial usage was down 10% and 13% respectively for the month. But as expected, the higher margin residential class was up 6%. Overall, retail sales were down 5% and these results were slightly favorable to our revised forecast for the month.

As a reminder, the earning sensitivities do vary across retail customer classes and we've included those here for you. Looking ahead, we expect the 3% to 5% decline in total retail volumes for the full year. We are forecasting the deepest declines in volumes compared to 2019 in both the second and third quarter with a gradual economic recovery beginning in the latter half of the third quarter and extending beyond the end of the year. With these forecasted ranges and on a weather normalized basis, we are forecasting the full-year 2020 negative EPS impact of \$0.25 to \$0.35.

As our communities are beginning measured re-openings, we are hearing from a large number of our industrial customers that they are planning to increase their level of operations in the mid to late May timeframe. At the same time, we expect higher residential volumes and until stay at home policies are fully relaxed.

Moving now to slide 14, we've activated several initiatives to mitigate the impacts of COVID-19. Our annual non-rider O&M budget is nearly \$5 billion, providing us a formidable lever to address revenue headwinds. As I mentioned, we began our mitigation plans in February and have greatly expanded those efforts to COVID-19 onset. Over the past five years, we have demonstrated a core competency in managing our O&M, absorbing increases for inflation as well as nearly \$300 million of O&M associated with the Piedmont acquisition. We have also demonstrated the ability to strategically manage cost between years, taking advantage of strong earnings in some years to strengthen periods when unexpected costs arise. Based on the tremendous focus and commitment of our teammates, we are confident we can reduce our O&M and other expenses by approximately \$350 million to \$450 million in 2020. Our target is not merely aspirational, but it's underscored with discrete actions on which we have clear line of sight and are already taking action.

For example, as our generating assets are expected to run less during the year, we are optimizing the timing and scope of our 2020 plant outages. In addition, we are aggressively managing all expenses, including our contract labor, overtime, non-essential projects, and a broad range of discretionary spending. We are also suspending external hiring, while sharing existing resources in a virtual manner in order to optimize labor cost. Let me be clear, we are highly confident in our ability to deliver on this goal of \$350 million to \$450 million of 2020 cost reductions.

Although we are still early in the year, based on the forecast of a gradual economic recovery beginning this summer and the significant cost mitigation actions that we have put into motion, we are affirming our 2020 target to deliver within our original earnings per share guidance range. Finally, we understand the value of the dividend to our investors. Approximately 40% of whom our retail investors and many of them count on our dividend as a source of income during these uncertain times. 2020 marks the 94th consecutive year of paying quarterly cash dividend.

Throughout the past nine decades, including during the financial crisis of 2008 and 2009, we have protected our quarterly cash dividend. Our excellent businesses that operate in some of the best jurisdictions in the country give us confidence to continue paying and growing the dividend consistent with our long-term target payout ratio of 65% to 75%.

Before we open it up for questions, let me turn to slide 15. Our attractive dividend yield coupled with our long-term earnings growth from investments in our regulated utilities provide a compelling risk-adjusted return for shareholders. As a company, we are well-positioned and confident our vibrantly growing communities will resume strong economic growth as we emerge from this pandemic.

With that, we'll open the line for your questions.

QUESTIONS & ANSWERS

Shar Pourreza – Guggenheim, Analyst

So big mitigation plan that was announced. How much is the \$0.35 to \$0.45 is sort of cemented and if COVID is more protracted than your current 3% to 5% low degradation, do you have incremental levers?

Lynn Good – Duke Energy Corporation, Chair, President & CEO

I'll start and Steve you can add. We have definitive a plan for the \$0.35 to \$0.45, Shar, as well as upside potential. And I think at some point, depending on how this economic downturn plays out, we would continue to go more aggressively not only at cost categories we've identified, but really within a broader context of transformation. And this is where we'd be more aggressive around corporate center, around outsourcing, real estate footprint, digital tools, early plant retirements, just a variety of things. And that work is already underway. So, this is something that I'm particularly proud of is we've demonstrated the ability to understand our cost and cost drivers significantly over the last five years. We've also put infrastructure in place to drive transformation and the plans are underway for a range of economic outcomes.

Shar Pourreza – Guggenheim, Analyst

And then, just focusing on the O&M side of the \$350 million to \$400 million mitigation plan. Can you touch on how much of this could be ongoing or perpetual in nature as you sort of think about the shaping of your O&M profile post-2020?

Lynn Good – Duke Energy Corporation, Chair, President & CEO

I would say there will be elements of the cost reductions that are sustainable and there will be elements that move with timing. So, an example would be when you put a hiring freeze in place, we will enter 2021 with a lower head count than we would originally projected. And then, we will begin bringing bills in at the appropriate time and case depending on the needs of the business.

I think outages, because we're running our asset less, we've been able to defer some of those. But we'll be thoughtful about maintaining assets that are important to customers and feather those back end as needed.

We are also spending a lot of time on what we've learned around remote work and the activities underway from COVID-19. And I believe there will be permanent savings from the way we are using resources and we're trying to get our hands around quantification of that as we look at remote work policies, and as we look at our real estate footprint, and you can expect to hear more about that as we think about 2021 and beyond.

Steve, would you add to that.

Steve Young – Duke Energy Corporation, Executive Vice President & CFO

I think, Lynn, you hit it very well. I'm very confident that we're learning a lot through this pandemic about how to work remotely, how to use technology tools that we didn't really realize what we had. That will serve us well as we go forward. Couple that with the digital capabilities that our business transformation center is utilizing in data analytics. I think we have found a new avenue, a new path with another body of efficiencies through what we're learning to this COVID-19 pandemic.

Stephen Byrd – Morgan Stanley, Analyst

I wanted to touch on ACP and I think many expect that you will be victorious at the Supreme Court. From there, I'm thinking about the Montana litigation and potential impact in terms of decision to restart the project or ability to restart the project. I think there's a chance there that the litigation could be fairly extensive. How does that factor into the decision-making around restarting work on ACP?

Lynn Good – Duke Energy Corporation, Chair, President & CEO

Stephen, it's an important consideration. And as I said in the remarks, assuming that we can get this resolved ahead of the tree-felling season we'll be in position to move forward maintaining cost and schedule. Given the fact that that ruling happened yesterday, you're catching us at a very early time in our evaluation. We would expect the Army Corps and DOJ to appeal, then we'll be monitoring that closely as I know others will be in the industry and other infrastructure companies, and we'll, of course, learn more from the Army Corp and DOJ if we go forward. So, it's something to keep on the radar screen, and we will continue to monitor and update as we learn more.

Stephen Byrd – Morgan Stanley, Analyst

And then, maybe just a quick one on the credit statistics that you laid out last year, kind of your pretty clear path. And maybe you're sort of overthinking or just looking at the discussion here. In terms of the 15% FFO/debt level that you're targeting versus sort of the 15% to 16% level, would you mind just touching again on dialogue with rating agencies, your overall sort of sense of where you want to be over the next several years in terms of your FFO/debt?

Steve Young – Duke Energy Corporation, Executive Vice President & CFO

Yes. Our targeted range for credit ratings is to have FFO in the 15% to 16% range. We've taken steps to make that happen in our plan and in the past. We have good dialogue with the rating agencies. Moody's reaffirmed our rating. S&P pulled the entire sector onto a negative outlook. And everybody is looking at the impacts of this pandemic. So, we'll continue that dialogue. We're seeing some erosion of top line revenues and that affects FFO. But you can see the mitigation impacts that we have put in place that moves in the opposite direction. So, we'll continue the dialogue. We will continue to work to meet our financial plans both earnings and on the credit side.

A couple of things that are unique to us, we've got these AMT credits. Accelerated monetization helps us quite a bit here. We're also taking advantage of deferring the corporate portion of payroll taxes. That's about \$100 million cash flow benefit. Our pension plans are in good shape in terms of funding and so forth, and we're not a cash taxpayer until 2027 in any significant way. So, we've got some solid strengths in our balance sheet that help us. And then, the continued regulatory activity of getting recovery of costs is essential there. So, we'll continue that dialogue with the rating agencies and we'll keep them abreast of what's moving forward.

