

EXHIBIT A

MERGER AGREEMENT

AGREEMENT AND PLAN OF MERGER

Dated as of October 24, 2015

by and among

DUKE ENERGY CORPORATION,

FOREST SUBSIDIARY, INC.

and

PIEDMONT NATURAL GAS COMPANY, INC.

TABLE OF CONTENTS

	Page
Article I The Merger	2
Section 1.1 The Merger	2
Section 1.2 Closing.....	2
Section 1.3 Effective Time.....	2
Section 1.4 Effects of the Merger	2
Section 1.5 Articles of Incorporation and Bylaws of the Surviving Corporation	2
Section 1.6 Directors and Officers of the Surviving Corporation.....	3
Section 1.7 Post-Merger Commitments.....	3
Section 1.8 Plan of Merger.....	4
Article II Effect of the Merger on Capital Stock	4
Section 2.1 Effect on Capital Stock.....	4
Section 2.2 Exchange of Certificates.....	5
Section 2.3 Treatment of Equity Awards	7
Section 2.4 Treatment of Employee Stock Purchase Plan	9
Section 2.5 Adjustments.....	9
Article III Representations and Warranties of the Company	9
Section 3.1 Organization, Standing and Corporate Power	10
Section 3.2 Capitalization	11
Section 3.3 Authority; Non-contravention	12
Section 3.4 Governmental Approvals	13
Section 3.5 Company SEC Documents; Undisclosed Liabilities	13
Section 3.6 Absence of Certain Changes	14
Section 3.7 Legal Proceedings	15
Section 3.8 Compliance With Laws; Permits.....	15
Section 3.9 Tax Matters	15
Section 3.10 Employee Benefits Matters	16
Section 3.11 Environmental Matters	18
Section 3.12 Intellectual Property.....	19
Section 3.13 Articles 9 and 9A of the NCBCA Not Applicable; Other Takeover Statutes; Appraisal Rights	19
Section 3.14 Real Property	19
Section 3.15 Contracts.....	19
Section 3.16 Labor	20
Section 3.17 Opinion of Financial Advisor.....	20
Section 3.18 Brokers and Other Advisors.....	20
Section 3.19 Company Shareholder Approval.....	20
Article IV Representations and Warranties of Parent and Merger Sub	21
Section 4.1 Organization, Standing and Corporate Power	21
Section 4.2 Authority; Noncontravention	21

TABLE OF CONTENTS (CONT'D)

	Page
Section 4.3	Governmental Approvals22
Section 4.4	Brokers and Other Advisors22
Section 4.5	Ownership and Operations of Merger Sub22
Section 4.6	Sufficient Funds22
Section 4.7	Share Ownership.....22
Section 4.8	Legal Proceedings23
Section 4.9	Non-Reliance on Company Estimates, Projections, Forecasts, Forward-Looking Statements and Business Plans.....23
Article V Covenants.....	23
Section 5.1	Conduct of Business23
Section 5.2	Preparation of the Proxy Statement; Shareholders Meeting.....27
Section 5.3	No Solicitation; Change in Recommendation.....28
Section 5.4	Reasonable Best Efforts.....31
Section 5.5	Public Announcements34
Section 5.6	Access to Information; Confidentiality.....34
Section 5.7	Takeover Laws35
Section 5.8	Indemnification and Insurance.....35
Section 5.9	Transaction Litigation37
Section 5.10	Section 1637
Section 5.11	Employee Matters37
Section 5.12	Merger Sub and Surviving Corporation.....40
Section 5.13	No Control of Other Party's Business.....40
Section 5.14	Financing Cooperation40
Section 5.15	Fiscal Year41
Article VI Conditions Precedent.....	42
Section 6.1	Conditions to Each Party's Obligation to Effect the Merger42
Section 6.2	Conditions to Obligations of Parent and Merger Sub42
Section 6.3	Conditions to Obligations of the Company43
Section 6.4	Frustration of Closing Conditions43
Article VII Termination	43
Section 7.1	Termination43
Section 7.2	Effect of Termination45
Section 7.3	Company Termination Fee; Parent Termination Fee.....46
Article VIII Miscellaneous	47
Section 8.1	No Survival of Representations and Warranties47
Section 8.2	Fees and Expenses.....48
Section 8.3	Amendment or Supplement48
Section 8.4	Waiver48
Section 8.5	Assignment.....48
Section 8.6	Counterparts48
Section 8.7	Entire Agreement; Third-Party Beneficiaries.....48
Section 8.8	Governing Law; Jurisdiction49

TABLE OF CONTENTS (CONT'D)

	Page
Section 8.9 Specific Enforcement	50
Section 8.10 WAIVER OF JURY TRIAL	50
Section 8.11 Notices	50
Section 8.12 Severability	51
Section 8.13 Definitions	52
Section 8.14 Interpretation	60

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER, dated as of October 24, 2015 (this "Agreement"), is entered into by and among Duke Energy Corporation, a Delaware corporation ("Parent"), Forest Subsidiary, Inc., a North Carolina corporation and a wholly owned Subsidiary of Parent ("Merger Sub"), and Piedmont Natural Gas Company, Inc., a North Carolina corporation (the "Company"). Defined terms used herein have the respective meanings set forth in Section 8.13.

W I T N E S S E T H

WHEREAS, the parties intend that, at the Effective Time, Merger Sub will, in accordance with the North Carolina Business Corporation Act (the "NCBCA"), merge with and into the Company, with the Company continuing as the surviving corporation (the "Merger") on the terms and subject to the conditions set forth in this Agreement;

WHEREAS, the board of directors of the Company (the "Company Board") has (a) determined that it is in the best interests of the Company and its shareholders for the Company to enter into this Agreement, (b) adopted this Agreement and approved the Company's execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement (including the consummation of the Merger upon the terms and subject to the conditions set forth in this Agreement and in accordance with the relevant provisions of the NCBCA) and (c) resolved to submit this Agreement to the Company's shareholders and recommend that the Company's shareholders approve this Agreement;

WHEREAS, the board of directors of Parent has (a) determined that it is in the best interests of Parent and its stockholders for Parent to enter into this Agreement and (b) adopted this Agreement and approved Parent's execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement (including the consummation of the Merger upon the terms and subject to the conditions set forth in this Agreement and in accordance with the relevant provisions of the NCBCA);

WHEREAS, the board of directors of Merger Sub has (a) determined that it is in the best interests of Merger Sub and its sole shareholder for Merger Sub to enter into this Agreement, (b) adopted this Agreement and approved Merger Sub's execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement (including the consummation of the Merger upon the terms and subject to the conditions set forth in this Agreement and in accordance with the relevant provisions of the NCBCA) and (c) resolved to submit this Agreement to Parent and recommend that Parent, in its capacity as Merger Sub's sole shareholder, approve this Agreement;

WHEREAS, Parent, in its capacity as the sole shareholder of Merger Sub, has approved this Agreement by written consent; and

WHEREAS, Parent, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements specified herein in connection with this Agreement.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Parent, Merger Sub and the Company hereby agree as follows:

ARTICLE I

THE MERGER

Section 1.1 The Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the NCBCA, at the Effective Time, Merger Sub shall be merged with and into the Company, and the separate existence of Merger Sub shall thereupon cease, and the Company shall be the surviving corporation in the Merger (the “Surviving Corporation”) and shall become, as a result of the Merger, a direct, wholly-owned subsidiary of Parent. At the Effective Time, as a result of the Merger, the name of the Surviving Corporation shall be Piedmont Natural Gas Company, Inc.

Section 1.2 Closing. The consummation of the Merger (the “Closing”) shall take place at the offices of Kirkland & Ellis LLP, 655 Fifteenth Street, N.W., Washington, D.C. 20005 at 10:00 a.m. (local time) on the date that is two (2) Business Days following the satisfaction or waiver (to the extent permitted by applicable Law) of the conditions set forth in Article VI (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions at such time), or on such other date and at such other time or place as is agreed to in writing by the parties hereto. The date on which the Closing occurs is referred to herein as the “Closing Date.”

Section 1.3 Effective Time. Subject to the provisions of this Agreement, on the Closing Date the parties hereto shall file with the Secretary of State of the State of North Carolina articles of merger (the “Articles of Merger”) executed in accordance with, and containing such information as is required by, Section 55-11-05 of the NCBCA and on or after the Closing Date shall make all other filings or recordings required under the NCBCA to effectuate the Merger. The Merger shall become effective at such time as the Articles of Merger are duly filed with the Secretary of State of the State of North Carolina or at such later time as is permissible under the NCBCA and is specified in the Articles of Merger (the time the Merger becomes effective being hereinafter referred to as the “Effective Time”).

Section 1.4 Effects of the Merger. The Merger shall have the effects set forth in this Agreement, the Articles of Merger and the applicable provisions of the NCBCA.

Section 1.5 Articles of Incorporation and Bylaws of the Surviving Corporation. At the Effective Time, the articles of incorporation and bylaws of the Company, in each case as amended to date and as in effect immediately prior to the Effective Time (the “Company Charter Documents”), shall be amended as of the Effective Time to be in the form of (except with respect to the name of the Company (which shall be “Piedmont Natural Gas Company, Inc.”) the articles of incorporation and bylaws of Merger Sub as of the date hereof and as so amended shall be the articles of incorporation and bylaws of Surviving Corporation until thereafter amended as provided therein or by applicable Law.

Section 1.6 Directors and Officers of the Surviving Corporation.

(a) The directors of Merger Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation immediately following the Effective Time, to serve until their respective successors are duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the articles of incorporation and bylaws of the Surviving Corporation.

(b) The officers of the Company immediately prior to the Effective Time shall be the officers of the Surviving Corporation immediately following the Effective Time, to serve until their respective successors are duly appointed and qualified or until their earlier death, resignation or removal in accordance with the articles of incorporation and bylaws of the Surviving Corporation.

Section 1.7 Post-Merger Commitments. Parent hereby confirms that, subject to the occurrence of the Effective Time, it:

(a) intends to cause the Surviving Corporation to maintain its headquarters in 4720 Piedmont Row Drive, Charlotte, North Carolina 28210 and to maintain a significant presence in the immediate location of such headquarters;

(b) intends to cause each of its Subsidiaries that is regulated as a public utility or gas utility under applicable Law of the State of North Carolina, the State of South Carolina or the State of Tennessee or is subject to such regulation by any other state to maintain its headquarters in the location of its headquarters as of immediately prior to the Closing and to maintain a significant presence in the immediate location of such headquarters;

(c) will take all necessary action so that, as soon as practicable after the Effective Time, Parent will expand the size of its board of directors by one seat and appoint a mutually agreeable current member of the Company Board as a director to serve on Parent's board of directors;

(d) intends to offer to retain the existing executive operating management team of the Company to manage Parent's and the Company's combined natural gas operations and to offer other senior Company executives the opportunity to join Parent's executive leadership team, and expects the head of such combined operations to report directly to the Chief Executive Officer of Parent and serve on Parent's Senior Management Committee;

(e) intends to establish a newly formed advisory board for its operations (the "Advisory Board"), which would meet several times a year to receive information and provide feedback on financial and operating results, customer service performance, community and government relations and economic development and investment opportunities that affect Parent's and the Company's local stakeholders;

(f) intends to nominate a minimum of six (6) current members of the Company Board for election to the Advisory Board;

(g) intends to cause the Surviving Corporation and its Subsidiaries to maintain the Company brand and continue to operate their business thereunder.

(h) intends to cause the Surviving Corporation and its Subsidiaries to maintain historic levels of community involvement, charitable contributions, low income funding, economic development and support efforts in the existing service territories of the Company and its Subsidiaries; and

(i) intends to maintain historic levels of community involvement, charitable contributions, low income funding, economic development and support efforts in the existing service territories of the Parent and its Subsidiaries.

Section 1.8 Plan of Merger. This Article I and Article II and, solely to the extent necessary under the NCBCA, the other provisions of this Agreement shall constitute a “plan of merger” for the purposes of the NCBCA, including Section 55-11-01 thereof.

ARTICLE II

EFFECT OF THE MERGER ON CAPITAL STOCK

Section 2.1 Effect on Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of the Company, Parent or Merger Sub or any holder of any shares of common stock, no par value per share, of the Company (“Company Common Stock”) or any shares of capital stock of Merger Sub:

(a) Capital Stock of Merger Sub. Each issued and outstanding share of capital stock of Merger Sub shall be converted into and become one validly issued, fully paid and non-assessable share of common stock, no par value per share, of the Surviving Corporation.

(b) Cancellation of Parent-Owned Stock. Any shares of Company Common Stock that are owned by Parent or Merger Sub or any of their respective wholly-owned Subsidiaries, in each case immediately prior to the Effective Time, shall be automatically canceled and shall cease to exist and no consideration shall be delivered in exchange therefor.

(c) Conversion of Company Common Stock. Each issued and outstanding share of Company Common Stock (other than shares to be canceled in accordance with Section 2.1(b)) shall thereupon be converted automatically into and shall thereafter represent solely the right to receive an amount in cash equal to \$60.00 without interest (the “Merger Consideration”). As of the Effective Time, all such shares of Company Common Stock shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and the holders immediately prior to the Effective Time of shares of Company Common Stock not represented by certificates (“Book-Entry Shares”) and the holders of certificates that immediately prior to the Effective Time represented any such shares of Company Common Stock (each, a “Certificate”) shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration to be paid in consideration therefor upon surrender of such Book-Entry Share or Certificate in accordance with Section 2.2(b) without interest (subject to any applicable withholding Tax).

Section 2.2 Exchange of Certificates.

(a) Paying Agent; Investment by Paying Agent of Funds. Prior to the Effective Time, Parent shall designate a bank or trust company reasonably acceptable to the Company (the "Paying Agent") for the purpose of exchanging shares of Company Common Stock for the Merger Consideration and enter into an agreement reasonably acceptable to the Company with the Paying Agent relating to the services to be performed by the Paying Agent. Parent shall deposit, or cause to be deposited, the aggregate Merger Consideration with respect to all shares of Company Common Stock (other than shares to be cancelled in accordance with Section 2.1(b)) with the Paying Agent at or prior to the Effective Time. The aggregate Merger Consideration deposited with the Paying Agent shall, pending its disbursement to such holders, be invested by the Paying Agent in (i) short-term commercial paper obligations of issuers organized under the Laws of a state of the United States of America, rated A-1 or P-1 or better by Moody's Investors Service, Inc. or Standard & Poor's Ratings Service, respectively, or in certificates of deposit, bank repurchase agreements or bankers' acceptances of commercial banks with capital exceeding \$10,000,000,000, or in mutual funds investing in such assets, or (ii) short-term obligations for which the full faith and credit of the United States of America is pledged to provide for the payment of principal and interest, or in mutual funds investing in such assets. Any interest and other income from such investments shall become part of the funds held by the Paying Agent for purposes of paying the Merger Consideration. No investment or investment losses resulting from such investment by the Paying Agent of the aggregate Merger Consideration shall relieve Parent, the Surviving Corporation or the Paying Agent from making the payments required by this Article II and Parent shall promptly replace any funds deposited with the Paying Agent lost through any investment made pursuant to this Section 2.2(a). No investment by the Paying Agent of the aggregate Merger Consideration shall have maturities that could prevent or delay payments to be made pursuant to this Agreement. Following the Effective Time, Parent agrees to make available to the Paying Agent, from time to time as needed, additional cash to pay the Merger Consideration as contemplated by this Article II without interest.

(b) Payment Procedures. As promptly as practicable after the Effective Time (but in no event more than three (3) Business Days thereafter), the Surviving Corporation shall cause the Paying Agent to mail to each holder of record of Company Common Stock (i) a letter of transmittal (which, in the case of shares of Company Common Stock represented by Certificates, shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Paying Agent, and shall be in such form and have such other provisions as Parent and the Company may reasonably agree and shall be prepared prior to Closing) and (ii) instructions for use in effecting the surrender of the Certificates or Book-Entry Shares in exchange for payment of the Merger Consideration. Upon surrender of Certificates for cancellation to the Paying Agent or, in the case of Book-Entry Shares, receipt of an "agent's message" by the Paying Agent (or such other evidence, if any, of transfer as the Paying Agent may reasonably request), together with such letter of transmittal, duly completed and validly executed in accordance with the instructions (and such other customary documents as may reasonably be required by the Paying Agent), the holder of such Certificates or Book-Entry Shares shall be entitled to receive in exchange therefor, subject to any required withholding Taxes, the Merger Consideration, without interest, for each share of Company Common Stock surrendered, and any Certificates surrendered shall forthwith be

canceled. If payment of the Merger Consideration is to be made to a Person other than the Person in whose name the surrendered Certificate or Book-Entry Share in exchange therefor is registered, it shall be a condition of payment that (A) the Person requesting such exchange present proper evidence of transfer or shall otherwise be in proper form for transfer and (B) the Person requesting such payment shall have paid any transfer and other Taxes required by reason of the payment of the Merger Consideration to a Person other than the registered holder of such Certificate or Book-Entry Share surrendered or shall have established to the reasonable satisfaction of the Surviving Corporation and the Paying Agent that such Tax either has been paid or is not applicable. Until surrendered as contemplated by this Section 2.2, each Certificate and Book-Entry Share shall be deemed at any time after the Effective Time to represent only the right to receive the Merger Consideration as contemplated by this Article II, without interest.

(c) Transfer Books; No Further Ownership Rights in Company Stock. The Merger Consideration paid in respect of shares of Company Common Stock upon the surrender for exchange in accordance with the terms of this Article II shall be deemed to have been paid in full satisfaction of all rights pertaining to the shares of Company Common Stock, and at the Effective Time, the stock transfer books of the Company shall be closed and thereafter there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the shares of Company Common Stock that were outstanding immediately prior to the Effective Time. From and after the Effective Time, the holders of Certificates or Book-Entry Shares that evidenced ownership of shares of Company Common Stock outstanding immediately prior to the Effective Time shall cease to have any rights with respect to such shares of Company Common Stock other than the right to receive the Merger Consideration, except as otherwise provided for herein or by applicable Law. If, at any time after the Effective Time, Certificates are presented to the Surviving Corporation for any reason, they shall be canceled and exchanged as provided in this Article II.

(d) Lost, Stolen or Destroyed Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by the Surviving Corporation or the Paying Agent, the posting by such Person of a bond, in such reasonable amount as Parent may direct, as indemnity against any claim with respect to such Certificate, the Paying Agent will pay, in exchange for such lost, stolen or destroyed Certificate, the applicable Merger Consideration to be paid in respect of the shares of Company Common Stock formerly represented by such Certificate, as contemplated by this Article II.

(e) Termination of Fund. At any time following the first (1st) anniversary of the Closing Date, the Surviving Corporation shall be entitled to require the Paying Agent to deliver to it any funds (including any interest received with respect thereto) that had been made available to the Paying Agent and which have not been disbursed in accordance with this Article II, and thereafter Persons entitled to receive payment pursuant to this Article II shall be entitled to look only to the Surviving Corporation (subject to abandoned property, escheat or other similar Laws) as general creditors thereof with respect to the payment of any Merger Consideration that may be payable upon surrender of any Company Common Stock held by such holders, as determined pursuant to this Agreement, without any interest thereon. Any amounts remaining unclaimed by such holders at such time at which such amounts would otherwise escheat to or become property of any Governmental Authority shall become, to the extent

permitted by applicable Law, the property of the Surviving Corporation, free and clear of all claims or interest of any Person previously entitled thereto.

(f) No Liability. Notwithstanding any other provision of this Agreement, none of Parent, the Merger Sub, the Surviving Corporation, the Company or the Paying Agent shall be liable to any Person for Merger Consideration delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(g) Withholding Taxes. Parent, the Company, the Surviving Corporation and the Paying Agent shall be entitled to deduct and withhold from the consideration otherwise payable to a holder of shares of Company Common Stock, Company RSUs or Company Performance Share Awards pursuant to this Agreement such amounts as may be required to be deducted and withheld with respect to the making of such payment under the Internal Revenue Code of 1986 (the “Code”), or under any applicable provision of state, local or foreign Law related to Taxes. To the extent amounts are so withheld and timely paid over to the appropriate Taxing authority, the withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made. Parent, the Company, the Surviving Corporation, and the Paying Agent shall reasonably cooperate with such holders in all reasonable respects, and in compliance with applicable Law, at their request and expense to minimize the amount of any applicable withholding.

Section 2.3 Treatment of Equity Awards.

(a) Company RSUs. Immediately prior to the Effective Time, each (x) Company RSU that was granted prior to the date of this Agreement and is outstanding immediately prior to the Effective Time and (y) each Company RSU that would result, pursuant to the terms of the applicable Company RSU award agreement, from crediting to an award recipient’s account the amount of cash dividends accrued, but not yet credited, in respect of each share of Company Common Stock subject to such Company RSU, shall be converted into a vested right to receive cash in an amount equal to the Merger Consideration.

(b) Currently Outstanding Company Performance Share Awards. Immediately prior to the Effective Time, each Company Performance Share Award that was granted prior to the date of this Agreement and is outstanding and subject to an incomplete performance period immediately prior to the Effective Time shall be converted into a vested right to receive cash in an amount equal to the target number of shares of Company Common Stock subject to such Company Performance Share Award, multiplied by the Merger Consideration, subject to proration consistent with past practice with respect to Applicable Retired Company Employees. In addition, to the extent that the Effective Time occurs within 2½ months following the end of the applicable performance period with respect to a Company Performance Share Award but prior to settlement of such Company Performance Share Award, such Company Performance Share Award shall be converted into a vested right to receive cash in an amount equal to the greater of (x) the target number of shares of Company Common Stock subject to such Company Performance Share Award, multiplied by the Merger Consideration and (y) the actual number of shares of Company Common Stock to which the holder of such Company Performance Share Award would be entitled based on actual performance with respect to the applicable performance

period, multiplied by the Merger Consideration, subject to proration consistent with past practice with respect to Applicable Retired Company Employees.

(c) Future Company Performance Share Awards. Each Company Performance Share Award that is granted after the date of this Agreement and is outstanding immediately prior to the Effective Time shall cease to represent an award that can be settled in shares of Company Common Stock, shall be assumed by Parent and shall be converted into a Parent restricted stock unit award (a "Parent RSU Award"), with the number of Parent Shares subject to such Parent RSU Award being equal to the product (rounded down to the nearest whole number) of (x) one hundred twenty-five percent (125%) of the target number of shares of Company Common Stock subject to such Company Performance Share Award immediately prior to the Effective Time multiplied by (y) the Equity Award Conversion Ratio. Any performance-related vesting conditions applicable to each such Company Performance Share Award shall cease to apply upon the conversion to Parent RSU Awards and the Parent RSU Awards shall be subject to time-based vesting only and shall fully vest at the time the incomplete performance period applicable to such Company Performance Share Awards would otherwise have ended (the "Parent RSU Award Vesting Date"), subject to the holder of the Parent RSU Award (the "Parent RSU Award Recipient") remaining continuously employed by the Surviving Corporation or its affiliates through the applicable Parent RSU Award Vesting Date; provided that in the event, at any time prior to the Parent RSU Award Vesting Date, a Parent RSU Award Recipient is terminated by the Surviving Corporation without "Cause" or resigns for "Good Reason," each as defined in the Company Stock Plan, any Parent RSU Awards held by the Parent RSU Award Recipient that would have vested on such Parent RSU Award Vesting Date shall fully and immediately vest as of the termination date. Except as provided herein, including with respect to vesting conditions, each such Company Performance Share Award that is assumed by Parent hereunder shall continue to be subject to the same terms and conditions that apply to such Company Performance Share Award immediately prior to the Effective Time; provided, however, that the compensation committee of Parent's board of directors shall succeed to the authority and responsibility of the Company Board or any committee thereof with respect to such Company Performance Share Award and such Company Performance Share Award shall be subject to administrative procedures consistent with those in effect under Parent's equity compensation plan. Parent shall register on a Form S-8 (or other appropriate form) all Parent Shares subject to the Parent RSU Awards.

(d) The Surviving Corporation shall be entitled to deduct and withhold from the amounts otherwise payable pursuant to this Section 2.3 to any holder of Company RSUs or Company Performance Share Awards such amounts as the Surviving Corporation is required to deduct and withhold with respect to the making of such payment under the Code, or any applicable provision of state, or local Law related to Tax, and the Surviving Corporation shall timely make any required filings and payments to Tax authorities relating to any such deduction or withholding. To the extent that amounts are so deducted and withheld by the Surviving Corporation, such withheld amounts shall be treated for the purposes of this Agreement as having been paid to the holder of Company RSUs or Company Performance Share Awards in respect of which such deduction and withholding was made by the Surviving Corporation.

(e) No later than the Effective Time, Parent shall provide, or shall cause to be provided, to the Surviving Corporation all funds necessary to fulfill the obligations under this

Section 2.3. All payments required under this Section 2.3 shall be made through the Company's payroll not later than the first payroll date following the Effective Time.

Section 2.4 Treatment of Employee Stock Purchase Plan. Except as otherwise provided in this Section 2.4, each current "Payroll Deduction Period" (as defined in the Company ESPP) (a "Payroll Deduction Period") in progress as of the date of this Agreement under the Company ESPP will continue, and the shares of Company Common Stock will be issued to participants thereunder on the next currently scheduled purchase dates thereunder occurring after the date of this Agreement as provided under, and subject to the terms and conditions of, the Company ESPP. New Payroll Deduction Periods under the Company ESPP will be permitted to commence following the date of this Agreement in the ordinary course of business. Any Payroll Deduction Period in progress as of the Effective Time will be shortened, and the last day of each such Payroll Deduction Period will be a date specified by Parent that is not more than thirty (30) days preceding the Effective Time or such other time as the parties otherwise agree, at which time each participant in the Company ESPP shall have purchased for his or her account as many shares of Company Common Stock as his or her payroll deductions that have accumulated during the relevant Payroll Deduction Period can purchase under the terms of the Company ESPP. Notwithstanding any restrictions on transfer of stock in the Company ESPP, the treatment in the Merger of any shares of Company Common Stock under this provision will be in accordance with Section 2.1. The Company will terminate the Company ESPP as of or prior to the Effective Time. The Company will, promptly after the date of this Agreement, take all actions (including, if appropriate, amending the terms of the Company ESPP) that are necessary to give effect to the transactions contemplated by this Section 2.4.

Section 2.5 Adjustments. If at any time during the period between the date of this Agreement and the Effective Time, any change in the outstanding shares of capital stock of the Company (or any other securities convertible or exchangeable therefor) shall occur as a result of any reclassification, stock split (including a reverse stock split) or combination, exchange or readjustment of shares, or any stock dividend or stock distribution with a record date during such period, or any similar event, the Merger Consideration shall be equitably adjusted; provided, however, that nothing in this Section 2.5 shall be deemed to permit or authorize any party hereto to effect any such change that it is not otherwise authorized or permitted to undertake pursuant to this Agreement.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except (a) as set forth in the disclosure schedule delivered by the Company to Parent simultaneously with the execution of this Agreement (the "Company Disclosure Schedule") (which schedule sets forth, among other things, items the disclosure of which is necessary or appropriate either in response to an express disclosure requirement contained in a provision hereof or as an exception to one or more representations or warranties contained in this Article III, or to one or more of the Company's covenants contained in Article V, except that any information set forth in one section of the Company Disclosure Schedule will be deemed to apply to all other sections or subsections thereof to the extent that such information is reasonably applicable) or (b) as set forth in any of the Company SEC Documents filed prior to the date of

this Agreement, but excluding in the case of this clause (b) any risk factor disclosure under the headings “Risk Factors” or “Forward Looking Statements”, the Company represents and warrants to Parent and Merger Sub as follows:

Section 3.1 Organization, Standing and Corporate Power.

(a) The Company is a corporation duly organized, validly existing and in good standing under the Laws of the State of North Carolina and has all requisite corporate power and authority necessary to own or lease all of its properties and assets and to carry on its business as it is now being conducted. The Company is duly qualified to do business and is in good standing in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such qualification necessary, except where the failure to be so qualified or in good standing would not reasonably be expected to have, a Company Material Adverse Effect. The Company has made available to Parent true and complete copies of the Company Charter Documents as in effect on the date of this Agreement.

(b) Each of the Company’s subsidiaries that constitutes a “significant subsidiary” of the Company within the meaning of Rule 1-02 of Regulation S-X under the Exchange Act (each, a “Significant Subsidiary”) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, except in each case as would not reasonably be expected to have a Company Material Adverse Effect. Each of the Significant Subsidiaries is duly qualified to do business and is in good standing in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such qualification necessary, except where the failure to be so qualified or in good standing would not reasonably be expected to have a Company Material Adverse Effect. All the outstanding shares of capital stock of, or other equity interests in, each Subsidiary of the Company have been validly issued and are fully paid and non-assessable and are owned directly or indirectly by the Company free and clear of all liens, pledges, security interests and transfer restrictions, except for such transfer restrictions as are contained in the articles of incorporation or bylaws (or any equivalent constituent documents) of such Subsidiary of the Company or for such transfer restrictions of general applicability as may be provided under the Securities Act of 1933 (the “Securities Act”) and other applicable Laws. The Company has made available to Parent true and complete copies of the articles of incorporation and bylaws (or equivalent constituent documents) of each Significant Subsidiary as in effect on the date of this Agreement.

(c) Each of the Company and the Significant Subsidiaries has all requisite entity power and authority to enable it to own, operate, lease or otherwise hold its properties and assets and to conduct its businesses as presently conducted, except where the failure to have such power or authority would not reasonably be expected to have a Company Material Adverse Effect.

(d) Section 3.1(d) of the Company Disclosure Schedule sets forth a list of the Company Joint Ventures, including the name of each such entity and the Company’s percentage ownership interest thereof. The Company has made available to Parent true and complete copies

of the articles of formation and limited liability company agreement (or equivalent constituent documents) of each Company Joint Venture.

Section 3.2 Capitalization.

(a) The authorized capital stock of the Company consists of 200,000,000 shares of Company Common Stock and 175,000 shares of preferred stock (the “Company Preferred Stock”). At the close of business on October 22, 2015, (a) 79,354,828 shares of Company Common Stock were issued and outstanding, (b) no shares of Company Preferred Stock were issued and outstanding, (c) Company RSUs with respect to an aggregate of 59,769 shares of Company Common Stock were issued and outstanding (including shares of Company Common Stock issuable in respect of dividends declared through such date), and (d) Company Performance Share Awards with respect to an aggregate of 500,478 shares of Company Common Stock based on achievement of applicable performance criteria at target level were issued and outstanding. From October 22, 2015 through the date of this Agreement, the Company has not issued any shares of Company Common Stock, shares of Company Preferred Stock, Company RSUs, Company Performance Share Awards or any other Equity Securities.

(b) All outstanding shares of Company Common Stock are, and all shares of Company Common Stock that may be issued upon the settlement of Company RSUs and Company Performance Share Awards will be, when issued, duly authorized, validly issued, fully paid and nonassessable and not subject to, or issued in violation of, any preemptive right. Except as set forth in (x) Section 3.2(b) of the Company Disclosure Schedule, (y) in Section 3.2(a), or (z) pursuant to the terms of this Agreement, as of the date hereof, there are not issued, reserved for issuance or outstanding, and there are not any outstanding obligations of the Company or any Subsidiary of the Company to issue, deliver or sell, or cause to be issued, delivered or sold, (i) any capital stock of the Company or any Subsidiary of the Company or any securities of the Company or any Subsidiary of the Company convertible into or exchangeable or exercisable for shares of capital stock or voting securities of, or other equity interests in, the Company or any Subsidiary of the Company or (ii) any warrants, calls, options or other rights to acquire from the Company or any Subsidiary of the Company, or any other obligation of the Company or any Subsidiary of the Company to issue, deliver or sell, or cause to be issued, delivered or sold, any capital stock or voting securities of, or other equity interests in, the Company or any Subsidiary of the Company (the foregoing clauses (i) and (ii), collectively, “Equity Securities”). Except pursuant to the Company Stock Plan, there are not any outstanding obligations of the Company or any Subsidiary of the Company to repurchase, redeem or otherwise acquire any Equity Securities. There is no outstanding Indebtedness of the Company having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which shareholders of the Company may vote.

(c) Section 3.2(c) of the Company Disclosure Schedule sets forth a complete and accurate list of the following information with respect to each Company RSU and each Company Performance Share Award outstanding as of the date of this Agreement: (i) the name of the holder of each Company RSU or Company Performance Share Award; (ii) the number of shares of Company Common Stock subject to each such Company RSU or Company Performance Share Award, with the number of such shares subject to Company Performance Share Awards listed at both target and maximum levels; (iii) the grant date of each such

Company RSU or Company Performance Share Award and (iv) the Company Stock Plan pursuant to which each such Company RSU or Company Performance Share Award was granted.

Section 3.3 Authority; Non-contravention.

(a) The Company has all necessary corporate power and authority to execute and deliver this Agreement and, subject to obtaining the Company Shareholder Approval, to perform its obligations hereunder and to consummate the Transactions. The Company Board, at a meeting duly called and held, unanimously adopted resolutions (i) determining that it is in the best interests of the Company and its shareholders for the Company to enter into this Agreement, (ii) adopting this Agreement and approving the Company's execution, delivery and performance of this Agreement and the consummation of the Transactions, and (iii) resolving to recommend that the shareholders of the Company approve this Agreement and directing that this Agreement be submitted to the shareholders of the Company for approval at a duly held meeting of such shareholders for such purpose (the "Company Board Recommendation"). As of the date of this Agreement, such resolutions have not been amended or withdrawn. Except for obtaining the Company Shareholder Approval, no other corporate action on the part of the Company is necessary to authorize the execution and delivery of and performance by the Company under this Agreement and the consummation by it of the Transactions. This Agreement has been duly executed and delivered by the Company and, assuming due authorization, execution and delivery hereof by the other parties hereto, constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except that such enforceability (i) may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws of general application affecting or relating to the enforcement of creditors' rights generally and (ii) is subject to general principles of equity, whether considered in a proceeding at law or in equity (the "Bankruptcy and Equity Exception").

(b) The execution and delivery of this Agreement by the Company does not, and neither the consummation by the Company of the Transactions nor compliance by the Company with any of the terms or provisions hereof will, (i) assuming the Company Shareholder Approval is obtained, conflict with or violate any provision of the Company Charter Documents or the organizational documents of any Subsidiary of the Company, (ii) assuming that each of the consents, authorizations and approvals referred to in Section 3.4 and the Company Shareholder Approval are obtained (and any condition precedent to any such consent, authorization or approval has been satisfied) and each of the filings referred to in Section 3.4 are made and any applicable waiting periods referred to therein have expired, violate any Law applicable to the Company or any of its Subsidiaries or (iii) assuming that each of the consents and notices specified in Section 3.3(b)(iii) of the Company Disclosure Schedule is obtained or given, as applicable, result in any breach of, or constitute a default (with or without notice or lapse of time, or both) under, or give rise to any right of termination, amendment, acceleration or cancellation of or payment under, any Company Material Contract to which the Company or any of its Subsidiaries is a party or any Company Permit, or result in the creation of a Lien (other than any Permitted Lien) upon any of the properties or assets of the Company or any of its Subsidiaries, other than, in the case of clauses (ii) and (iii), as would not reasonably be expected to have a Company Material Adverse Effect.