Stephen Byrd – Morgan Stanley, Analyst

No, that makes total sense. And just lastly if I could, just on the O&M cost control, impressive results in terms of being able to cut costs. And it's an interesting point about some of the learnings that you're engaged in. When you think about the EPS growth guidance in the longer term that you've laid out in the trajectory, is there a potential that some of these learnings could last and be beneficial, could that have a meaningful benefit in terms of how you think about your overall trajectory or is it a little too early to say? How are you thinking about what you've been able to learn here?

Lynn Good – Duke Energy Corporation, Chair, President & CEO

Stephen, I think O&M agility, the ability to lower cost structure is a tailwind to growth because it puts us in a great position to deploy capital without raising price to customers. And so, I do think about it as something that's important to the long-term growth of the company.

Stephen Byrd – Morgan Stanley, Analyst

Understood. And it sounds like at least a portion of these cost savings are things that could be more permanent in nature and be beneficial longer term. Whereas other things like outage timing or more transitory in nature. So, it sounds like it's a mix of the two.

Lynn Good – Duke Energy Corporation, Chair, President & CEO

I think that's right, Stephen, but I think it's important that you're hearing from us that lowering our cost structure is not only a core competency of ours but a strong objective. And we think, particularly in a time we've got economic uncertainty, to move early and aggressively is a smart thing to do and that's how we are positioning ourselves in 2020 and also for 2021 and beyond.

Steve Young – Duke Energy Corporation, Executive Vice President & CFO

And we are learning techniques to utilize our workforce much more efficiently in this situation. We can virtually shift engineers within functions. We have shifted financial people from budgeting, to accounting, to audit services. IT people to different functions. These virtual capabilities, as we learn more about them, are going to help us utilize our workforce more efficiently and I think that's going to provide longer-term savings capabilities.

Steve Fleishman – Wolfe Research, Analyst

Could you just remind us on the North Carolina rate cases, when you expect outcomes and if that does get delayed further, how much do we have to worry about the timing of that in terms of your range for this year?

Lynn Good – Duke Energy Corporation, Chair, President & CEO

We made a filing maybe a week ago, two days ago, adjusting or recommending the consolidation of the two cases in the Carolinas it's supported by public staff putting a hearing in July of this year. And so, we think that commission will give that close consideration and that'll put us close to the timing we'd originally planned. So, we feel like we've got some flexibility within our financial plan for 2020 on that timing.

I also think it's fair to say that there are tools with these cases whether it's deferrals, accounting orders, give back of deferred income taxes, interim rates, a variety of tools that could be used to support the health of the utility. And we'll be evaluating all of those considerations as we go. Many of those tools are available to the commission is you know.

Steve Fleishman – Wolfe Research, Analyst

Any updated thoughts on whether you have the likely potential to settle those cases or expect them to be going to the end?

Lynn Good – Duke Energy Corporation, Chair, President & CEO

Steve, we've entered into a settlement on a handful of items in the DEC case. We'll have similar discussions on DEP. In between now and July, we'll continue to keep lines of communication open with the parties to see if there are other opportunities. I think this is an important time as you recognize customers, of course, working through the economic downturn, but the health of the utilities are also extraordinarily important. And I'm not sure that there's been another time when the essential nature of our service has been underscored more than this. And so, we'll continue to have discussions. It's hard to forecast whether or not we'll get to any further settlement at this point, but we'll keep you posted.

Steve Fleishman – Wolfe Research, Analyst

Lastly, I think you mentioned that there's been the initial meeting on the North Carolina Energy plan. Could you just give a color on where that stands and when we might start seeing any outcomes from that?

Lynn Good – Duke Energy Corporation, Chair, President & CEO

There have been two stakeholder work streams in 2020, one focused on climate policy. So, this is a group of stakeholders focused on retirement of coal, CO2 markets, clean energy standard. And they have continued to meet remotely, talking about these various items. We would expect a draft report from those discussions in the second quarter, public drafts for third quarter, and then a recommendation going to the governor by the end of the year.

You may recall that the objective is to get to at least a 70% carbon reduction by 2030. And it's actually greenhouse gases not carbon. And so, there are some alignment around base years and other things going on to figure out exactly how to do the counting. We're comfortable with this objective. From our climate strategy where at least 50% by 2030. So, that stream of work is very engaged.

There have also been two meetings on a stakeholder process focused on modernized regulation, performance based rate making and other tool. The discussion there is early, I would say. I think there was one meeting in person, one remote meeting. The objectives there are trying to find ways that carbon reduction can be incented, distributed energy resources and so, that is moving it perhaps, at slightly slower pace but good discussion and dialog there as well. So, I think on both of these, we'll have more feedback as the year progresses and determine whether or not there's any specific push coming out of either of these processes for legislation in 2021.

Jonathan Arnold – Vertical Research, Analyst

On this guidance reaffirmation and the cost savings versus the pressure you see on sales, is it reasonable to assume that where you're sitting today, if those things play out as you've outlined, recognizing there's a lot variability that you would be that are solidly in the range or are we kind of holding in at the low-end or if there's any other color you can give us there?

Lynn Good – Duke Energy Corporation, Chair, President & CEO

Jonathan, we appreciate that. We built a plan and are executing a plan that matches the COVID-19 expectation as well as the first quarter weaker weather, which really gives us an opportunity to land solidly within the range. And as we've talked about, we have a track record of being able to manage O&M in this fashion and we have a high degree of confidence that we can do that. But we also recognize we're only a couple of months into this. The third quarter is still ahead of us. There are a wide range of assumptions on how this economy is going to play out. Our states are just beginning to reopen. We have the milestones around Atlantic Coast Pipeline that we've talked about with the SCOTUS decision and also the biological opinion.

So, we'll continue to update on all of those things as the year progresses. But the actions that we've put into place right now are designed to place us solidly within the range.

Jonathan Arnold – Vertical Research, Analyst

One other thing, you've talked about keeping regulators informed on incremental costs, are you actually deferring certain items and just where are you on sort of deferrals and potentially orders out of commissions allowing you to do that?

Lynn Good – Duke Energy Corporation, Chair, President & CEO

For the first quarter, Jonathan, minimal impact because we were just sort of starting into this process in the various policies with customers. But we are reporting and tracking all of these costs to our various commissions. And you will begin to see filings around deferrals or accounting orders and other things. I think Ohio and Indiana are already underway. And as we get more of that feedback going, then we will reflect the appropriate accounting entries at the

right time. Steve, how would you add?

Steve Young – Duke Energy Corporation, Executive Vice President & CFO

Yeah, that's correct. We're preparing filings in the Midwest and in Ohio and Indiana. We are tracking cost in all of our jurisdictions. And at the appropriate time, we'll make various filings and work with our regulators on appropriate deferrals. Nothing's being deferred at this point but applications are getting prepared, tracking is moving forward, and we'll continue to look at this and see what makes most sense.

Jonathan Arnold – Vertical Research, Analyst

And how have you treated that in guidance, I guess?

Lynn Good – Duke Energy Corporation, Chair, President & CEO

We're assuming that we will get appropriate treatment of the incremental costs and I'm focusing on things like bad debt expense. The timing of when that occurs in terms of cash collections will depend on the jurisdiction. But for incremental costs we are assuming that we'll get appropriate regulatory treatment.

Jonathan Arnold – Vertical Research, Analyst

The recent executive order about not forcing equipment from adversary nations. Do you have any initial thoughts at the higher level on how this might impact your ability to execute the plan on grid, for example, just any color?

Lynn Good – Duke Energy Corporation, Chair, President & CEO

We're closely following it, Jonathan. I think the spirit of that is to address cyber risk which is something we strongly support. There was a similar executive order issued a few years ago for the telecom industry. And so, we will factor in as we learn more these plans into our investment plan. But as you know making investment in T&D intended to address cyber and physical risks as well as renewables and customer programs all of that fits squarely within our strategic investment plan. So we will adjust to that as we learn more, and focus on cyber risk around the bulk power system.

Steve Young – Duke Energy Corporation, Executive Vice President & CFO

And I would add that we have a broad supplier base across our footprint. As you said, Jonathan, there's more to learn as to who's specifically being targeted here. But we look at our vendor base and try to diversify as much as possible so we can move in different directions if necessary.

Julien Dumoulin-Smith – BAML, Analyst

So I know you addressed this in part, but I want to come back to it. How you think about the sustainability of the cost cuts beyond the current period? Obviously, it's a dramatic number so not necessarily expected, but how do you think about the cadence of that against the need for perhaps evolving rate case timeline? And even within that number that you talked about this year, how you're thinking about that complementing your cost cutting efforts to mitigate the impacts from coal ash?