Section 3.4 Governmental Approvals. Except for (a) the filing with the SEC of a proxy statement, in preliminary and definitive form, relating to the Company Shareholders Meeting (as amended or supplemented from time to time, the “Proxy Statement”), and other filings required under, and compliance with other applicable requirements of, the Securities Exchange Act of 1934 (the “Exchange Act”) and the rules of the NYSE in connection with this Agreement and the Merger, (b) the filing of the Articles of Merger with the Secretary of State of the State of North Carolina pursuant to the NCBCA, (c) approvals or filings required under, and compliance with other applicable requirements of, the NCUC (such approvals and filings described in this clause (c), the “Required Statutory Approvals”), (d) the approvals or filings set forth on Section 3.4(d) of the Company Disclosure Schedule, and (e) filings required under, and compliance with other applicable requirements of, the HSR Act, no consents or approvals of, or filings, declarations or registrations with, any Governmental Authority are necessary for the execution and delivery of this Agreement by the Company and the consummation by the Company of the Transactions, other than as would not reasonably be expected to have a Company Material Adverse Effect.

Section 3.5 Company SEC Documents; Undisclosed Liabilities.

(a) The Company has filed with or furnished to the SEC, on a timely basis, all registration statements, reports, proxy statements and other documents with the SEC required to be filed or furnished since October 31, 2013 (collectively, and in each case including all exhibits and schedules thereto and documents incorporated by reference therein, as such statements, reports and documents may have been amended since the date of their filing, the “Company SEC Documents”). As of their respective effective dates (in the case of Company SEC Documents that are registration statements filed pursuant to the requirements of the Securities Act) and as of their respective filing dates (in the case of all other Company SEC Documents), or in the case of amendments thereto, as of the date of the last such amendment (but only amendments prior to the date of this Agreement in the case of any Company SEC Document with a filing or effective date prior to the date of this Agreement), the Company SEC Documents complied in all material respects with the requirements of the Exchange Act, the Securities Act or the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”), as the case may be, and the rules and regulations of the SEC promulgated thereunder, applicable to such Company SEC Documents, and none of the Company SEC Documents as of such respective dates (or, if amended, the date of the filing of such amendment, with respect to the disclosures that are amended) contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) Except to the extent updated, amended, restated or corrected by a subsequent Company SEC Document (but only amendments, restatements or corrections prior to the date of this Agreement in the case of any Company SEC Document with a filing or effective date prior to the date of this Agreement), as of their respective dates of filing with the SEC, the consolidated financial statements of the Company included in the Company SEC Documents (i) complied as to form in all material respects with all applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto (except, in the case of unaudited statements, as permitted by Form 10-Q of the SEC), (ii) have been prepared in accordance with GAAP applied on a consistent basis during the periods involved (except (A) as

may be indicated in the notes thereto or (B) as permitted by Regulation S-X) and (iii) present fairly, in all material respects, the consolidated financial position of the Company and its Subsidiaries, and the consolidated results of their operations and cash flows, as of each of the dates and for the periods shown, as applicable, in conformity with GAAP.

(c) The Company has established and maintains disclosure controls and procedures and internal control over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 under the Exchange Act) as required by Rule 13a-15 under the Exchange Act. The Company's disclosure controls and procedures are reasonably designed to ensure that all material information required to be disclosed by the Company in the reports that it files or furnishes under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that all such material information is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure and to make the certifications required pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act.

(d) Neither the Company nor any of its Subsidiaries has any liabilities which would be required to be reflected or reserved against on a consolidated balance sheet of the Company prepared in accordance with GAAP or the notes thereto, except for liabilities (i) reflected or reserved against on the balance sheet of the Company and its Subsidiaries as of July 31, 2015 (the "Balance Sheet Date") (including the notes thereto) included in the Company SEC Documents, (ii) incurred after the Balance Sheet Date in the ordinary course of business, (iii) as contemplated by this Agreement or otherwise arising in connection with the Transactions or (iv) as would not reasonably be expected to have a Company Material Adverse Effect.

(e) All filings (other than immaterial filings) required to be made by the Company or any of its Subsidiaries since January 1, 2014 under applicable state Laws specifically governing the regulation of public utilities have, to the Knowledge of the Company, been filed with the applicable state public utility commissions (including, to the extent required, the North Carolina Utilities Commission ("NCUC"), the South Carolina Public Service Commission and the Tennessee Regulatory Authority as the case may be, including all forms, statements, reports, agreements (oral or written) and all documents, exhibits, amendments and supplements appertaining thereto (collectively, "Regulatory Filings")), and all such Regulatory Filings complied, in all material respects, as of their respective dates, with all applicable requirements of the applicable statute and the rules and regulations thereunder, except for Regulatory Filings the failure of which to make or the failure of which to make in compliance with all applicable requirements of the applicable statute and the rules and regulations thereunder have not had and would not reasonably be expected to have a Company Material Adverse Effect.

Section 3.6 Absence of Certain Changes. From November 1, 2014 to the date of this Agreement, (a) except in connection with the Transactions, the business of the Company and its Subsidiaries has been conducted in all material respects in the ordinary course of business consistent with past practice and (b) there has not been any fact, circumstance, change, event, development, occurrence or effect that has had or would reasonably be expected to have a Company Material Adverse Effect.

Section 3.7 Legal Proceedings. There is no pending or, to the Knowledge of the Company, threatened, Claim against the Company or any of its Subsidiaries, nor is there any injunction, order, judgment, ruling or decree imposed upon the Company or any of its Subsidiaries, in each case, by or before any Governmental Authority, that would reasonably be expected to have a Company Material Adverse Effect.

Section 3.8 Compliance With Laws; Permits. The Company and its Subsidiaries are in compliance with all laws, statutes, ordinances, codes, rules, regulations, rulings, decrees, judgments, injunctions and orders of Governmental Authorities (collectively, "Laws") applicable to the Company or any of its Subsidiaries, except for instances of non-compliance as would not reasonably be expected to have a Company Material Adverse Effect. The Company and each of its Subsidiaries hold, and are in compliance with, all licenses, franchises, permits, certificates, approvals and authorizations from Governmental Authorities required by Law for the conduct of their respective businesses as they are now being conducted (collectively, "Company Permits"), except as would not reasonably be expected to have a Company Material Adverse Effect.

Section 3.9 Tax Matters.

(a) Each of the Company and its Subsidiaries has timely filed, or has caused to be timely filed on its behalf (taking into account any extension of time within which to file), all Tax Returns required to be filed by it, and all such filed Tax Returns are correct and complete, except as would not reasonably be expected to have a Company Material Adverse Effect. Each of the Company and its Subsidiaries has paid all Taxes that are required to be paid by it (whether or not shown or required to be shown as due on any Tax Returns), except as would not reasonably be expected to have a Company Material Adverse Effect. Each of the Company and its Subsidiaries has withheld and timely remitted to the appropriate Governmental Authority all material Taxes required to be withheld from amounts owing to any employee, creditor or third party. No material deficiency with respect to Taxes has been proposed, asserted or assessed against the Company or any of its Subsidiaries which has not been fully paid or otherwise finally resolved or adequately reserved for in the Company's financial statements included in the Company SEC Documents. No material audit or other administrative or court proceedings are pending with any Governmental Authority with respect to Taxes of the Company or any of its Subsidiaries, and no written notice thereof has been received. With respect to any Tax years open for audit, neither the Company nor any of its Subsidiaries has granted in writing any material waiver of any statute of limitations with respect to, or any extension of a period for the assessment of, any Tax, except, with respect to the federal income tax return for the 2011 tax year, for the extension of the statute of limitations to June 30, 2016. Neither the Company nor any of its Subsidiaries has incurred any liability for Taxes since the Balance Sheet Date except in the ordinary course of business.

(b) Neither the Company nor any of its Subsidiaries has any material liability for Taxes of any Person (except for the Company or any of its Subsidiaries) arising from the application of Treasury Regulation Section 1.1502-6 or any analogous provision of state, local or foreign Law, or as a transferee or successor, by contract or otherwise.

(c) Neither the Company nor any of its Subsidiaries is a party to or is otherwise bound by any material Tax sharing, allocation or indemnification agreement or

arrangement, except for such an agreement or arrangement (1) exclusively between or among the Company and its Subsidiaries, or (2) with customers, vendors, lessors or other third parties entered into in the ordinary course of business and not primarily related to Taxes.

(d) No closing agreements, private letter rulings, technical advice memoranda, advance Tax rulings, advance pricing agreements, or similar written agreements or rulings have been entered into or issued by any Governmental Authority with respect to Taxes of the Company or any of its Subsidiaries in each case that could reasonably be expected to have a material effect on the Tax liability of the Company or any of its Subsidiaries after the Closing Date.

(e) There are no material Liens on any of the assets of the Company or any of its Subsidiaries that arose in connection with any failure (or alleged failure) to pay any Tax.

(f) In any Taxable period ending after the Closing Date, neither the Company nor any of its Subsidiaries will be required to include or accelerate the recognition of any material item of income, or exclude or defer any material item of deduction or other Tax benefit, in either case as a result of any change in method of Tax accounting made prior to the Closing Date, any installment sale prior to the Closing Date, any closing agreement entered into prior to the Closing Date, or any prepaid amount received prior to the Closing Date.

(g) Within the past three (3) years, neither the Company nor any of its Subsidiaries has been a “distributing corporation” or a “controlled corporation” in a distribution intended to qualify for tax-free treatment under Section 355 of the Code.

(h) Neither the Company nor any of its Subsidiaries has engaged in any “listed transaction” as defined in Treasury Regulations Section 1.6011-4(b)(2) or Treasury Regulations Section 301.6111-2(b) in any Tax year for which the statute of limitations has not expired.

(i) This Section 3.9 and Section 3.10 constitute the sole and exclusive representations and warranties of the Company regarding Tax matters.

(j) For purposes of this Agreement: (i) “Taxes” shall mean all federal, state, local or foreign taxes, customs, tariffs, duties, charges, fees, imposts, levies or other assessments imposed by a Governmental Authority, including all income, gross receipts, franchise, estimated, alternative minimum, add on minimum, sales, use, transfer, value added, excise, severance, stamp, customs, duties, escheat, unclaimed property, real property, personal property, capital stock, social security, unemployment, payroll, employee, withholding, or other tax imposed by a Governmental Authority, including any interest, penalties or additions to tax imposed by any Governmental Authority in connection with any of the foregoing and (ii) “Tax Returns” shall mean any return, report, claim for refund, estimate, information return or statement or other similar document relating to or required to be filed with any Governmental Authority with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

Section 3.10 Employee Benefits Matters. Section 3.10(a) of the Company Disclosure Schedule sets forth a complete and accurate list, as of the date of this Agreement, of each

material Company Plan. The Company has made available to Parent correct and complete copies of (a) the current plan document for each material Company Plan (or, if such Company Plan is not in writing, a written description of the material terms thereof), (b) the most recent annual reports on Form 5500 required to be filed with the Department of Labor with respect to each Company Plan (if any such report was required), (c) the most recent summary plan description for each material Company Plan for which such summary plan description is required, (d) each trust agreement relating to any Company Plan, (e) the most recent audited financial statement and the actuarial or other valuation report prepared for the most recently completed plan year with respect thereto and (f) any material and non-routine correspondence with a Governmental Authority regarding any pending audit, investigation, claim or dispute under any Company Plan. Each Company Plan is in compliance with its terms and the applicable provisions of ERISA, the Code and all other applicable laws, except where such noncompliance would not reasonably be expected to have a Company Material Adverse Effect. There are no pending or, to the Knowledge of the Company, threatened claims (other than claims for benefits in the ordinary course) with respect to any Company Plans, nor is any Company Plan under (and the Company has received no notice that there is any threatened) audit or administrative proceeding by the IRS, the Department of Labor, or any other Governmental Authority with respect to any Company Plan that, in each case, would reasonably be expected to have a Company Material Adverse Effect. All Company Plans that are “employee pension plans” (as defined in Section 3(3) of ERISA) that are intended to be tax qualified under Section 401(a) of the Code (each, a “Company Pension Plan”) have received a favorable determination letter from the IRS or has filed a timely application therefor and, to the Knowledge of the Company, such Company Pension Plan qualifies in all material respects under Section 401(a) of the Code in operation. The Company has made available to Parent a correct and complete copy of the most recent determination letter received with respect to each Company Pension Plan, as well as a correct and complete copy of each pending application for a determination letter, if any. Except as set forth on Section 3.10(b) of the Company Disclosure Schedule, neither the Company nor any ERISA Affiliate sponsors, maintains or contributes to, nor has any liability with respect to, a multiemployer plan (as defined in Section 3(37) of ERISA) or a plan subject to section 302 or Title IV of ERISA or section 412 of the Code. With respect to each Company Pension Plan set forth on Section 3.10(b) of the Company Disclosure Schedule, (i) no proceeding has been initiated to terminate such plan under Sections 4041 or 4042 of ERISA; (ii) there has been no “reportable event” (as such term is defined in Section 4043(b) of ERISA) for which a reporting waiver does not apply that would reasonably be expected to have a Company Material Adverse Effect; (iii) no such plan has been required to file information pursuant to Section 4010 of ERISA for the current or most recently completed year; (iv) each required installment or any other payment required under Section 412 of the Code or Section 303 of ERISA has been made before the applicable due date except as would not reasonably be expected to have a Company Material Adverse Effect; (v) no such plan has applied for or received a waiver of the minimum funding standards or an extension of any amortization period within the meaning of Section 412 of the Code or Sections 302 or 303 of ERISA that is currently in effect; and (vi) there are no funding-based benefit limitations (within the meaning of Section 436 of the Code) currently in effect. Other than as would not reasonably be expected to have a Company Material Adverse Effect, the Company and its Subsidiaries have reserved the right and power to terminate, suspend, discontinue and amend all Company Plans that provide for post-termination health, medical or other welfare benefits. Except as set forth on Section 3.10(c) of the Company

Disclosure Schedule, the consummation of the Transactions will not, either alone or in combination with another event, except as expressly provided in this Agreement, (i) entitle any employee of the Company to severance pay, unemployment compensation or any other payment, or (ii) accelerate the time of payment or vesting, or increase the amount of compensation due any such employee or officer. Except as set forth on Section 3.10(d) of the Company Disclosure Schedule, no amounts payable under the Company Plans will fail to be deductible for federal income tax purposes by virtue of section 280G of the Code. This Section 3.10 constitutes the sole and exclusive representation and warranty of the Company regarding pension and employee benefit liabilities, obligations, or compliance with Laws.

Section 3.11 Environmental Matters. Except for those matters that would not reasonably be expected to have a Company Material Adverse Effect, (a) each of the Company and its Subsidiaries is and for the last five (5) years has been in compliance with all applicable Environmental Laws, which compliance includes obtaining, maintaining or complying with all Company Permits required under Environmental Laws for the operation of their respective businesses, and all such Company Permits are valid and in full force and effect, (b) (i) there is no Claim relating to or arising under Environmental Laws (including, without limitation, relating to or arising from the Release, threatened Release or exposure to any Hazardous Material or alleging violation of or challenging the validity of any environmental Company Permit) that is pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries, or any real property currently owned or operated by the Company or any of its Subsidiaries, and (ii) to the Knowledge of the Company, there is no Claim relating to or arising under Environmental Laws (including, without limitation, relating to or arising from the Release, threatened Release or exposure to any Hazardous Material) that is pending or threatened against any real property currently leased by the Company or any of its Subsidiaries or formerly owned, operated or leased by the Company or any of its Subsidiaries, (c) neither the Company nor any of its Subsidiaries has received any written notice of, or entered into any order, settlement, judgment, injunction or decree involving uncompleted, outstanding or unresolved liabilities or corrective or remedial obligations relating to or arising under Environmental Laws (including, without limitation, relating to or arising from the Release, threatened Release or exposure to any Hazardous Material) and to the Knowledge of the Company, there are no facts or conditions relating to the Company's or any of its Subsidiaries' properties or operations that would reasonably be expected to give rise to any such liability or corrective or remedial obligation, (d) there have been no ruptures or explosions in the Company's or any Company Subsidiary's natural gas, liquefied natural gas, natural gas liquid and other pipelines, lateral lines, pumps, pump stations, storage facilities, terminals and other related operations, assets, machinery and equipment (collectively, "Systems") that have resulted in Claims, including Claims for personal injury, loss of life or property damage, except to the extent any such Claims have been resolved, and (e) there are no defects, corrosion or other damage to any of the Company's or any Company Subsidiary's Systems that would reasonably be expected to result in a pipeline integrity failure, and the Company is in compliance in all material respects with all appropriate inspection and recordkeeping requirements relating thereto. Section 3.4, Section 3.5, Section 3.6 and this Section 3.11 constitute the exclusive representations and warranties of the Company regarding environmental matters, including without limitation all matters arising under Environmental Laws.

Section 3.12 Intellectual Property. Except as would not reasonably be expected to have a Company Material Adverse Effect, (a) (i) the conduct of the Company’s business as currently conducted does not infringe or otherwise violate any Person’s Intellectual Property and (ii) there is no Claim of such infringement or other violation pending, or to the Knowledge of the Company, threatened in writing, against the Company, and (b) (i) to the Knowledge of the Company, no Person is infringing or otherwise violating any Intellectual Property owned by the Company and (ii) no Claims of such infringement or other violation are pending or, to the Knowledge of the Company, threatened in writing against any Person by the Company. This Section 3.12 constitutes the sole and exclusive representation and warranty of the Company with respect to any actual or alleged infringement or other violation of any Intellectual Property of any other Person.

Section 3.13 Articles 9 and 9A of the NCBCA Not Applicable; Other Takeover Statutes; Appraisal Rights. The Company is not subject to the prohibitions on certain business combinations set forth in Article 9 or Article 9A of the NCBCA. Assuming that the representations and warranties of Parent and Merger Sub contained in Section 4.7 are true and correct, the Company has taken all necessary actions, if any, so that the Transactions are not subject to any “fair price,” “moratorium,” control share acquisition,” interested shareholder,” “affiliated transaction” or similar anti-takeover Law (each, a “Takeover Statute”) or any similar provision (including any supermajority shareholder approval requirement) in the Company Charter Documents. No holder of Company Common Stock is entitled to appraisal or dissenters’ rights under the NCBCA in connection with the Transactions.

Section 3.14 Real Property. Except as would not reasonably be expected to have a Company Material Adverse Effect, the Company or a Subsidiary of the Company owns and has either good and valid title, in fee, or valid leasehold, easement or other rights, to the land, buildings, structures and other improvements thereon and fixtures thereto necessary to permit it to conduct its business as currently conducted, in each case free and clear of all Liens (except in all cases for Permitted Liens). Except as would not reasonably be expected to have a Company Material Adverse Effect and except as may be limited by the Bankruptcy and Equity Exception, all leases, easements or other agreements under which the Company or any of its Subsidiaries lease, access or use real property are valid, binding and in full force and effect against the Company or any of its Subsidiaries and, to the Knowledge of the Company, the counterparties thereto, in accordance with their respective terms, and neither the Company nor any of its Subsidiaries are in default under any of such leases, easements or other agreements.

Section 3.15 Contracts.

(a) For purposes of this Agreement, “Company Material Contract” means any Contract which is required to be filed by the Company as a “material contract” pursuant to Item 601(b)(10) of Regulation S-K under the Securities Act.

(b) Each Company Material Contract is valid and binding on the Company and any of its Subsidiaries to the extent the Company or such Subsidiary is a party thereto, as applicable, and to the Knowledge of the Company, each other party thereto, and is in full force and effect and enforceable in accordance with its terms (subject to the Bankruptcy and Equity Exception), except where the failure to be valid, binding, enforceable and in full force and effect,

would not reasonably be expected to have a Company Material Adverse Effect. The Company and each of its Subsidiaries, and, to the Knowledge of the Company, any other party thereto, has performed all obligations required to be performed by it under each Company Material Contract, except where such noncompliance would not reasonably be expected to have a Company Material Adverse Effect.

Section 3.16 Labor. Except as set forth in Section 3.16 of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries is party to any collective bargaining agreement. Since September 30, 2013, there has been no labor strike, lockout, work stoppage, or picketing, or, to the Knowledge of the Company, threat thereof, by or with respect to any employee of the Company or any of its Subsidiaries, except where such strike, lockout, work stoppage, or picketing has not had or would not reasonably be expected to have a Company Material Adverse Effect. Except as set forth in Section 3.16 of the Company Disclosure Schedule or as has not had and would not reasonably be expected to have a Company Material Adverse Effect, since September 30, 2013, the Company and each of its Subsidiaries (a) has complied and is in compliance with all applicable legal, administrative and regulatory requirements relating to wages, hours, employee and independent contractor classification, immigration, discrimination in employment, collective bargaining, as well as the Workers Adjustment and Retraining Notification Act and comparable local, state, and federal Laws (“WARN”), and all other local, state, and federal Laws pertaining to employment and labor, and (b) are not liable for any arrears of wages or any taxes or penalties for failure to comply with any of the foregoing. Furthermore, except as set forth in Section 3.16 of the Company Disclosure Schedule or as has not had and would not reasonably be expected to have a Company Material Adverse Effect, there are no actions, charges, arbitrations, complaints, or investigations pending or, to the Knowledge of the Company, threatened by or on behalf of any employee or group of employees of the Company or any of its Subsidiaries alleging violations of local, state, or federal Laws pertaining to employment and labor or WARN.

Section 3.17 Opinion of Financial Advisor. The Company Board has received the opinion of Goldman, Sachs & Co., dated as of the date of this Agreement, to the effect that, as of such date, and subject to the various assumptions and qualifications set forth therein, the Merger Consideration to be received in the Merger by holders of the Company Common Stock is fair from a financial point of view to the holders of the Company Common Stock.

Section 3.18 Brokers and Other Advisors. Except for Goldman, Sachs & Co. (the “Company Financial Advisor”), no broker, investment banker, financial advisor or other Person is entitled to any broker’s, finder’s, financial advisor’s or other similar fee, in connection with the Transactions based upon arrangements made by or on behalf of the Company or any of its Subsidiaries.

Section 3.19 Company Shareholder Approval. Assuming the accuracy of the representations and warranties of Parent and Merger Sub set forth in Section 4.7, approval of this Agreement by the affirmative vote (in person or by proxy) of the holders of a majority of the outstanding shares of Company Common Stock entitled to vote at the Company Shareholders Meeting (the “Company Shareholder Approval”) is the only vote or approval of the holders of any class or series of capital stock of the Company necessary to adopt or approve this Agreement and the Transactions.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Parent and Merger Sub jointly and severally represent and warrant to the Company as follows:

Section 4.1 Organization, Standing and Corporate Power. Parent is a corporation duly organized, validly existing and in good standing under the Laws of Delaware and Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of North Carolina. Each of Parent and Merger Sub has all requisite corporate power and authority necessary to own or lease all of its properties and assets and to carry on its business as it is now being conducted. Parent is duly qualified to do business and is in good standing in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such qualification necessary, except where the failure to be so qualified or in good standing would not reasonably be expected to have a Parent Material Adverse Effect.

Section 4.2 Authority; Noncontravention.

(a) Each of Parent and Merger Sub has all necessary corporate power and authority to execute and deliver this Agreement, to perform their respective obligations hereunder and to consummate the Transactions. The execution and delivery of and performance by Parent and Merger Sub under this Agreement, and the consummation by Parent and Merger Sub of the Transactions, have been duly authorized and approved by all necessary corporate action by Parent and Merger Sub (including by the Parent Board and the board of directors of Merger Sub) and, promptly after the execution and delivery hereof, approved by Parent as the sole shareholder of Merger Sub, and no other corporate action on the part of Parent and Merger Sub is necessary to authorize the execution and delivery of and performance by Parent and Merger Sub under this Agreement and the consummation by them of the Transactions. This Agreement has been duly executed and delivered by Parent and Merger Sub and, assuming due authorization, execution and delivery hereof by the Company, constitutes a legal, valid and binding obligation of each of Parent and Merger Sub, enforceable against each of them in accordance with its terms, subject to the Bankruptcy and Equity Exception. No vote or approval of the holders of any class or series of capital stock of Parent is necessary to adopt or approve this Agreement and the Transactions.

(b) The execution and delivery of this Agreement by Parent and Merger Sub do not and neither the consummation by Parent or Merger Sub of the Transactions, nor compliance by Parent or Merger Sub with any of the terms or provisions hereof, will (i) conflict with or violate any provision of the certificate of incorporation and bylaws of Parent, in each case as amended to the date of this Agreement or (ii) assuming that each of the consents, authorizations and approvals referred to in Section 4.3 (and any condition precedent to any such consent, authorization or approval has been satisfied) is obtained or given, as applicable, and each of the filings referred to in Section 4.3 are made and any applicable waiting periods referred to therein have expired, violate any Law applicable to Parent, Merger Sub or any of their respective Subsidiaries or (iii) result in any breach of, or constitute a default (with or without

notice or lapse of time or both) under, or give rise to any right of termination, amendment, acceleration or cancellation of, any permit or Contract to which Parent, Merger Sub or any of their respective Subsidiaries is a party, except, in the case of clauses (ii) and (iii), as would not reasonably be expected to have a Parent Material Adverse Effect.

Section 4.3 Governmental Approvals. Except for (a) the filing with the SEC of the Proxy Statement, in preliminary and definitive form, and other filings required under, and compliance with other applicable requirements of, the Exchange Act and the rules of the NYSE in connection with this Agreement and the Merger, (b) the filing of the Articles of Merger with the Secretary of State of the State of North Carolina pursuant to the NCBCA, (c) the Required Statutory Approvals, (d) the approvals or filings set forth on Section 3.4(d) of the Company Disclosure Schedule and (e) filings required under, and compliance with other applicable requirements of, the HSR Act, no consents or approvals of, or filings, declarations or registrations with, any Governmental Authority are necessary for the execution and delivery of this Agreement by Parent and Merger Sub and the consummation by Parent and Merger Sub of the Transactions, other than as would not reasonably be expected to have a Parent Material Adverse Effect.

Section 4.4 Brokers and Other Advisors. Except for Barclays Capital Inc., the fees of which will be paid by Parent, no broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee, in connection with the Transactions based upon arrangements made by or on behalf of Parent or any of its Subsidiaries.

Section 4.5 Ownership and Operations of Merger Sub. Parent owns beneficially and of record all of the outstanding capital stock of Merger Sub, all of which is duly authorized, validly issued, fully paid and non-assessable. Merger Sub was formed solely for the purpose of engaging in the Transactions. Merger Sub has no assets, liabilities or obligations and, since the date of its formation has not engaged in any business activities or conducted any operations except, in each case as arising from the execution of this Agreement and the performance of its covenants and agreements hereunder.

Section 4.6 Sufficient Funds. Parent and Merger Sub shall have available at or before the Effective Time, sufficient cash and cash equivalents and other sources of immediately available funds to deliver the aggregate Merger Consideration and make the payments required under Section 2.3, and any other amounts incurred or otherwise payable by Parent, Merger Sub or the Surviving Corporation in connection with the Transactions, and there is no restriction on the use of such cash for such purposes. Parent has, or shall have, the financial resources and capabilities to fully perform its obligations under this Agreement. Parent and Merger Sub acknowledge and agree that their obligations hereunder are not subject to any conditions regarding Parent's, Merger Sub's or any other Person's ability to obtain financing for the consummation of the Transactions.

Section 4.7 Share Ownership. Neither Parent nor Merger Sub "beneficially owns" (as such term is defined for purposes of Article 7 of the articles of incorporation of the Company) a number of shares of Company Common Stock equal to or greater than five percent (5%) of the number of issued and outstanding shares of Company Common Stock.

Section 4.8 Legal Proceedings. There is no pending or, to the Knowledge of Parent, threatened, Claim against Parent, Merger Sub or any of their respective Subsidiaries, nor is there any injunction, order, judgment, ruling or decree imposed upon Parent, Merger Sub or any of their respective Subsidiaries, in each case, by or before any Governmental Authority, that would reasonably be expected to have a Parent Material Adverse Effect.

Section 4.9 Non-Reliance on Company Estimates, Projections, Forecasts, Forward-Looking Statements and Business Plans. In connection with the due diligence investigation of the Company by Parent and Merger Sub, Parent and Merger Sub have received and may continue to receive from the Company certain estimates, projections, forecasts and other forward-looking information, as well as certain business plans and cost-related plan information, regarding the Company, its Subsidiaries and their respective businesses and operations. Parent and Merger Sub hereby acknowledge that there are uncertainties inherent in attempting to make such estimates, projections, forecasts and other forward-looking information, with which Parent and Merger Sub are familiar, that Parent and Merger Sub are taking full responsibility for making their own evaluation of the adequacy and accuracy of all estimates, projections, forecasts and other forward-looking information, as well as such business plans and cost-related plans, furnished to them (including the reasonableness of the assumptions underlying such estimates, projections, forecasts, forward-looking information, business plans or cost-related plans based on current state and federal rules and regulations), and that neither Parent nor Merger Sub has relied upon or will have any claim against the Company or any of its Subsidiaries, or any of their respective shareholders, directors, officers, employees, Affiliates, advisors, agents or representatives, or any other Person, with respect thereto. Accordingly, each of Parent and Merger Sub hereby acknowledge that neither the Company nor any of its Subsidiaries, nor any of their respective shareholders, directors, officers, employees, Affiliates, advisors, agents or representatives, nor any other Person, has made or is making any representation or warranty or has or shall have any liability (whether pursuant to this Agreement, in tort or otherwise) with respect to such estimates, projections, forecasts, forward-looking information, business plans or cost-related plans (including the reasonableness of the assumptions underlying such estimates, projections, forecasts, forward-looking information, business plans or cost-related plans based on current state and federal rules and regulations).

ARTICLE V

COVENANTS

Section 5.1 Conduct of Business.

(a) Except as contemplated or permitted by this Agreement, as required by applicable Laws, as contemplated by any of the matters set forth in Section 5.1(a) of the Company Disclosure Schedule, or with the prior written consent of Parent (which consent shall not be unreasonably withheld, delayed or conditioned), during the period from the date of this Agreement until the earlier of the Effective Time and the termination of this Agreement in accordance with Article VII, (x) the Company shall, and shall cause each of its Subsidiaries to, use reasonable best efforts to conduct its business in all material respects in the ordinary course and to preserve intact its present lines of business, maintain its rights and franchises and preserve

satisfactory relationships with Governmental Authorities, employees, customers and suppliers, and (y) the Company shall not, and shall not permit any of its Subsidiaries to:

(i) issue, sell, or grant any shares of its capital stock, or any securities or rights convertible into, exchangeable or exercisable for, or evidencing the right to subscribe for any shares of its capital stock, or any rights, warrants or options to purchase any shares of its capital stock, or any securities or rights convertible into, exchangeable or exercisable for, or evidencing the right to subscribe for, any shares of its capital stock, except as set forth on Section 5.1(a)(i) of the Company Disclosure Schedule;

(ii) redeem, purchase or otherwise acquire any of its outstanding shares of capital stock, or any rights, warrants or options to acquire any shares of its capital stock, except (A) pursuant to Company Material Contracts set forth on Section 5.1(a)(ii) of the Company Disclosure Schedule as in effect as of the date hereof or (B) in connection with withholding to satisfy Tax obligations with respect to Company RSUs or Company Performance Share Awards, acquisitions in connection with the forfeiture of equity awards, or acquisitions in connection with the settlement of Company RSUs or Company Performance Share Awards;

(iii) (A) declare, authorize, set aside for payment or pay any dividend on, or make any other distribution in respect of, any shares of its capital stock, other than (1) dividends paid by any Subsidiary of the Company to the Company or to any wholly-owned Subsidiary of the Company, (2) quarterly cash dividends with respect to the Company Common Stock not to exceed the current annual per share dividend rate by more than \$0.04 per fiscal year, with record dates and payment dates consistent with the Company's current dividend practice, or (3) a "stub period" dividend to holders of record of Company Common Stock as of immediately prior to the Effective Time equal to the product of (x) the number of days from the record date for payment of the last quarterly dividend paid by the Company prior to the Effective Time, multiplied by (y) a daily dividend rate determined by dividing the amount of the last quarterly dividend prior to the Effective Time by ninety-one (91) or (B) adjust, split, combine, subdivide or reclassify any shares of its capital stock;

(iv) incur any Indebtedness (or amend any Contract relating to Indebtedness) except for Indebtedness (1) incurred to replace, renew, extend, refinance or refund any existing Indebtedness, in the same principal amount of such existing Indebtedness and upon the maturity of such existing Indebtedness in accordance with its terms (2) incurred in accordance with Section 5.1(a)(iv) of the Company Disclosure Schedule, or (3) among the Company and any of its wholly-owned Subsidiaries or among any of such wholly-owned Subsidiaries; provided that, in no event shall any Indebtedness incurred pursuant hereto (or any Contract relating to such Indebtedness) include any term or provision pursuant to which the consummation of the Merger or the other transactions contemplated by this Agreement would reasonably be expected to result in a breach, default or event of default with respect to such Indebtedness (or any Contract relating to such Indebtedness) or permit the holders of any Indebtedness of the Company or any of its Subsidiaries to accelerate the payment of any Indebtedness or require the Company or

any of its Subsidiaries to, voluntarily or involuntarily, redeem, repurchase or repay any Indebtedness prior to its scheduled maturity;

(v) sell, pledge, dispose of, transfer, lease, license or encumber any of its properties, assets or business (including by merger, consolidation or disposition of stock or assets), other than (A) immaterial assets in the ordinary course of business consistent with past practice, (B) pursuant to Company Material Contracts set forth on Section 5.1(a)(v) of the Company Disclosure Schedule as in effect on the date of this Agreement, or (C) transfers among the Company and its wholly owned Subsidiaries;

(vi) make capital expenditures except as budgeted in the Company's current long term plan (plus a 20% variance) that was made available to Parent;

(vii) make any acquisition (including by merger or share exchange) of the capital stock, equity securities, membership interests or a material portion of the assets of any other Person, or make any loans, advances or capital contributions to, or investments in, any other person (other than any wholly owned Subsidiary of the Company), except (A) acquisitions not in excess of \$25,000,000 individually or \$50,000,000 in the aggregate or (B) pursuant to Company Material Contracts set forth on Section 5.1(a)(vii) of the Company Disclosure Schedule as in effect on the date of this Agreement;

(viii) increase in any respect the compensation of any of its directors or employees (provided that payments of bonuses and other grants and awards made in the ordinary course consistent with past practice shall not constitute an increase in compensation), except (A) as required pursuant to applicable Law or the terms of Company Plans or other employee benefit plans or arrangements in effect on the date of this Agreement and (B) increases in salaries, wages and benefits of employees and director fees made in the ordinary course of business;

(ix) adopt or amend any Company Plan except as required by Law or for immaterial or ministerial amendments;

(x) make any material change to its methods of accounting, except as required by GAAP (or any interpretation thereof), Regulation S-X of the Exchange Act, as required by a Governmental Authority or quasi-Governmental Authority (including the Financial Accounting Standards Board or any similar organization) or as required by applicable Law;

(xi) amend the Company Charter Documents, amend the organizational documents of any Subsidiary, or exercise any approval or consent right within its discretion to amend any organizational documents of any Company Joint Venture;

(xii) adopt a plan or agreement of complete or partial liquidation or dissolution;

(xiii) enter into, modify or amend in any material respect, or terminate or waive any material right under, any Company Material Contract, except for any new

agreement, modification, amendment, termination or waiver in the ordinary course of business consistent with past practice;

(xiv) waive, release, assign, settle or compromise any material Claim against the Company or any of its Subsidiaries, other than waivers, releases, assignments, settlements or compromises that (A) with respect to the payment of monetary damages, involve only the payment of monetary damages (i) equal to or less than the amounts specifically reserved with respect thereto on the consolidated financial statements of the Company included in the Company SEC Documents (including the notes thereto) or (ii) do not exceed \$5,000,000 in the aggregate during any consecutive twelve-month period, and (B) except as contemplated by Section 5.9, with respect to any non-monetary terms and conditions therein, impose or require actions that would not reasonably be expected to be material and adverse to the Company and its Subsidiaries, taken as a whole;

(xv) make or change any material Tax election, change any material method of Tax accounting (except as required by applicable Law including the adoption of the tangible property regulations and disposition rules), settle or compromise any material Tax liability or refund, amend any material Tax Return (except that the Company and its Subsidiaries may amend any Tax Return in order to effectuate the carryback of specified liability losses, net operating losses, capital losses or tax credits), enter into any written agreement with a Governmental Authority with respect to Taxes, consent to the extension or waiver of the limitation period applicable to any Tax matter, or materially amend or change any of its methods for reporting income, deductions or accounting for Tax purposes, except, in each case, as required in relation to the items referenced in Section 3.9 of the Company Disclosure Schedule;

(xvi) effectuate a “plant closing” or “mass layoff,” as those terms are defined in WARN;

(xvii) enter into a new line of business;

(xviii) materially change any of its energy price risk management and marketing of energy parameters, limits and guidelines (the “Company Risk Management Guidelines”) or enter into any physical commodity transactions, exchange-traded futures and options transactions, over-the-counter transactions and derivatives thereof or similar transactions other than as permitted by the Company Risk Management Guidelines;

(xix) take any action that would reasonably be expected to prevent or materially impede, interfere with, hinder or delay the consummation by Parent or any of its Subsidiaries of the Transactions; or

(xx) agree or commit to take any of the foregoing actions.

(b) During the period from the date of this Agreement until the Effective Time, Parent and Merger Sub shall not, and Parent shall cause its Subsidiaries not to, take any action that would reasonably be expected to prevent or materially impede, interfere with, or delay the consummation by Parent or Merger Sub of the Transactions.

(c) Notwithstanding anything to the contrary herein, the Company may, and may cause any of its Subsidiaries to, take reasonable actions in compliance with applicable Law with respect to any operational emergencies (including any restoration measures in response to any hurricane, tornado, tsunami, flood, earthquake or other natural disaster or weather-related event, circumstance or development), equipment failures, outages or an immediate and material threat to the health or safety of natural Persons.

(d) Notwithstanding anything to the contrary contained herein, between the date of this Agreement and the Effective Time, the Company and its Subsidiaries may (i) continue to make Regulatory Filings in the ordinary course of business, including without limitation those filings described on Section 5.1(d) of the Company Disclosure Schedule, and (ii) take any other action contemplated by or described in any such state or federal filings or other submissions filed or submitted in connection with such Regulatory Filings prior to the date of this Agreement in the ordinary course of business.

Section 5.2 Preparation of the Proxy Statement; Shareholders Meeting.

(a) As promptly as reasonably practicable following the date of this Agreement, the Company shall prepare and file with the SEC the Proxy Statement, and Parent shall cooperate with the Company with the preparation of the foregoing. The Company, with Parent's cooperation, shall use commercially reasonable efforts to respond as promptly as reasonably practicable to and resolve all comments received from the SEC or its staff concerning the Proxy Statement. The Company agrees that (i) except with respect to any information supplied in writing to the Company by Parent or Merger Sub for inclusion or incorporation by reference in the Proxy Statement, the Proxy Statement will comply in all material respects with the applicable provisions of the Exchange Act and the rules and regulations thereunder and (ii) none of the information supplied or to be supplied by the Company for inclusion or incorporation by reference in the Proxy Statement will, on the date it is first mailed to shareholders of the Company or at the time of the Company Shareholders Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Company will cause the Proxy Statement to be mailed to the Company's shareholders, as promptly as reasonably practicable after the SEC confirms that it has no further comments on the Proxy Statement. No filing of, or amendment or supplement to, or correspondence with the SEC with respect to, the Proxy Statement will be made by the Company without providing Parent a reasonable opportunity to review and comment thereon and with the Company considering in good faith such comments; provided, however, that the foregoing shall not apply with respect to a Takeover Proposal, a Superior Proposal, a Company Adverse Recommendation Change or any matters relating thereto. Each of Parent and Merger Sub shall cooperate with the Company in connection with the preparation and filing of the Proxy Statement, including promptly furnishing to the Company in writing upon request any and all information relating to it as may be required to be set forth in the Proxy Statement under applicable Law. Each of the Parent and Merger Sub agrees that such information supplied by it in writing for inclusion (or incorporation by reference) in the Proxy Statement will not, on the date it is first mailed to shareholders of the Company and at the time of the Company Shareholders Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in

light of the circumstances under which they were made, not misleading. If, at any time prior to the Effective Time, any information relating to Parent or Merger Sub or any of their respective Affiliates, officers or directors, should be discovered by Parent or Merger Sub which should be set forth in an amendment or supplement to the Proxy Statement so that the Proxy Statement would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, Parent (or Merger Sub, as the case may be) shall promptly notify the Company so that it may file with the SEC an appropriate amendment or supplement describing such information and, to the extent required by Law, disseminate such amendment or supplement to the shareholders of the Company. If, at any time prior to the Effective Time, any information relating to the Company or any of its respective Affiliates, officers or directors, should be discovered by the Company which should be set forth in an amendment or supplement to the Proxy Statement so that the Proxy Statement would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the Company shall promptly notify Parent and the Company shall file with the SEC an appropriate amendment or supplement describing such information and, to the extent required by Law, disseminate such amendment or supplement to the shareholders of the Company.

(b) The Company shall, as promptly as reasonably practicable after the date of the mailing of the definitive Proxy Statement to the Company's shareholders, in accordance with applicable Law, the Company Charter Documents and the NYSE rules, duly give notice of, convene and hold a meeting of its shareholders to consider the approval of this Agreement and such other matters as may be then reasonably required (including any adjournment or postponement thereof, the "Company Shareholders Meeting"); provided, however, that the Company shall be permitted to delay or postpone convening the Company Shareholders Meeting (i) with the consent of Parent, (ii) for the absence of a quorum, (iii) to allow reasonable additional time for any supplemental or amended disclosure which the Company has determined in good faith (after consultation with outside legal counsel) is necessary under applicable Law and for such supplemental or amended disclosure to be disseminated and reviewed by the Company's shareholders prior to the Company Shareholders Meeting as necessary under applicable Law or (iv) to allow additional solicitation of votes in order to obtain the Company Shareholder Approval. Except if there has been a Company Adverse Recommendation Change in accordance with Section 5.3(d), the Company shall use its reasonable best efforts to solicit and secure the Company Shareholder Approval as promptly as practicable.

(c) Subject to Section 5.3 and the right of the Company Board to make a Company Adverse Recommendation Change pursuant thereto, unless and until there has been a Company Adverse Recommendation Change in accordance with Section 5.3, the Company shall include the Company Board Recommendation in the preliminary and definitive Proxy Statement. The Company agrees that, unless this Agreement has been terminated pursuant to Section 7.1, a Company Adverse Recommendation Change shall not relieve the Company of its obligation hereunder to submit this Agreement to the Company's shareholders at the Company Shareholders Meeting.

Section 5.3 No Solicitation; Change in Recommendation.

(a) The Company agrees that it shall, and shall cause its Subsidiaries and its and its Subsidiaries' directors, officers and employees to, and shall use its reasonable best efforts to cause its other Representatives to, immediately cease all existing discussions or negotiations with any Person conducted heretofore with respect to any Takeover Proposal, immediately request the prompt return or destruction of all confidential information previously furnished and immediately terminate all physical and electronic data room access previously granted to any such Person or its Representatives. Except as otherwise provided in this Agreement, from the date of this Agreement until the earlier of the Effective Time or the date, if any, on which this Agreement is terminated pursuant to Section 7.1, the Company shall not, and shall cause its Subsidiaries and its and its Subsidiaries' directors, officers and employees not to, and shall use its reasonable best efforts to cause its other Representatives not to, directly or indirectly, (i) solicit, initiate, knowingly encourage or knowingly facilitate any Takeover Proposal or the making or consummation thereof or (ii) enter into, or otherwise participate in any discussions (except to notify such Person of the existence of the provisions of this Section 5.3) or negotiations regarding, or furnish to any Person any information in connection with, any Takeover Proposal.

(b) Notwithstanding anything to the contrary contained in this Agreement, if the Company or any of its Subsidiaries, or any of its or their respective Representatives receives an unsolicited *bona fide* written Takeover Proposal made after the date of this Agreement, the Company, the Company Board (or a duly authorized committee thereof) and the Company's Representatives may engage in negotiations and discussions with, or furnish any information and other access to, any Person making such Takeover Proposal and any of its Representatives or potential sources of financing if the Company Board determines in good faith, after consultation with the Company's outside legal and financial advisors, that such Takeover Proposal is or could reasonably be expected to lead to a Superior Proposal; provided that prior to engaging in any negotiations or discussions with, or furnishing any information to, any such Person or its Representatives, the Company and the Person making such Takeover Proposal shall have entered into an Acceptable Confidentiality Agreement. The Company will promptly (and in any event within the later of twenty-four (24) hours or 5:00 p.m. New York City time on the next Business Day) notify Parent in writing of the receipt of such Takeover Proposal, the material terms and conditions of any such Takeover Proposal and the identity of the Person making such Takeover Proposal. The Company will keep Parent informed in all material respects on a prompt basis (and in any event within the later of twenty-four (24) hours or 5:00 p.m. New York City time on the next Business Day) of the material terms and status of such Takeover Proposal (including any change in the price or any other material terms thereof). The Company shall not terminate, amend, modify, waive or fail to enforce any provision of any "standstill" or similar obligation of any Person unless the Company Board (or a duly authorized committee thereof) determines in good faith, after consultation with its outside legal counsel, that the failure to take such action would reasonably be expected to be inconsistent with its fiduciary duties under applicable Law.

(c) Except as otherwise provided in this Agreement, neither the Company Board nor any committee thereof shall (i)(A) withdraw, change, qualify, withhold or modify, or publicly propose to withdraw, change, qualify, withhold or modify, in a manner adverse to Parent, the Company Board Recommendation, (B) adopt, approve or recommend, or publicly propose to adopt, approve or recommend, any Takeover Proposal, (C) fail to include in the Proxy Statement the Company Board Recommendation, (D) fail to recommend against any Takeover

Proposal subject to Regulation 14D under the Exchange Act in any solicitation or recommendation statement made on Schedule 14D-9 within ten (10) Business Days after Parent so requests reaffirmation in writing (provided, that Parent shall be entitled to make such a written request for reaffirmation only once for each Takeover Proposal and once for each material amendment to such Takeover Proposal), or (E) resolve or publicly propose to do any of the foregoing (any action described in this clause (i) being referred to herein as a “Company Adverse Recommendation Change”) or (ii) cause or permit the Company or any of its Affiliates to execute or enter into, any letter of intent, memorandum of understanding, agreement in principle, agreement or commitment (other than an Acceptable Confidentiality Agreement) constituting, or that would reasonably be expected to lead to, any Takeover Proposal (a “Company Acquisition Agreement”).

(d) Notwithstanding anything to the contrary in this Agreement, at any time prior to obtaining the Company Shareholder Approval, the Company Board (or a duly authorized committee thereof) may make a Company Adverse Recommendation Change (and, solely with respect to a Superior Proposal, terminate this Agreement pursuant to Section 7.1(d)(ii)), if (i) (A) a Company Intervening Event has occurred or (B) the Company has received a Superior Proposal other than as a result of a breach of this Section 5.3 (other than immaterial breach), in each case, if the Company Board (or a duly authorized committee thereof) determines in good faith, after consultation with its outside legal counsel, that the failure to make a Company Adverse Recommendation Change as a result of the occurrence of such Company Intervening Event or in response to the receipt of such Superior Proposal, as the case may be, would reasonably be expected to be inconsistent with its fiduciary duties under applicable Law and (ii) (A) the Company provides Parent prior written notice of its intent to make any Company Adverse Recommendation Change or terminate this Agreement pursuant to Section 7.1(d)(ii) at least four (4) Business Days prior to taking such action to the effect that, absent any modification to the terms and conditions of this Agreement, the Company Board has resolved to effect a Company Adverse Recommendation Change or to terminate this Agreement pursuant to Section 7.1(d)(ii), which notice shall specify the basis for such Company Adverse Recommendation Change or termination and attaching the most current draft of any Company Acquisition Agreement with respect to, the Superior Proposal (or, if no such draft exists, a summary of the material terms and conditions of such Superior Proposal), if applicable (a “Notice of Recommendation Change”) (it being understood that such Notice of Recommendation Change shall not in itself be deemed a Company Adverse Recommendation Change and that any change in price or material revision or amendment to the terms of a Superior Proposal, if applicable, shall require a new notice to which the provisions of clauses (ii)(A), (B) and (C) of this Section 5.3(d) shall apply *mutatis mutandis* except that, in the case of such a new notice, all references to four (4) Business Days in this Section 5.3(d) shall be deemed to be two (2) Business Days); (B) during such four (4) Business Day period, if requested by Parent, the Company shall make its Representatives available to negotiate in good faith with Parent and its Representatives regarding any modifications to the terms and conditions of this Agreement that Parent proposes to make; and (C) at the end of such four (4) Business Day period and taking into account any modifications to the terms of this Agreement proposed by Parent, if any, in a written, binding and irrevocable offer, the Company Board determines in good faith (after consultation with outside legal counsel) that the failure to make such a Company Adverse Recommendation Change would reasonably be expected to be inconsistent with its fiduciary duties under applicable Law, and that, in the case of a Company

Adverse Recommendation Change with respect to a Takeover Proposal, such Takeover Proposal still constitutes a Superior Proposal.

(e) Nothing contained in this Agreement shall prohibit the Company or the Company Board (or a duly authorized committee thereof) from (i) taking and disclosing to the shareholders of the Company a position contemplated by Rule 14e-2(a) under the Exchange Act or making a statement contemplated by Item 1012(a) of Regulation M-A or Rule 14d-9 under the Exchange Act, (ii) making any disclosure to the shareholders of the Company if the Company Board (or a duly authorized committee thereof) determines in good faith, after consultation with its outside legal counsel, that the failure to make such disclosure would be reasonably likely to be inconsistent with applicable Law, (iii) informing any Person of the existence of the provisions contained in this Section 5.3 or (iv) making any “stop, look and listen” communication to the shareholders of the Company pursuant to Rule 14d-9(f) under the Exchange Act.

(f) As used in this Agreement, “Takeover Proposal” shall mean any inquiry, proposal or offer (whether or not in writing) from any Person (other than Parent, Merger Sub and any of its Affiliates thereof) to purchase or otherwise acquire, directly or indirectly, in a single transaction or series of related transactions, (a) assets of the Company and its Subsidiaries (including securities of Subsidiaries) that account for 15% or more of the Company’s consolidated assets or from which 15% or more of the Company’s revenues or earnings on a consolidated basis are derived or (b) 15% or more of the outstanding Company Common Stock pursuant to a merger, consolidation or other business combination, sale or issuance of shares of capital stock, tender offer, share exchange, other business combination, recapitalization, liquidation, dissolution or similar transaction involving the Company, in each case other than the Merger.

(g) As used in this Agreement, “Superior Proposal” shall mean any unsolicited *bona fide* written Takeover Proposal on terms which the Company Board (or a duly authorized committee thereof) determines in good faith, after consultation with the Company’s outside legal counsel and independent financial advisors, to be more favorable to the holders of Company Common Stock than the Transaction (after taking into account any revisions to the terms of this Agreement that are proposed by Parent pursuant to Section 5.3(d)), taking into account, to the extent applicable, the legal, financial, regulatory and other aspects of such proposal and this Agreement that the Company Board considers relevant; provided that for purposes of the definition of Superior Proposal, the references to “15%” in the definition of Takeover Proposal shall be deemed to be references to “50%.”

(h) As used in this Agreement, “Company Intervening Event” means any fact, circumstance, effect, change, event, occurrence or development that (1) is unknown to or by the Company Board as of the date hereof (or if known, the magnitude or material consequences of which were not known by the Company Board as of the date of this Agreement) and (2) becomes known to or by the Company Board prior to obtaining the Company Shareholder Approval.

Section 5.4 Reasonable Best Efforts.

(a) Subject to the terms and conditions of this Agreement, each of the Company, Parent and Merger Sub shall use its respective reasonable best efforts to (i) cause the

Transactions to be consummated as soon as practicable, (ii) make promptly any required submissions and filings under applicable Antitrust Laws or to Governmental Authorities with respect to the Transactions, (iii) cooperate with the other parties and promptly furnish information required in connection with such submissions and filing to such Governmental Authorities or under such Antitrust Laws, (iv) keep the other parties reasonably informed with respect to the status of any such submissions and filings to such Governmental Authorities or under Antitrust Laws, including with respect to: (A) the receipt of any non-action, action, clearance, consent, approval or waiver, (B) the expiration of any waiting period, (C) the commencement or proposed or threatened commencement of any investigation, litigation or administrative or judicial action or proceeding under Antitrust Laws or other applicable Laws, and (D) the nature and status of any objections raised or proposed or threatened to be raised under Antitrust Laws or other applicable Laws with respect to the Transactions and (v) obtain all actions or non-actions, approvals, consents, waivers, registrations, permits, authorizations and other confirmations from any third party and/or Governmental Authority necessary to consummate the Transactions as soon as practicable. For purposes hereof, “Antitrust Laws” means the Sherman Act, the Clayton Act, the HSR Act, the Federal Trade Commission Act, and all applicable foreign Antitrust Laws and all other applicable Laws issued by a Governmental Authority that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition.

(b) In furtherance and not in limitation of the foregoing: (i) each party hereto agrees to (A) make an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the Transactions as soon as reasonably practicable after the date hereof (and in any event within twenty-one (21) days after the date hereof, unless the parties otherwise agree to a different date), (B) supply as soon as practicable any additional information and documentary material that may be requested pursuant to the HSR Act and (C) use its reasonable best efforts to take, or cause to be taken, all other actions consistent with this Section 5.4 necessary to cause the expiration or termination of the applicable waiting periods under the HSR Act (including any extensions thereof) as soon as practicable, and (ii) each party agrees to (A) make or cause to be made the appropriate filings as soon as practicable with the NCUC relating to the Merger, (B) supply as soon as practical any additional information and documentary material that may be required or requested by the NCUC and (C) use its reasonable best efforts to take or cause to be taken all other actions consistent with this Section 5.4 as necessary to obtain any necessary approvals, consents, waivers, permits, authorizations or other actions or non-actions from the NCUC as soon as practicable.

(c) The Company, Parent and Merger Sub shall, subject to applicable Law relating to the exchange of information: (i) promptly notify the other parties hereto of (and if in writing, furnish the other parties with copies of) any communication to such Person from a Governmental Authority regarding the filings and submissions described in Section 5.4(a) and permit the others to review and discuss in advance (and to consider in good faith any comments made by the others in relation to) any proposed written response to any communication from a Governmental Authority regarding the filings and submissions described in Section 5.4(a), (ii) keep the others reasonably informed of any developments, meetings or discussions with any Governmental Authority in respect of any filings, investigation, or inquiry concerning the Transactions and (iii) not independently participate in any meeting or discussions with a

Governmental Authority in respect of any filings, investigation or inquiry concerning the Transactions without giving the other party prior notice of such meeting or discussions and, unless prohibited by such Governmental Authority, the opportunity to attend or participate; provided, that the parties shall be permitted to redact any correspondence, filing, submission or communication to the extent such correspondence, filing, submission or communication contains competitively or commercially sensitive information, including information relating to the valuation of the Transactions.

(d) In furtherance and not in limitation of the foregoing, but subject to the other terms and conditions of this Section 5.4, Parent and Merger Sub agree to take promptly any and all steps necessary to avoid, eliminate or resolve each and every impediment and obtain all clearances, consents, approvals and waivers under Antitrust Laws or other applicable Laws that may be required by any Governmental Authority, so as to enable the parties to close the Transactions as soon as practicable (and in any event no later than three (3) Business Days prior to the End Date), including committing to and effecting, by consent decree, hold separate orders, trust, or otherwise, (i) the sale, license, holding separate or other disposition of assets or businesses of Parent or Company or any of their respective Subsidiaries, (ii) terminating, relinquishing, modifying, or waiving existing relationships, ventures, contractual rights, obligations or other arrangements of Parent or Company or their respective Subsidiaries and (iii) creating any relationships, ventures, contractual rights, obligations or other arrangements of Parent or Company or their respective Subsidiaries (each a “Remedial Action”); provided, however, that any Remedial Action may, at the discretion of the Company or Parent, be conditioned upon consummation of the Transactions.

(e) In furtherance and not in limitation of the foregoing, but subject to the other terms and conditions of this Section 5.4, in the event that any litigation or other administrative or judicial action or proceeding is commenced, threatened or is reasonably foreseeable challenging any of the Transactions and such litigation, action or proceeding seeks, or would reasonably be expected to seek, to prevent, materially impede or materially delay the consummation of the Transactions, Parent shall use reasonable best efforts to take any and all action, including a Remedial Action, to avoid or resolve any such litigation, action or proceeding as promptly as practicable and in any event no later than three (3) Business Days prior to the End Date. In addition, each of the Company, Parent and Merger Sub shall cooperate with each other and use its respective reasonable best efforts to contest, defend and resist any litigation, action or proceeding and to have vacated, lifted, reversed or overturned any ruling, decree, judgment, injunction or other order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents, delays, interferes with or restricts consummation of the Transactions as promptly as practicable and in any event no later than three (3) Business Days prior to the End Date.

(f) From the date hereof until the earlier of the Effective Time and the date this Agreement is terminated pursuant to Article VII, neither Parent nor Merger Sub shall, nor shall they permit their respective Subsidiaries to, acquire or agree to acquire any rights, assets, business, Person or division thereof (through acquisition, license, joint venture, collaboration or otherwise), if such acquisition, would reasonably be expected to materially increase the risk of not obtaining any applicable clearance, consent, approval or waiver under Antitrust Laws or other applicable Laws with respect to the Transactions, or would reasonably be expected to

materially prevent or prohibit or impede, interfere with or delay obtaining any applicable clearance, consent, approval or waiver under Antitrust Laws or other applicable laws with respect to the Transactions.

(g) Notwithstanding the obligations set forth in this Agreement, Parent and its Affiliates shall not be required to, and, without the prior written consent of Parent (which consent may be withheld at Parent's sole discretion) the Company shall not, and shall cause its Subsidiaries not to, in connection with obtaining any consent or approval of any Governmental Authority in connection with this Agreement or the transactions contemplated hereby, offer or accept, or agree, commit to agree or consent to, any undertaking, term, condition, liability, obligation, commitment, sanction or other measure (including any Remedial Action), that constitutes a Burdensome Condition. For purposes of this Agreement, "Burdensome Condition" shall mean any undertakings, terms, conditions, liabilities, obligations, commitments, sanctions or other measures (including any Remedial Action) that, in the aggregate, would have or would be reasonably likely to have, a material adverse effect on the financial condition, assets, liabilities, businesses or results of operations of the Company and its Subsidiaries, taken as a whole, or of Parent and its Subsidiaries, taken as a whole (and after giving effect to the Merger such that Parent and its Subsidiaries for this purpose shall be deemed to be a consolidated group of entities of the size and scale of a hypothetical company that is 100% of the size and scale of the Company and its Subsidiaries, taken as a whole); provided, however, that any such undertakings, terms, conditions, liabilities, obligations, commitments, sanctions or other measures shall not constitute or be taken into account in determining whether there has been or is such a material adverse effect to the extent such undertakings, terms, conditions, liabilities, obligations, commitments, sanctions or other measures are described in Section 1.7.

(h) Parent shall promptly notify the Company and the Company shall notify Parent of any notice or other communication from any Governmental Authority alleging that such Governmental Authority's consent is or may be required in connection with or as a condition of the Merger.

Section 5.5 Public Announcements. The initial press release with respect to the execution of this Agreement shall be a joint press release to be reasonably agreed upon by Parent and the Company. Following such initial press release, Parent and the Company shall consult with each other before issuing, and give each other the opportunity to review and comment upon, any press release or other public statements with respect to the Transactions and shall not issue any such press release or make any such public statement prior to such consultation, except as such party may reasonably conclude may be required by applicable Law, court process or by obligations pursuant to any listing agreement with any national securities exchange or national securities quotation system (and then only after as much advance notice and consultation as is feasible); provided, however, that the restrictions set forth in this Section 5.5 shall not apply to any release or public statement (a) made or proposed to be made by the Company in connection with a Takeover Proposal, a Superior Proposal or a Company Adverse Recommendation Change or any action taken pursuant thereto, (b) in connection with any dispute between the parties regarding this Agreement or the Transactions or (c) not inconsistent in any material respects with the prior public disclosures regarding the Transactions.

Section 5.6 Access to Information; Confidentiality.

(a) From the date hereof until the earlier of the Effective Time or the date on which this Agreement is terminated in accordance with its terms, the Company shall afford to the Parent and its Representatives reasonable access (at Parent's sole cost and expense) during normal business hours and upon reasonable advance notice to the Company's properties (but excluding for the conduct of Phase I or Phase II environmental assessments or testing), books, Contracts and records and the Company shall furnish promptly to the other party such information concerning its business and properties as such party may reasonably request (other than any publicly available document filed by it pursuant to the requirements of federal or state securities Laws); provided that the Parent and its Representatives shall conduct any such activities in such a manner as not to interfere unreasonably with the business or operations of the other party; provided, further, (x) that the Company shall not be obligated to provide such access or information if the Company determines, in its reasonable judgment, that doing so would violate applicable Law or a Contract or obligation of confidentiality owing to a third party, jeopardize the protection of the attorney-client privilege, or expose such party to risk of liability for disclosure of sensitive or personal information (provided that the Company shall use its reasonable best efforts to provide such access or information (or as much of it as possible) in a manner that does not result in the events set out in this clause (x)), and (y) the conduct of such activities shall be subject to the rights and obligations of the Company referred to in the final proviso of the final sentence of Section 5.4(c) hereof. Until the Effective Time, the information provided will be subject to the terms of the confidentiality letter agreement, dated as of October 2, 2015, between Parent and the Company (as it may be amended from time to time, the "Confidentiality Agreement").

(b) If this Agreement is terminated pursuant to Section 7.1, the Confidentiality Agreement shall automatically be deemed to be amended and restated such that (i) the "Restricted Period" for all purposes of the Confidentiality Agreement shall be the period of eighteen (18) months from the date of such termination, as if the Parties had never entered into this Agreement, and (ii) the other provisions of the Confidentiality Agreement shall remain in force and effect for a period of two (2) years after such termination, as if the parties hereto had never entered into this Agreement.

Section 5.7 Takeover Laws. If any Takeover Statute or similar statute or regulation becomes applicable to the Transactions, the Company and the Company Board will use reasonable best efforts to ensure that such Transactions may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise to minimize the effect of such statute or regulation on the Transactions.

Section 5.8 Indemnification and Insurance.

(a) From and after the Effective Time, Parent shall, and shall cause the Surviving Corporation to, (i) indemnify, defend and hold harmless each current and former director, officer and employee of the Company and any of its Subsidiaries and each person who served as a director, officer, member, trustee or fiduciary of another corporation, partnership, joint venture, trust, pension or other employee benefit plan or enterprise if such service was at the request or for the benefit of the Company or any of its Subsidiaries (each, an "Indemnitee" and, collectively, the "Indemnitees") against all claims, liabilities, losses, damages, judgments, fines, penalties, costs (including amounts paid in settlement or compromise) and expenses

(including fees and expenses of legal counsel) in connection with any actual or threatened claim, suit, action, proceeding or investigation (whether civil, criminal, administrative or investigative) (each, a “Claim”), whenever asserted, arising out of, relating to or in connection with any action or omission relating to their position with the Company or its Subsidiaries occurring or alleged to have occurred before or at the Effective Time (including any Claim relating in whole or in part to this Agreement or the Transactions), to the fullest extent permitted under applicable Law and (ii) assume all obligations of the Company and its Subsidiaries to the Indemnitees in respect of limitation of liability, exculpation, indemnification and advancement of expenses as provided in (A) the Company Charter Documents and the respective organizational documents of each of the Company’s Subsidiaries as currently in effect and (B) any indemnification agreements with an Indemnitee (but only to the extent such indemnification agreement was made available to Parent prior to the date hereof), which shall in each case survive the Transactions and continue in full force and effect to the extent permitted by applicable Law.

(b) From and after the Effective Time, Parent shall, and shall cause the Surviving Corporation to, pay and advance to an Indemnitee any expenses (including fees and expenses of legal counsel) in connection with any Claim relating to any acts or omissions covered under this Section 5.8 or the enforcement of an Indemnitee’s rights under this Section 5.8 as and when incurred to the fullest extent permitted under applicable Law, provided that the person to whom expenses are advanced provides an undertaking in accordance with applicable Law to repay such expenses if it is ultimately determined by a court of competent jurisdiction that such Indemnitee is not entitled to indemnification for such matter (but only to the extent such repayment is required by applicable Law, the Company Charter Documents, applicable organizational documents of Subsidiaries of the Company or applicable indemnification agreements).

(c) For a period of six (6) years from the Effective Time, Parent shall cause to be maintained in effect coverage not materially less favorable than the coverage provided by the policies of directors’ and officers’ liability insurance and fiduciary liability insurance in effect as of the date hereof maintained by the Company and its Subsidiaries with respect to matters arising on or before the Effective Time either through the Company’s existing insurance provider or another provider reasonably selected by Parent; provided, however, that, after the Effective Time, Parent shall not be required to pay annual premiums in excess of 300% of the annual premium currently paid by the Company in respect of the coverages required to be obtained pursuant hereto, but in such case shall purchase as much coverage as reasonably practicable for such amount; provided, further, that in lieu of the foregoing insurance coverage, the Company may purchase “tail” insurance coverage, at a cost no greater than the aggregate amount which Parent would be required to spend during the six-year period provided for in this Section 5.8(c), that provides coverage not materially less favorable than the coverage described above to the insured persons than the directors’ and officers’ liability insurance and fiduciary liability insurance coverage currently maintained by the Company and its Subsidiaries as of the date hereof with respect to matters arising on or before the Effective Time.

(d) The provisions of this Section 5.8 are (i) intended to be for the benefit of, and shall be enforceable by, each Indemnitee, his or her heirs and his or her representatives from and after the Effective Time, and (ii) in addition to, and not in substitution for or limitation of, any other rights to indemnification or contribution that any such Person may have by contract or

otherwise. The obligations of Parent and the Surviving Corporation under this Section 5.8 shall not be terminated or modified in such a manner as to adversely affect the rights of any Indemnitee to whom this Section 5.8 applies unless (A) such termination or modification is required by applicable Law or (B) the affected Indemnitee shall have consented in writing to such termination or modification (it being expressly agreed that the Indemnitees to whom this Section 5.8 applies shall be third party beneficiaries of this Section 5.8).

(e) In the event that Parent, the Surviving Corporation or any of their respective successors or assigns (i) consolidates with or merges into any other Person and is not the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers or conveys all or substantially all of its properties and assets to any Person, then, and in each such case, proper provision shall be made so that the successors and assigns of Parent and the Surviving Corporation shall assume all of the obligations thereof set forth in this Section 5.8.

Section 5.9 Transaction Litigation. Each of Parent and the Company shall notify the other promptly of the commencement of any shareholder litigation relating to this Agreement or the Transactions of which it has received notice (“Transaction Litigation”). The Company shall give Parent the opportunity to participate in, but not control, the defense or settlement of any shareholder litigation against the Company or any of its directors or officers relating to this Agreement or the Transactions, and no such settlement of any shareholder litigation shall be agreed to by the Company or any of its Representatives without Parent’s prior written consent, such consent not to be unreasonably withheld, conditioned or delayed.

Section 5.10 Section 16. Prior to the Effective Time, each of the Company, Parent and Merger Sub shall take all such steps reasonably necessary to cause any dispositions of Company Common Stock (including derivative securities with respect to Company Common Stock) directly resulting from the Merger by each individual who will be subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to the Company immediately prior to the Effective Time to be exempt under Rule 16b-3 promulgated under the Exchange Act.

Section 5.11 Employee Matters.

(a) Until the later of twelve (12) months from the Closing Date or December 31, 2017 (the “Continuation Period”), Parent shall provide, or shall cause to be provided, to each individual who is employed by the Company or any of its Subsidiaries (including the Surviving Corporation and its Subsidiaries) immediately prior to the Effective Time (each, a “Company Employee”), annual base salary and base wages, annual target bonus opportunities (based on target amounts calculated as an applicable percentage of annual base salary for the bonus opportunities established for the most recent Company fiscal year commencing before the Effective Time), and the target value (based on target amounts calculated as an applicable percentage of annual base salary) of the annual Company Performance Share Award granted during the most recent Company fiscal year commencing before the Effective Time (without taking into account any discount to the value of Company Stock for purposes of applying such target value to a long-term incentive compensation opportunity granted by Parent) (the “LTIP Target Amount”), provided that the LTIP Target Amount may be paid in cash rather than granted in equity, and aggregate employee benefits, in each case, that are no less favorable than such annual base salary and base wages, annual target bonus opportunities, LTIP Target Amounts and

aggregate employee benefits provided to the Company Employees immediately prior to the Effective Time. Notwithstanding any other provision of this Agreement to the contrary and without limiting the generality of the foregoing, Parent shall or shall cause the Surviving Corporation to provide any Company Employee whose employment terminates following the Effective Time and during the applicable protected period, as described on Section 5.11(b) of the Company Disclosure Schedule, either without “Cause” or for “Good Reason,” in each case as defined on Section 5.11(a) of the Company Disclosure Schedule, with severance benefits no less favorable than as set forth on Section 5.11(a) of the Company Disclosure Schedule.