Lynn Good – Duke Energy Corporation, Chair, President & CEO

Yeah. So I'll take a stab and, Steve, you can build on it. We have developed a plan, Julien, to match what we see as COVID risk as well as mild weather. They've got economic downturn as well as a weak start to the year. And we've identified from a range of things, operation, corporate center, employee expenses, hiring freeze, contractor contingent workers, overtime, variable compensation, a variety of tools that we used to go after that.

As I commented a moment ago, the fact there were only a couple of months into this and learning about the reopening and learning about what might unfold over the balance of the year, we are also looking in each of those cost categories

for potential upsizing of them, as well as moving into what I would call more transformative changes where we might look at real estate and early retirement of certain assets and so on.

So, there's a lot of planning going on because the future is uncertain. If I look at that range of costs, some of them will be sustainable. I'm not prepared to give you a percentage or a specific number on that. But I do believe that some of them will be sustainable. The example I gave a moment ago, hiring freeze is going to put us into 2021 with a smaller workforce. And we will monitor as we go how to convert to a sustainable lower cost structure if we find ourselves in a longer downturn.

I think as you talk about coal ash, you're talking about regulatory risk. And the rate case outcomes and how that will factor in. We have a range of assumptions in our financial plan as we think about rate cases, and that is always part of our thinking in developing the size and mitigating actions. And so, I won't point to a specific item on that, but I will say any time you put a financial plan together, you're evaluating a range of outcomes. We feel strongly that recovery of coal ash costs and recovery of a return is important. We believe it's important for health of a balance sheet when you think about costs of this nature. And we will be prepared to strongly defend that when we're on the stand later this summer.

Steve Young – Duke Energy Corporation, Executive Vice President & CFO

And I might add, Julien, that as we think about our regulatory cadences, the ability to generate these O&M efficiencies is a very useful tool. It gives us headroom and needed capital investments on behalf of our customers as Lynn alluded to earlier and minimizing any rate impacts to customers. So this capital optimization around our O&M optimization in sync with the regulatory cadence is a very important part of what we're trying to put together and we've got flexibility in the capital plan. So we can move that capital around to fit under O&M efficiencies to help our shareholders and our customers. So those are the types of dynamics we're trying to put together across our footprint.

Julien Dumoulin-Smith – BAML, Analyst

How are you thinking about the shaping here by quarter of these cost cuts and how they manifest themselves relative, I suppose, to the reduction of load? I mean, it sounds like you were rapidly able to identify these cost cuts such as if you think about 2Q and 3Q, etcetera? And then, Lynn, if I can clarify. You specifically said that you did not yet elect, for instance, voluntary retirement programs as part of this \$400 million number?

Lynn Good – Duke Energy Corporation, Chair, President & CEO

There is no assumption of a voluntary retirement program in the numbers, Julien.

Steve Young – Duke Energy Corporation, Executive Vice President & CFO

And then on the shaping, Julien, I'd look for most of it to be in the second half of the year. A lot of our generation outage work will be in the fall generation season. As our head count freeze kicks in that kind of builds during the year. We had budgeted increases in workforce. We'll certainly see some in each quarter of the rest of the year. But specifically, with the generation outage work, that'll be a bit more in the second half of the year.

Michael Weinstein – Credit Suisse, Analyst

A couple of quick ones here on CapEx and O&M. So, the Florida grid hardening plan that you just filed, is that already reflected in the five-year CapEx plan?

Lynn Good – Duke Energy Corporation, Chair, President & CEO

So, Michael, we updated in February about \$1.5 billion into Florida, our Florida five-year plan, and that is consistent with what we filed in the grid hardening plan. We will see incremental capital beyond the five years because this has put forward a 10-year plan and we'll provide those updates as the years progress.

Steve Young – Duke Energy Corporation, Executive Vice President & CFO

That's right. Our February capital plan was increased 12% and the Florida grid mod was a significant part of the increase.

Michael Weinstein – Credit Suisse, Analyst

And just to beat the dead horse on the O&M reduction, is there a ballpark estimate that you could give us for how much is deferral into the planned maintenance and how much is more permanent, say, 25% of it more permanent, maybe 50% permanent.

Lynn Good – Duke Energy Corporation, Chair, President & CEO

Michael, at this point, I don't have a range to share with you. I think that's been a topic of interest. And as we go into the second quarter and begin out more earnest planning for 2021, I think we'll be in a better position to talk about that. But our objective will be to make as much sustainable as we can in this environment. But I don't have a specific on deferrals versus sustainable at this point.

Steve Young – Duke Energy Corporation, Executive Vice President & CFO

And we want to look at how the assets operate and think about their performance under the revised operations and so forth and that will impact this as well.

Michael Weinstein – Credit Suisse, Analyst

Steve, you mentioned the idea that you have headroom, yes, smaller O&M with more capital improvement. Do you see the opportunity to convert some of these OpEx cuts once the crisis is over into a higher rate base and CapEx growth plan?

Steve Young – Duke Energy Corporation, Executive Vice President & CFO

Well, we certainly always look at putting our financial plans together, keeping in mind impacts on customer rates. And so, to the extent you can reduce O&M cost, that does give you that headroom there. We have a robust dataset of capital opportunities, we turn capital away each year when we go through our budgeting process. So, given our scope and scale, the breadth of our grid, we have plenty of opportunities to do those kinds of things, Mike.

Michael Weinstein – Credit Suisse, Analyst

And also, since the Progress rate case has a record that's still open. Is it possible to incorporate some of these COVID cost deferrals and recovery mechanisms or anything else you're thinking about there, that would be possible to incorporate that into that case?

Lynn Good – Duke Energy Corporation, Chair, President & CEO

So, Michael, we're looking at the appropriate way to handle the Carolinas in light of the fact that the cases has yet to go hearing. I don't have anything specific to share on that plan right now, but we are reporting the costs to both – to the North Carolina Commission and to the state and to South Carolina, and we'll make the appropriate filings and incorporate them in the rate case if that makes sense or handle in whatever way make sense. Just too early on that one.

Jeremy Tonet – JP Morgan, Analyst

Just want to come to the O&M side with a slightly different angle. As I recall, it seems like the spending on items such as vegetation management was accelerated in 4Q 2019. So, just trying to think through how much cost savings was kind of banked last year that could be used again this year and was any of that contingency kind of already utilized in the first quarter?

Steve Young – Duke Energy Corporation, Executive Vice President & CFO

You're right. In terms of 2019, our agility programs worked in the other direction. We had a favorable year and we accelerated some useful expenses into 2019. We had veg management, where we had about \$0.04 that we fold into 2019, as I recall. That was baked into our plans and our forecasts and so forth. And the ability to do those kinds of things is very useful to us. That's already baked into the numbers that you're seeing at this point, but that helps us achieve and get into our range, that dexterity between calendar years.

Operator

Thank you. And ladies and gentlemen, that does conclude our time for questions-and-answers today. I'd like to turn the conference back over to Lynn Good for any additional or closing remarks.

Lynn Good – Duke Energy Corporation, Chair, President & CEO

Well, thank you, Derrick, and thanks to all who joined today for your interest and investments in Duke Energy. And I just want to take this opportunity to thank the employees at Duke Energy. I'm extraordinarily proud of the work that's been underway with new safety protocols to do the business as usual, but also to serve our customers well. And the commitment of the leadership team and our employees to excellence for the customers, and in maintaining a financial health for our company is truly extraordinary.

So, thanks to the Duke Energy employees and thanks to all of you for joining today.

Operator

Thank you. And again, that does conclude today's call. Again, we thank you for your participation. You may now disconnect.

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

DUKE ENERGY CAROLINAS, LLC,

DUKE ENERGY PROGRESS, LLC,

Plaintiffs,

v.