(b) For all purposes (including purposes of vesting, eligibility to participate and level of benefits, but not for purposes of defined benefit pension plan accrual or, for the avoidance of doubt, with respect to the vesting or restoration of any otherwise forfeited benefits accrued prior to the Effective Time under a defined benefit pension plan maintained by Parent or its Subsidiaries (except as required by Law)) under the employee benefit plans of Parent and its Subsidiaries providing benefits to any Company Employee after the Effective Time (including the Company Plans) (the “New Plans”), each Company Employee shall be credited with his or her years of service with the Company and its Subsidiaries and their respective predecessors before the Effective Time, to the same extent as such Company Employee was entitled, before the Effective Time, to credit for such service under any Company Plan in which such Company Employee participated or was eligible to participate immediately prior to the Effective Time, provided that the foregoing shall not apply to the extent that its application would result in a duplication of benefits with respect to the same period of service. Furthermore, to the extent a Company Employee or a “Company Retired Employee” (as defined below) becomes eligible to participant in Parent’s retiree medical plan, for all purposes (including purposes of vesting, eligibility to participate and level of benefits) under the retiree medical plan of Parent and its Subsidiaries, each (x) Company Employee and (y) former employee of the Company or any of its Subsidiaries whose employment with the Company or any of its Subsidiaries ended as a result of such former employee’s retirement and who is eligible to participate in the Company’s retiree medical plan as of the Effective Time (the “Company Retired Employees”), shall be credited with his or her years of service with the Company and its Subsidiaries and their respective predecessors before the Effective Time, to the same extent as such Company Employee or Company Retired Employee was entitled, immediately before the Effective Time, to credit for such service under the Company’s retiree medical plan as of the Effective Time. Parent shall, or shall cause an Affiliate to, provide post-retirement medical benefits to Eligible Retirees (as defined below) that are no less favorable than those provided (i) under the Company’s post-retirement medical program in effect as of January 1, 2016 (the “Company’s Retiree Health Plan”) or (ii) to similarly situated, as applicable, employees and retirees who participate in the post-retirement programs of Parent or its Subsidiaries (other than the Surviving Corporation). “Eligible Retirees” means Company Retired Employees and Company Employees who are or become eligible to participant in the Company’s Retiree Health Plan as in effect on January 1, 2016. In addition, and without limiting the generality of the foregoing, (i) each Company Employee shall be immediately eligible to participate, without any waiting time, in any and all New Plans to the extent coverage under such New Plan is replacing comparable coverage under a Company Plan in which such Company Employee participated immediately before the Effective Time (such plans, collectively, the “Old Plans”), and (ii) for purposes of each New Plan providing medical, dental, pharmaceutical and/or vision benefits to any Company Employee, Parent shall cause all pre-existing condition exclusions and actively-at-work

requirements of such New Plan to be waived for such Company Employee and his or her covered dependents, to the extent such conditions were inapplicable or waived under the comparable Old Plans of the Company or its Subsidiaries in which such Company Employee participated immediately prior to the Effective Time. Parent shall cause any eligible expenses incurred by any Company Employee and his or her covered dependents during the portion of the plan year of the Old Plan ending on the date such Company Employee's participation in the corresponding New Plan begins to be taken into account under such New Plan for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such Company Employee and his or her covered dependents for the applicable plan year as if such amounts had been paid in accordance with such New Plan.

(c) Without limiting the generality of Section 5.11(a), from and after the Effective Time, Parent shall cause the Surviving Corporation and its Subsidiaries to assume, honor, and continue all obligations under the Company Plans and compensation and severance arrangements and agreements in accordance with their terms as in effect immediately before the Effective Time and the Transactions shall be deemed to constitute a "change in control," "change of control", "corporate transaction" or similar words to such effect under such Company Plans, arrangements or agreements.

(d) At the Effective Time, Parent shall cause the Surviving Corporation to pay to each Company Employee and each Applicable Retired Company Employee a pro-rata portion of any bonus that such Company Employee or Applicable Retired Company Employee would have been entitled to receive under the Company's Annual Incentive Plans and any other applicable annual bonus plan for the performance period during which the Effective Time occurs, consistent with past practice and based on achievement of applicable performance criteria at target level. In addition, to the extent that the Effective Time occurs within 2.5 months following the end of a performance period with respect to the Annual Incentive Plans or any other applicable annual bonus plan, but prior to payment of the bonuses for such completed performance, Parent shall cause the Surviving Corporation to pay to each Company Employee, and to each Applicable Retired Company Employee on a prorated basis consistent with past practice, the greater of (i) the Company Employee's or Applicable Retired Company Employee's, as applicable, target bonus for such performance period and (ii) the bonus to which the Company Employee or Applicable Retired Company Employee, as applicable, would be entitled for such performance period based on actual performance.

(e) Notwithstanding anything to the contrary herein, the provisions of this Section 5.11 are solely for the benefit of the parties to this Agreement, and no provision of this Section 5.11 is intended to, or shall, constitute the establishment or adoption of or an amendment to any Company Plans for purposes of ERISA or otherwise and no Company Employee or any other individual associated therewith shall be regarded for any purpose as a third-party beneficiary of this Agreement or have the right to enforce the provisions hereof including in respect of continued employment (or resumed employment). Nothing contained herein shall alter the at-will employment relationship of any Company Employee.

(f) Without limiting the generality of the foregoing provisions of this Section 5.11, the parties hereby agree to take the additional actions set forth in Section 5.11(f) of the Company Disclosure Schedule.

Section 5.12 Merger Sub and Surviving Corporation. Parent shall take all actions necessary to (a) cause Merger Sub and the Surviving Corporation to perform promptly their respective obligations under this Agreement and (b) cause Merger Sub to consummate the Merger on the terms and conditions set forth in this Agreement. Prior to the Effective Time, Merger Sub shall not engage in any activity of any nature except for activities related to or in furtherance of the Transactions.

Section 5.13 No Control of Other Party's Business. Nothing contained in this Agreement is intended to give Parent or Merger Sub, directly or indirectly, the right to control or direct the Company's or its Subsidiaries' operations prior to the Effective Time. Prior to the Effective Time, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and its Subsidiaries' respective operations.

Section 5.14 Financing Cooperation.

(a) The Company shall, and shall cause the Subsidiaries of the Company to, (i) provide commercially reasonable assistance with the preparation of and any discussions regarding the business, financial statements, projections, and management discussion and analysis of the Company and the Subsidiaries of the Company, all for use in connection with any debt financing to be obtained by Parent in connection with the Merger (the "Financing"), and (ii) request that its independent accountants provide customary and reasonable assistance to Parent in connection with providing customary comfort letters in connection with the Financing; provided, further, that nothing in this Agreement shall require the Company to cause the delivery of (1) legal opinions or reliance letters or any certificate as to solvency or any other certificate necessary for the Financing, other than as allowed by the preceding clause (ii), (2) any audited financial information or any financial information prepared in accordance with Regulation S-K or Regulation S-X under the Securities Act of 1933, as amended, or any financial information in a form not customarily prepared by the Company with respect to any period or (3) any financial information with respect to a month or fiscal period that has not yet ended or has ended less than forty-five (45) days prior to the date of such request.

(b) Notwithstanding anything to the contrary contained in this Agreement (including this Section 5.14): (i) nothing in this Agreement (including this Section 5.14) shall require any such cooperation to the extent that it would (1) require the Company to pay any commitment or other fees, reimburse any expenses or otherwise incur any liabilities or give any indemnities prior to the Closing, (2) unreasonably interfere with the ongoing business or operations of the Company or any of the Subsidiaries of the Company, (3) require the Company or any of the Subsidiaries of the Company to enter into or approve any agreement or other documentation effective prior to the Closing or agree to any change or modification of any existing agreement or other documentation that would be effective prior to the Closing, (4) require the Company to provide *pro forma* financial statements or *pro forma* adjustments reflecting the Financing or any description of all or any component of the Financing (it being understood that the Company shall use reasonable best efforts to assist in preparation of *pro forma* financial adjustments to the extent otherwise relating to the Company and required by the Financing), (5) require the Company or the Subsidiaries of the Company to provide *pro forma* financial statements or *pro forma* adjustments reflecting transactions contemplated or required hereunder (it being understood that the Company shall use reasonable best efforts to assist in

preparation of *pro forma* financial adjustments to the extent otherwise relating to the Company and required by the Financing), or (6) require the Company, any of the Subsidiaries of the Company or any of their respective boards of directors (or equivalent bodies) to approve or authorize the Financing, and (ii) no action, liability or obligation (including any obligation to pay any commitment or other fees or reimburse any expenses) of the Company, the Subsidiaries of the Company, or any of their respective Representatives under any certificate, agreement, arrangement, document or instrument relating to the Financing shall be effective until the Closing.

(c) Parent shall (i) promptly reimburse the Company for all reasonable and out-of-pocket costs or expenses (including reasonable and documented costs and expenses of counsel and accountants) incurred by the Company the Subsidiaries of the Company and any of its or their Representatives in connection with any cooperation provided for in this Section 5.14, and (ii) indemnify and hold harmless the Company, the Subsidiaries of the Company and any of its and their Representatives against any claim, loss, damage, injury, liability, judgment, award, penalty, fine, Tax, cost (including cost of investigation), expense (including fees and expenses of counsel and accountants) or settlement payment incurred as a result of, or in connection with, any cooperation provided for in this Section 5.14 or the Financing and any information used in connection therewith, unless the Company acted in bad faith or with gross negligence and other than in the case of fraud.

(d) Without limiting the generality of the foregoing, promptly following Parent's request, the Company shall deliver to each of the lenders under the Existing Indebtedness (the "Existing Loan Lenders") a notice (an "Existing Loan Notice") prepared by Parent, in form and substance reasonably acceptable to the Company, notifying each of the Existing Loan Lenders of this Agreement and the contemplated Merger. At Parent's election, the Existing Loan Notice with respect to one or more of the Existing Loan Documents may include a request for a consent, in form and substance reasonably acceptable to the Company (an "Existing Loan Consent"), to (1) the consummation of the Merger and the other transactions contemplated by this Agreement, and (2) certain modifications of (or waivers under or other changes to) the Existing Loan Documents; provided, that no such modifications, waivers or changes shall be effective prior to the Effective Time.

Section 5.15 Fiscal Year. From the date of the receipt of the of the Company Shareholder Approval until the Effective Time, promptly following Parent's request, the Company shall cooperate with Parent to take all actions reasonably requested by Parent to prepare to change the fiscal year of the Company and its Subsidiaries to end on December 31, effective immediately following the Effective Time. Parent shall, promptly upon request by the Company, reimburse the Company for all documented and reasonable out-of-pocket costs incurred by the Company or any of its Subsidiaries in connection with such cooperation under this Section 5.15.

ARTICLE VI

CONDITIONS PRECEDENT

Section 6.1 Conditions to Each Party's Obligation to Effect the Merger. The respective obligations of each party hereto to effect the Closing shall be subject to the satisfaction (or waiver, if permissible under applicable Law) on or prior to the Closing Date of the following conditions:

(a) Company Shareholder Approval. The Company Shareholder Approval shall have been obtained.

(b) Regulatory Approvals. All waiting periods (and any extensions thereof) applicable to the Merger under the HSR Act shall have been terminated or shall have expired and the Required Statutory Approvals shall have been obtained at or prior to the Effective Time (the termination or expiration of such waiting periods and extensions thereof, together with the obtaining of the Required Statutory Approvals, the "Regulatory Approvals").

(c) No Injunctions. No Law enacted, promulgated, issued, entered, amended or enforced by any Governmental Authority shall be in effect enjoining, restraining, preventing or prohibiting consummation of the Merger or making the consummation of the Merger illegal.

Section 6.2 Conditions to Obligations of Parent and Merger Sub. The obligations of Parent and Merger Sub to effect the Closing are further subject to the satisfaction (or waiver, if permissible under applicable Law) on or prior to the Closing Date of the following conditions:

(a) Representations and Warranties. (i) Each of the representations and warranties of the Company set forth in this Agreement (other than the representations and warranties of the Company set forth in Section 3.2(a), Section 3.2(b), Section 3.3(a), Section 3.6(b) and Section 3.19) shall be true and correct (without giving effect to any limitation as to "materiality" or "Company Material Adverse Effect" set forth therein), except where the failure to be true and correct has not had or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect; (ii) each of the representations and warranties of the Company set forth in Section 3.2(a), Section 3.2(b), Section 3.3(a) and Section 3.19 shall be true and correct in all material respects; and (iii) the representations and warranties set forth in Section 3.6(b) shall be true and correct in all respects; in the case of each of clause (i), (ii) and (iii), as of the Effective Time as though made at and as of the Effective Time (except to the extent that such representation and warranty is expressly made as of a specified date, in which case such representation and warranty shall be true and correct as of such specific date).

(b) Performance of Covenants and Agreements of the Company. The Company shall have performed in all material respects all covenants and agreements required to be performed by it under this Agreement at or prior to the Closing Date.

(c) Officer's Certificate. Parent shall have received a certificate signed on behalf of the Company by an executive officer of the Company certifying the satisfaction by the Company of the conditions set forth in Section 6.2(a) and Section 6.2(b).

(d) Absence of Company Material Adverse Effect. Since the date of this Agreement, no circumstance, change, event, development, occurrence or effect that, individually or in the aggregate, has had or would reasonably be expected to have a Company Material Adverse Effect, shall have occurred and be continuing.

(e) Absence of Burdensome Effect. The Regulatory Approvals shall not impose or require any undertakings, terms, conditions, liabilities, obligations, commitments or sanctions, or any structural or remedial actions (including any Remedial Actions), that constitute a Burdensome Condition.

Section 6.3 Conditions to Obligations of the Company. The obligation of the Company to effect the Closing is further subject to the satisfaction (or waiver, if permissible under applicable Law) on or prior to the Closing Date of the following conditions:

(a) Representations and Warranties. The representations and warranties of Parent and Merger Sub set forth in this Agreement shall be true and correct (without giving effect to any limitation as to “materiality” or “Parent Material Adverse Effect” set forth therein) as of the Effective Time with the same effect as though made on and as of the Effective Time (except to the extent that such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall be true and correct as of such earlier date) , except where the failure to be true and correct has not had and would not reasonably be expected to have a Parent Material Adverse Effect.

(b) Performance of Covenants and Agreements of Parent and Merger Sub. Parent and Merger Sub shall have performed in all material respects all covenants and agreements required to be performed by them under this Agreement at or prior to the Closing Date.

(c) Officer’s Certificate. The Company shall have received a certificate signed on behalf of Parent by an executive officer of Parent certifying the satisfaction by Parent and Merger Sub of the conditions set forth in Section 6.3(a) and Section 6.3(b).

Section 6.4 Frustration of Closing Conditions. None of the Company, Parent or Merger Sub may rely on the failure of any condition set forth in Section 6.1, Section 6.2 or Section 6.3, as the case may be, to be satisfied if such failure was caused by such party’s failure to use its reasonable best efforts to consummate the Merger and the other Transactions or due to the failure of such party to perform any of its other obligations under this Agreement.

ARTICLE VII **TERMINATION**

Section 7.1 Termination. This Agreement may be terminated and the Transactions abandoned at any time prior to the Effective Time:

- (a) by the mutual written consent of the Company and Parent; or
- (b) by either of the Company or Parent:

(i) if the Merger shall not have been consummated on or before October 31, 2016 (the “End Date”); provided that if, prior to the End Date, all of the conditions to the Closing set forth in Article VI have been satisfied or waived, as applicable, or shall then be capable of being satisfied (except for any condition set forth in Section 6.1(b), Section 6.1(c) or Section 6.2(e)), either the Company or Parent may, prior to 5:00 p.m. Charlotte, North Carolina time on the End Date, extend the End Date to a date that is not later than six (6) months after the End Date (and if so extended, such later date shall then, for all purposes under this Agreement, be the “End Date”); provided, further, that neither the Company nor Parent may terminate this Agreement or extend the End Date pursuant to this Section 7.1(b)(i) if it (or, in the case of Parent, Merger Sub) is in breach of any of its covenants or agreements and such breach has primarily caused or resulted in either (1) the failure to satisfy the conditions to its obligations to consummate the Closing set forth in Article VI prior to the End Date or (2) the failure of the Closing to have occurred prior to the End Date;

(ii) if any Law having the effect set forth in Section 6.1(c) shall not have been reversed, stayed, enjoined, set aside, annulled or suspended and shall be in full force and effect and, in the case of any ruling, decree, judgment, injunction or order of any Governmental Authority (each, a “Restraint”), shall have become final and non-appealable; provided, however, that the right to terminate this Agreement under this Section 7.1(b)(ii) shall not be available to a party if the issuance of such final, non-appealable Restraint was primarily due to the failure of such party to perform any of its obligations under this Agreement, including under Section 5.4;

(iii) the Company Shareholder Approval is not obtained at the Company Shareholders Meeting duly convened (unless such Company Shareholders Meeting has been adjourned, in which case at the final adjournment thereof); or

(c) by Parent:

(i) if the Company shall have breached or failed to perform any of its representations, warranties, covenants or agreements set forth in this Agreement, which breach or failure to perform (A) would give rise to the failure of a condition set forth in Section 6.2(a) or Section 6.2(b), respectively, and (B) cannot be cured by the Company by the End Date or, if capable of being cured, shall not have been cured within thirty (30) calendar days following receipt of written notice from the Parent stating the Parent’s intention to terminate this Agreement pursuant to this Section 7.1(c)(i) and the basis for such termination; provided that Parent shall not have the right to terminate this Agreement pursuant to this Section 7.1(c)(i) if it or Merger Sub is then in material breach of any of its representations, warranties, covenants or other agreements hereunder; or

(ii) if the Company Board (or a duly authorized committee thereof) shall have effected a Company Adverse Recommendation Change; provided, however, that Parent shall not have the right to terminate this Agreement under this Section 7.1(c)(ii) if the Company Shareholder Approval shall have been obtained; or

(d) by the Company:

(i) if Parent or Merger Sub shall have breached or failed to perform any of its representations, warranties, covenants or agreements set forth in this Agreement, which breach or failure to perform (A) would give rise to the failure of a condition set forth in Section 6.3(a) or Section 6.3(b), respectively, and (B) cannot be cured by Parent or Merger Sub by the End Date or, if capable of being cured, shall not have been cured within thirty (30) calendar days following receipt of written notice from the Company stating the Company's intention to terminate this Agreement pursuant to this Section 7.1(d)(i) and the basis for such termination; provided that, Company shall not have the right to terminate this Agreement pursuant to this Section 7.1(d)(i) if it is then in material breach of any of its representations, warranties, covenants or other agreements hereunder; or

(ii) prior to the receipt of the Company Shareholder Approval, if the Company Board shall have effected a Company Adverse Recommendation Change with respect to a Superior Proposal in accordance with Section 5.3 and shall have approved, and concurrently with the termination hereunder, the Company shall have entered into, a Company Acquisition Agreement providing for the implementation of such Superior Proposal; provided that such termination pursuant to this Section 7.1(d)(ii) shall not be effective and the Company shall not enter into any such Company Acquisition Agreement, unless the Company has paid the Company Termination Fee to Parent or causes the Company Termination Fee to be paid to Parent substantially concurrently with such termination in accordance with Section 7.3; (provided that Parent shall have provided wiring instructions for such payment or, if not, then such payment shall be paid promptly following delivery of such instructions).

Section 7.2 Effect of Termination. In the event of the termination of this Agreement as provided in Section 7.1, written notice thereof shall be given to the other party or parties, specifying the provision hereof pursuant to which such termination is made, and this Agreement shall forthwith become null and void and have no further force or effect (other than Section 5.6(b), Section 7.2 and Section 7.3, and Article VIII, all of which shall survive termination of this Agreement), and there shall be no liability on the part of Parent, Merger Sub or the Company or their respective directors, officers, other Representatives or Affiliates, whether arising before or after such termination, based on, arising out of or relating to this Agreement or the negotiation, execution, performance or subject matter hereof (whether in contract or in tort or otherwise, or whether at law (including at common law or by statute) or in equity); provided, however, that, subject to Section 7.3 (including the limitations on liability contained therein), no party shall be relieved or released from any liabilities or damages arising out of any willful and material breach of this Agreement prior to such termination that gave rise to the failure of a condition set forth in Article VI. The Confidentiality Agreement shall survive in accordance with its terms following termination of this Agreement. Without limiting the meaning of a willful and material breach, the parties acknowledge and agree that any failure by a party hereto to consummate the Merger and the other transactions contemplated hereby after the applicable conditions to the Closing set forth in Article VI have been satisfied or waived (except for those conditions that by their nature are to be satisfied at the Closing, which conditions would be capable of being satisfied at the time of such failure to consummate the Merger) shall constitute a willful and material breach of this Agreement.

Section 7.3 Company Termination Fee; Parent Termination Fee.

(a) In the event that this Agreement is terminated by the Company pursuant to Section 7.1(d)(ii), the Company shall pay or cause to be paid as directed by Parent the Company Termination Fee substantially concurrently with the termination of this Agreement.

(b) In the event that this Agreement is terminated by Parent pursuant to Section 7.1(c)(ii), the Company shall pay or cause to be paid as directed by Parent the Company Termination Fee within two (2) Business Days of such termination.

(c) In the event that (i) this Agreement is terminated (A) by Parent or the Company pursuant to Section 7.1(b)(i) or Section 7.1(b)(iii) or (B) by Parent pursuant to Section 7.1(c)(i) (solely with respect to a breach or failure to perform a covenant), (ii) a Takeover Proposal shall have been publicly disclosed or made to the Company after the date hereof (x) in the case of termination pursuant to Section 7.1(b)(i) or Section 7.1(c)(i), prior to the date of such termination, or (y) in the case of termination pursuant to Section 7.1(b)(iii), prior to the date of the Company Shareholder Meeting, and (iii) within twelve (12) months of the date this Agreement is terminated, the Company enters into a Company Acquisition Agreement which is subsequently consummated or consummates a Takeover Proposal (provided that for purposes of clause (iii) of this Section 7.3(c), the references to “15%” in the definition of Takeover Proposal shall be deemed to be references to “50%”), then the Company shall pay or cause to be paid as directed by Parent the Company Termination Fee on the date of consummation of such transaction.

(d) For purposes of this Agreement, “Company Termination Fee” shall mean an amount equal to \$125,000,000 in cash.

(e) Parent shall pay to the Company a fee of \$250,000,000 in cash (the “Parent Termination Fee”) if each of the following clauses (i), (ii) and (iii) of this Section 7.3(e) is true:

(i) this Agreement is terminated by Parent or the Company:

(A) pursuant to Section 7.1(b)(i) and, at the time of such termination, any of the conditions set forth in Section 6.1(b) or Section 6.1(c) (in the case of Section 6.1(c), if and only if the applicable Restraint giving rise to termination arises in connection with the Regulatory Approvals), shall have not been satisfied; or

(B) pursuant to Section 7.1(b)(ii), (if, and only if, the applicable Restraint giving rise to such termination arises in connection with the Regulatory Approvals); or

(ii) this Agreement is terminated by the Company pursuant to Section 7.1(d)(i) because of a failure by Parent or Merger Sub to comply with its obligations under Section 5.4; and

(iii) at the time of such termination, the conditions to the Closing set forth in Section 6.1(a) and Section 6.2 (other than Section 6.2(c) and Section 6.2(e)) shall have been satisfied or waived (except for any such conditions that have not been satisfied as a result of a breach by Parent or Merger Sub of its respective obligations under this Agreement).

Parent shall pay the Parent Termination Fee to the Company (to an account designated in writing by the Company) no later than three (3) Business Days after the date of the applicable termination.

(f) Notwithstanding the foregoing, in no event shall the Company be required to pay the Company Termination Fee on more than one occasion. Notwithstanding anything to the contrary in this Agreement, the parties agree that if this Agreement is terminated under circumstances in which the Company is obligated to pay the Company Termination Fee under this Section 7.3 and the Company Termination Fee is paid, the payment of the Company Termination Fee shall be the sole and exclusive remedy available to Parent and Merger Sub with respect to this Agreement and the Transactions, and, upon payment of the Company Termination Fee pursuant to this Section 7.3, the Company (and the Company's Affiliates and its and their respective directors, officers, employees, shareholders and other Representatives) shall have no further liability with respect to this Agreement or the Transactions to Parent, Merger Sub or any of their respective Affiliates or Representatives; provided, that regardless of whether the Company pays or is obligated to pay the Company Termination Fee, nothing in this Section 7.3(f) shall release the Company from liability for a willful and material breach of this Agreement. In no event shall Parent be required to pay the Parent Termination Fee on more than one occasion. Notwithstanding anything to the contrary in this Agreement, the parties agree that if this Agreement is terminated under circumstances in which Parent is obligated to pay the Parent Termination Fee under this Section 7.3 and the Parent Termination Fee is paid, the payment of the Parent Termination Fee shall be the sole and exclusive remedy available to the Company with respect to this Agreement and the Transactions, and, upon payment of the Parent Termination Fee pursuant to this Section 7.3, Parent, Merger Sub and the Persons providing the Financing (the "Financing Parties") (and Parent's, Merger Sub's and the Financing Parties' Affiliates and their respective directors, officers, employees, shareholders and other Representatives) shall have no further liability with respect to this Agreement or the Transactions to the Company or any of their respective Affiliates or Representatives; provided, that regardless of whether Parent pays or is obligated to pay the Parent Termination Fee, nothing in this Section 7.3(f) shall release Parent from liability for a willful and material breach of this Agreement.

(g) Any amount that becomes payable pursuant to Section 7.3 shall be paid by wire transfer of immediately available funds to an account designated by Parent or the Company, as applicable, and shall be reduced by any amounts required to be deducted or withheld therefrom under applicable Law in respect of Taxes.

ARTICLE VIII **MISCELLANEOUS**

Section 8.1 No Survival of Representations and Warranties. None of the representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Effective Time and all rights, claims and causes of action (whether

in contract or in tort or otherwise, or whether at Law (including at common law or by statute) or in equity) with respect thereto shall terminate at, the Effective Time. This Section 8.1 shall not limit any covenant or agreement of the parties that by its terms contemplates performance in whole or in part after the Effective Time. The Confidentiality Agreement shall (a) survive termination of this Agreement in accordance with its terms and (b) terminate as of the Effective Time.

Section 8.2 Fees and Expenses. Except as otherwise provided in Section 5.8 and Section 7.3, whether or not the Transactions are consummated, all fees and expenses incurred in connection with the Transactions and this Agreement shall be paid by the party incurring or required to incur such fees or expenses.

Section 8.3 Amendment or Supplement. At any time prior to the Effective Time, this Agreement may be amended or supplemented in any and all respects, whether before or after receipt of the Company Shareholder Approval, by written agreement of the parties hereto and delivered by duly authorized officers of the respective parties; provided, however, that (a) following receipt of the Company Shareholder Approval, there shall be no amendment or change to the provisions hereof which by Law would require further approval by the shareholders of the Company without such approval and (b) after the Effective Time, this Agreement may not be amended or supplemented in any respect.

Section 8.4 Waiver. At any time prior to the Effective Time, any party may, subject to applicable Law, (a) waive any inaccuracies in the representations and warranties of any other party hereto, (b) extend the time for the performance of any of the obligations or acts of any other party hereto or (c) waive compliance by the other party with any of the agreements contained herein or, except as otherwise provided herein, waive any of such party's conditions. Notwithstanding the foregoing, no failure or delay by the Company, Parent or Merger Sub in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right hereunder. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

Section 8.5 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, by operation of Law or otherwise, by any of the parties without the prior written consent of the other parties. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns. Any purported assignment not permitted under this Section shall be null and void.

Section 8.6 Counterparts. This Agreement may be executed in counterparts (each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement) and shall become effective when one or more counterparts have been signed by each of the parties and delivered (by electronic communication, facsimile or otherwise) to the other parties.

Section 8.7 Entire Agreement; Third-Party Beneficiaries. This Agreement, including the Company Disclosure Schedule, and the exhibits hereto, together with the other

instruments referred to herein, including the Confidentiality Agreement (a) constitute the entire agreement, and supersede all other prior agreements and understandings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof and thereof and (b) except for (i) the rights of the Company's shareholders and holders of Company RSUs and Company Performance Share Awards to receive the Merger Consideration and payments pursuant to Article II, respectively, after the Effective Time, (ii) the right of the Company, on behalf of its shareholders, to pursue damages in the event of Parent or Merger Sub's willful and material breach of this Agreement, in which event the damages recoverable by the Company for itself and on behalf of its shareholders (without duplication) shall be determined by reference to the total amount that would have been recoverable by the holders of the Company Common Stock (including, "lost premium" and time value of money) if all such holders brought an action against Parent and Merger Sub and were recognized as intended third party beneficiaries hereunder, which right is hereby acknowledged and agreed by Parent and Merger Sub, and (iii) the provisions of Section 5.8, is not intended to and shall not confer upon any Person other than the parties hereto any rights or remedies hereunder. Each of Parent, Merger Sub, and the Company hereby acknowledges and agrees that, except for the representations and warranties contained in this Agreement (as modified by the Company Disclosure Schedule, in the case of the representations and warranties of the Company), none of them, or any of their respective Affiliates or Representatives, or any other Person acting on behalf of any of them, makes, and none of them or any of their respective Representatives relies on or has been induced by any other representations, warranties, information (including estimates, projections, forecasts and other forward-looking information, business plans and cost-related plan information) or inducements, and each of the parties to this Agreement, on behalf of itself, its Affiliates, and its and their respective Representatives, hereby disclaims any other representations, warranties or inducements, express or implied, as to the accuracy or completeness of any information, made by, or made available by, itself, any of its Affiliates or any of its or their respective Representatives, with respect to, or in connection with, the negotiation, execution or delivery of this Agreement or the Transactions contemplated hereby, notwithstanding the delivery or disclosure to the other or the other's Representatives of any documentation or other information with respect to any one or more of the foregoing.

Section 8.8 Governing Law; Jurisdiction.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any choice or conflict of laws provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware, except that matters related to the fiduciary obligations of the Company Board shall be governed by the laws of the State of North Carolina.

(b) Each of the parties (i) irrevocably submits itself to the personal jurisdiction of each state or federal court sitting in the State of Delaware, as well as to the jurisdiction of all courts to which an appeal may be taken from such courts, in any suit, action or proceeding arising out of or relating to this Agreement or any of the transactions contemplated herein, (ii) agrees that every such suit, action or proceeding shall be brought, heard and determined exclusively in the Court of Chancery of the State of Delaware (provided that, in the event subject matter jurisdiction is unavailable in or declined by the Court of Chancery, then all

such claims shall be brought, heard and determined exclusively in any other state or federal court sitting in the State of Delaware), (iii) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from such court, (iv) agrees not to bring any suit, action or proceeding arising out of or relating to this Agreement or any of the transactions contemplated herein in any other court, and (v) waives any defense of inconvenient forum to the maintenance of any suit, action or proceeding so brought.

(c) Each party irrevocably consents to the service of process outside the territorial jurisdiction of the courts referred to in this Section 8.8 in any such action or proceeding by mailing copies thereof by registered or certified United States mail, postage prepaid, return receipt requested, to its address as specified in or pursuant to this Article VIII. However, the foregoing shall not limit the right of a party to effect service of process on the other party by any other legally available method.

Section 8.9 Specific Enforcement.

(a) The parties agree that immediate, extensive and irreparable damage would occur for which monetary damages would not be an adequate remedy in the event that any of the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached. Accordingly, the parties agree that, if for any reason Parent, Merger Sub or the Company shall have failed to perform its obligations under this Agreement or otherwise breached this Agreement, then the party seeking to enforce this Agreement against such nonperforming party under this Agreement shall be entitled to specific performance and the issuance of immediate injunctive and other equitable relief without the necessity of proving the inadequacy of money damages as a remedy, and the parties further agree to waive any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief, this being in addition to and not in limitation of any other remedy to which they are entitled at Law or in equity. If any party hereto brings any Claim to enforce specifically the performance of the terms and provisions of this Agreement when expressly available to such party pursuant to the terms of this Agreement, then, notwithstanding anything to the contrary herein, the End Date shall automatically be extended by the period of time between the commencement of such Claim and ten (10) Business Days following the date on which such Claim is fully and finally resolved.

Section 8.10 WAIVER OF JURY TRIAL. Each party hereto hereby waives, to the fullest extent permitted by applicable Law, any right it may have to a trial by jury in respect of any suit, action or other proceeding arising out of this Agreement or the Transactions. Each Party (a) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such party would not, in the event of any action, suit or proceeding, seek to enforce the foregoing waiver and (b) acknowledges that it and the other Parties have been induced to enter into this Agreement by, among other things, the mutual waiver and certifications in this Section 8.10.

Section 8.11 Notices. All notices, requests and other communications to any party hereunder shall be in writing and shall be deemed given if delivered personally, facsimiled (which is confirmed) or sent by overnight courier (providing proof of delivery) to the parties at the following addresses:

If to Parent or Merger Sub, to:

Duke Energy Corporation
550 South Tryon Street, DEC-45A
Charlotte, North Carolina 28202
Attention: Greer Mendelow, Deputy General Counsel
Facsimile: (980) 373-9962

with a copy (which shall not constitute notice) to:

Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603
Attention: Thomas A. Cole
Imad I. Qasim
Facsimile: (312) 853-7036

If to the Company, to:

Piedmont Natural Gas Company, Inc.
4720 Piedmont Row Drive
Charlotte, North Carolina 28210
Attention: Thomas E. Skains, Jane R. Lewis-Raymond
Facsimile: (704) 731-4099

with a copy (which shall not constitute notice) to:

Kirkland & Ellis LLP
655 Fifteenth Street, N.W., Suite 1200
Washington, D.C. 20005
Attention: George P. Stamas
Facsimile: (202) 879-5200

or such other address or facsimile number as such party may hereafter specify by like notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5 p.m. in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt.

Section 8.12 Severability. If any term or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, provisions and conditions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable law in an acceptable manner to the end that the Transactions are fulfilled to the extent possible.