AG INSURANCE SA/NV (f/k/a/L'Etoile S.A.
Belge d'Assurances),AGEAS INSURANCE LIMITED (f/k/a
Bishopsgate Insurance Company Limited),AIG PROPERTY CASUALTY COMPANY
(f/k/a Birmingham Fire Insurance Company of
Pennsylvania),ALLEANZA ASSICURAZIONI S.P.A. (as
successor to Lloyd Italiano Assicurazioni
S.p.A.),ALLIANZ FRANCE S.A. (f/k/a Assurances
Generales de France),ALLIANZ GLOBAL RISKS US
INSURANCE COMPANY (f/k/a Allianz
Insurance Company),ALLIANZ UNDERWRITERS INSURANCE
COMPANY (f/k/a Allianz Underwriters, Inc.),ALLSTATE INSURANCE COMPANY (as
successor to Northbrook Insurance Company),AMERICAN HOME ASSURANCE
COMPANY,ARROWOOD INDEMNITY COMPANY
(f/k/a Royal Indemnity Company),ASEGURADORA INTERACCIONES S.A.
(f/k/a Seguros La Republica S.A.),IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
17-CVS- 5594**COMPLAINT****JURY TRIAL DEMANDED**

OFFICIAL COPY

Sep 04 2020

ASSOCIATED ELECTRIC & GAS)
INSURANCE SERVICES LTD.,)
)
AXA BELGIUM (as successor to Groupe Josi)
Compagnie Centrale d'Assurances),)
)
BERKSHIRE HATHAWAY DIRECT)
INSURANCE COMPANY (f/k/a American)
Centennial Insurance Company),)
)
CENTRE INSURANCE COMPANY (f/k/a)
London Guarantee and Accident Company of)
New York),)
)
CENTURY INDEMNITY COMPANY (as)
successor to California Union Insurance)
Company),)
)
COLUMBIA CASUALTY COMPANY,)
)
EMPLOYERS MUTUAL CASUALTY)
COMPANY,)
)
FEDERAL INSURANCE COMPANY,)
)
FIREMAN'S FUND INSURANCE)
COMPANY,)
)
FIRST STATE INSURANCE COMPANY,)
)
GENERAL REINSURANCE)
CORPORATION (as successor to North Star)
Reinsurance Corporation),)
)
GENERALI IARD S.A. (as successor to Le)
Continent),)
)
LEXINGTON INSURANCE COMPANY,)
)
OLD REPUBLIC INSURANCE COMPANY,)
)
PACIFIC EMPLOYERS INSURANCE)
COMPANY,)
)
SEGUROS DE RIESGOS LABORALES)
SURAMERICANA S.A. (as successor to)
Compania Agricola de Seguros),)

TIG INSURANCE COMPANY (as successor)
to Ranger Insurance Company and)
International Surplus Lines Insurance)
Company),)
)
TWIN CITY FIRE INSURANCE)
COMPANY,)
)
UNITED STATES FIRE INSURANCE)
COMPANY,)
)
Defendants.)

Plaintiffs Duke Energy Carolinas, LLC (“Duke Energy Carolinas”) and Duke Energy Progress, LLC (“Duke Energy Progress”) (collectively referred to herein as “Duke”), by their undersigned counsel, bring this action against the Defendant insurers identified below and, in support thereof, allege as follows:

NATURE OF THE ACTION

1. This is a civil action seeking insurance coverage under certain third-party liability insurance policies (“the Policies”) sold to Duke by the Defendant insurance companies. Each of the Policies provides coverage for liability for property damage caused by an occurrence.

2. In particular, Duke seeks damages for breach of contract and an order declaring the present and future rights, duties, and liabilities of the parties under the Policies and directing the Defendant insurers to indemnify Duke for damages suffered by Duke from certain environmental claims (“the Environmental Claims”) asserted against Duke arising out of coal combustion residuals (“CCRs”) at 14 Duke power plants in North Carolina and one Duke power plant in South Carolina.

THE PARTIES

The Plaintiffs

3. **Duke Energy Carolinas.** Plaintiff Duke Energy Carolinas is a limited liability company organized under the laws of North Carolina and has its principal place of business in North Carolina. Duke Energy Carolinas was previously known as Duke Power Company (“Duke Power”). Duke Energy Carolinas is a legal entity under the law with the capacity to file suit.

4. **Duke Energy Progress.** Plaintiff Duke Energy Progress is a limited liability company organized under the laws of North Carolina and has its principal place of business in North Carolina. Duke Energy Progress was previously known as Carolina Power & Light Company (“Carolina Power & Light”). Duke Energy Progress is a legal entity under the law with the capacity to file suit.

The Defendants

5. **AG Insurance.** Upon information and belief, Defendant AG Insurance SA/NV, formerly known as L’Etoile S.A. Belge d’Assurances, is incorporated in Belgium and has its principal place of business in Belgium.

6. **Ageas Insurance Limited.** Upon information and belief, Defendant Ageas Insurance Limited, formerly known as Bishopsgate Insurance Company Limited, is incorporated in the United Kingdom and has its principal place of business in the United Kingdom.

7. **AIG Property Casualty Company.** Upon information and belief, Defendant AIG Property Casualty Company, formerly known as Birmingham Fire Insurance Company of Pennsylvania, is incorporated in Pennsylvania and has its principal place of business in New York.

8. **Alleanza Assicurazioni.** Upon information and belief, Defendant Alleanza Assicurazioni S.p.A., as successor to Lloyd Italico Assicurazioni S.p.A., is incorporated in Italy and has its principal place of business in Italy.

9. **Allianz France.** Upon information and belief, Defendant Allianz France S.A., formerly known as Assurances Generales de France, is incorporated in France and has its principal place of business in France.

10. **Allianz Global Risks.** Upon information and belief, Defendant Allianz Global Risks US Insurance Company, formerly known as Allianz Insurance Company, is incorporated in Illinois and has its principal place of business in Illinois.

11. **Allianz Underwriters.** Upon information and belief, Defendant Allianz Underwriters Insurance Company, formerly known as Allianz Underwriters, Inc., is incorporated in Illinois and has its principal place of business in Illinois.

12. **Allstate.** Upon information and belief, Defendant Allstate Insurance Company, as successor to Northbrook Insurance Company, is incorporated in Illinois and has its principal place of business in Illinois.

13. **American Home Assurance.** Upon information and belief, Defendant American Home Assurance Company is incorporated in New York and has its principal place of business in New York.

14. **Arrowood.** Upon information and belief, Defendant Arrowood Indemnity Company, formerly known as Royal Indemnity Company, is incorporated in Delaware and has its principal place of business in Charlotte, North Carolina.

15. **Aseguradora Interacciones.** Upon information and belief, Defendant Aseguradora Interacciones S.A., formerly known as Seguros La Republica S.A., is incorporated in Mexico and has its principal place of business in Mexico.

16. **AEGIS.** Upon information and belief, Defendant Associated Electric & Gas Insurance Services, Ltd. is incorporated in Bermuda and has its principal place of business in New Jersey.

17. **AXA Belgium.** Upon information and belief, Defendant AXA Belgium, as successor to Groupe Josi Compagnie Centrale d'Assurances, is incorporated in Belgium and has its principal place of business in Belgium.

18. **Berkshire Hathaway Direct.** Upon information and belief, Defendant Berkshire Hathaway Direct Insurance Company, formerly known as American Centennial Insurance Company, is incorporated in Nebraska and has its principal place of business in Nebraska.

19. **Centre.** Upon information and belief, Defendant Centre Insurance Company, formerly known as London Guarantee and Accident Company of New York, is incorporated in Delaware and has its principal place of business in New York.

20. **Century Indemnity.** Upon information and belief, Defendant Century Indemnity Company, as successor to California Union Insurance Company, is incorporated in Pennsylvania and has its principal place of business in Pennsylvania.

21. **Columbia.** Upon information and belief, Defendant Columbia Casualty Company is incorporated in Illinois and has its principal place of business in Illinois.

22. **Employers Mutual.** Upon information and belief, Defendant Employers Mutual Casualty Company is incorporated in Iowa and has its principal place of business in Iowa.

23. **Federal.** Upon information and belief, Defendant Federal Insurance Company is incorporated in Indiana and has its principal place of business in Pennsylvania.

24. **Fireman's Fund.** Upon information and belief, Defendant Fireman's Fund Insurance Company is incorporated in California and has its principal place of business in Illinois.

25. **First State.** Upon information and belief, Defendant First State Insurance Company is incorporated in Connecticut and has its principal place of business in Massachusetts.

26. **Gen Re.** Upon information and belief, Defendant General Reinsurance Corporation, as successor to North Star Reinsurance Corporation, is incorporated in Delaware and has its principal place of business in Connecticut.