Section 8.13 Definitions. As used in this Agreement, the following terms shall have the meanings ascribed to them below:

“Acceptable Confidentiality Agreement” shall mean a confidentiality agreement (which need not prohibit the making of a Takeover Proposal) that contains provisions that are not materially less favorable in the aggregate to the Company than those contained in the Confidentiality Agreement.

“Advisory Board” shall have the meaning set forth in Section 1.7.

“Affiliate” shall mean, as to any Person, any other Person that, directly or indirectly, controls, or is controlled by, or is under common control with, such Person. For this purpose, “control” (including, with its correlative meanings, “controlled by” and “under common control with”) shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.

“Agreement” shall have the meaning set forth in the Preamble.

“Annual Incentive Plans” shall mean the Company’s Short-Term Incentive Plan and the Company’s Mission, Values and Performance Plan.

“Antitrust Laws” shall have the meaning set forth in Section 5.4(a).

“Applicable Retired Company Employee” shall mean an individual who was employed by the Company or any of its Subsidiaries (i) at any time during the performance period under the Company Stock Plan, Annual Incentive Plans, and any other applicable bonus plan during which the Effective Time occurs, or (ii) at any time during the performance period under the Company Stock Plan, Annual Incentive Plans, and any other applicable bonus plan that was completed prior to the Effective Time, but with respect to which Company Performance Share Awards have not been settled or bonuses have not been paid, as applicable, as of the Effective Time, but who in each case is no longer employed by the Company or any of its Subsidiaries as of the Effective Time due to such individual’s retirement in accordance with Company policy.

“Articles of Merger” shall have the meaning set forth in Section 1.3.

“Balance Sheet Date” shall have the meaning set forth in Section 3.5(d).

“Bankruptcy and Equity Exception” shall have the meaning set forth in Section 3.3(a).

“Book-Entry Shares” shall have the meaning set forth in Section 2.1(c).

“Burdensome Condition” shall have the meaning set forth in Section 5.4(g).

“Business Day” shall mean a day except a Saturday, a Sunday or other day on which the SEC or banks in the cities of Charlotte, North Carolina or New York, New York are authorized or required by Law to be closed.

“Certificate” shall have the meaning set forth in Section 2.1(c).

“Claim” shall have the meaning set forth in Section 5.8(a).

“Clayton Act” shall mean the Clayton Act of 1914.

“Closing” shall have the meaning set forth in Section 1.2.

“Closing Date” shall have the meaning set forth in Section 1.2.

“Code” shall have the meaning set forth in Section 2.2(g).

“Company” shall have the meaning set forth in the Preamble.

“Company Adverse Recommendation Change” shall have the meaning set forth in Section 5.3(c).

“Company Acquisition Agreement” shall have the meaning set forth in Section 5.3(c).

“Company Board” shall have the meaning set forth in the recitals.

“Company Board Recommendation” shall have the meaning set forth in Section 3.3(a).

“Company Charter Documents” shall have the meaning set forth in Section 1.5.

“Company Common Stock” shall have the meaning set forth in Section 2.1.

“Company Disclosure Schedule” shall have the meaning set forth in the Article III Preamble.

“Company Employee” shall have the meaning set forth in Section 5.11(a).

“Company ESPP” shall mean the Company Employee Stock Purchase Plan, amended and restated as of April 1, 2009, as amended from time to time.

“Company Financial Advisor” shall have the meaning set forth in Section 3.18.

“Company Intervening Event” shall have the meaning set forth in Section 5.3(h).

“Company Joint Venture” shall mean any Joint Venture of the Company.

“Company Material Adverse Effect” shall mean any circumstance, change, event, development, occurrence or effect that (a) has, individually or in the aggregate, a material adverse effect on the business, properties, assets, results of operations or financial condition of the Company and its Subsidiaries taken as a whole; provided that no circumstance, change, event, development, occurrence or effect, directly or indirectly, arising out of, resulting from or relating to the following, individually or in the aggregate, shall constitute or be taken into account in determining whether a Company Material Adverse Effect has occurred: (i) any condition, change, event, occurrence or effect in any of the industries or markets in which the

Company or its Subsidiaries operates, including natural gas distribution or transmission industries (including, in each case, any changes in the operations thereof or with respect to system-wide changes or developments in natural gas transmission or distribution systems); (ii) any enactment of, change in, or change in interpretation of, any Law or GAAP or governmental policy; (iii) general economic, regulatory or political conditions (or changes therein) or conditions (or changes therein) in the financial, credit or securities markets (including changes in interest or currency exchange rates) in any country or region in which the Company or any of its Subsidiaries conducts business; (iv) any change in the price of natural gas or any other raw material, mineral or commodity used or sold by the Company or any of its Subsidiaries or in the cost of hedges relating to such prices, any change in the price of interstate natural gas transportation services or any change in customer usage patterns or customer selection of third-party suppliers for natural gas; (v) any acts of God, natural disasters, terrorism, armed hostilities, sabotage, war or any escalation or worsening of acts of terrorism, armed hostilities or war; (vi) the announcement, pendency of or performance of the Transactions, including by reason of the identity of Parent or any communication by Parent regarding the plans or intentions of Parent with respect to the conduct of the business of the Company or any of its Subsidiaries and including the impact of any of the foregoing on any relationships, contractual or otherwise, with customers, suppliers, distributors, collaboration partners, joint venture partners, employees or regulators; (vii) any action taken by the Company or any of its Subsidiaries that is required or expressly permitted by the terms of this Agreement or with the consent or at the direction of Parent or Merger Sub; (viii) any change in the market price, or change in trading volume, of the capital stock of the Company (it being understood that the facts or occurrences giving rise or contributing to such change shall be taken into account in determining whether there has been a Company Material Adverse Effect); (ix) any failure by the Company or its Subsidiaries to meet internal, analysts' or other earnings estimates or financial projections or forecasts for any period, or any changes in credit ratings and any changes in any analysts recommendations or ratings with respect to the Company or any of its Subsidiaries (it being understood that the underlying facts or occurrences giving rise to such failure shall be taken into account in determining whether there has been a Company Material Adverse Effect if not otherwise falling within any of the exceptions set forth in clauses (a)(i) through (a)(viii) or (a)(x) through (a)(xi) of this proviso); (x) any fact, circumstance, effect, change, event or development that results from any shutdown or suspension of operations at any third-party facilities from which the Company or any of its Subsidiaries obtains natural gas (excluding the Company Joint Ventures); (xi) any pending, initiated or threatened Transaction Litigation, in each case to the extent, in each of clauses (i) through (v), that such change, event, occurrence or effect does not affect the Company and its Subsidiaries, taken as a whole, in a materially disproportionate manner relative to other similarly situated participants in the business and industries in which the Company and its Subsidiaries operate; or (b) would, individually or in the aggregate, reasonably be expected to prevent or materially impede, interfere with or delay the consummation by the Company of the Transactions.

“Company Material Contract” shall have the meaning set forth in Section 3.15(a).

“Company Pension Plan” shall have the meaning set forth in Section 3.10.

“Company Performance Share Awards” means all performance share awards payable in shares of Company Common Stock subject to performance-based vesting or delivery requirements, whether granted under a Company Stock Plan or otherwise.

“Company Permits” shall have the meaning set forth in Section 3.8.

“Company Plans” shall mean (a) each “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) that the Company or any of its Subsidiaries sponsors, participates in, is a party or contributes to, or with respect to which the Company or any of its Subsidiaries could reasonably be expected to have any material liability and (b) each other employee benefit plan, program or arrangement, including without limitation, any stock option, stock purchase, stock appreciation right or other stock or stock-based incentive plan, cash bonus or incentive compensation arrangement, retirement or deferred compensation plan, profit sharing plan, unemployment or severance compensation plan, that the Company or any of its Subsidiaries sponsors, participates in, is a party or contributes to, or with respect to which the Company or any of its Subsidiaries could reasonably be expected to have any material liability.

“Company Preferred Stock” shall have the meaning set forth in Section 3.2.

“Company Retired Employees” shall have the meaning set forth in Section 5.11(b).

“Company Risk Management Guidelines” shall have the meaning set forth in Section 5.1(a)(xviii).

“Company RSUs” means any share unit payable in shares of Company Common Stock or whose value is determined with reference to the value of shares of Company Common Stock, whether granted under a Company Stock Plan or otherwise.

“Company SEC Documents” shall have the meaning set forth in Section 3.5(a).

“Company Stock Plan” shall mean the Company’s Incentive Compensation Plan.

“Company Shareholder Approval” shall have the meaning set forth in Section 3.19.

“Company Shareholders Meeting” shall have the meaning set forth in Section 5.2(b).

“Company Termination Fee” shall have the meaning set forth in Section 7.3(d).

“Company’s Retiree Health Plan” shall have the meaning set forth in Section 5.11(b).

“Confidentiality Agreement” shall have the meaning set forth in Section 5.6(a).

“Continuation Period” shall have the meaning set forth in Section 5.11(a).

“Contract” means any loan or credit agreement, debenture, note, bond, mortgage, indenture, deed of trust, lease, license, contract or other agreement.

“Effective Time” shall have the meaning set forth in Section 1.3.

“Eligible Retirees” shall have the meaning set forth in Section 5.11(b).

“Encumbrances” shall mean any mortgage, deed of trust, lease, license, restriction, hypothecation, option to purchase or lease or otherwise acquire any interest, right of first refusal or offer, conditional sales or other title retention agreement, adverse claim of ownership or use, easement, encroachment, right of way or other title defect, or encumbrance of any kind or nature.

“End Date” shall have the meaning set forth in Section 7.1(b)(i).

“Environmental Laws” means all Laws relating to workplace safety or health, safety in respect of the transportation, storage and delivery of hazardous liquids and natural gas, and pollution or protection of the environment and natural resources, including without limitation, Laws (including common law) relating to the exposure to, or Releases or threatened Releases of, natural gas, asbestos and any hazardous or toxic materials, substances or wastes, as the foregoing are enacted or in effect on or prior to Closing.

“Equity Award Conversion Ratio” means the quotient of (i) the Merger Consideration divided by (ii) the average of the volume weighted averages of the trading prices of Parent Shares on the NYSE, on each of the five (5) consecutive trading days ending on (and including) the trading day that is two (2) trading days prior to the Closing Date.

“Equity Securities” shall have the meaning set forth in Section 3.2.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means each corporation or trade or business that would be treated as a single employer with the Company pursuant to Section 4001(b)(1) of ERISA.

“Exchange Act” shall have the meaning set forth in Section 3.4.

“Existing Indebtedness” means the Indebtedness evidenced by the Existing Loan Documents.

“Existing Loan Consent” shall have the meaning set forth in Section 5.14(d).

“Existing Loan Documents” means the Contracts (and all amendments thereto) to which the Company or any of its Subsidiaries is a party or by which it is bound or to which any of their respective assets are subject (other than any of the foregoing solely between the Company and any of its wholly owned Subsidiaries or solely between any of the Company’s wholly owned Subsidiaries) that evidences Indebtedness for borrowed money in excess of \$5,000,000 of the Company or any of its Subsidiaries, whether unsecured or secured.

“Existing Loan Lenders” shall have the meaning set forth in Section 5.14(d).

“Existing Loan Notice” shall have the meaning set forth in Section 5.14(d).

“Federal Trade Commission Act” shall mean the Federal Trade Commission Act of 1914.

“Financing” shall have the meaning set forth in Section 5.14(a).

“Financing Parties” shall have the meaning set forth in Section 7.3(f).

“GAAP” shall mean generally accepted accounting principles in the United States.

“Governmental Authority” shall mean any federal, state or local, domestic, foreign or multinational government, court, regulatory or administrative agency, commission, authority or other governmental instrumentality.

“Hazardous Materials” means any materials or substances or wastes which are limited, controlled or otherwise regulated under, or as to which liability or standards of conduct may be imposed under any Environmental Law.

“HSR Act” shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

“Indebtedness” shall mean, with respect to any Person, without duplication, (a) all obligations of such Person for borrowed money (other than intercompany indebtedness), (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person evidenced by letters of credit, bankers’ acceptances or similar facilities to the extent drawn upon by the counterparty thereto, (d) all capitalized lease obligations of such Person and (e) all guarantees or other assumptions of liability for any of the foregoing.

“Indemnitee(s)” shall have the meaning set forth in Section 5.8(a).

“Intellectual Property” shall mean all intellectual property and industrial property rights of any kind or nature to the extent recognized in any and all jurisdictions throughout the world, including all (a) patents all related continuations, continuations-in-part, divisionals, reissues, reexaminations, substitutions, and extensions thereof, and pending applications for any of the foregoing, (b) registered and unregistered trademarks, trade names, service marks, logos, corporate names, internet domain names, and any applications for registration of any of the foregoing, together with all goodwill associated with each of the foregoing, (c) registered and unregistered copyrights and works of authorship, including copyrights in computer software, mask works and databases, and any applications for registration of any of the foregoing, and (d) trade secrets and other proprietary rights in know-how, customer lists, databases, technical information, invention disclosures, research and development, computer software, data, formulas, algorithms, methods, systems, processes and technology.

“IRS” means the U.S. Internal Revenue Service.

“Joint Venture” of a Person shall mean any Person that is not a Subsidiary of such first Person, in which such first Person owns directly or indirectly an equity interest.

“Knowledge” shall mean, (a) in the case of the Company, the actual knowledge, as of the date of this Agreement, of the individuals listed on Section 8.13 of the Company Disclosure Schedule and (b) in the case of Parent and Merger Sub, the actual knowledge, as of the date of this Agreement, of Patricia C. Smith and Julia S. Janson.

“Laws” shall have the meaning set forth in Section 3.8.

“Liens” shall mean any pledges, liens, charges, Encumbrances, options to purchase or lease or otherwise acquire any interest, and security interests of any kind or nature whatsoever.

“LTIP Target Amount” shall have the meaning set forth in Section 5.11(a).

“Merger” shall have the meaning set forth in the recitals.

“Merger Consideration” shall have the meaning set forth in Section 2.1(c).

“Merger Sub” shall have the meaning set forth in the Preamble.

“NCBCA” shall have the meaning set forth in the recitals.

“NCUC” shall have the meaning set forth in Section 3.5(e).

“New Plans” shall have the meaning set forth in Section 5.11(b).

“Notice of Recommendation Change” shall have the meaning set forth in Section 5.3(d).

“NYSE” shall mean the New York Stock Exchange.

“Old Plans” shall have the meaning set forth in Section 5.11(b).

“Parent” shall have the meaning set forth in the Preamble.

“Parent Board” shall mean the board of directors of Parent.

“Parent Material Adverse Effect” shall mean any change, event, occurrence or effect that, individually or in the aggregate, has had or would reasonably be expected to have a material and adverse effect on the ability of Parent or Merger Sub to consummate, or that would reasonably be expected to prevent or materially impede, interfere with or delay the consummation by Parent or Merger Sub of the Transactions.

“Parent RSU Award” shall have the meaning set forth in Section 2.3(c).

“Parent RSU Award Recipient” shall have the meaning set forth in Section 2.3(c).

“Parent RSU Award Vesting Date” shall have the meaning set forth in Section 2.3(c).

“Parent Shares” means shares of Parent common stock, par value \$0.001 per share.

“Parent Termination Fee” shall have the meaning set forth in Section 7.3(e).

“Paying Agent” shall have the meaning set forth in Section 2.2(a).

“Payroll Deduction Period” shall have the meaning set forth in Section 2.4.

“Permitted Encumbrances” shall mean (a) zoning, building codes and other state and federal land use Laws regulating the use or occupancy of such real property or the activities conducted thereon which are imposed by any Governmental Authority having jurisdiction over such real property and (b) easements, rights-of-way, encroachments, restrictions, covenants, conditions and other similar Encumbrances that (i) are disclosed in the public records, (ii) would be set forth in a title policy, title report or survey with respect to the applicable real property or (iii) individually or in the aggregate, (A) are not substantial in character, amount or extent in relation to the applicable real property and (B) do not materially and adversely impact the Company’s current or contemplated use, utility or value of the applicable real property or otherwise materially and adversely impair the Company’s present or contemplated business operations at such location.

“Permitted Liens” shall mean (a) statutory Liens for Taxes, assessments or other charges by Governmental Authorities not yet due and payable or the amount or validity of which is being contested in good faith and by appropriate proceedings, (b) mechanics’, materialmen’s, carriers’, workmen’s, warehouseman’s, repairmen’s, landlords’ and similar Liens granted or which arise in the ordinary course of business, (c) Liens reflected in the Company SEC Documents, (d) Permitted Encumbrances, (e) Liens permitted under or pursuant to any Contracts relating to Indebtedness and (f) such other Liens that would not have a Company Material Adverse Effect.

“Person” means an individual, corporation, limited liability company, partnership, association, trust, unincorporated organization, other entity or group (as defined in the Exchange Act), including a Governmental Authority.

“Proxy Statement” shall have the meaning set forth in Section 3.4.

“Regulatory Filings” shall have the meaning set forth in Section 3.5(e).

“Release” means any release, spill, emission, discharge, leaking, pumping, injection, deposit, disposal, dispersal, leaching or migration into the indoor or outdoor environment (including, without limitation, ambient air, surface water, groundwater and surface or subsurface strata) or into or out of any property, including the migration of released Hazardous Materials through or in the soil, surface water or groundwater.

“Regulatory Approvals” shall have the meaning set forth in Section 6.1(b).

“Remedial Action” shall have the meaning set forth in Section 5.4(d).

“Representatives” means, with respect to any Person, the professional (including financial) advisors, attorneys, accountants, consultants or other representatives (acting in such capacity) retained by such Person or any of its controlled Affiliates, together with directors, officers, employees, agents and representatives of such Person and its Subsidiaries.

“Required Statutory Approvals” shall have the meaning set forth in Section 3.4.

“Restraint” shall have the meaning set forth in Section 7.1(b)(ii).

“Sarbanes-Oxley Act” shall have the meaning set forth in Section 3.5(a).

“SEC” means the U.S. Securities and Exchange Commission.

“Securities Act” shall have the meaning set forth in Section 3.1(b).

“Sherman Act” means the Sherman Antitrust Act of 1890.

“Significant Subsidiary” shall have the meaning set forth in Section 3.1(b).

“Subsidiary” when used with respect to any party, shall mean any corporation, limited liability company, partnership, association, trust or other entity of which securities or other ownership interests representing more than 50% of the equity and more than 50% of the ordinary voting power (or, in the case of a limited partnership, more than 50% of the general partnership interests) are, as of such date, owned by such party or one or more Subsidiaries of such party or by such party and one or more Subsidiaries of such party. For the avoidance of doubt, the Company Joint Ventures are not Subsidiaries of the Company.

“Superior Proposal” shall have the meaning set forth in Section 5.3(g).

“Surviving Corporation” shall have the meaning set forth in Section 1.1.

“Systems” shall have the meaning set forth in Section 3.11.

“Takeover Statute” shall have the meaning set forth in Section 3.13.

“Takeover Proposal” shall have the meaning set forth in Section 5.3(f).

“Tax Returns” shall have the meaning set forth in Section 3.9(j).

“Taxes” shall have the meaning set forth in Section 3.9(j).

“Transaction Litigation” shall have the meaning set forth in Section 5.9.

“Transactions” refers collectively to this Agreement and the transactions contemplated hereby, including the Merger.

“WARN” shall have the meaning set forth in Section 3.16.

Section 8.14 Interpretation.

(a) Time Periods. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, (i) the date that is the reference date in calculating such period shall be excluded and (ii) if the last day of such period is a not a Business Day, the period in question shall end on the next succeeding Business Day.

(b) Dollars. Unless otherwise specifically indicated, any reference herein to \$ means U.S. dollars.

(c) Gender and Number. Any reference herein to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(d) Articles, Sections and Headings. When a reference is made herein to an Article or a Section, such reference shall be to an Article or a Section of this Agreement unless otherwise indicated. The table of contents and headings contained herein are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(e) Include. Whenever the words “include”, “includes” or “including” are used herein, they shall be deemed to be followed by the words “without limitation.”

(f) Hereof; Defined Terms. The words “hereof,” “hereto,” “hereby,” “herein” and “hereunder” and words of similar import when used herein shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms defined in this Agreement shall have the defined meanings when used in any document made or delivered pursuant hereto unless otherwise defined therein.

(g) Contracts; Laws. Any Contract or Law defined or referred to herein means such Contract or Law as from time to time amended, modified or supplemented, unless otherwise specifically indicated.

(h) Persons. References to a Person are also to its successors and permitted assigns.

(i) Exhibits and Disclosure Schedules. The Exhibits to this Agreement and the Company Disclosure Schedules are hereby incorporated and made a part hereof. The Company may include in the Company Disclosure Schedule items that are not material in order to avoid any misunderstanding, and such inclusion, or any references to dollar amounts herein or in the Company Disclosure Schedule, shall not be deemed to be an acknowledgement or representation that such items are material, to establish any standard of materiality or to define further the meaning of such terms for purposes of this Agreement or otherwise. Any capitalized term used in any Exhibit or any Company Disclosure Schedule but not otherwise defined therein shall have the meaning given to such term herein.

(j) Construction. Each of the parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written.

PIEDMONT NATURAL GAS COMPANY,
INC.

By: 

Name: Thomas E. Skains
Title: Chairman of the Board,
President and Chief Executive
Officer

FOREST SUBSIDIARY, INC.

By: _____

Name:
Title:

DUKE ENERGY CORPORATION

By: _____

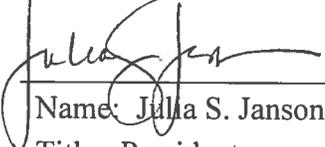
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written.

PIEDMONT NATURAL GAS COMPANY,
INC.

By: _____
Name:
Title:

FOREST SUBSIDIARY, INC.

By:  _____
Name: Julia S. Janson
Title: President

DUKE ENERGY CORPORATION

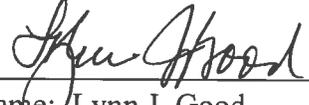
By:  _____
Name: Lynn J. Good
Title: President, CEO and Vice Chair

EXHIBIT B

COST-BENEFIT ANALYSIS

Duke Energy Acquisition of Piedmont Natural Gas Company Cost-Benefit Analysis

INTRODUCTION

The following cost-benefit analysis was developed in relation to Duke Energy's pending merger with Piedmont Natural Gas Company. The analysis documents the expected benefits, detriments, costs and savings associated with the purchase. The information and format of this analysis is consistent with the requirements set forth in Docket No. M-100, Sub 129 dated November 2, 2000.

ASSUMPTIONS

The following assumptions were used when developing the cost-benefit analysis:

The analysis identifies future expected benefits, detriments, costs and savings associated with the merger and is subject to change as a result of changes in economic conditions, regulatory orders, management decisions and/or operating conditions that were not known at the time this analysis was developed.

Estimates reflected herein were developed as of December 2015.

The analysis captures incremental benefits and costs resulting from the merger and includes both qualitative and quantitative benefits.

The analysis does not include federal and state income tax ramifications of the transaction.

COST-BENEFIT ANALYSIS FILING REQUIREMENT

Docket No. M-100, Sub 129 Ordering Paragraph 2.(a) requires... *“a comprehensive list of all material areas of expected benefits, detriment, cost, and savings over a specified period (e.g. three to five years) following consummation of the merger and a clear description of each individual item in each area.”*

Duke Energy and Piedmont provide the following information in response to this requirement:

**Duke Energy Acquisition of Piedmont Natural Gas Company
Cost-Benefit Analysis**

SUMMARY OF PRESENTLY QUANTIFIABLE CUSTOMER COSTS AND BENEFITS

The following table provides a summary of the anticipated quantifiable costs and benefits applicable to customers with respect to the proposed transaction which have been identified at this time. The integration process currently underway between Piedmont and Duke Energy is anticipated to yield additional economic benefits to customers which have not yet been quantified. Additional on-going, but currently non-quantifiable, customer benefits are discussed in the pages that follow. Customers will not bear any acquisition premium or transaction costs associated with this merger, which shall be paid exclusively by shareholders.

Quantified Benefits

1. Piedmont Board Of Directors costs - \$2.1 million annually
2. CEO compensation costs - \$3.0 million annually
3. Outside counsel costs - \$0.4 million annually
4. Outside auditor costs - \$1.0 million annually
5. Transfer agent costs - \$0.55 million annually
6. Insurance costs - \$2.3 million annually
7. Stock listing fee - \$0.1 annually

Total Presently Quantifiable Benefits = \$9.45 million annually

Integration Costs

1. Integration consultant costs - \$4.75 million, one-time¹

Total Presently Quantifiable Costs = \$4.75 million, one-time²

¹ Estimated pre-closing fees. Does not reflect all costs to achieve future benefits

² Applicants reserve the right to seek to recover integration costs from customers in future cost recovery proceedings to the extent that such costs result in net benefits.

**Duke Energy Acquisition of Piedmont Natural Gas Company
Cost-Benefit Analysis**

COMPREHENSIVE IDENTIFICATION OF ALL ANTICIPATED MERGER COSTS AND BENEFITS³

ITEM	DESCRIPTION	(BENEFIT) / DETRIMENT
BENEFITS FROM THE MERGER - Merging Piedmont into the family of Duke Energy subsidiaries will create an organization with greater financial strength, greater diversity of resources, reduced economic risks for customers and improved operational efficiencies.		
Increased Financial Strength	The combination of the two companies will increase and strengthen Piedmont’s ability to access, on reasonable terms, the capital needed to expand service to new customers and to meet its obligations under federal integrity management regulations.	On-going benefit <u>Quantification of Benefit</u> The amount of these benefits to accrue to Duke Energy Carolinas (“DEC”), Duke Energy Progress (“DEP”) and Piedmont customers will depend upon numerous factors, including, but not limited to, conditions in the financial markets, and cannot reasonably be quantified at this time.
Reduced Market Risk	The merger will produce a combined gas/electric customer mix that is more tolerant of economic downturns than either individual company. The combined customers from both companies will have greater rate protection since both will become a part of a larger aggregate customer population with shared costs.	On-going benefit <u>Quantification of Benefit</u> This benefit is not readily quantifiable but will accrue to DEC, DEP and Piedmont customers.
System Reliability and Efficiencies	Duke Energy is Piedmont’s largest customer and is reliant, to a significant degree, on the reliability of natural gas to fuel its already substantial and growing natural gas-fired turbine fleet. Consolidation of ownership and control of both gas and electric infrastructure within a common service territory will create the potential for more efficient and reliable operations of both gas and electric utility facilities. The merger will provide additional opportunities to enhance the combined Duke Energy’s experience and skills in the increasingly important areas of natural gas procurement, transportation and pipeline construction, with the commensurate ability to potentially lower DEC and DEP’s fuel costs for the benefit of their customers. It should also facilitate the seamless provision of energy services (gas and electric) to the combined	On-going benefit <u>Quantification of Benefit</u> This benefit will accrue to the benefit of DEC, DEP and Piedmont customers, but is not readily quantifiable at this time and depends on effective implementation of measures designed to realize the potential efficiencies and enhanced reliability offered by the merger.

³ Including quantifiable customer costs and benefits from the table above.

**Duke Energy Acquisition of Piedmont Natural Gas Company
Cost-Benefit Analysis**

ITEM	DESCRIPTION	(BENEFIT) / DETRIMENT
	<p>companies' utility customers. Additionally, it will enhance customer service, and the safety and reliability of service provided by both companies. Finally, it will potentially enhance long-term planning and coordination of construction of natural gas infrastructure serving all customers (including power plants).</p>	
<p style="text-align: center;">Impact on Access to Upstream Gas Supply and Capacity</p>	<p>The proposed merger will also create the potential to enhance the procurement of additional upstream interstate pipeline capacity on a more efficient basis in order to meet the combined needs of Duke Energy's electric and natural gas customers as well as Piedmont's natural gas customers.</p>	<p>On-going Benefit</p> <p style="text-align: center;"><u>Quantification of Benefit</u></p> <p>This benefit is not quantifiable at this time but to the extent it is realized, the customers of DEC, DEP and Piedmont will be the primary beneficiaries through lower upstream demand/fuel costs.</p>

**Duke Energy Acquisition of Piedmont Natural Gas Company
Cost-Benefit Analysis**

ITEM	DESCRIPTION	(BENEFIT) / DETRIMENT
Utility Governance and Operations	<p>Duke Energy and Piedmont are in the early stages of examining the potential benefits of the integration of Piedmont into the Duke Energy family of companies. Both Duke Energy and Piedmont are experienced utility providers in North Carolina and other states and have duplicative systems and practices that have the potential to be synchronized and optimized in a post-merger environment. Such synchronization and optimization should result in both qualitative and quantitative benefits to customers by improving the provision of services by both companies and by reducing costs associated with more efficient operations. The merger also presents the opportunity to consolidate systems and processes between Piedmont and Duke Energy’s existing LDC operations in Ohio and Kentucky which should also result in operational best practices and economic efficiencies.</p> <p>Duke Energy has in place the corporate and administrative functions necessary to support many of the functions now performed by Piedmont. These functions include, but are not limited to, strategic planning, treasury, finance, tax, accounting, legal, investor relations, human resources, information technology and public relations. Duke Energy believes that the incremental costs of absorbing these redundant activities will be significantly less than the cost of Piedmont providing these services on a stand-alone basis.</p> <p>In addition, the integration of certain programs will provide economies of scale in areas such as shareholder services, fleet management, travel programs, supply chain, facilities management, security, insurance, advertising, professional services, payroll and benefits plan administration, and credit facilities, among others. Also, future operational expenditures in the area of information systems, which each company would otherwise make on a standalone basis, should be combined and more efficiently applied to a larger customer base.</p>	<p>On-going benefit</p> <p style="text-align: center;"><u>Quantification of Benefit</u></p> <p>Anticipated Piedmont savings identified to date of (\$9.45 million) include:</p> <ol style="list-style-type: none"> 1. Board Of Directors costs - \$2.1 million annually 2. CEO compensation costs - \$3.0 million annually 3. Outside counsel costs - \$0.4 million annually 4. Outside auditor costs - \$1.0 million annually 5. Transfer agent costs - \$0.55 million annually 6. Insurance costs - \$2.3 million annually 7. Stock listing fee - \$0.1 million annually
Maintenance of Piedmont Corporate Presence in North Carolina	<p>The proposed merger will continue to maintain Piedmont’s corporate headquarters and presence in Charlotte, North Carolina. This is a direct benefit to the State and to the localities where Piedmont’s offices, equipment and employees are located. These benefits include the positive direct economic effect of rents, salaries, taxes, purchasing, and charitable contributions but also include indirect benefits such as continued civic engagement and the maintenance of Piedmont’s existing brand. This is a benefit to the Commission and to the Company’s customers through</p>	<p>On-going benefit</p> <p style="text-align: center;"><u>Quantification of Benefit</u></p> <p>Piedmont’s corporate headquarters rental payments are in the range of \$4 million annually and its annual charitable donations to the communities and organizations in North Carolina are approximately \$1.5 million as of the most recent year.</p>

**Duke Energy Acquisition of Piedmont Natural Gas Company
Cost-Benefit Analysis**

ITEM	DESCRIPTION	(BENEFIT) / DETRIMENT
	enhanced responsiveness and sensitivity to local and state issues and priorities, including economic development and the expansion of gas infrastructure. In addition, the implementation of the Advisory Board called for in the Merger Agreement will benefit the communities in which Duke Energy and Piedmont operate by providing additional input for corporate management.	
Enhanced Ability to Facilitate Infrastructure Expansion	In order to facilitate economic growth and the attraction of new businesses to North Carolina, business development entities and local governments must coordinate the availability of a full panoply of utility and infrastructure services. Currently, Duke Energy and Piedmont have distinct policies and practices regarding their ability to extend infrastructure to under-developed areas of the State. Under a merged company, the ability to coordinate the extension of gas and electric infrastructure would be simpler and more coherent thereby increasing the opportunity to achieve such expansions.	<p>On-going benefit</p> <p style="text-align: center;"><u>Quantification of Benefit</u></p> <p>This benefit is not presently quantifiable, but will accrue to the benefit of DEC, DEP and Piedmont customers.</p>
No Change in Rates, Charges or Terms and Conditions of Service	Although Duke Energy and Piedmont believe that the proposed merger will provide most or all of the benefits identified above, it is important to note that the merger will not result in any increase to rates or charges or changes in terms or conditions of service pursuant to which Duke Energy Carolinas, Duke Energy Progress and Piedmont currently provide service to customers in the North Carolina. Any such changes proposed in the future would, of course, be subject to the direct supervisory authority of the NCUC. Based on this fact alone, it is clear that the proposed merger will have no detrimental impact on customers in North Carolina, irrespective of the various benefits listed above.	<p>Present Benefit, no detriment to customers</p> <p style="text-align: center;"><u>Quantification of Benefit</u></p> <p>There is no detriment to customers because Duke Energy and Piedmont will not pass along to customers the acquisition premium and transaction costs set forth below.</p>

**Duke Energy Acquisition of Piedmont Natural Gas Company
Cost-Benefit Analysis**

ONE-TIME TRANSACTION RELATED COSTS TO BE BORNE BY APPLICANTS AND NOT CUSTOMERS

ITEM	DESCRIPTION	(BENEFIT) / DETRIMENT
Transaction Fees	There will be one-time costs associated with this transaction. Examples of these costs include investment banker fees, transaction costs related to security issuances, legal, accounting and advisory fees.	One-time cost absorbed by Duke Energy and Piedmont. <u>Quantification of (Benefit) / Detriment</u> These costs are currently estimated at \$125 million.
Acquisition Premium over Book Value	Excess of purchase price (market value) over book value of assets.	One-time cost absorbed by Duke Energy. <u>Quantification of (Benefit) / Detriment</u> Approximately \$3.4 billion as of October 31, 2015. This amount represents a total enterprise acquisition premium spread across all of Piedmont's businesses and jurisdictions rather than a North Carolina only premium.

EXHIBIT C

MARKET POWER REPORT



MARKET POWER ANALYSIS OF PROPOSED TRANSACTION BETWEEN DUKE ENERGY CORPORATION AND PIEDMONT NATURAL GAS COMPANY

PREPARED FOR

North Carolina Utilities Commission

PREPARED BY

The Brattle Group

January 14, 2016

Table of Contents

I.	Introduction.....	1
	A. Purpose	1
	B. Summary of Findings	1
II.	Overview of the Transaction	3
	A. Duke.....	3
	B. Piedmont	4
III.	Market Power Analysis.....	6
	A. Areas Analyzed for Potential Competitive Concern.....	6
	B. Retail Electric/Gas Competition.....	7
	1. Residential and small commercial customers.....	7
	2. Large commercial and industrial customers.....	9
	3. Transaction-related investment impacts	10
	a. Piedmont’s and Duke’s regulated rates of return are comparable, such that the merging party does not have an incentive to favor investment in gas over electric, or vice versa.	11
	b. Piedmont’s gas system and Duke’s electric systems in North Carolina have opposite seasonal peaks, so that building out Piedmont’s gas system will not offset needed investment in Duke’s electric system.	13
	C. Market Power Analysis for Delivered Gas.....	17
	1. Brief summary of this section	18
	2. Applicants’ gas transportation rights and wholesale gas sales.....	18
	3. The merged firm has no increased incentive or ability to increase the price of firm released gas transport capacity.	21
	4. Regulatory restrictions limit Duke’s and Piedmont’s incentives and ability to influence prices for firm released gas transport capacity	26
	D. Third-party generation is not at risk of higher gas delivery costs as a result of the Transaction.....	27
	1. Municipalities and co-operatives in North Carolina have sufficient regulatory protection to prevent rate increases regardless of the degree of competition from rival generation.....	27

2.	Market conditions and regulation regarding the supply of delivered gas effectively preclude the Transaction from harming generation that competes with Duke.	29
a.	Third-party generation dependence on Piedmont distribution	29
b.	Third-party generation exposure to potential increased costs of gas transmission capacity	30
IV.	Conclusion	31

I. Introduction

A. PURPOSE

Duke Energy Corporation (“Duke”) and Piedmont Natural Gas Company (“Piedmont”), together “Applicant” or “the Companies”, asked The Brattle Group (“Brattle”) to conduct an analysis of the market power issues that are relevant to the request for approval of the business combination filed with the North Carolina Utilities Commission (“Commission” or “NCUC”) by the Companies. The request was made to comply with the Order Requiring Filing of Analysis issued by the Commission on November 2, 2000, in Docket No. M-100, Sub 129. In that Order, the Commission directed that parties seeking authority to engage in business combinations within the electric or natural gas industries shall file a market power analysis on the same date that the application is filed.¹

More specifically, the analysis addresses whether the proposed merger of Duke and Piedmont (hereafter, “Transaction”) has any potential adverse competitive impact on wholesale and retail electricity and natural gas markets in North Carolina.

B. SUMMARY OF FINDINGS

The Transaction involves the purchase of a natural gas distribution company with a service territory in North Carolina (*i.e.*, Piedmont) by Duke, which operates two regulated electric utilities (Duke Energy Carolinas and Duke Energy Progress) with service territories in North Carolina.

Our analysis focuses on the limited areas of potential competitive concern created by the combination, which are: (i) “inter-fuel” competition between gas and electricity as alternative sources of energy; (ii) ownership of gas transmission rights by each of the merging parties and any potential effect of the Transaction on the price of released gas transportation capacity and/or delivered gas in North Carolina; and (iii) the potential effects of the Transaction on third-party generation.

We find that Duke and Piedmont lack both the ability and the incentive to raise prices or restrict output as a result of the Transaction, due to the economic and regulatory conditions in the electric and gas markets in North Carolina. Consequently, we find that the Transaction raises no basis for competitive concern in any of the above three areas. This is consistent with the fact that the Federal Trade Commission issued an early termination after a preliminary antitrust review of the Transaction.²

¹ Order Requiring Filing of Analyses, Docket No. M-100, Sub 129, p. 6-7 (Nov. 2, 2000).

² See:

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Current regulations sufficiently constrain retail electric and gas pricing, such that the Transaction will not adversely affect electric-gas retail competition. Neither Duke nor Piedmont offers any fuel switching discounts or rebates to residential or small commercial customers. Limited discounts are made available by Piedmont to large commercial and industrial customers, which require regulatory approval.

The Transaction also will not diminish Piedmont's incentive to develop gas infrastructure, nor will it reduce Duke's incentive to develop electric infrastructure. Both companies have comparable allowed returns on equity, which provides no incentive to favor development of electric infrastructure over gas infrastructure (or vice versa). Furthermore, Duke's North Carolina electric system has been historically summer peaking due to cooling needs, and it is projected in the future to have lower reserve margins in the summer, while Piedmont's gas system is winter peaking due to heating needs. Therefore, the increases in gas infrastructure investment needed to support expanded gas heating in the winter are unlikely to affect the electric infrastructure investment needed to support cooling requirements in the summer.

We also find that the economic conditions in the electric and gas markets, as well as regulatory provisions currently in place, are such that the Transaction will not provide the incentive or the ability for Duke or Piedmont to influence delivered gas prices, gas transmission capacity, or gas transmission services in the secondary markets.

[REDACTED] Duke potentially could be harmed by an increase in delivered gas or gas transportation prices under these circumstances. In any case, the combination of Duke with Piedmont does not increase net concentration in the supply of delivered gas or gas transportation rights when Duke needs additional gas.

[REDACTED] and other suppliers will have substantial excess capacity. Consequently, there is no Transaction-related incentive or ability to raise delivered gas prices or gas transportation prices affecting North Carolina.

Continued from previous page

<https://www.ftc.gov/enforcement/premerger-notification-program/early-termination-notices/20160426>.

³ "Short-term" refers to a market with products or services with less than one-year of delivery duration.

For the above reasons, there are also no “vertical” market power concerns that the Transaction will directly disadvantage independent power producers (“IPPs”) who serve wholesale electric customers in competition with Duke. Moreover, these power producers do not currently contract with Piedmont for delivered gas, nor are they materially dependent on Piedmont’s gas distribution system. There is also no concern that Piedmont will disadvantage gas-fired generation owned by municipalities (“munis”) or electric co-operatives (“co-ops”) to make them more reliant on Duke’s own generation.

II. Overview of the Transaction

A. DUKE

Duke is an energy company composed largely of multiple regulated utilities, with operations in North and South Carolina, Florida, Ohio, Kentucky, and Indiana. In North Carolina, Duke operates two regulated electric utilities: Duke Energy Carolinas (“DEC”) and Duke Energy Progress (“DEP”). DEC serves over 2.5 million customers in its North Carolina and South Carolina territories and owns 20,185 MW of generation capacity.⁴ DEP serves over 1.5 million customers in North Carolina and South Carolina and owns 14,601 MW of generation capacity.

Within the DEC and DEP portfolios, the combined utilities own the natural gas-fired power plants listed in Table 1, totaling approximately 11,000 MW of gas-fired capacity.⁵ In addition to these plants, Duke has tolling arrangements for approximately 1,700 MW of gas-fired generation capacity and a power purchase agreement (“PPA”) for another 170 MW of gas-fired capacity.⁶

⁴ This includes operating, restarted, and standby capacity as well as the 38.5% DEC ownership of unit 1 at the Catawba Nuclear Station.

⁵ In addition to natural gas-fueled generation, Duke owns approximately 9,000 MW capacity of nuclear generation, 10,000 MW capacity of coal-fired generation, 3,000 MW of hydropower/pumped storage capacity, and 800 MW of oil-fired capacity. These figures include 100% ownership by Duke of the Brunswick Nuclear Units 1&2, Mayo, Roxboro Plant Unit 4, and Harris Nuclear Plant.

⁶ Duke provided data and Velocity Suite, ABB Inc., “Generating Unit Capacity” dataset. The tolling capacity number is based on nameplate ratings while the PPA number is based on summer capacity ratings.

Table 1: Duke-Owned Natural Gas Fired Generation Capacity in the Carolinas

Owner	Plant Name	Type(s)	NG Nameplate Capacity (MW)
Duke Energy Carolinas	Buck Steam Station (NC)	CC	691
Duke Energy Carolinas	Dan River (NC)	CC	691
Duke Energy Carolinas	Lincoln Combustion	CT	1,754
Duke Energy Carolinas	Mill Creek (SC)	CT	799
Duke Energy Carolinas	Rockingham Power LLC	CT	978
Duke Energy Carolinas	W S Lee	ST & CT	283
Duke Energy Progress	Asheville	CT	424
Duke Energy Progress	Darlington County	CT	583
Duke Energy Progress	L V Sutton	CC	625
Duke Energy Progress	Lee	CC	1,068
Duke Energy Progress	Sherwood H Smith Jr Energy Complex	CT & CC	2,298
Duke Energy Progress	Wayne County	CT	1,059

Source: Velocity Suite, ABB Inc., “Generating Unit Capacity” dataset.

Notes: Includes restarted and standby units, as well as the percent of the nuclear Catawba plant capacity owned by DEC (38.49% of unit 1).

Duke currently does not own gas transmission in the Carolinas. It also does not own or have rights to any liquefied natural gas (“LNG”) storage systems in the Carolinas.

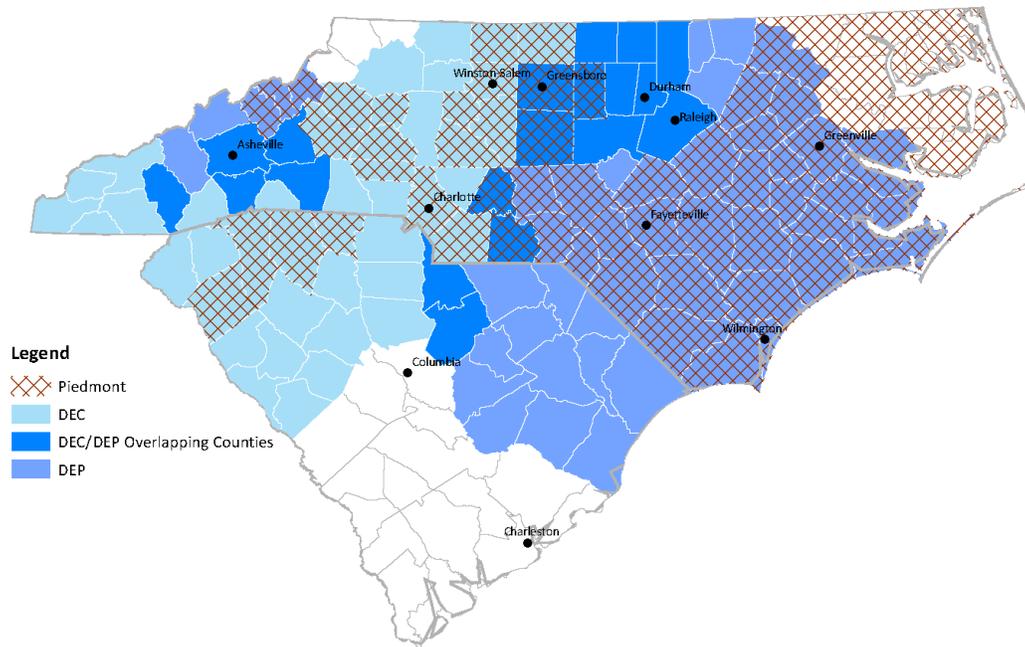
However, Duke has firm rights to approximately 360,000 dekatherms per day (“Dth/d”) of transmission capacity on the Transco pipeline for delivery in “Transco Zone 5,” the service region on Transco’s pipeline covering South Carolina through Virginia. Duke also has purchased an additional 75,000 Dth/d of firm transportation capacity to Zone 5 from Piedmont, which will be effective beginning March 2016. Finally, Duke has a 40% ownership share in the ACP project. Upon approval and completion,⁷ Duke would have capacity rights for delivery of 725,000 Dth/d into North Carolina. The targeted in-service operation date for ACP is November 1, 2018.

B. PIEDMONT

Piedmont is a regulated natural gas local distribution company (“LDC”) that serves over 1 million customers in North Carolina, 4 counties of South Carolina, and the Nashville area of Tennessee. Piedmont’s natural gas distribution network overlaps with DEC’s and DEP’s wholesale/transmission territory. Figure 1 below provides a map of Piedmont’s service territory in the Carolinas and its extent of overlap with Duke.

⁷ The ACP project is currently seeking FERC approval.

Figure 1: Duke and Piedmont Service Territories in the Carolinas



Sources: Velocity Suite, ABB Inc., 2014 EIA Form 861.

In addition to its distribution network, Piedmont has firm transportation rights to approximately 750,000 Dth/d of capacity on Transco deliverable into Zone 5.⁸ It also has capacity rights on two LNG storage facilities with combined capacity of approximately 190,000 Dth/d (approximately 2 million Dth of storage capacity), plus an additional 263,400 Dth/d (approximately 2.6 million Dth of storage capacity) in the Pine Needle LNG storage facility, in which it also has a 45% ownership stake. Table 2 provides an overview of natural gas assets owned by Piedmont in the Carolinas.⁹

⁸ This amount includes Piedmont’s interim firm transportation right to move 100,000 Dth/d from the Leidy Southeast expansion to Transco Zone 5, as well as 20,000 Dth/d on Transco’s Virginia Southside expansion.

⁹ Piedmont also jointly owns 50 percent of Hardy Storage and can withdraw gas up to 68,800 Dth/d, which can be delivered via Columbia and Transco. It also has storage rights on Columbia FSS storage and Transco gas storage systems outside the Carolinas. See Piedmont’s 10-K for the fiscal year ended October 31, 2015, p. 7, 104.

Table 2: Piedmont Assets in the Carolinas* as of 2016

Asset	Description	State	Facility Operator	Piedmont		
				Ownership Share	Capacity (Dth)	Capacity Rights (Dth/d)
[1]	[2]	[3]	[4]	[5]	[6]	[7]
Cardinal	Intrastate Pipeline	NC	Williams	21%	N/A	252,500
Pine Needle LNG	Storage	NC	Williams	45%	2,634,000	263,400
Piedmont LNG-[Bentonville]	Storage (Internal)	NC	Piedmont	100%	1,015,000	90,000
Piedmont LNG-[Huntersville]	Storage (Internal)	NC	Piedmont	100%	1,005,865	100,000
Transcontinental Pipeline	Interstate Pipeline	Zone 5 (NC, SC, and VA)	Williams	0%	N/A	652,157
Transcontinental Pipeline	Interstate Pipeline	Leidy/Zone 6 - 4	Williams	0%	N/A	100,000
Piedmont LDC System	Laterals and LDC System	NC and SC	Piedmont	100%	N/A	See Note 1

Notes:

Outside North Carolina and South Carolina, Piedmont also holds storage capacity rights on Columbia (including Hardy Storage) and Transco. See *infra* n.9.

With the exception of the Wayne County plant, all of Duke's plants on Piedmont's system subscribe to firm transportation.

[5]: Ownership shares of Cardinal and Pine Needle LNG obtained from Piedmont's 2014 10-K filing.

[6],[7]: Pine Needle LNG capacity rights data from Piedmont's 2014 10-K filing. Pine Needle LNG capacity data from IOC data. Cardinal, Bentonville and Huntersville facilities data obtained directly from Piedmont.

[7] Piedmont's capacity rights on Transco are as of October 1, 2015 from Velocity Suite, ABB Inc., "Natural Gas Pipelines Index of Customers" dataset.

III. Market Power Analysis

A. AREAS ANALYZED FOR POTENTIAL COMPETITIVE CONCERN

The Transaction involves the purchase of a natural gas distribution company with a service territory in North Carolina (*i.e.*, Piedmont) by Duke, which operates two regulated electric utilities (DEC and DEP) with service territories in North Carolina. Thus, the issues of potential competitive concern focus on the following three areas: (i) "inter-fuel" competition between gas and electricity as alternative sources of energy; (ii) ownership of gas transmission rights by each of the merging parties and any potential effect of the Transaction on the price of released gas transport capacity and/or delivered gas in North Carolina; and, (iii) the potential effects of the Transaction on third-party generation.

Our analysis finds that there is no basis for competitive concerns with respect to these three areas. This is partly due to regulatory constraints that are broadly described in Table 3, which also describes the business lines of possible interest:

Table 3: Possible Areas of Competitive Overlap

Market Level	Gas	Electricity
Retail	Piedmont is regulated and granted exclusive franchise within its service territories.	DEC and DEP are regulated and granted exclusive franchise within their service territories.
Wholesale	Both Duke and Piedmont are buyers, and potentially sellers, of delivered gas and gas transmission capacity.	Subject to Federal Energy Regulatory Commission (FERC) jurisdiction, Duke does not have authority to sell power at market-based rates within the DEC and DEP balancing authority areas (i.e., Duke is limited to cost-based rates in these areas).

It is significant that, at the retail level, the gas rates charged by Piedmont and the electric rates charged by Duke are regulated. This, in itself, constrains any ability of the merged entity to raise retail prices post-Transaction, if market power were theoretically created or enhanced through the Transaction. Also, Duke is limited to cost-based rates in making wholesale power sales (*e.g.*, to munis and co-ops) within its balancing authority areas (“BAAs”).

The areas of competitive overlap are analyzed in further detail below.

B. RETAIL ELECTRIC/GAS COMPETITION

1. Residential and small commercial customers

One theory of potential harm in electric-gas mergers is that there are customers who are harmed via reduced gas-electric competition. For example, customers could be negatively impacted who choose between gas and electricity at the margin, or who have a choice in technology that can operate either off of gas or electricity (*e.g.*, hot water tanks, building heating).

In an unregulated environment, a merger between firms selling closely competing products can raise competitive concerns. That prospect is diminished if the substitutability between the products is relatively modest and marginal costs are reduced through the merger process.

In this case, regardless of any incentives created through the Transaction, regulation impedes the ability of either Duke or Piedmont to raise prices post-Transaction to either retail electric or gas customers in North Carolina who have the ability to switch between the two products.

Theoretically, price-based competition between gas and electric power can take the form of discounts or rebates on fuel-specific equipment. NCUC Rules R8-68 (Incentive Programs for Electric Public Utilities and Electric Membership Corporations, Including Energy Efficiency and Demand-Side Management Programs) and R6-95 (Incentive Programs for Natural Gas Utilities)

establish guidelines for electric and gas incentive programs and require utilities to identify whether a proposed program will directly or indirectly affect the choice between electricity and gas in the residential and commercial markets.¹⁰ Under these rules, programs that may affect fuel switching are presumed to be promotional, and the costs of such programs are not recoverable from ratepayers.¹¹ This restriction diminishes the profitability for DEC/DEP and Piedmont of offering promotional programs purely to encourage fuel-switching. As a practical matter, neither Duke nor Piedmont offers any fuel-switching discounts or rebates.¹²

Residential and commercial inter-fuel competition may also theoretically take the form of discounted rates. NCUC Rules R8-68 and R6-95 do not cover customer tariffs; however, the rates and rate designs are regulated and approved by the Commission.¹³ DEC offers a seasonally discounted electric rate for homes with all-electric appliances and space conditioning¹⁴ and Energy Star certified homes with electric space heating and hot-water heating.¹⁵ The all-electric rates offered by DEC are historical in nature and have been approved since 1958.¹⁶ Neither DEP nor Piedmont offer a discounted rate based on appliance or HVAC fuel-type. Any discount programs that may be offered in the future will require Commission approval prior to implementation.

¹⁰ See Chapter 8 Appendix of Commission Rules and Regulations, North Carolina Utilities Commission, Docket No. E-100 Sub 113, February 29, 2008.

¹¹ The NCUC must find good cause to allow recovery from ratepayers of a promotional program. A utility also may rebut the presumption that a program is promotional in nature by demonstrating that the program will incentivize the construction of dwellings and installation of appliances that are more energy efficient than required by state/and or federal building codes.

¹² Piedmont only allows rebates for natural gas equipment which replaces existing natural gas equipment. "Piedmont Natural Gas North Carolina Rebate Program," Piedmont Natural Gas website, accessed January 5, 2016 at

<http://www.piedmontng.com/yourhome/savemoneyandenergy/efficiencyprograms/ncequiprebates.aspx>

¹³ See Chapter 8 Appendix of Commission Rules and Regulations, North Carolina Utilities Commission, Docket No. E-100 Sub 113, February 29, 2008.

¹⁴ To qualify for the discounted rate schedule (Residential Service, Electric Water Heating and Space Conditioning, abbreviated RE) all energy supplied for water-heating, cooking, clothes drying, and environmental space conditioning must be electric. Electricity under Schedule RE is discounted 0.9638 cents/kWh relative to the standard residential tariff of 9.3697 cents/kWh for all usage over 350 kWh/month during the November-June period.

¹⁵ The All-Electric Energy Star rate schedule (Residential Service, Energy Star) includes a discount of 1.0096 cents/kWh relative to the standard Energy Star tariff for all usage over 350 kWh/month, during the November-June period.

¹⁶ DEC Schedule RA was approved effective September 30, 1958 in Docket No. E-7 Sub 30.

2. Large commercial and industrial customers

The pricing of retail electric service for large commercial and industrial (“C&I”) customers in an unregulated environment could conceivably be limited by the threat of customer loss from retail electric service to retail gas service, and vice versa. However, retail pricing for Duke’s and Piedmont’s large C&I customers is based on regulated tariff schedules that must be approved by the Commission. This alone places a significant constraint on potential increases in prices following the transaction. It also limits the amount of pricing competition available today.

The standard tariff schedules are available to all C&I customers following clear guidelines for eligibility to each customer. For example, electric customers whose demand exceeds 1,000 kW are eligible for Duke’s “Large General Service” (“LGS”) rate schedule.¹⁷

Some of Duke’s qualified C&I customers receive Economic Development and Renewable Energy Riders. Any customer that meets the requirements for these riders can pay rates under one of these special tariff schedules instead of, say, the LGS tariff.¹⁸ A small fraction of Piedmont C&I customers receive a negotiated rate schedule, some of whom have bargaining leverage as a result of proximity to the Transco interstate pipeline that would allow them potentially to bypass Piedmont’s distribution system. Piedmont must obtain NCUC approval on all negotiated rates.

¹⁷ According to the tariff, “This Schedule is available for electric service used by a nonresidential customer with either a Contract Demand that equals or exceeds 1,000 kW or whenever the registered or computed demand equals or exceeds 1,000 kW in the preceding 12 months.

This Schedule is not available: (1) for breakdown, standby, or supplementary service unless used in conjunction with the applicable standby or generation service rider for a continuous period of not less than one year; (2) for resale service; or (3) for any new customer with a Contract Demand in excess of 100,000 kW.”

See <https://www.duke-energy.com/pdfs/G9-NC-Schedule-LGS-dep.pdf>

¹⁸ With some restrictions, customers eligible for LGS service can receive the economic rider if they meet one of the following conditions:

A. Customer employ an additional workforce in Company's service area of a minimum of seventy-five (75) full time equivalent (FTE) employees. Employment additions must occur following Company's approval for service under this Rider.

B. Customer's New Load must result in capital investment of four hundred thousand dollars (\$400,000), provided that such investment is accompanied by a net increase in full time equivalent employees employed by Customer in Company's service area. The capital investment must occur following Company's approval for service under this Rider.

See <https://www.duke-energy.com/pdfs/RR20-NC-Rider-ED-dep.pdf>

3. Transaction-related investment impacts

Gas/electric mergers also raise the potential issue that the growth rate of the gas LDC infrastructure may be reduced following the merger in order to limit cannibalization of the electric utility infrastructure. However, in reality, that is not likely to be a competitive concern with respect to the proposed Transaction.

Regardless of ownership structure, both Piedmont and Duke as regulated utilities earn a Commission-approved return on investments that increase their rate bases.¹⁹ Any concern that Piedmont may have less incentive to build out its infrastructure as a result of the Transaction depends on the assumptions that: (i) the incremental shareholder profits earned on the gas infrastructure investment are substantially less than those earned on the electricity investment; and, (ii) investment in gas infrastructure displaces a nearly equivalent investment in electric infrastructure.

There is no reason to believe that either condition holds in the proposed Transaction. It is possible that less post-Transaction investment in infrastructure development might occur for one of the merging utilities if its allowed return on equity is substantially less than the allowed return on equity of the other utility (after adjusting for risk), and investment in the higher return utility could be substituted for investment in the lower return utility. However, both Piedmont and the Duke North Carolina utilities have similar allowed returns on equity (*i.e.*, 10% for Piedmont and 10.2% for DEC/DEP), such that there is no post-Transaction incentive to favor investment in electric over gas, or vice versa.

Moreover, the different seasonal peaks for Duke's North Carolina utilities and Piedmont imply that investment in expanded gas infrastructure is unlikely to displace a comparable amount of investment in electric infrastructure. The peak demand for gas on Piedmont's system is in the winter, as it is used to meet heating needs. By contrast, peak residential electric demand on Duke's system, and the infrastructure needed to support it, has been historically driven by cooling needs in the summer. This summer peak demand is largely unaffected by the residential customer's choice of fuel to meet its heating needs in the winter.

Furthermore, electric infrastructure investment is stimulated when projected reserve margins fall to levels where increases in capacity are encouraged in order to ensure system reliability.

¹⁹ Following NCUC Rule R6-11, only the NPV-positive portion of investments made by Piedmont are allowed to be added to rate base. See Chapter 6 of Commission Rules and Regulations, North Carolina Utilities Commission. This rule dissuades uneconomic investments that could potentially increase the dollar return to the gas utility but run the risk of raising the price of delivered gas to Piedmont customers. Investments by Duke in expanding the electric distribution infrastructure are subject to similar considerations, as the NCUC could disallow such investments or subject them to *ex post* prudence reviews.

Reserve margins for DEP are currently projected to be lower in the summer through 2030, while reserve margins for DEC are projected to be lower in the summer until at least 2021.

So, there is no basis for a concern that a build-out of gas infrastructure that allows residential customers to choose gas-fired heating (as opposed to electric heating) would displace investment in electric infrastructure. Below, further detail is provided regarding the anticipated competitive effects of the Transaction on infrastructure development in North Carolina.

a. Piedmont's and Duke's regulated rates of return are comparable, such that the merging party does not have an incentive to favor investment in gas over electric, or vice versa.

From the shareholder's perspective, the profitability of investing in regulated energy infrastructure depends on the difference between the regulator's allowed rate of return on equity and debt costs and the underlying cost of capital. Duke's North Carolina utilities and Piedmont each have comparable allowed rates of return on equity of approximately 10%.

Additionally, the NCUC has determined allowed debt costs and debt-to-equity ratios that result in roughly comparable allowed costs of capital, especially for DEP and Piedmont. As shown in Table 4 below, both DEP and Piedmont have allowed costs of capital of about 7.5%. Piedmont's after-tax cost of capital is approximately 6.6%, while DEP's after-tax cost of capital is about 6.8% and DEC's is about 7.0%.

Table 4: Regulatory Cost of Capital for Duke and Piedmont

	Duke Energy	Duke Carolinas	Duke Progress	Piedmont
Senior Unsecured Credit Rating				
S&P	[A]	BBB+	A-	A
Moody's	[B]	A3	A1	A2
Fitch	[C]	BBB+	A+	na
Allowed ROE	[D]	10.20%	10.20%	10.00%
Allowed Cost of Debt				
Long-term	[E]	5.26%	4.57%	5.23%
Short-term	[F]			0.53%
Equity %	[G]	53.00%	53.00%	50.66%
Debt %				
Long-Term %	[I]	47.00%	47.00%	46.52%
Short-Term %	[J]			2.82%
Regulatory WACC	[K]	7.88%	7.55%	7.51%
Tax Rate (NC)	[L]	37.60%	37.60%	37.60%
After Tax WACC	[M]	6.95%	6.75%	6.59%
Before Tax WACC	[N]	11.14%	10.81%	10.57%

Sources and notes:

[A]-[C]: www.duke-energy.com/investors/fixed-income-investors/credit-ratings.asp. Accessed 1/8/2016. Credit Ratings for Duke Progress are for Senior Secured Debt. Piedmont credit ratings from Form 10-K for the fiscal year ended October 31, 2015.

[D]-[J]: Duke Carolinas: NCUC Order Granting General Rate Increase, Docket No. E-7, Sub 1026. Issued 9/24/2013.

[D]-[J]: Duke Progress: NCUC Order Granting General Rate Increase, Docket No. E-2, Sub 1023. Issued 5/30/2013.

[D]-[J]: Piedmont: NCUC Order Approving Partial Rate Increase, Docket No. G-9, Sub 631. Issued 12/17/2013.

[K]: $[D] \times [G] + [E] \times [I]; [D] \times [G] + [E] \times [I] + [F] \times [J]$ for Piedmont.

[L]: NC corporate tax rate: $4.0\% + 35\% \times (1 - 4.0\%)$. From <http://www.ncleg.net/Sessions/2015/Bills/House/PDF/H97v8.pdf> and <https://home.kpmg.com/xx/en/home/services/tax/tax-tools-and-resources/tax-rates-online/corporate-tax-rates-table.html>. Accessed 1/13/2016.

[M]: $[D] \times [G] + [E] \times [I] \times (1 - [L]); [D] \times [G] + ([E] \times [I] + [F] \times [J]) \times (1 - [L])$ for Piedmont.

[N]: $[M] / (1 - [L])$

Our analysis also included a review of each company's actual debt costs as reported in their associated 10-K filings.²⁰ Piedmont's long-term embedded debt issuance costs are approximately 4.9%, while DEC's and DEP's embedded long-term debt-issuance costs are each approximately 4.7%.²¹

²⁰ Piedmont Natural Gas, Annual Report and Form 10-K 2015, October 31, 2015 (Public) p. 78; Duke Energy, 2014 Annual Report and Form 10-K, December 31, 2014 (Public) p. 137.

²¹ See Appendix A: Long-Term Debt-Issuance Costs for the calculation of Duke and Piedmont long-term debt-issuance costs.

In summary, the allowed return on equity is roughly comparable between Piedmont and DEC/DEP, and Piedmont's debt costs (whether measured by the allowed values under NCUC review or its actual reported costs) are also similar to DEC/DEP debt costs. Thus, the Transaction is unlikely to cause the merged entity to favor investment in electric infrastructure over gas infrastructure, or vice versa.

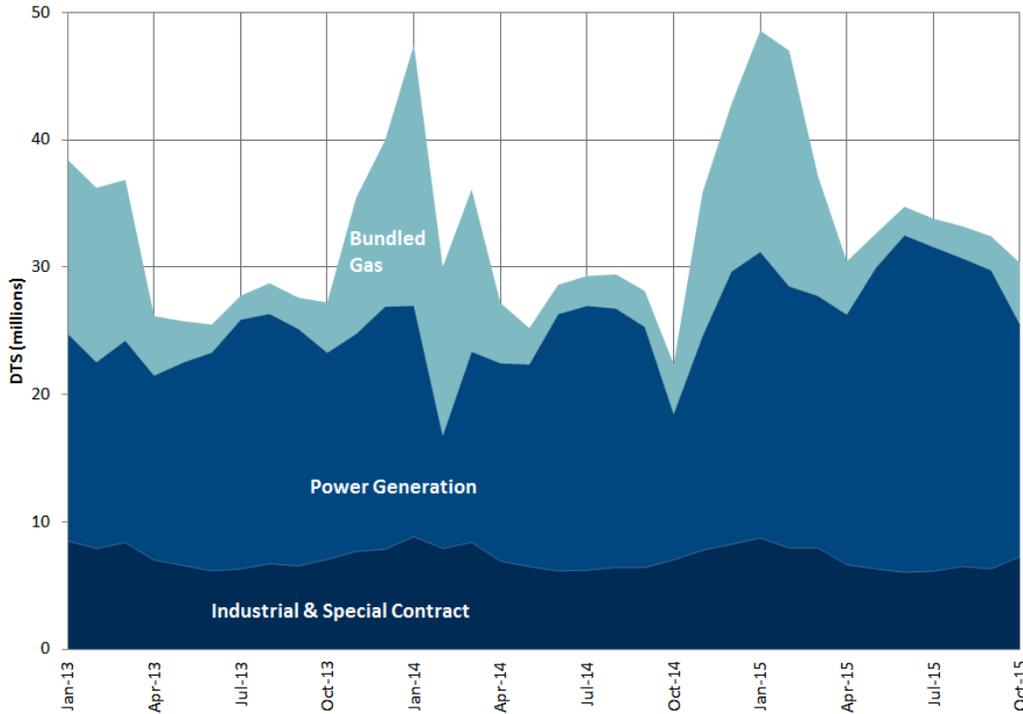
b. Piedmont's gas system and Duke's electric systems in North Carolina have opposite seasonal peaks, so that building out Piedmont's gas system will not affect investment in Duke's electric system.

With gas demand largely driven by heating needs, the Piedmont system has been historically winter-peaking. This is demonstrated in Figure 2 below, which shows Piedmont's sales of bundled gas to retail customers, gas delivered to power generation customers, and gas transportation service (for the subset of commercial and industrial gas customers who procure gas for transport to the Piedmont city-gate). Although gas needed for power generation is dual-peaking (summer and winter), the demand of the remainder of Piedmont's customers clearly peaks in the winter period.

In addition, Piedmont plans its annual gas procurement requirements based on a winter forecast "design day," which relies on predictions of winter weather and heating degree days.²² Its pipeline infrastructure must accommodate projected peak winter demand.

²² "See, for example "Annual Review of Gas Costs Pursuant to G.S.62-133.4(c) and Commission Rule R1-17(k)(6): Testimony and Exhibits of Michelle R. Mendoza On Behalf Of Piedmont Natural Gas Company, Inc." Before the North Carolina Utilities Commission Docket No. G-9, Sub 653.

Figure 2: Piedmont’s Gas Sales Peak in Winter



Source: Piedmont Data

Notes: Vertical distance of each category is in millions of DTS. Stacked value represents total gas sales.