27. **Generali IARD S.A..** Upon information and belief, Defendant Generali IARD S.A., as successor to Le Continent, is incorporated in France and has its principal place of business in France.

28. **Lexington.** Upon information and belief, Defendant Lexington Insurance Company is incorporated in Delaware and has its principal place of business in Massachusetts.

29. **Old Republic.** Upon information and belief, Defendant Old Republic Insurance Company is incorporated in Pennsylvania and has its principal place of business in Pennsylvania.

30. **Pacific Employers.** Upon information and belief, Defendant Pacific Employers Insurance Company is incorporated in Pennsylvania and has its principal place of business in Pennsylvania.

31. **Seguros de Riesgos Laborales Suramericana S.A.** Upon information and belief, Defendant Seguros de Riesgos Laborales Suramericana S.A, as successor to Compania

Agricola de Seguros S.A., is incorporated in Colombia and has its principal place of business in Colombia.

32. **TIG.** Upon information and belief, Defendant TIG Insurance Company, as successor to Ranger Insurance Company and International Surplus Lines Insurance Company, is incorporated in California and has its principal place of business in New Hampshire.

33. **Twin City Fire.** Upon information and belief, Defendant Twin City Fire Insurance Company is incorporated in Indiana and has its principal place of business in Connecticut.

34. **U.S. Fire.** Upon information and belief, Defendant United States Fire Insurance Company is incorporated in Delaware and has its principal place of business in New Jersey.

JURISDICTION AND VENUE

35. **Personal Jurisdiction.** This Court has personal jurisdiction over Defendants pursuant to applicable North Carolina law, at least because (i) the Defendants have engaged in substantial business activity within North Carolina, (ii) the insurance policies at issue in this action were issued to Plaintiffs in North Carolina, (iii) Plaintiffs were residents of North Carolina when the events out of which the claims in this action arose took place, (iv) the events out of which the claims in this action arose took place in North Carolina, and/or (v) the injurious consequences of Defendants' failure to comply with their contractual obligations to provide coverage have been endured by Plaintiffs in North Carolina. In addition, upon information and belief, Defendant Arrowood Indemnity Company's principal place of business is in North Carolina.

36. **Venue.** Venue in this Court is proper pursuant to N.C. Gen. Stat. § 1-80 and/or N.C. Gen. Stat. § 1-82.

THE LIABILITY INSURANCE POLICIES

37. **Policies Sold to Duke Energy Carolinas.** From 1973 to 1986, Duke Power purchased excess-level third-party liability insurance with standard-form wording. The policy numbers and policy periods of those policies sold by Defendants that presently are known to Duke are set forth in Exhibit A to this Complaint, which is hereby incorporated by reference as if fully set forth herein. The policies are occurrence-based and remain in full force and effect.

38. **Policies Sold to Duke Energy Progress.** From 1971 to 1986, Carolina Power & Light purchased excess-level third-party liability insurance with standard-form wording. The policy numbers and policy periods of those policies sold by Defendants that presently are known to Duke are set forth in Exhibit B to this Complaint, which is hereby incorporated by reference as if fully set forth herein. The policies are occurrence-based and remain in full force and effect. The policies at issue sold by Defendants to Duke Power and Carolina Power & Light are collectively referred to herein as the “Policies.”

39. **Duty to Indemnify.** The Policies each promise, with varying wording, to indemnify Duke for all sums Duke is legally obligated to pay on account of property damage caused by an occurrence, subject only to any underlying or upper limits of liability expressly and unambiguously stated in each respective Policy. The Policies also indemnify for fees and expenses incurred by Duke in the investigation and defense of any claim or suit. Duke’s damages exceed the self-insured retentions and either reach or are expected to reach the level of attachment of all of the Policies.

THE ENVIRONMENTAL CLAIMS

40. **Background.** Power plants that generate electricity through the combustion of coal create a number of waste byproducts. Among those waste byproducts are CCRs. CCRs

include fly ash, bottom ash, coal slag, and flue gas desulfurized gypsum. Fly ash and bottom ash are both commonly referred to as “coal ash.” Coal ash contains various heavy metals and potentially hazardous constituents, including arsenic, barium, cadmium, chromium, lead, manganese, mercury, nitrates, sulfates, selenium, and thallium. Coal ash has not been defined, itself, as a “hazardous substance” or “hazardous waste” under federal law, although some constituents of coal ash may be hazardous in sufficient quantities or concentrations.

41. Coal ash basins (also known as “coal ash ponds,” “coal ash impoundments,” or “ash dikes”) may be part of the waste treatment system at coal-fired power plants. Historically, Duke’s coal ash basins were unlined earthen impoundments and typically operated as follows: Coal ash was mixed with water to form a slurry. The coal ash slurry was carried through sluice pipe lines to the coal ash basin. Settling occurred in the coal ash basin, in which particulate matter and free chemical components separated from the slurry and settled at the bottom of the basin. Less contaminated water remained at the surface of the basin, from which it eventually could be discharged if authorized under relevant law and permits. In some instances, water at the surface of the primary basin flowed into a secondary basin, where further settling and treatment occurred before its discharge into a water of the United States.

42. Coal ash basins generally continued to store settled ash and particulate material for years or decades. From time to time, Duke dredged settled coal ash from some of the basins, storing the ash in dry stacks on plant property.

43. Until recently, a total of approximately 108 million tons of coal ash was held in coal ash basins owned and operated by Duke in North Carolina. Duke also operates facilities with coal ash basins in South Carolina, where, until recently, there was approximately 6 million tons of coal ash.

44. It is alleged, without regard to historical awareness of harm, that coal ash constituents from coal ash basins and other areas have been infiltrating into groundwater over a long period of time. State environmental regulators have alleged that there have been environmental impacts or potential impacts to groundwater beneath each of Duke's North Carolina and South Carolina coal-fired power plants that are part of this claim.

45. Duke's CCR liability has evolved over time and continues to evolve. In North Carolina, Duke faces liability under the North Carolina Coal Ash Management Act ("CAMA"), which has undergone legal challenge and significant modification since it was first enacted and was significantly amended in July 2016. In both North Carolina and South Carolina, Duke also faces additional CCR liability under a recent United States Environmental Protection Agency ("EPA") rule regulating the disposal of CCRs ("CCR Rule"), as to which the scope of Duke's additional liability is not yet fully determined.

46. **North Carolina -- CAMA.** CAMA was the subject of substantial amendments in July 2016, pursuant to Session Law 2016-95. The amendments, among other things, clarify and cement Duke's remedial obligations and give the North Carolina Department of Environmental Quality ("NCDEQ") flexibility to update Duke's remedial obligations based on new information and changing conditions. The amendments introduced a number of new requirements and deadlines not contemplated in the original statute.

47. CAMA requires Duke to take investigatory and remedial steps in connection with CCRs at its North Carolina coal-fired power plants. CAMA requires an owner of a CCR surface impoundment to, *inter alia*, conduct groundwater monitoring and assessment to identify groundwater contamination, and to implement corrective action to restore groundwater quality in the event of groundwater contamination related to coal ash constituents. The remedial action

required under CAMA on account of groundwater and/or surface water contamination also includes source control, including the removal of CCRs from an impoundment or the construction of an impermeable environmental cap on top of an impoundment.

48. CAMA prescribes that the NCDEQ develop classifications for each North Carolina CCR surface impoundment based on the impoundment's risk to public health, safety, and welfare, the environment, and natural resources. Each impoundment is to be classified as high risk, intermediate risk, or low risk. In assessing a CCR impoundment's risk the NCDEQ considers three primary factors: impact to surface water, impact to groundwater, and structural integrity. CAMA requires that high and intermediate risk impoundments be dewatered and their CCRs be removed. CAMA requires that, at the election of NCDEQ, low risk impoundments be dewatered and covered with an impermeable environmental cap or that the CCRs be removed after dewatering. In May 2016, the NCDEQ released proposed classifications as to Duke's North Carolina power plants and designated all power plants – aside from those power plants specifically identified in CAMA, discussed below – as intermediate risk.

49. The North Carolina General Assembly expressly required by Session Laws 2014-122 and 2016-95 that Duke take certain remedial actions at certain specifically-identified power plants. By direct mandate of the North Carolina General Assembly, Duke must dewater and remove all CCRs from impoundments at the following seven power plants: Dan River Steam Station, Riverbend Steam Station, Asheville Steam Electric Generating Plant, L.V. Sutton Energy Complex, H.F. Lee Steam Electric Generating Plant, Cape Fear Steam Electric Generating Plant, and W.H. Weatherspoon Steam Electric Plant.

50. The July 2016 amendment made substantial changes to CAMA. It required Duke, as an additional remedial measure, to provide permanent water supplies to certain residences

near CCR impoundments that rely upon drinking water supply wells. The amendment provided that the NCDEQ shall classify a CCR impoundment as low risk if the impoundment owner provides a permanent water supply as required by the statute and other conditions are met. The amendment imposed an additional requirement that a certain amount of ash be beneficiated for cementitious purposes. The CCR impoundments at the Buck Steam Station and H.F. Lee Steam Electric Generating Plant are being excavated to comply with this CAMA obligation. In addition, pursuant to the July 2016 amendment, Duke must select a third ash beneficiation site by no later than July 1, 2017. The amendment also reflects the elimination of the Coal Ash Management Commission – the body originally charged with deciding impoundment classifications – after the Supreme Court of North Carolina ruled that the Commission was unconstitutional.

51. **Other North Carolina CCR Liability.** In addition to CAMA, Duke faces additional CCR-related liability at its North Carolina power plants on account of alleged environmental property damage under the federal CCR Rule. The CCR Rule establishes minimum criteria for the management and disposal of CCRs in landfills and impoundments and provides comprehensive guidance regarding risks imposed by, among other things, groundwater contamination. The CCR Rule requires groundwater monitoring and assessment to identify potential groundwater contamination. In the event contamination is identified, the CCR Rule may require remedial action including, but not limited to, corrective action to restore groundwater quality and source control, including the removal of CCRs from an impoundment or the construction of an impermeable environmental cap on top of an impoundment. Duke's potential liability for remedial action under the CCR Rule remains uncertain at this time, as the

deadline to begin evaluating the groundwater monitoring data for statistically significant increases over background levels for constituents is not until October 2017.

52. **The North Carolina Power Plants.** The North Carolina power plants at which Duke faces liability on account of alleged environmental property damage allegedly caused by CCRs are as follows:

Allen Steam Station

53. The Allen Steam Station, located in Belmont, Gaston County, North Carolina, commenced operation in 1957. The Allen plant is adjacent to the Catawba River. The Allen plant has been owned and operated since its inception by Duke Energy Carolinas.

54. Historically, CCRs generated at the Allen plant were managed primarily in on-site impoundments at the plant. There are two impoundments at the Allen plant: the Active Ash Basin and the Inactive Ash Basin.

55. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the Allen plant for which Duke makes a claim under the Policies issued to Duke Power. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

Asheville Steam Electric Generating Plant

56. The Asheville Steam Electric Generating Plant, located in Arden, Buncombe County, North Carolina, commenced operation in 1964. The Asheville plant is adjacent to the French Broad River and Lake Julian. The Asheville plant has been owned and operated since its inception by Duke Energy Progress.

57. Historically, CCRs generated at the Asheville plant were managed primarily in on-site impoundments at the plant. There are two impoundments at the Asheville plant: the 1964 Ash Basin and the 1982 Ash Basin.

58. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the Asheville plant for which Duke makes a claim under the Policies issued to Carolina Power & Light. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

Belews Creek Steam Station

59. The Belews Creek Steam Station, located in Belews Creek, Stokes County, North Carolina, commenced operation in 1974. The Belews Creek plant is adjacent to West Belews Creek/Belews Lake. The Belews Creek plant has been owned and operated since its inception by Duke Energy Carolinas.

60. Historically, CCRs generated at the Belews Creek plant were managed primarily in an on-site impoundment at the plant. There is one CCR impoundment at the Belews Creek plant: the Active Ash Basin.

61. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the Belews Creek plant for which Duke makes a claim under the Policies issued to Duke Power. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

Buck Steam Station

62. The Buck Steam Station, located in Salisbury, Rowan County, North Carolina, commenced operation in 1926. The Buck plant is adjacent to the Yadkin River. The Buck plant has been owned and operated since its inception by Duke Energy Carolinas.

63. Historically, CCRs generated at the Buck plant were managed primarily in on-site impoundments at the plant. There are three CCR impoundments at the Buck plant: Ash Basin Cell 1, Ash Basin Cell 2, and Ash Basin Cell 3.

64. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the Buck plant for which Duke makes a claim under the Policies issued to Duke Power. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

Cape Fear Steam Electric Generating Plant

65. The Cape Fear Steam Electric Generating Plant, located in Moncure, Chatham County, North Carolina, commenced operation in 1923. The Cape Fear plant is adjacent to the Cape Fear River, Haw River, and Deep River. The Cape Fear plant has been owned and operated since its inception by Duke Energy Progress.

66. Historically, CCRs generated at the Cape Fear plant were managed primarily in on-site impoundments at the plant. There are five CCR impoundments at the Cape Fear plant: the 1956 Ash Pond, the 1963 Ash Pond, the 1970 Ash Pond, the 1978 Ash Pond, and the 1985 Ash Pond.

67. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the

Cape Fear plant for which Duke makes a claim under the Policies issued to Carolina Power & Light. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

Rogers Energy Complex (Cliffside Steam Station)

68. The Rogers Energy Complex (Cliffside Steam Station), located in Mooresboro, Rutherford and Cleveland Counties, North Carolina, commenced operation in 1940. The Cliffside plant is adjacent to the Broad River. The Cliffside plant has been owned and operated since its inception by Duke Energy Carolinas, formerly known as Duke Power.

69. Historically, CCRs generated at the Cliffside plant were managed primarily in on-site impoundments at the plant. There are three CCR impoundments at the Cliffside plant: the Active Ash Basin, Retired Unit 5 Basin, and Retired Unit 1-4 Basin.

70. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the Cliffside plant for which Duke makes a claim under the Policies issued to Duke Power. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

Dan River Steam Station

71. The Dan River Steam Station, located in Eden, Rockingham County, North Carolina, commenced operation in 1949. The Dan River plant is adjacent to the Dan River. The Dan River plant has been owned and operated since its inception by Duke Energy Carolinas.

72. Historically, CCRs generated at the Dan River plant were managed primarily in on-site impoundments at the plant. There are two CCR impoundments at the Dan River plant: the Primary Basin and the Secondary Basin.

73. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the Dan River plant for which Duke makes a claim under the Policies issued to Duke Power. These costs do not include costs relating to the February 2, 2014, spill and cleanup of the Dan River. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

H.F. Lee Steam Electric Generating Plant

74. The H.F. Lee Steam Electric Generating Plant, located in Goldsboro, Wayne County, North Carolina, commenced operation in 1951. The H.F. Lee plant is adjacent to the Neuse River. The H.F. Lee plant has been owned and operated since its inception by Duke Energy Progress.

75. Historically, CCRs generated at the H.F. Lee plant were managed primarily in on-site impoundments at the plant. There are four CCR impoundments at the H.F. Lee plant: the Active Ash Pond, Ash Pond #1, Ash Pond #2, and Ash Pond #3.

76. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the H.F. Lee plant for which Duke makes a claim under the Policies issued to Carolina Power & Light. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

Marshall Steam Station

77. The Marshall Steam Station, located in Terrell, Catawba County, North Carolina, commenced operation in 1965. The Marshall plant is adjacent to Lake Norman. The Marshall plant has been owned and operated since its inception by Duke Energy Carolinas.

78. Historically, CCRs generated at the Marshall plant were managed primarily in an on-site impoundment at the plant. There is one CCR impoundment at the Marshall plant: the Ash Basin.

79. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the Marshall plant for which Duke makes a claim under the Policies issued to Duke Power. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

Mayo Steam Electric Generating Plant

80. The Mayo Steam Electric Generating Plant, located near Roxboro, Person County, North Carolina, commenced operation in 1983. The Mayo plant is adjacent to Mayo Lake and Crutchfield Branch. The Mayo plant has been owned and operated since its inception by Duke Energy Progress.

81. Historically, CCRs generated at the Mayo plant were managed primarily in an on-site impoundment at the plant. There is one CCR impoundment at the Mayo plant: the Ash Pond.

82. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the Mayo plant for which Duke makes a claim under the Policies issued to Carolina Power & Light. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

Riverbend Steam Station

83. The Riverbend Steam Station, located in Mount Holly, Gaston County, North Carolina, commenced operation in 1929. The Riverbend plant is adjacent to the Catawba River (Mountain Island Lake). The Riverbend plant has been owned and operated since its inception by Duke Energy Carolinas.

84. Historically, CCRs generated at the Riverbend plant were managed primarily in on-site impoundments at the plant. There are two CCR impoundments at the Riverbend plant: the Primary Basin and the Secondary Basin.

85. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the Riverbend plant for which Duke makes a claim under the Policies issued to Duke Power. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

Roxboro Steam Electric Generating Plant

86. The Roxboro Steam Electric Generating Plant, located near Semora, Person County, North Carolina, commenced operation in 1966. The Roxboro plant is adjacent to Hyco Lake. The Roxboro plant has been owned and operated since its inception by Duke Energy Progress.

87. Historically, CCRs generated at the Roxboro plant were managed primarily in on-site impoundments at the plant. There are two CCR impoundments at the Roxboro plant: the East Ash Pond and the West Ash Pond.

88. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the

Roxboro plant for which Duke makes a claim under the Policies issued to Carolina Power & Light. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

L.V. Sutton Energy Complex

89. The L.V. Sutton Energy Complex, located in Wilmington, New Hanover County, North Carolina, commenced operation in 1954. The Sutton plant is adjacent to the Cape Fear River. The Sutton plant has been owned and operated since its inception by Duke Energy Progress.

90. Historically, CCRs generated at the Sutton plant were managed primarily in on-site impoundments at the plant. There are two CCR impoundments at the Sutton plant: the 1971 Ash Basin and the 1984 Ash Basin.

91. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the Sutton plant for which Duke makes a claim under the Policies issued to Carolina Power & Light. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

W.H. Weatherspoon Steam Electric Plant

92. The W.H. Weatherspoon Steam Electric Plant, located near Lumberton, Robeson County, North Carolina, commenced operation in 1949. The Weatherspoon plant is adjacent to the Lumber River. The Weatherspoon plant has been owned and operated since its inception by Duke Energy Progress.

93. Historically, CCRs generated at the Weatherspoon plant were managed primarily in an on-site impoundment at the plant. There is one CCR impoundment at the Weatherspoon plant: the Ash Pond.

94. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the Weatherspoon plant for which Duke makes a claim under the Policies issued to Carolina Power & Light. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

95. **The South Carolina Power Plant.** The South Carolina power plant at which Duke faces liability on account of alleged environmental property damage allegedly caused by CCRs is as follows:

H.B. Robinson Steam Electric Plant

96. The H.B. Robinson Steam Electric Plant, located near Hartsville, Darlington County, South Carolina, commenced operation in 1960. The Robinson plant is adjacent to Lake Robinson. The Robinson plant has been owned and operated since its inception by Duke Energy Progress.

97. Historically, CCRs generated at the Robinson plant were managed primarily in an on-site impoundment at the plant. There is one CCR impoundment at the Robinson plant.

98. The South Carolina Department of Health and Environmental Control (“SCDHEC”) issued a Notice of Violation to Duke in which it alleged that the CCR impoundment at the Robinson plant caused groundwater contamination, and, as a result, SCDHEC ordered Duke to investigate and remediate groundwater.

99. Duke is obligated to and will conduct groundwater remediation at the Robinson plant. Due to site-specific factors, source control will be accomplished through the excavation of CCRs from the CCR impoundment. CCRs removed from the impoundment will be moved to a lined, permitted landfill that Duke will construct on-site.

100. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the Robinson plant for which Duke makes a claim under the Policies issued to Carolina Power & Light. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

101. In addition, Duke may face additional CCR-related liability at the Robinson plant on account of alleged environmental property damage under the federal CCR Rule. As with Duke's North Carolina power plants, Duke's potential liability at the Robinson plant for remedial action under the CCR Rule remains uncertain at this time, as groundwater monitoring is ongoing.

COVERAGE UNDER THE POLICIES

102. **Coverage.** The Policies provide coverage for Duke's CCR liability. Duke satisfies the requirements for coverage in each Policy. Duke faces liability on account of, and is being legally compelled to investigate and remediate, alleged environmental property damage allegedly caused by CCRs at the North and South Carolina power plants identified above. The alleged environmental property damage includes damage to third party property, including groundwater, that is not owned by Duke. Duke's liability for alleged property damage is caused by an occurrence during the policy period of each of the Policies.

103. The costs Duke has incurred and/or will incur on account of alleged environmental property damage at each of the above-referenced power plants will exceed the available per-occurrence limits of each of the Policies.

104. Duke has complied with all conditions and paid all premiums. No Policy exclusions apply. Duke is entitled to the full benefits and protections of the Policies.

105. **The Defendant Insurers' Failure to Provide Coverage.** Duke notified Defendants of its specific CCR liability at each of the North Carolina and South Carolina power plants described in Paragraphs 52 to 101, and asserted a specific claim against each Defendant under the Policies demanding coverage.

106. No Defendant has honored its contractual obligation to provide coverage for the Environmental Claims. Defendants have reserved rights or refused to respond to Duke's request for coverage. The Defendant insurers have breached and/or repudiated their contractual obligations under the Policies.

CAUSES OF ACTION

Count I – Breach of Contract

107. **Incorporation by Reference.** Duke repeats and incorporates by reference the allegations in the preceding paragraphs as if fully set forth herein.

108. **Entitlement to Benefits of the Policies.** The Policies are valid and enforceable contracts under which Defendants agreed to provide insurance coverage pursuant to the Policies' terms. Pursuant to the Policies' terms, Defendants are required to provide coverage in connection with Duke's CCR liability at the North Carolina and South Carolina power plants identified above.

109. **Assertion of Claim.** Duke asserted that Defendants are responsible to indemnify it for damages arising out of the Environmental Claims.

110. **Breach.** Defendants breached their contractual obligations under the Policies by repudiating their coverage obligations and/or otherwise failing to provide coverage or respond to Duke's request for coverage.

111. As a direct and proximate result of the Defendants' respective breaches of the Policies, Duke has incurred damages currently recoverable under the Policies and will continue to incur substantial additional sums, damages, and expenses. Defendants' breaches have caused Duke actual damages, including the payment of millions of dollars for environmental response costs in connection with CCR claims against it. Defendants have deprived Duke of the benefit of the insurance coverage each Defendant agreed to provide and for which each Defendant has been paid premiums.

Count II – Declaratory Judgment

112. **Incorporation by Reference.** Duke repeats and incorporates by reference the allegations in the preceding paragraphs as if fully set forth herein.

113. **Entitlement to Benefits of the Policies.** The Policies are valid and enforceable contracts under which Defendants agreed to provide insurance coverage pursuant to the Policies' terms. Pursuant to the Policies' terms, Defendants are required to provide coverage in connection with Duke's CCR liability at the North Carolina and South Carolina power plants identified above.

114. **Disputed Coverage.** Upon receipt of notice of the Environmental Claims, Defendants have failed to honor their contractual obligations under the Policies and Duke is

informed and believes that Defendants dispute their obligation to indemnify Duke under the Policies in connection with the Environmental Claims.

115. **Actual Controversy.** An actual and justiciable controversy presently exists between Duke and Defendants with respect to Defendants' duties and obligations under the Policies in connection with Duke's CCR liability described herein. The controversy is of sufficient immediacy to justify the issuance of a declaratory judgment. The issuance of declaratory relief by this Court will terminate some or all of the existing controversy between the parties. Duke is entitled to a declaration that Defendants are required under the terms of their Policies to provide coverage to Duke for damages and costs Duke will incur on account of its CCR liability described herein.

116. **Necessity of Declaratory Relief.** The rights, status, and other legal relations between Duke and Defendants are uncertain and insecure. Continuing uncertainty regarding the extent of available insurance will perpetuate and augment the injury Duke already is suffering, including: (i) an increased financial burden on itself and its ratepayers, which Defendants promised to bear, and (ii) the burden of interfacing with enforcement agencies in the face of continuing uncertainty as to the total financial exposure and sources of funding to meet current CCR liabilities. The entry of a declaratory judgment by this Court is necessary to terminate the uncertainty and controversy giving rise to this proceeding.