Investment in the electric system is also driven by the need to have sufficient capacity available to provide power during the highest demand hours of the year, where an additional planning reserve margin is used to allow for unanticipated generating unit outages and demand surges.²³ Historically, DEP and DEC have been considered summer-peaking systems from a demand standpoint, and investment in generation capacity has been oriented toward meeting summer planning reserve margins.²⁴

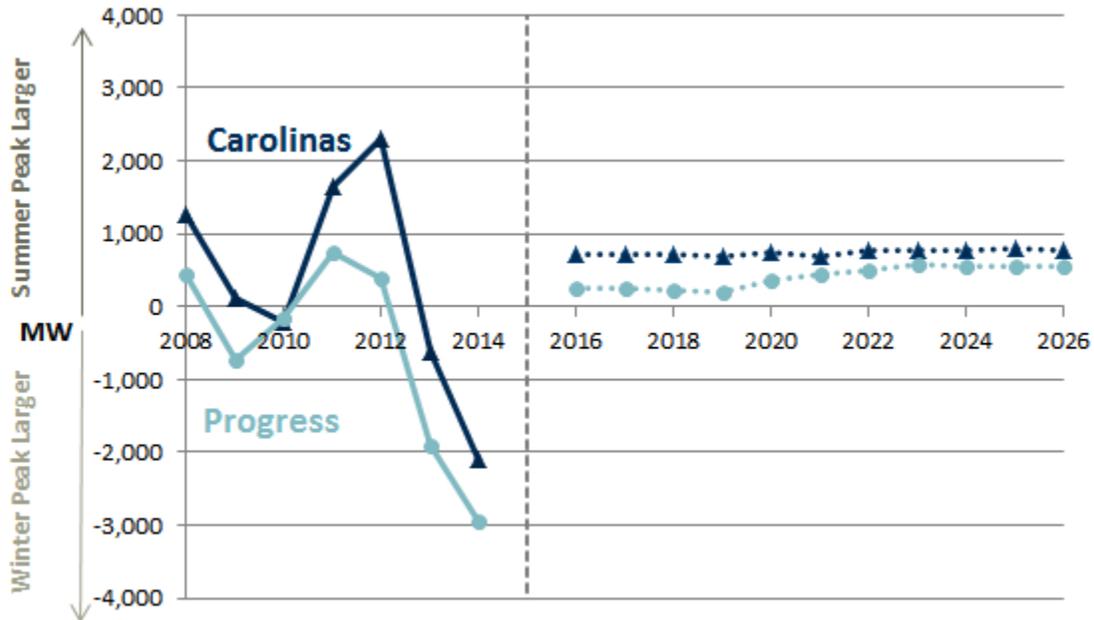
²³ The planning reserve margin ensures that demand will be satisfied after accounting for planned and unplanned generator outages and the potential for higher than expected demand. Both DEC and DEP determine reserve margin quantities using a loss of load expectation (“LOLE”) of 1 day in 10 years (Duke Energy Progress, North Carolina Integrated Resource Plan (Annual Report), September 1, 2015 (Public) p. 12; Duke Energy Carolinas, North Carolina 2015 IRP Update Report Integrated Resource Plan, September 1, 2015 (Public) p. 12). While the planning reserve margin may determine the quantity of generation capacity (MW) needed, the type of resource that is selected to meet the reserve margin may be determined by the quantity of energy (MWh) produced by a given type of resource and other operating characteristics, such as unit flexibility or environmental impact.

²⁴ The reserve margin is the projected difference between available supply (generation capacity plus firm contracted imports, minus firm contracted exports) and system peak demand, and it is expressed as a

Continued on next page

As shown in Figure 3, both DEP and DEC are projected to remain summer-peaking through at least 2026. However, the difference between projected seasonal peaks is less than 1,000 MW, and both DEC and DEP have historically experienced winter-peaking years, most notably in 2014 due to extreme winter weather resulting from the “Polar Vortex.”

**Figure 3 Summer Peak minus Winter Peak for Duke Progress and Duke Carolinas
Historic and Projected**



Sources: 2013 and 2015 Annual Report Regarding Long Range Needs for Expansion of Electric Generation Facilities for Service in North Carolina: Required Pursuant to G.S.62-110.1(c), Duke Energy Carolinas, North Carolina 2015 IRP Update Report: Integrated Resource Plan, Duke Energy Progress, North Carolina Integrated Resource Plan (Annual Report).

Notes: Historical winter peak is that following the summer peak; projected winter peaks are given by winter season.

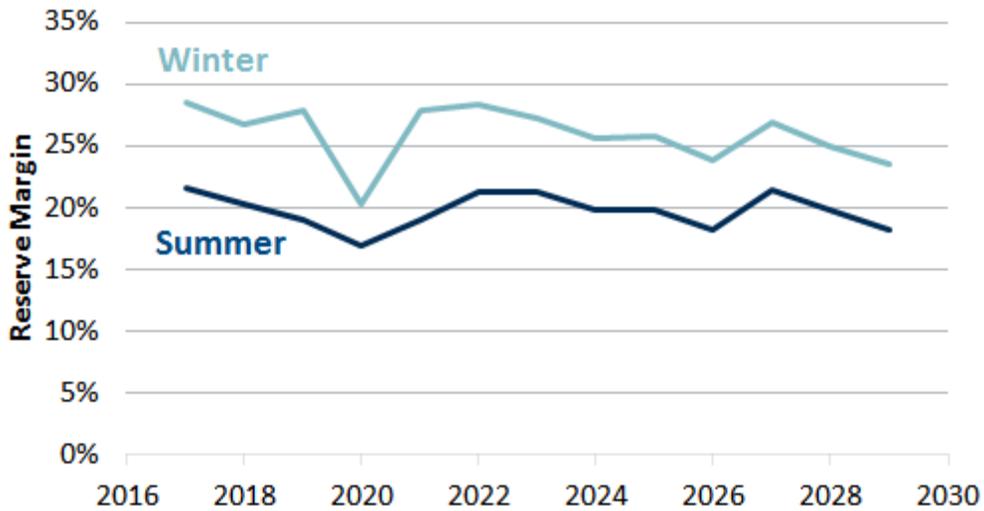
New investment in electricity infrastructure will generally be driven by the need to make additional capacity available during the season that has the lowest projected reserve margin. The reserve margins for DEP are projected to be lower in the summer than winter through 2029, as shown in Figure 4 below. The average difference between the projected DEP summer and

Continued from previous page

percentage of peak demand. This projection includes planned generation construction. A 17% summer planning reserve margin was used in the 2015 DEC IRP and 2015 DEP IRP. Duke Energy Progress, North Carolina Integrated Resource Plan (Annual Report), September 1, 2015 (Public) p. 12; Duke Energy Carolinas, North Carolina 2015 IRP Update Report Integrated Resource Plan, September 1, 2015 (Public) p. 12.

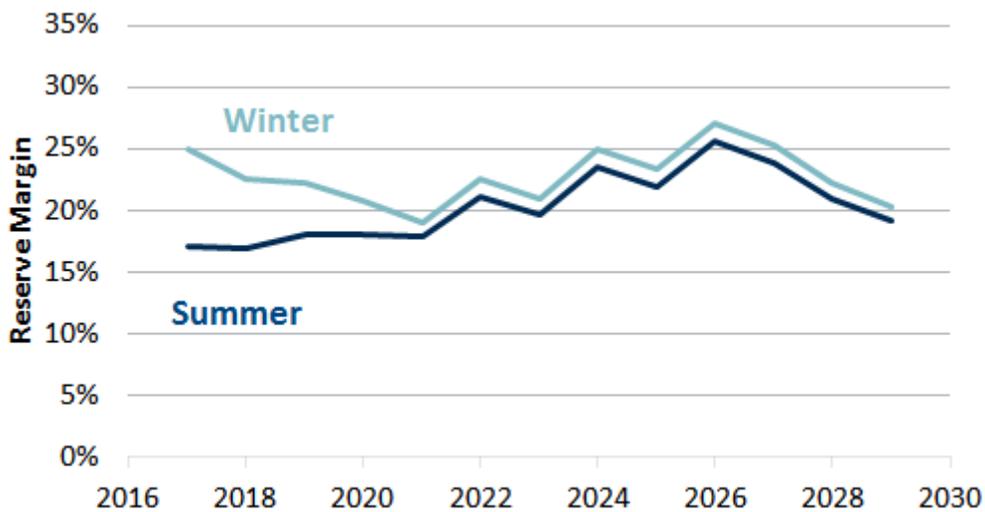
winter reserve margins is 6% between 2017 and 2029. DEC reserve margins also are projected to be lower in the summer than winter through 2029, as shown in Figure 5 below.

Figure 4: Duke Progress Projected Seasonal Reserve Margin



Source: Duke Energy Progress, North Carolina Integrated Resource Plan (Annual Report), September 1, 2015.

Figure 5: Duke Carolinas Projected Seasonal Reserve Margin



Source: Duke Energy Carolinas, North Carolina 2015 IRP Update Report: Integrated Resource Plan (Public), September 1, 2015.

Consequently, the investment needed to accommodate additional Piedmont gas customers depends on their winter gas demand, while investment in electricity infrastructure is affected by summer electricity demand. Increased gas use in the winter to meet heating needs is therefore unlikely to affect electricity investment needed to support summer cooling needs.

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In view of the potential horizontal overlap in firm transportation rights held by Duke and Piedmont, we analyzed the impact of the Transaction on the competitive conditions affecting the sale of released gas transportation capacity and delivered gas into Transco Zone 5. This analysis included an assessment of the Transaction's impact on the concentration among sellers of these products and the ability of purchasers to obtain these products without relying on Duke or Piedmont for supply.

1. Brief summary of this section

We find that the Transaction does not raise competitive concerns, for the reasons described in detail below.

[REDACTED]

[REDACTED]

2. Applicants' gas transportation rights and wholesale gas sales

Duke and Piedmont both have contracted firm transportation and storage agreements allowing them to make deliveries of gas into the Carolinas. Duke has firm transportation ("FT") rights on Transco's pipeline, allowing Duke to receive gas in Transco's production region or move it into Zone 5. Piedmont uses its FT rights on Transco to receive gas either in Transco's production region or Zone 6 for delivery into Zone 5.

Piedmont also has substantial storage capacity. This capacity includes both its fully owned LNG storage facilities and its bundled storage contracts with Transco. Piedmont's bundled storage contracts enable it to deliver gas withdrawn from storage without the need for additional pipeline capacity.²⁵

Additionally, both Piedmont and Duke are anchor shippers on the proposed ACP. If the ACP is approved and comes into service as scheduled in late 2018, both entities will have additional capacity to deliver into North Carolina.

²⁵ Note that Pine Needle LNG is an unbundled storage facility. As with other unbundled storage facilities, we do not include it in our analysis to avoid double-counting firm gas deliverable in Zone 5. For further detail, see the Technical Appendix B.

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Table 5 summarizes the Duke and Piedmont firm transportation and storage rights that enable delivery into Zone 5, both current (“Pre-ACP”) and following the expected entry into service of the ACP (“Post-ACP”).

Table 5: Piedmont’s and Duke’s FT and Storage Rights Enabling Delivery into Zone 5 during Winter (Dth/d)

	Transco Z5 FT	Storage Capacity on LDC System	Bundled Storage on Transco	ACP Capacity	Total Pre- ACP	Total Post- ACP
	[1]	[2]	[3]	[4]	[5]	[6]
Duke Energy	359,560	0	0	725,000	359,560	1,084,560
Piedmont Natural Gas	796,958	190,000	86,118	160,000	1,073,076	1,233,076

Sources and Notes:

[1]: For Piedmont, the amount includes 100,000 Dth/d on Transco’s Leidy Southeast Expansion from Zone 6 to Zone 4 capacity on, and 20,000 Dth/d on Transco’s Virginia Southside Expansion from Zone 6 to Zone 5.

[2]: Piedmont’s storage capacity includes 100,000 Dth/d of LNG-Huntersville and 90,000 Dth/d of LNG-Bentonville. Both are located in the Carolinas.

[3]: Bundled storage on Transco includes rate schedules GSS, LSS, S-2, SS-2, LGA, and LNG. Piedmont has contracts under GSS and LNG. Duke also has firm storage contracts with Saltville that coincide with secondary firm transportation agreements on East Tennessee. These storage agreements have maximum daily withdrawals of approximately 20,000 Dth/d in winter and 50,000 Dth/d in the non-winter months that we do not include in the analysis.

See *Infra* n.27.

[4]: For the purposes of the market power analysis, the unsubscribed capacity rights of the ACP (60,000 Dth/d) are allocated to the ACP owners according to their ownership shares. The allocations are 24,000 Dth/d and 6,000 Dth/d for Duke and Piedmont, and thereby Duke’s and Piedmont’s assumed ACP capacity rights increases to 749,000 Dth/d and 166,000 Dth/d, respectively.

[5]: [1] + [2] + [3] = [5].

[6]: [1] + [2] + [3] + [4] = [6]. Does not reflect the 75,000 Dth/day transfer from Piedmont to Duke in spring 2016.

Note that Duke and Piedmont subscribe to additional storage capacity outside of Transco. For example, Piedmont subscribes to the Hardy storage facility located on the Columbia pipeline, and also subscribes to Columbia FSS storage.²⁶ Duke has storage capacity off East Tennessee into Saltville Storage with approximately 50,000 Dth/d of non-winter storage maximum withdrawal rights and approximately 20,000 Dth/d of winter storage maximum withdrawal rights. Though gas from these non-Transco storage facilities can be delivered to the interconnections of

²⁶ One of Piedmont’s contracts on Columbia delivering directly onto Piedmont’s distribution system is a Storage Service Transportation (SST) contract with receipt point at Hardy. We include this contract in our HHI analysis.

Columbia and East Tennessee with Transco and into Zone 5, we do not include this capacity because the transportation used by Duke is not firm point-to-point.²⁷

[REDACTED]

While Duke and Piedmont are both net purchasers of gas, [REDACTED]. Based on discussions with Duke's and Piedmont's natural gas desks, the two entities sell gas "off system" for somewhat different purposes. For most of the year, because [REDACTED]

[REDACTED]

Piedmont engages in off-system sales in order to optimize and produce value for its customers and shareholders from its excess FT capacity.

By contrast, historically Duke's gas needs to meet its gas-fired power generation requirements have [REDACTED]. Duke primarily engages in gas sales as needed to balance differences between its forward purchases to meet generation needs and actual real time consumption. According to discussions with Duke, [REDACTED]

[REDACTED]

Table 6 below summarizes the off-system sales made by Piedmont and Duke in 2013, 2014, and the first part of 2015. Note that Duke's off-system resale of gas is small as a percentage of its total gas purchases, representing only 0.1% of its purchases in 2013, 1.2% of its purchases in 2014, and 0.4% of its purchases through August 2015.

27

[REDACTED]

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**Table 6: Summary of Off-System Natural Gas Sales
Delivered to Zone 5**

Company	Total Off-System Sales (MMDth) [1]	Off-System Sales Revenue (Millions \$) [2]	Percent of Total Gas Purchases [3]
2013			
Duke Energy	0.3	1.6	0.1%
Piedmont Natural Gas	20.3	132.7	24.4%
2014			
Duke Energy	2.4	22.3	1.2%
Piedmont Natural Gas	10.4	150.1	11.5%
2015			
Duke Energy	0.8	2.7	0.4%
Piedmont Natural Gas	11.9	108.5	18.3%

Source and Notes: Duke and Piedmont's internal data. Duke's 2015 total gas purchases are calculated through August 2015. All other 2015 off-system sales and total gas purchases are calculated through October 2015.

Note that

although it does have the ability to do so.²⁸ Piedmont releases substantial capacity when available; it released about 214.4 MMDth in 2014. However, the market prices for these releases were such that Piedmont earned only about \$17 million in revenue from its releases in 2014—substantially less than its revenues from off-system gas sales.²⁹

3. The merged firm has no increased incentive or ability to increase the price of firm released gas transport capacity.

We have evaluated the likely impact of the Transaction on concentration in the supply of available gas transport capacity that can be used to provide delivery into the Carolinas.

In our analysis, we analyzed six different scenarios. We examined three seasonal market conditions: Average Summer, Average Winter, and Winter Peak. We also analyzed two distinct time periods: Pre-ACP (2014/2015) and Post ACP (2019).

²⁸ Capacity release data from SNL from January 2012 – October 2015 show that the only capacity releases made by Duke subsidiaries during this period are to other Duke subsidiaries.

²⁹ SNL Financial LC, “Capacity Release by Releasing Shipper,” dataset.

As of winter 2015, Duke had capacity rights of almost 360,000 Dth/d, and it will have approximately 435,000 Dth/d beginning in March 2016.³⁰ However, as shown in Table 7,

[REDACTED]

Hence, [REDACTED]
Under these conditions, [REDACTED]
[REDACTED]. Consequently, when these conditions hold, there is no incentive created by the Transaction to increase the price of delivered gas or gas transportation rights.

[REDACTED]

[REDACTED]

[REDACTED] to hold until the ACP is completed. When the ACP begins operation, Duke will obtain an additional 725,000 Dth of daily firm capacity into the Carolinas. During the expected Winter Peak and Average Summer conditions after the ACP is operational, Duke's gas demand for meeting its generation needs will be higher than its current level— [REDACTED]

³⁰ An agreement dated April 2014 between Piedmont and Duke provides for the non-recallable release of 75,000 Dth/d of Firm Transportation, with delivery point at Piedmont's city-gate, from Piedmont to Duke, effective March 1, 2016.

[REDACTED]

During these periods, Duke would benefit from lower delivered gas prices. Consequently, the Transaction would not be expected to increase market concentration or create any anticompetitive incentives to increase the price of delivered gas or released gas transportation capacity under these conditions.

Following commencement of operations on the ACP, [REDACTED] relative to its projected gas requirements for power generation during seasonal periods when its gas generation needs are lower. We have described an example of such a period in our Average Winter, Post-ACP scenario.³²

However, even in this period, the Transaction will not materially increase Applicant's market power. This is primarily because it is precisely in such periods when gas demand is relatively low, not just for Duke but more generally. In our analysis of the Average Winter scenario, there will likely be a large number of potential sellers of excess gas transport capacity (or delivered gas) besides [REDACTED]. We estimate that the amount of gas transport capacity that is available from suppliers other than Duke and Piedmont is likely to be substantially larger than the quantity demanded.

In particular, we examined the amount of "net" (i.e., "uncommitted") gas delivery capacity into Transco Zone 5 during Average Winter conditions. In performing this analysis, we analyzed the gas delivery capacity of individual parties, including any owned LNG storage and bundled storage on Transco. From this, we "netted" out the expected capacity needed by each party to meet its own power generation requirements, gas LDC load requirements, or other commitments.

Of this "uncommitted" gas transportation capacity available during Average Winter conditions after the ACP becomes operational, Duke's share is approximately 7% (approximately 204,000 Dth/day) and Piedmont's share is approximately 15%. Together, the merging parties account for approximately 22% of such capacity. Further details of this calculation are provided in the technical appendix.³³

³¹ In 2017, the WS Lee facility, located in northern South Carolina along the Transco pipeline, will add 650 MW of combined cycle gas capacity to Duke's portfolio (and a further 100 MW will be owned by North Carolina Electric Membership Corporation).

³² The excess FT rights would decline in 2020 as Duke expects more natural gas-fired power plants to be on-line in 2020. See Duke's 2014 IRP.

³³ Technical Appendix B, *Horizontal Competitive Effects Analysis of Delivered Gas Market in North Carolina*.

Under this scenario, we also calculated seller concentration in the form of the Herfindahl-Hirschman Index (“HHI”).³⁴ In this post-ACP average winter scenario, the post-Transaction HHI is 1,983, and the Transaction-related change in the HHI is 207.

Table 8: Concentration Measurement for Average Winter Conditions, Post-ACP

	Post-ACP	
	Market Share	HHI Contribution
Piedmont	15%	231
Duke	7%	46
Rest of Industry	78%	1,498
Pre-Merger HHI Total	100%	1,776
Post-Merger Change in HHI		207
Post-Merger HHI Total		1,983

Notes:

The changes in HHI for all other scenarios is zero and therefore not shown

The market share figure for “Rest of Industry” is composed of multiple capacity rights owners. For a breakdown of shares by firm, see the Technical Appendix.

We also considered a sensitivity analysis that examined the potential effects of Transco’s Atlantic Sunrise expansion project. We assume in our analysis that, if approved by FERC, this project would increase by approximately 850,000 Dth/d the amount of deliverable gas at various delivery points along Transco’s Leidy Line (connection point in Zone 6) and Station 85 (Zone 4).³⁵ The project is scheduled to be online by July 2017.³⁶

³⁴ The HHI is calculated by summing the squares of the individual firms’ market shares, and thus gives proportionately greater weight to the larger market shares. For example, a market consisting of four firms with market shares of thirty percent, thirty percent, twenty percent, and twenty percent has an HHI of 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI ranges from 10,000 (in the case of a pure monopoly) to a number approaching zero (in the case of an atomistic market). The increase in the HHI due to merger is equal to twice the product of the market shares of the merging firms. Although it is desirable to include all firms in the calculation, lack of information about firms with small shares is not critical because such firms do not affect the HHI significantly. See the 2010 U.S. Department of Justice and Federal Trade Commission, *Horizontal Merger Guidelines* (issued August 19, 2010), pp. 18-19 and footnotes 9 and 10.

³⁵ Transcontinental Gas Pipe Line Company, LLC., Application for Certificate of Public Convenience and Necessity (Atlantic Sunrise Project), Docket No. CP15-138, March 31, 2015, p. 10.

³⁶ *Id.*, p. 21.

Unlike the ACP, which terminates in the market area, Atlantic Sunrise provides delivery points in Transco's Zone 4.³⁷ The subscribers to Atlantic Sunrise's capacity are largely gas producers and marketers. Consequently, the full amount of the project's capacity is unlikely to be used to deliver into Transco Zone 5. We therefore scale each shipper's contract volume by the ratio of historical deliveries into Zone 5 to the total amount of capacity with Zone 5 on the firm path. In the Winter-Average scenario, this sensitivity case results in a Post-Merger HHI of 1,592 and a Transaction-related change in HHI of 162. Further details on this sensitivity analysis are provided in the technical appendix.

While the 2010 U.S. Department of Justice and Federal Trade Commission *Horizontal Merger Guidelines* ("*Guidelines*") indicate that HHI values in these ranges "potentially raise significant competitive concerns and often warrant scrutiny,"³⁸ the *Guidelines* also emphasize "that the measurement of market shares and market concentration is *not an end in itself*" (emphasis added). Instead, the *Guidelines* indicate that HHI analysis should be used as part of an overall analysis of various factors relating to the likely competitive effects of a merger.³⁹

In fact, an analysis of other factors, which we shall discuss presently, shows that the Transaction does not present competitive concerns under these seasonal conditions. The main reason for this assessment is that there is substantial excess gas delivery capacity relative to the amount of gas delivery needed during these seasonal conditions.

To demonstrate this point, we calculated a "Residual Supply Index" to assess the degree to which the merged firm will be "pivotal" to the supply of delivered gas in the Average Winter scenario. A firm is considered to be "pivotal" when demand for a particular product cannot be met without relying upon supply provided by that particular firm. If demand for the given product can be satisfied without relying upon that firm, then the firm is not pivotal.

As described in Table 9 below, "Competing Supply" (*i.e.*, row [f], 2.33 million Dth/d) represents the estimated uncommitted transportation capacity that can be delivered into Transco Zone 5 held by owners of transportation rights other than Piedmont and Duke. By contrast, "Unserved Demand" (*i.e.*, row [e] in Table 9, 0.26 million Dth/d) represents the need for uncommitted transportation capacity, which we estimate as the difference between expected seasonal gas demand and the amount of gas delivery under contract. The "Residual Supply Index" is approximately 8.9, which indicates that the amount of Competing Supply is 8.9 times the size of Unserved Demand under these conditions.

³⁷ It also includes delivery points in Pennsylvania and Northern Virginia. We exclude this portion of the expansion project.

³⁸ *Horizontal Merger Guidelines* at Section 5.3.

³⁹ *Horizontal Merger Guidelines* at Section 4.

In other words, this result indicates that all Unserved Demand could be met by third parties other than Piedmont or Duke with just 11% of their available delivery capacity. Moreover, these gas delivery rights are held by a diverse group of market participants. Consequently, there is little opportunity under these conditions for the Transaction to facilitate the exercise of market power with respect to the sale of delivered gas or gas transportation rights.⁴⁰

Table 9: Pivotal Supplier Analysis for Average Winter Conditions, Post-ACP

		Post-ACP
Piedmont + Duke Uncommitted Supply	[a]	658,570
Total Uncommitted Supply	[b]	2,989,777
Total Demand	[c]	3,758,725
Committed Demand	[d]	(3,495,548)
Unserved Demand	[e]	263,177
Competing Supply	[f]	2,331,207
Residual Supply Index	[g]	8.86
Result		Not Pivotal

Sources and Notes:

Pivotal if [g] is less than 1.

[a]: Uncommitted supply of Duke and Piedmont.

[b]: Uncommitted supply of all parties.

[c]: Winter Average market demand based on actual deliveries.

[d]: Demand served by LDCs and reg. electric generation.

[e] = [c] + [d]

[f] = [b] - [a]

[g] = [f] / [e]

Based on this result, and [REDACTED] the Transaction does not present competitive concerns with respect to the availability and pricing of delivered gas or gas transportation rights affecting North Carolina.

4. Regulatory restrictions limit Duke’s and Piedmont’s incentives and ability to influence prices for firm released gas transport capacity

DEC is allowed to return up to 10% of any bulk power sales profits to shareholders. The remaining 90% of such profits flow back to customers as a revenue requirement offset. For example, in any wholesale power market where Duke has market-based rate authority, such

⁴⁰ Sheffrin, A., “Predicting Market Power using the Residual Supply Index,” Presented to FERC Market Monitoring Workshop, December 3-4, 2002. Also, Taylor, G., Ledgerwood, S., Broehm R., and Fox-Penner P., “Market Power and Market Manipulation in Energy Markets from the California Crisis to the Present,” pp. 38-40, 113-114, Public Utilities Reports, Inc., March 2015.

as sales into PJM, any profits from such sales would return to Duke following the 90/10 profit sharing rule.⁴¹ DEP does not retain profits from bulk market power sales.

Piedmont also has a profit-sharing rule. The split is 75% to Piedmont customers, 25% to Piedmont shareholders.⁴²

Moreover, FERC's broad enforcement authority applies to manipulative, deceptive, or fraudulent actions undertaken in connection with the purchase or sale of natural gas or purchase or sale of transportation services (including released capacity) subject to FERC jurisdiction. That regulatory oversight constitutes an additional effective check against any potential attempts to artificially impact pricing in the capacity release markets examined herein.

D. THIRD-PARTY GENERATION IS NOT AT RISK OF HIGHER GAS DELIVERY COSTS AS A RESULT OF THE TRANSACTION

Munis and co-ops own or contract for generation that competes with electric generation supplied by Duke in meeting the needs of their customers. This "competing generation" includes power plants owned by IPPs.

A theoretical competitive concern is that, after the Transaction, the combined firm would have the ability to take pricing and operational actions that raise the cost of acquiring delivered gas for owners of gas-fired generation. There would be an increased incentive to take such actions if Duke would accrue additional profits in its electric business. Presumably, those additional profits would derive from increased sales by Duke and possibly increased prices for electric power sold to munis and co-ops.

However, Duke is constrained from benefiting from such behavior, because: (i) FERC regulation prohibits Duke from increasing prices on those sales to a level higher than cost-based prices; and, most importantly, (ii) market conditions and regulation regarding the supply of delivered gas and the use of transportation rights to deliver the gas effectively preclude the merged firm from harming generators that compete with Duke's generation.

1. Municipalities and co-operatives in North Carolina have sufficient regulatory protection to prevent rate increases regardless of the degree of competition from rival generation.

Duke does not have market-based rate authority for wholesale power sales in its balancing authority areas.⁴³ Thus, for short-term (less than one year) power sales in its balancing authority

⁴¹ Order Approving Stipulation and Deciding Non-Settled Issues in Docket No. E-7, Sub 828 (December 20, 2007).

⁴² Piedmont Natural Gas Co. Form 10-K for the Fiscal year Ended October 31, 2015, p. 76.

areas, Duke must sell at cost-based rates that the FERC has approved. Duke is similarly restricted regarding contract terms for one year or longer because it is required to file with and obtain FERC acceptance for each of its power sales contracts.⁴⁴

There is little flexibility for Duke in determining how to set cost-based rates. Power supplied on a long-term basis by DEC/DEP to munis and co-ops within their respective service territories is priced at the utility's system average cost, implying that Duke does not receive "excess" profits beyond its regulated allowed return associated with the rate base allocated to serve those customers' loads. Nor are munis/coops receiving discounts, relative to the system average cost or to other customers, that could be threatened if competition by IPPs or self-owned generation were to diminish.

Power supplied outside of respective service territories is sold at no lower than "system lambda," reflecting the incremental cost to provide those energy sales and existing NCUC rule makings.⁴⁵ This condition means that no potential or actual Duke customer in North Carolina can be offered a rate that is less than Duke's costs to serve that customer, a condition which will continue to hold irrespective of the merger with Piedmont. Moreover, while Duke is permitted to sell wholesale power outside its balancing authority areas at market-based rates, those balancing authority areas make up the vast majority of the state of North Carolina. FERC has found Duke not to have market power outside its balancing authority areas, indicating therefore that its ability to raise wholesale power prices in the non-Duke BAAs of North Carolina is constrained by competition.⁴⁶

Continued from previous page

⁴³ See *DEC Wholesale Market-Based Rate Tariff Providing for Sales of Capacity, Energy, or Ancillary Services*, sec. 7, filed on June 20, 2014 in FERC Docket No. ER14-2323, and *DEP Market-Based Rates Tariff*, sec. VII, filed August 31, 2015 in FERC Docket No. ER15-2568.

⁴⁴ See *Duke Power, a Div. of Duke Energy Corp.*, 111 FERC ¶ 61,506, at P 61-62 (2005) (limitation on market-based rate sales within the DEC balancing authority area); *Florida Power Corp.*, 113 FERC ¶ 61,131 at P 17 (2005) (limitations on market-based rate sales within the DEP balancing authority areas).

⁴⁵ *In the Matter of Duke Energy Carolinas, LLC's Advance Notice of Purchase Power Agreement with the City of Orangeburg, South Carolina and Joint Petition for Declaratory Order*, Docket No. E-7, Sub 858 (March 30, 2009).

⁴⁶ See FERC's order issued July 15, 2015 in FERC Docket No. ER14-2323, in which FERC accepted Duke's triennial market power update for the southeast region.

2. Market conditions and regulation regarding the supply of delivered gas effectively preclude the Transaction from harming generation that competes with Duke.

There are two mechanisms by which the merged firm would, theoretically, be able to raise the cost of third party generation to supply power in North Carolina: (i) any actions which Piedmont, in its capacity as the franchised LDC, might take to increase the delivered price of gas to generating units connected to Piedmont's distribution system or a Piedmont-owned lateral; and (ii) any actions which the merged firm might take to increase delivered gas costs through an exercise of the combined firm's market power in secondary markets for gas transportation capacity.

a. Third-party generation dependence on Piedmont distribution

The IPPs in the region include Southern Company's Rowan and Cleveland facilities, the Broad River peaking facility, and NTE's future King's Mountain facility. Of these, only the Rowan plant is in Piedmont's service territory. Southern Company has a contract with Piedmont for this facility based on the construction cost of the lateral connection to Transco, and does not otherwise have any dependence on Piedmont's gas distribution network.

In addition to IPP-owned generation, munis and co-ops in North Carolina own four generation plants that are each directly connected to Piedmont's gas distribution network. Table 10 provides a summary of these power plants. Based on conversations with Duke and Piedmont, we understand that each of the NCEMC plants receives firm transmission service from Piedmont and that Fayetteville's Butler Warner facility receives interruptible service. Additionally, Duke has operational control of the Anson County and Butler-Warner plants, and it has a PPA for 3 of the 6 units at Richmond/Hamlet. Finally, all of the muni/co-op plants in North Carolina are peaking facilities with unfavorable heat rates, operating in fewer than 4% of hours, and contributing little to their associated load obligations.

Table 10: Muni/Co-op-Owned Gas-Fired Generation

	NCEMPA	NCEMC		Fayetteville
Plant Name	Monroe	Anson County	Richmond/Hamlet	Butler Warner
Capacity & Type	24 MW GT	339 MW CT	339 MW CT	185 MW CC & 40 MW CT
Capacity Factor	0.22%	4%	2%	0.74% CC & 0.66% CT
Contracts		<ul style="list-style-type: none"> • FT Service from Piedmont • Tolloed to Duke (2032) 	<ul style="list-style-type: none"> • FT Service from Piedmont • 3 of 6 units under Duke PPA (2019) 	<ul style="list-style-type: none"> • Interruptible Service from Piedmont • Tolloed to Duke (2019)

Source and Notes: Velocity Suite, ABB Inc., “Monthly Plant Production Costs - Plant View” dataset. Capacity and Capacity Factors are based on summer capacity.

In summary, no IPP is materially dependent on Piedmont for gas distribution, Duke already controls (or owns the output from) most of the muni/co-op capacity, and muni and co-op generation is comprised of peaking facilities with low capacity factors. Consequently, we have concluded that third-party generation is not at risk of higher gas costs related to changes with respect to Piedmont’s gas distribution network.

b. Third-party generation exposure to potential increased costs of gas transmission capacity

All else equal, IPPs with gas-fired generation are less likely to secure contracts to provide wholesale power as they face increased procurement costs for obtaining delivered gas. To the extent that the merged firm could influence the price of gas through its presence as an owner and potential supplier of gas transmission capacity in the secondary markets, IPPs could be disadvantaged.

However, as shown in Section III.C above, the potential supply of delivered gas (or transportation rights into Zone 5 that are the key input into gas delivery) is sufficiently competitive to make it implausible that the merged firm would be able to harm generators competing with Duke’s generation. For most scenarios, there is no Transaction-related change in concentration in the supply of delivered gas, since Duke is a net purchaser of delivered gas. In the only scenario where there is a potential Transaction-related increase in market concentration, there are many alternative sources of supply with more than ample capacity to satisfy demand for gas delivery.

Consequently, there is no basis for a competitive concern that the merging company will cause rival generators’ delivered gas costs to rise.

IV. Conclusion

The analysis in this report reviewed and considered the degree of competitive overlap in electricity and natural gas services between Duke and Piedmont and the potential scope for loss of competition in North Carolina as a result of the Transaction. We find that the Transaction raises no basis for competitive concern.

Current regulations sufficiently constrain retail electric and gas pricing such that the Transaction will not adversely affect electric-gas retail competition. Moreover, the Transaction will not diminish Piedmont's incentive to develop gas infrastructure, nor will it reduce Duke's incentive to develop electric infrastructure.

In addition, our analysis shows that economic conditions in the electric and gas markets, as well as regulatory provisions currently in place, are such that the Transaction will not provide the incentive or the ability for Duke or Piedmont to raise delivered gas prices or withhold gas transmission capacity or gas transport services affecting North Carolina.

Due to the above effects, there is no basis for "vertical" market power concerns that the Transaction will directly disadvantage IPPs who serve wholesale electric customers in competition with Duke. In addition, Piedmont will be unable to disadvantage gas-fired generation owned by munis or co-ops to make them more reliant on Duke's own generation.