PRAYER FOR RELIEF

117. WHEREFORE, Duke respectfully requests that this Court enter a judgment as follows:

- a. On Count I, order that Defendants pay compensatory and consequential damages in an amount to be determined at trial for Duke's damages, sums,

costs, expenses, “loss,” and “ultimate net loss” incurred on account of its CCR liability at the North Carolina and South Carolina power plants described herein;

- b. On Count II, issue a declaration that Duke is entitled to coverage under the Policies with respect to its CCR liability described herein, and that Defendants are obligated to provide coverage under the terms of their Policies for Duke’s future damages, sums, costs, expenses, “loss,” and “ultimate net loss” incurred on account of its CCR liability;
- c. Order that Defendants pay prejudgment and post-judgment interest and Duke’s costs, expenses, and attorneys’ fees incurred in connection with this action;
- d. An award of such other and further relief as the Court deems just and proper.

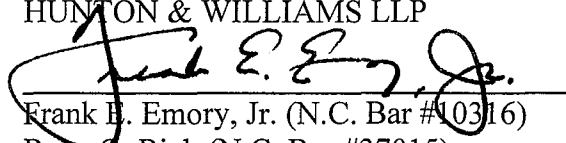
DEMAND FOR JURY TRIAL

Plaintiffs Duke Energy Carolinas and Duke Energy Progress demand a trial by jury on all issues so triable.

This the 29th day of March, 2017.

Respectfully submitted,

HUNTON & WILLIAMS LLP

A handwritten signature in black ink, appearing to read "Frank B. Emory, Jr.", is written over a horizontal line.

Frank B. Emory, Jr. (N.C. Bar #10316)

Ryan G. Rich (N.C. Bar #37015)

Bank of America Plaza, Suite 3500

101 South Tryon Street

Charlotte, North Carolina 28280

Tel: (704) 378-4700

Fax: (704) 378-4890

femory@hunton.com

rrich@hunton.com

PILLSBURY WINTHROP SHAW PITTMAN LLP

Mark J. Plumer (*pro hac vice* pending)

Matthew G. Jeweler (*pro hac vice* pending)

1200 Seventeenth Street, NW

Washington, DC 20036

Tel: (202) 663-8000

Fax: (202) 663-8007

mark.plumer@pillsburylaw.com

matthew.jeweler@pillsburylaw.com

*Counsel for Plaintiffs Duke Energy Carolinas and
Duke Energy Progress*

EXHIBIT A**Policies Issued to Duke Power
(By Original Insurer Name)**

Insurer	Policy Number	Policy Period	
		Start	End
Allianz Insurance Company	XL559537	10/31/1982	10/31/1983
Allianz Underwriters, Inc.	AUX 5200514	10/31/1981	10/31/1982
American Centennial Insurance Company	CC 002611	10/31/1981	10/31/1983
Associated Electric and Gas Insurance Services Ltd.	172	12/31/1979	12/31/1980
Associated Electric and Gas Insurance Services Ltd.	209CNJ	10/31/1985	10/31/1986
California Union Insurance Company	UT 3569	12/31/1979	12/31/1980
California Union Insurance Company	ZCX 006009	10/31/1981	10/31/1982
California Union Insurance Company	ZCX 007450	10/31/1984	10/31/1985
Certain London Market and Other Companies*	K25801	10/23/1973	12/31/1975
Certain London Market and Other Companies*	UGL 1330	12/31/1975	12/31/1976
Certain London Market and Other Companies*	UGL 1331	12/31/1975	12/31/1978
Certain London Market and Other Companies*	UGL 1332	12/31/1975	12/31/1978
Certain London Market and Other Companies*	UGL 1333	12/31/1975	12/31/1978
Certain London Market and Other Companies*	UHL 1370	12/31/1976	12/31/1977
Certain London Market and Other Companies*	UJL 1680	12/31/1977	12/31/1978
Columbia Casualty Company	UT 3569	12/31/1979	12/31/1980
Employers Mutual Casualty Company	20021	12/31/1978	12/31/1979
Federal Insurance Company	(85) 7929-31-72	10/31/1984	10/31/1985
Fireman's Fund Insurance Company	XLX 1531024	10/31/1983	10/31/1984
Fireman's Fund Insurance Company	XLX 1687008	10/31/1984	10/31/1985
Fireman's Fund Insurance Company	XLX 1687003	11/9/1984	10/31/1985
First State Insurance Company	127720	10/23/1973	1/31/1976
First State Insurance Company	130224	2/1/1978	12/31/1978
First State Insurance Company	UT 3569	12/31/1979	12/31/1980
First State Insurance Company	929871	10/31/1981	10/31/1982
First State Insurance Company	917316	10/31/1982	10/31/1983
International Surplus Lines Insurance Company	UT 3569	12/31/1979	12/31/1980
London Guarantee and Accident Company	LX3278836	10/31/1981	10/31/1982

of New York

London Guarantee and Accident Company of New York	LX1898119	10/31/1982	10/31/1983
North Star Reinsurance Corporation	NSX-11822	10/23/1973	12/31/1976
Northbrook Insurance Company	127719/63 000 264	10/23/1973	12/31/1975
Old Republic Insurance Company	OZX-11486	10/31/1981	10/31/1982
Pacific Employers Insurance Company	XCC 002383	10/31/1982	10/31/1983
Ranger Insurance Company	BSP 122047	10/31/1981	10/31/1983
Ranger Insurance Company	EUL 300658	10/31/1983	10/31/1984
Ranger Insurance Company	EUL 300579	10/31/1984	10/31/1985
Royal Indemnity Company	EC103320	10/31/1984	10/31/1985
Twin City Fire Insurance Company	TXS101193	10/31/1982	10/31/1983

*The following insurers subscribed to one or more of the above-referenced policies issued in the London insurance market to Duke Power Company: American Centennial Insurance Company; Assurances Generales de France; Bishopsgate Insurance Company Limited; Compania Agricola de Seguros S.A.; Groupe Josi Compagnie Centrale d'Assurances; Le Continent; Seguros La Republica S.A.

EXHIBIT B**Policies Issued to Carolina Power & Light
(By Original Insurer Name)**

Insurer	Policy Number	Policy Period	
		Start	End
American Centennial Insurance Company	CC 002613	10/31/1981	10/31/1983
Associated Electric and Gas Insurance Services Ltd.	211CNJ	10/31/1985	10/31/1986
Certain London Market and Other Companies^	K24880	12/31/1971	12/31/1972
Certain London Market and Other Companies^	K25800	12/31/1972	12/31/1975
Certain London Market and Other Companies^	K25801	8/9/1973	12/31/1975
Certain London Market and Other Companies^	UGL 1330	12/31/1975	12/31/1976
Certain London Market and Other Companies^	UGL 1331	12/31/1975	12/31/1978
Certain London Market and Other Companies^	UGL 1332	12/31/1975	12/31/1978
Certain London Market and Other Companies^	UGL 1333	12/31/1975	12/31/1978
Certain London Market and Other Companies^	UHL 1370	12/31/1976	12/31/1977
Certain London Market and Other Companies^	UJL 1680	12/31/1977	12/31/1978
Federal Insurance Company	(85) 7929-31-63	10/31/1984	10/31/1985
Fireman's Fund Insurance Company	XLX 1530917	10/31/1983	10/31/1984
Pacific Employers Insurance Company	XCC 002380	10/31/1982	10/31/1983
Pacific Employers Insurance Company	XCC 012437	10/31/1983	10/31/1984
Ranger Insurance Company	BSP 122048	10/31/1981	10/31/1983
Ranger Insurance Company	EUL 300659	10/31/1983	10/31/1984
Ranger Insurance Company	EUL 300578	10/31/1984	10/31/1985
United States Fire Insurance Company	522 020271 6	10/31/1984	10/31/1985

^The following insurers subscribed to one or more of the above-referenced policies issued in the London insurance market to Carolina Power & Light Company: American Home Assurance Company; Birmingham Fire Insurance Company of Pennsylvania; Compania Agricola de Seguros S.A.; L'Etoile S.A. Belge d'Assurances; Le Continent; Lexington Insurance Company; Lloyd Italico Assicurazioni S.p.A.; Seguros La Republica S.A.



2018 DEPRECIATION STUDY

CALCULATED ANNUAL DEPRECIATION
ACCRUALS RELATED TO ELECTRIC PLANT
AS OF DECEMBER 31, 2018

Prepared by:



Gannett Fleming

*Excellence Delivered **As Promised***