Technical Appendix A Long-Term Debt-Issuance Costs

Table 1: Piedmont Long-Term Debt Interest Rate Calculation

Interest Rate	Maturity Date	As of October 31		Annual Interest Payment on Debt as of 2015
		2015	2014	
[A]	[B]	[C]	[D]	[E]
<i>Senior Notes:</i>				
2.92%	June 6, 2016	\$ 40,000	\$ 40,000	\$ 1,168.00
8.51%	September 30, 2017	\$ 35,000	\$ 35,000	\$ 2,978.50
4.24%	June 6, 2021	\$ 160,000	\$ 160,000	\$ 6,784.00
3.47%	July 16, 2027	\$ 100,000	\$ 100,000	\$ 3,470.00
3.57%	July 16, 2027	\$ 200,000	\$ 200,000	\$ 7,140.00
4.10%	September 18, 2034	\$ 250,000	\$ 250,000	\$ 10,250.00
4.65%	August 1, 2043	\$ 300,000	\$ 300,000	\$ 13,950.00
3.60%	September 1, 2025	\$ 150,000		\$ 5,400.00
<i>Medium-Term Notes:</i>				
6.87%	October 6, 2023	\$ 45,000	\$ 45,000	\$ 3,091.50
8.45%	September 19, 2024	\$ 40,000	\$ 40,000	\$ 3,380.00
7.40%	October 3, 2025	\$ 55,000	\$ 55,000	\$ 4,070.00
7.50%	October 9, 2026	\$ 40,000	\$ 40,000	\$ 3,000.00
7.95%	September 14, 2029	\$ 60,000	\$ 60,000	\$ 4,770.00
6.00%	December 19, 2033	\$ 100,000	\$ 100,000	\$ 6,000.00
Total Principal		\$ 1,575,000	\$ 1,425,000	
Less current maturities		\$ 40,000		
Less Unamortized Debt Issuance Expenses and Discounts		\$ 11,323	\$ 10,516	
[1] Total		\$ 1,523,677	\$ 1,414,484	\$ 75,452.00
[2] Average Interest Rate (2015)				4.95%

Source: Piedmont Natural Gas Company, Form 10-K for the fiscal year ended October 31, 2015.

Notes:

[A]-[D]: From Form 10-K, p. 78.

[E]: [A] x [C].

[2]: [1][E] / [1][C].

Table 2: Duke Long-Term Debt Interest Rate Calculation

	Weighted Average Interest Rate	Duke Energy	Duke Carolinas	Progress Energy	Duke Energy Progress
	[A]	[B]	[C]	[D]	[E]
[1] Unsecured debt, maturing 2015-2073	4.92%	\$ 12,937	\$ 1,155	\$ 3,850	\$ 2,274
[2] Secured debt, maturing 2016-2037	2.50%	\$ 2,806	\$ 400	\$ 525	\$ 300
[3] First mortgage bonds, maturing 2015-2044	4.76%	\$ 19,180	\$ 6,161	\$ 9,800	\$ 5,475
[4] Capital leases, maturing 2015-2051	5.30%	\$ 1,428	\$ 27	\$ 314	\$ 146
[5] Tax-exempt bonds, maturing 2015-2041	2.13%	\$ 1,296	\$ 355	\$ 291	\$ 291
[6] Notes Payable, Commercial Paper	0.70%	\$ 2,989	\$ -	\$ -	\$ -
[7] Money Poll / Intercompany borrowings		\$ -	\$ 300	\$ 835	\$ -
[8] Fair value hedge carrying value adjustment		\$ 8	\$ 8	\$ -	\$ -
[9] Unamortized debt discount and premium, net		\$ 1,890	\$ (15)	\$ (26)	\$ (11)
[10] Total	4.29%	\$ 42,534	\$ 8,391	\$ 15,589	\$ 8,475
[11] Short-term notes and commercial paper		\$ (2,514)	\$ -	\$ -	\$ -
[12] Short-term money poll borrowings		\$ -	\$ -	\$ (835)	\$ -
[13] Current maturities of long-term debt		\$ (2,807)	\$ (507)	\$ (1,507)	\$ (945)
[14] Total Long-term debt	4.58%	\$ 37,213	\$ 7,884	\$ 13,247	\$ 7,530
[15] Unsecured debt, maturing 2015-2073		\$ 636.50	\$ 56.83	\$ 189.42	\$ 111.86
[16] Secured debt, maturing 2016-2037		\$ 70.15	\$ 10.00	\$ 13.13	\$ 7.50
[17] First mortgage bonds, maturing 2015-2044		\$ 912.97	\$ 293.26	\$ 466.48	\$ 260.61
[18] Capital leases, maturing 2015-2051		\$ 75.68	\$ 1.43	\$ 16.64	\$ 7.74
[19] Tax-exempt bonds, maturing 2015-2041		\$ 27.60	\$ 7.56	\$ 6.20	\$ 6.20
[20] Total Interest		\$ 1,722.91	\$ 369.08	\$ 691.87	\$ 393.90
[21] Estimated LT interest rate		4.63%	4.68%	5.22%	5.23%
[22] Interest rate, excl. tax exempt bonds		4.72%	4.80%	5.29%	5.36%
[23] Estimated bond interest rate		4.64%	4.67%	4.72%	4.72%

Source: Duke Energy Corporation, Form 10-K for the fiscal period ended December 31, 2014

Notes: Debt in millions USD.

[1]-[14]: From Duke 2014 10-K.

[1][E]: Progress Energy unsecured debt apportioned to Duke Energy Progress using ratio of Duke Energy Progress to Progress Energy total assets: \$3,850 x 59.1%.

[15]: [1][A] x ([1][B] to [1][E]).

[16]: [2][A] x ([2][B] to [2][E]).

[17]: [3][A] x ([3][B] to [3][E]).

[18]: [4][A] x ([4][B] to [4][E]).

[19]: [5][A] x ([5][B] to [5][E]).

[20]: Sum ([15]-[19]).

[21]: [20] / [14].

[22]: Sum ([15]-[18]) / ([14]-[5]).

[23]: Sum ([15]-[17]) / Sum ([1]-[3]).

Technical Appendix B

Horizontal Competitive Effects Analysis

Delivered Gas Market in North Carolina

I. Overview

This technical appendix provides a more detailed description of how we perform the horizontal market power analysis of delivered gas in North Carolina. The results of our analysis are presented in Section III.C of *Market Power Analysis of Proposed Transaction Between Duke Energy Corporation and Piedmont Natural Gas Company* (“Exhibit B”) on behalf of Duke Energy Corporation (“Duke”) and Piedmont Natural Gas Company (“Piedmont”), together Applicants, before the State of North Carolina Utilities Commission.¹

The main method used in our horizontal market power analysis is to measure whether the merger would significantly increase concentration of wholesale delivered gas capacity rights in such a way that prices would be likely to increase. We rely on the framework set out in the Antitrust Agencies’ 2010 Horizontal Merger Guidelines (2010 Guidelines)² as the basic framework for evaluating the horizontal competitive effects of this proposed merger.³ Our analysis consists of four main components: (1) identification of the relevant product markets; (2) identification of the relevant geographic markets; (3) identification of the potential suppliers that can serve relevant products in relevant markets; and (4) analysis of the concentration of capacity ownership and other relevant competitive factors following the 2010 Guidelines.⁴

The remainder of this appendix discusses each of these components. Section II of the appendix discusses how we define the relevant product and geographic markets for the HHI analysis. It

¹ Exhibit B, Docket Nos. E-2, Sub 1095, E-7, Sub 1100, and G-9, Sub-682, (2016).

² 2010 U.S. Department of Justice and Federal Trade Commission, *Horizontal Merger Guidelines* (issued August 19, 2010).

³ Other sections of Exhibit B address potential vertical and horizontal market power analyses in retail markets.

⁴ The HHI is a widely accepted measure of market concentration, calculated by squaring the market share of each firm competing in the market and summing the results. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. For example, a market consisting of four firms with market shares of thirty percent, thirty percent, twenty percent, and twenty percent has an HHI of 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI ranges from 10,000 (in the case of a pure monopoly) to a number approaching zero (in the case of an atomistic market). The increase in the HHI due to merger is equal to twice the product of the market shares of the merging firms. See *2010 Guideline*, pp. 18-19 and footnotes 9 and 10.

also explains how we identify potential suppliers. Section III describes the data and assumptions used in our HHI calculation. Finally, Section IV presents the results of the HHI calculations.

II. DEFINING RELEVANT MARKETS AND POTENTIAL SUPPLIERS

Defining the relevant product and geographic markets is necessary to perform a market power analysis. The boundaries of the product and geographic markets are based upon substitution between the products within the defined geographic area. From the proposed merger perspective, we delineate the relevant markets according to Duke's and Piedmont's overlapping natural gas assets and rights.

A. RELEVANT PRODUCT MARKET

Both Duke, through its subsidiaries DEC and DEP, and Piedmont currently hold firm transportation and bundled storage rights on natural gas pipelines that deliver gas into North Carolina.⁵ Piedmont uses its rights to support its LDC and power generation supply obligations in North Carolina. DEC and DEP, on the other hand, use their rights to supply gas to their power plants, which generate electricity to serve their native load obligations.

For the purpose of Exhibit B's horizontal market power analysis, the relevant product is wholesale delivered natural gas in North Carolina,⁶ measured in terms of firm transportation capacity and long-term gas purchase contracts for delivery into the relevant geographic market, which contains North Carolina. As Piedmont and other shippers also own bundled gas storage rights on Transco and peak-shaving gas storage facilities in North Carolina, storage capacity is included in the measurement of the relevant product. Furthermore, because both Duke and Piedmont have obligations to use gas to serve load, the relevant product in our analysis is further refined as *available* firm capacity rights, which are measured as firm transportation and storage capacity rights after netting off associated load obligations.

The demand for natural gas is highly seasonal. Piedmont's peak demand for gas is in the winter while Duke's demand, as an electric utility, peaks in the summer. Due to this seasonality and the balance between supply and demand, the ability of Piedmont and Duke to affect competition in the delivered gas market may vary across the year. We therefore define the relevant product markets by seasonal periods, including Annual Peak, Winter Average, and Summer Average.

⁵ *Infra* Section III.B.1.

⁶ In this appendix, we use the term delivered gas interchangeably with wholesale delivered gas.

B. RELEVANT GEOGRAPHIC MARKET

Currently, the main interstate pipeline that can deliver gas into North Carolina is Transcontinental Gas Pipe Line Company, LLC's ("Transco's") natural gas transmission system. Transco's transmission system extends from Texas, Louisiana, Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, New Jersey and New York.⁷ As shown in Figure 1, Transco classifies the portion of its pipeline system that goes through North Carolina as Zone 5 ("Transco Zone 5"). Transco Zone 5 contains delivery points in North Carolina, as well as South Carolina and Virginia.

Figure 1: Transco System Map



Source: The Williams Companies, Transco Update Spring 2014

East Tennessee ("Tennessee") and Columbia Gas Transmission Corp. ("Columbia") can also deliver gas into North Carolina. However, gas marketed by capacity right holders on Tennessee and Columbia must pass through Transco (in its Zone 5) in order to reach the North Carolina

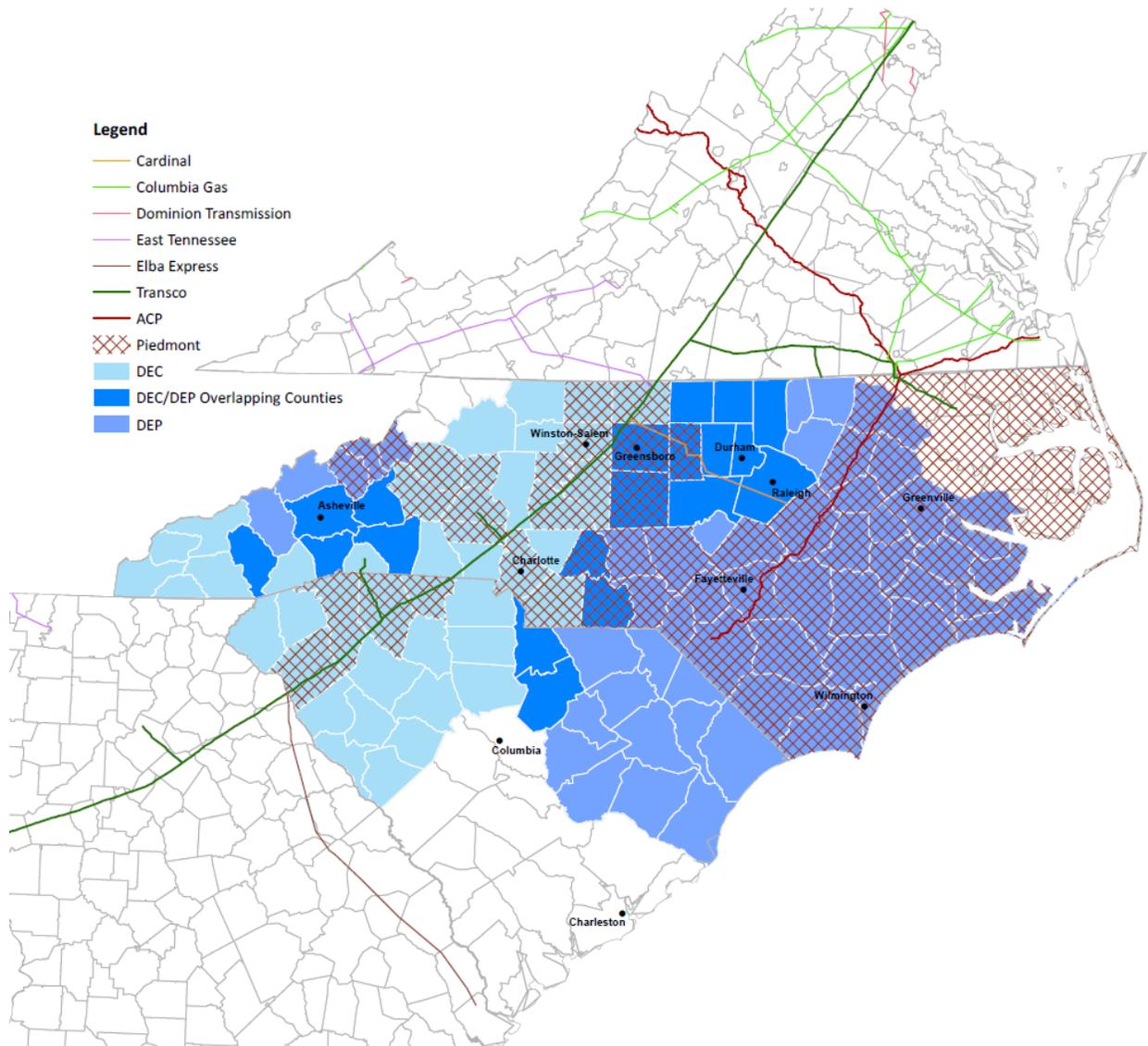
⁷ Transcontinental Gas Pipe line Company LLC, FERC Gas Tariff, Forth Revised Volume No. 1, Effective Date 7/12/2009, Original Sheet No. 4.

market with one exception.⁸ The one exception is that Piedmont and Direct Energy can take delivery directly from Columbia to its system near Pleasant Hill, North Carolina.⁹

⁸ The presence of the Station 165 pooling point supports the conception of Transco Zone 5 as a single market. According to the FERC, pooling “creates a more liquid gas market as shippers and producers can buy and sell gas at pooling points.” <https://www.ferc.gov/whats-new/comm-meet/2010/021810/G-1.pdf>. Transco’s tariff supports this goal by providing pooling service at a number of points on its system, including the Station 165 Zone 5 pooling point. The pooling service allows shippers to aggregate gas to the virtual pooling point, sell it, and authorize the buyer to receive the gas at the pooling point for onward transportation using the buyer’s transportation contracts.

⁹ Velocity Suite, ABB Inc., “Natural Gas Pipelines Index of Customers” dataset

Figure 2: Geographic Area Map



Sources: 2014 EIA Form 861; EIA Layer Information for Interactive State Maps, “Natural Gas Interstate and Intrastate Pipelines” shapefile; client provided data.

By November 2018, the proposed Atlantic Coast Pipeline (“ACP”) project is expected to be in-service.¹⁰ The ACP is jointly owned by Dominion Resources (45%), Inc. (“Dominion”), Duke (40%), Piedmont (10%), and AGL Resources, Inc. (5%). Figure 2 presents the location of Transco, Tennessee, Columbia, and the ACP in relation to the DEC, DEP, and Piedmont service areas.

¹⁰ The ACP project is currently seeking a Certificate of Public Convenience and Necessity (CCN) before the FERC. See *Atlantic Coast Pipeline, LLC*, Docket Nos.CP15-554-000, September 18, 2015.

Consequently, prior to the service date of the ACP (“Pre-ACP”), the relevant geographic market for the market power analysis is Transco Zone 5 plus the portion of Columbia’s capacity with delivery point at Pleasant Hill. After the ACP enters service (“Post-ACP”), the relevant market boundary includes Transco Zone 5, Pleasant Hill, and the ACP.

Transco’s Zone 5 includes delivery points in South Carolina, North Carolina, and Virginia. Although the Applicants’ operations overlap primarily in North Carolina, we do not limit the geographic market to Transco’s Zone 5 delivery points in North Carolina. Transco’s rules provide flexibility to its firm transportation (“FT”) right holders to choose their delivery points as long as the delivery points are located between their contracted receipt and delivery zones.¹¹ We discuss more of these rules in the next section.

C. IDENTIFY POTENTIAL COMPETING SUPPLIERS

Potential suppliers in our analysis are defined as firms who hold the following firm rights:

- 1) *Zone 5 FT Right Holders*: These suppliers include shippers holding FT contracts with Transco with delivery points in Zone 5 and receipt points outside Zone 5. Such shippers can purchase gas in Transco’s production region (Zones 1 – 3), or in the Marcellus area (Zone 6) and deliver it into Zone 5 on a firm basis.¹²
- 2) *Transco Bundled Storage Holders*: Some bundled storage contracts on Transco are able to make deliveries into Zone 5. Unlike unbundled storage, bundled storage contract holders are able to make deliveries to points specified in their contracts without making separate pipeline nominations. Of the bundled storage contract holders, we assume that those who also have FT with delivery points in Zone 5 have bundled storage delivery points in Zone 5.
- 3) *Holders of FT Rights Crossing Zone 5 (“Zone 5 Firm Pass-through Path Capacity”)*: Transco’s tariff allows the holder of a contract where Zone 5 lies between the contractual receipt and delivery points to make deliveries into Zone 5 on a firm basis. For example, the holder of a contract with receipt point in Zone 3 and delivery point in Zone 6 could deliver into Zone 5 on a firm basis. However, the holder of a Zone 3 to Zone 6 contract might have a load obligation in New York City. We therefore consider only a portion of such Zone 5 Firm Path capacity in the market. We discuss the details of our calculation of “deliverable” Zone 5 Firm Path capacity in section III.E below.

¹¹ FERC Order on Rehearing Denying Piedmont’s Request for a Rehearing of Transco’s Clarification of Firm Rate Schedule Language Related to Scheduling Priorities, filed October 27th, 2015 in Docket No. RP14-46-002.

¹² We also include a single Transco FT contract with both delivery and receipt points in Zone 5. This contract’s receipt point is at the interconnection with Tennessee and represents new gas entering the region.

- 4) *LNG and Peak-shaving Storage Facilities*: LDCs serving loads in Zone 5 may have LNG storage facilities on their pipelines. These facilities can be used to make additional deliveries to the distribution utility’s sales customers during times of high demand. As seasonally appropriate (*i.e.*, in winter but not in summer), we include such capacity if any potential suppliers own or hold rights on those facilities. We only include facilities located in North Carolina, South Carolina, and Virginia.

III. Data, Assumptions, and Calculation of HHI

A. SCENARIOS

To proxy the market conditions after the merger, we examine two main scenarios: Pre-ACP and Post-ACP. The Pre-ACP represents current market conditions and relies upon historical data, while the Post-ACP represents the expected market conditions in 2019, immediately following the entry into service of the ACP. While the FERC has not yet approved the pipeline, if constructed, it will substantially increase the capacity to deliver gas into the Carolinas. Both Piedmont and Duke are subscribers to the pipeline.

B. FIRM CAPACITY RIGHTS

1. PIEDMONT AND DUKE’S FT AND STORAGE RIGHTS

We obtain Transco’s and Columbia’s (Pleasant Hill) winter and non-winter FT rights from the Index of Customers (IOC).¹³ The Transco IOC includes both contracts on Transco’s pre-2015 system (Legacy system), and contracts on the Leidy Southeast and Virginia Southside expansions (2015 expansions). Both projects entered service in 2015. In calculating Firm Capacity Rights into Transco Zone 5, we include contracts with delivery points in Transco Zone 5 on both the legacy system and 2015 expansions. Additionally, we include contracts on the 2015 expansions subscribed to by LDCs with service areas in the relevant geographic market. For further details, see section III.E.1 below.

¹³ The data were submitted to FERC by various pipelines and storage operators in FERC Form 549b. We obtain it through Velocity Suite, ABB Inc., “Natural Gas Pipelines Index of Customers” database.

2. In the Pre-ACP period, Piedmont holds a total of 1,073,076 Dth/d of FT and storage rights. As shown in Table 1, these rights include 796,958 Dth/d of FT for delivery into Transco Zone 5, (comprised partly of 100,000 Dth/d of FT rights from Zone 6 to Zone 4 on the Leidy Southeast expansion and 20,000 Dth/d of FT rights on the Virginia Southside expansion), 86,118 Dth/d of bundled storage on Transco, and 190,000 Dth/d of LNG and peak-shaving storage facilities, which are located in North Carolina. Duke, on the other hand, holds a total of 359,560 Dth/d of FT rights on Transco Zone 5.

Table 1: Piedmont’s and Duke’s FT and Bundled Storage Rights (Dth/d)

	Transco Z5 FT	Storage Capacity on LDC System	Bundled Storage on Transco	ACP Capacity	Total Pre- ACP	Total Post- ACP
	[1]	[2]	[3]	[4]	[5]	[6]
Duke Energy	359,560	0	0	725,000	359,560	1,084,560
Piedmont Natural Gas	796,958	190,000	86,118	160,000	1,073,076	1,233,076

Sources and Notes:

[1]: For Piedmont, the amount includes 100,000 Dth/d on Transco’s Leidy Southeast Expansion from Zone 6 to Zone 4, and 20,000 Dth/d on Transco’s Virginia Southside Expansion from Zone 6 to Zone 5.

[2]: Piedmont’s storage capacity includes 100,000 Dth/d of LNG-Huntersville and 90,000 Dth/d of LNG-Bentonville. Both are located in the Carolinas.

[3]: Bundled storage on Transco includes rate schedules GSS, LSS, S-2, SS-2, LGA, and LNG. Piedmont has contracts under GSS and LNG. Duke also has firm storage contracts with Saltville that coincide with secondary firm transportation agreements on East Tennessee. These storage agreements have maximum daily withdrawals of approximately 20,000 Dth/d in winter and 50,000 Dth/d in the non-winter months that we do not include in our analysis.

See *Infra* n.28.

[4]: For the purposes of the market power analysis, the unsubscribed capacity rights of the ACP (60,000 Dth/d) are allocated to the ACP owners according to their ownership shares. The allocations are 24,000 Dth/d and 6,000 Dth/d for Duke and Piedmont, and thereby Duke’s and Piedmont’s assumed ACP capacity rights increases to 749,000 Dth/d and 166,000 Dth/d, respectively.

[5]: [1] + [2] + [3] = [5].

[6]: [1] + [2] + [3] + [4] = [6]. Does not reflect the 75,000 Dth/day transfer from Piedmont to Duke in spring 2016.

After the ACP comes online, Duke’s and Piedmont’s abilities to deliver gas into North Carolina will increase to 1,084,560 Dth/d and 1,233,076 Dth/d, respectively. Duke will hold ACP FT rights of 725,000 Dth/d while Piedmont will hold 160,000 Dth/d. In addition to the FT and storage rights reflected in the table, for the purposes of the market power analysis we also allocate a portion of the ACP’s unsubscribed capacity to Duke and Piedmont based on their ownership shares (24,000 Dth/d and 6,000 Dth/d respectively). This allocation is conservative given that Dominion will operate the pipeline, and the ACP’s unsubscribed capacity will be

released under the Federal Energy Regulatory Commission's rules. Additionally, Table 1 does not reflect Piedmont's release of 75,000 Dth/d of Zone 5 FT to Duke. Prior to the merger announcement, Piedmont agreed to release this capacity to Duke. The release is effective March 1, 2016 and lasts until February 1, 2023. Thus, in the Post-ACP scenario, we reduce Piedmont's capacity rights and increase Duke's capacity rights by 75,000 Dth/day to reflect this agreement.

As discussed above, Piedmont has a 100,000 Dth/d contract on the Leidy Southeast expansion. The Leidy Southeast expansion has receipt points in Zone 6 and delivery points in Zones 5 and 6. As we discuss in Section III.E, we include Leidy Southeast contract capacity for shippers (such as Piedmont) who have Zone 5 LDC load.

After the aforementioned adjustments, Piedmont and Duke's FT Into Zone 5 in the Post-ACP scenario (not including storage or ACP capacity) are as follows:

- Piedmont's Rights: 696,958 Dth/d into Zone 5 + 100,000 Dth/d Leidy Southeast contract – 75,000 Dth/d released to Duke = 721,958 Dth/d
- Duke's Rights: 359,560 Dth/d into Zone 5 + 75,000 Dth/d released by Piedmont = 434,560 Dth/d

[REDACTED]

[REDACTED]

[REDACTED]

C. TRANSCO ZONE 5 TO ZONE 5 CAPACITY TREATMENT

We treat Transco Zone 5 to Zone 5 FT separately from FT Into Zone 5 in order to avoid double counting. As an example of how double counting could occur, consider a shipper that holds two contracts. The first contract is an FT contract with receipt point outside of Zone 5 and delivery point in Zone 5 ("FT Into Zone 5"). The second contract is an FT contract with both receipt and delivery points in Zone 5 ("Zone 5 to Zone 5 FT"). The shipper can use the two contracts to first bring gas into Zone 5 and then to move it within Zone 5 to its ultimate delivery point. Our analysis would account for the first contract as FT Into Zone 5. However, the shipper can only

bring gas into Zone 5 up to the quantity of the first contract. If we were to also include the Zone 5 to Zone 5 contract, we would be overstating the ability of the shipper to move gas into Zone 5. In general, we only count Zone 5 to Zone 5 contracts if the gas arriving at the receipt point would not already have been captured as FT Into Zone 5.

Table 2 shows all Transco FT contracts with both receipt and delivery points in Zone 5. As shown in the table, all Zone 5 to Zone 5 FT originates at either the interconnection with the East Tennessee pipeline at Cascade Creek or the Zone 5 pooling point at Station 165. The contracts with Station 165 receipt points raise the double-counting concern discussed in the previous paragraph. The gas received at Station 165 would have been transported into Zone 5 using FT with receipt points outside of Zone 5, which we have already accounted for as FT Into Zone 5. We therefore do not include these Zone 5 to Zone 5 contracts in our analysis.

Table 2: Transco FT with both Receipt and Delivery Points in Zone 5

Shipper	Contract #	Receipt Point	Delivery Point	Volume
[1]	[2]	[3]	[4]	[5]
Columbia Gas of Virginia Inc	9145192	Station 165	Emporia/Waldrop	7,800
Columbia Gas of Virginia Inc	9060991	Cascade Creek	Lynchburg	40,000
Columbia Gas of Virginia Inc	9038923	Station 165	Emporia/Waldrop	15,000
Columbia Gas of Virginia Inc	1031806	Station 165	Emporia/Waldrop	15,000
Columbia Gas of Virginia Inc	1020774	Station 165	Emporia/Waldrop	19,245
Eservices Inc	9130363	Station 165	Emporia/Waldrop	755
International Paper Co	9145203	Station 165	Emporia/Waldrop	7,000
Reynolds Metals Co	1020819	Station 165	Emporia/Waldrop	575
Virginia Natural Gas	1031212	Station 165	Emporia/Waldrop	14,625

Source: Velocity Suite, ABB Inc., “Natural Gas Pipelines Index of Customers” dataset.

We treat the contract with receipt point at Cascade Creek, an interconnection point between East Tennessee and Transco Zone 5, differently. This is because the gas could have been transported to the Cascade Creek receipt point on the East Tennessee pipeline, which we have not counted among the Into Zone 5 contracts. We therefore include this Zone 5 to Zone 5 contract with Cascade Creek receipt point in our analysis.

D. BUNDLED STORAGE CAPACITY

Transco operates several gas storage facilities, and shippers are able to contract for capacity on these facilities. The pipeline has several rate schedules associated with these storage facilities. The schedules fall into two categories: unbundled and bundled storage. In the first category, shippers must make two separate nominations to withdraw gas: one to withdraw gas from the facility and another to move the gas from the storage facility to its desired delivery point. With bundled storage rate schedules, the shipper makes a single nomination to withdraw gas and deliver to its desired points. Unlike unbundled storage capacity rights, bundled storage rights

therefore represent additional capacity rights to deliver gas into Transco Zone 5 over and above FT Into Zone 5.

Transco's rate schedules GSS, LSS, S-2, SS-2, LGA, and LNG correspond to bundled storage services.¹⁵ Most of the facilities associated with these schedules are located in Transco's production region, but they are subscribed to by shippers located throughout Transco's system. As many of the shippers subscribing to bundled storage contracts use these storage services to make deliveries outside of Transco Zone 5, we exclude them from our analysis. We only include bundled storage contracts with shippers who have FT Into Zone 5.

Additionally, bundled storage contracts are seasonal. For all contracts other than GSS, withdrawals are only allowed during the winter months. We therefore include capacity from these contracts during the "Peak" period and the "Winter-Average" period, but not the "Summer-Average" period. We include capacity from GSS contracts during all periods.¹⁶

Note that we do not include Duke's storage contracts on East Tennessee. While gas withdrawn from these facilities can be delivered to the interconnection with Transco, Transco FT would then be required to move the gas to delivery points in Zone 5 on a firm basis. Including this capacity in the market would therefore be double counting.¹⁷

E. ALLOCATED ZONE 5 FIRM PASS-THROUGH PATH CAPACITY

Transco allows holders of FT rights for which Transco Zone 5 lies between its receipt and delivery points to make deliveries into Zone 5 on a firm basis. We refer to such rights as "Zone 5 Firm Pass-through Path." Many of these right holders are LDCs or marketers serving loads outside of Zone 5, thus much of their Zone 5 Firm Pass-through Path rights are used to serve their non-Zone 5 load. However, these non-Zone 5 LDCs and gas marketers historically did not necessarily use all of their capacity rights to deliver outside of Zone 5. In this section, we describe the method used to determine the quantity of their unused Zone 5 Firm Pass-through Path capacity that can be reasonably expected to participate in our market, and how this Zone 5 Firm Pass-Through Path capacity is allocated to potential suppliers for the purpose of our analysis.

¹⁵ Williams Transco, Storage Training Document, June 18, 2014, Available At: <http://www.iline.williams.com/Transco/files/training/Storage.pdf>

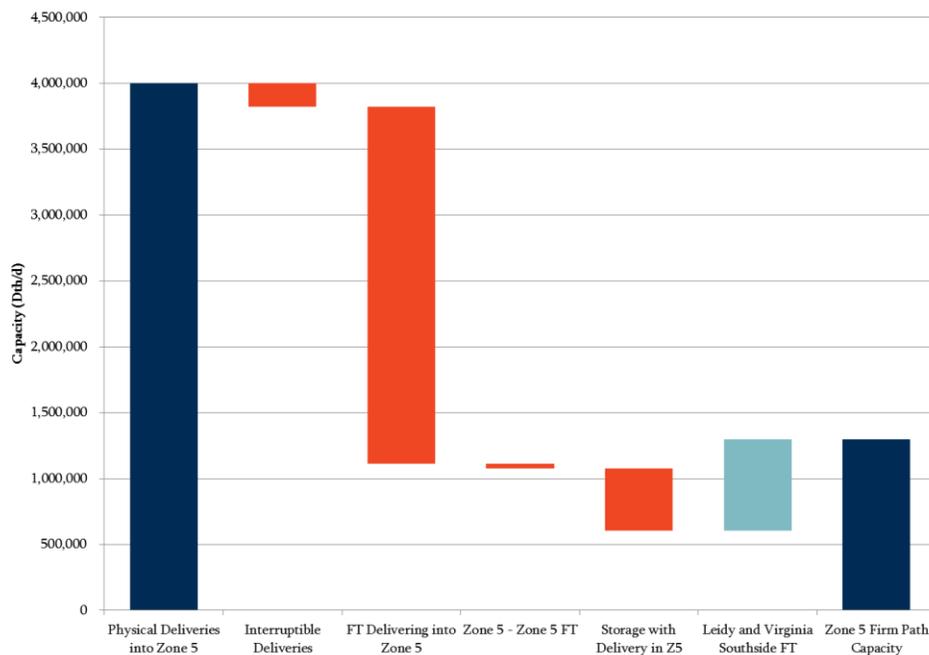
¹⁶ Data from Transco's 2012 rate case confirms that shippers withdraw from GSS storage in the summer.

¹⁷ Rather than using an FT nomination, Duke might instead make a non-secondary reverse path nomination on an unused segment of its FT. However, since non-secondary reverse path nominations have lower precedence than primary path nominations, we do not include them in our analysis.

1. Determination of Available Zone 5 Firm Pass-through Path Capacity

According to Transco’s 2014 Spring Update, the historical maximum capacity available to deliver into Transco’s Zone 5 was approximately 4 million Dth/d.¹⁸ This quantity is well in excess of the total FT capacity Into Zone 5 in 2014. In 2015, Transco also completed several pipeline expansion projects, which increased its system capacity to deliver into Zone 5. These include the Virginia Southside and Leidy Southeast expansion projects. To derive the Pre-ACP maximum delivery capacity, we increase the 2014 maximum Zone 5 delivery capacity by the total subscriptions to the Virginia Southside (270,000 Dth/d) and Leidy Southeast expansion (425,000 Dth/d) projects made by Zone 5 LDCs, yielding a total of about 4.63 million Dth/d.¹⁹ We then subtract the FT Into Zone 5, the Zone 5 to Zone 5 FT, and the bundled storage capacity. Figure 3 illustrates the calculation of Winter Zone 5 Firm Pass-through Path Capacity.

Figure 3: Magnitude of Winter Zone 5 Firm Path Capacity



Source: Velocity Suite, ABB Inc.; 2011/2012 G-1 Part A and Part B; All LNG Facilities Data, Natural Gas Intelligence (NGI), 2006; and client provided data.

¹⁸ Transco Update, Spring 2014, Available at: <http://www.1line.williams.com/Transco/files/presentations/2014SpringUpdate.pdf>

¹⁹ We do not include the Zone 6 to Zone 4 Leidy Southeast contracts of Anadarko (50,000 Dth/d) and MMSGS Inc. (50 Dth/d), both gas marketers. This is likely a conservative assumption given the small size of these shippers.

2. Allocation of Zone 5 Firm Pass-through Path Capacity

We allocate available Zone 5 Firm Pass-through Path Capacity to shippers using reservation and delivery data from Transco's 2012 rate case.²⁰ This was the most recent publically available data showing deliveries by shipper. We only allocate Zone 5 Firm Pass-through Path capacity to shippers that have firm path contracts in the Transco 2012 rate case data. We use the data to estimate, for each shipper, the volume of deliveries made into Transco Zone 5 in excess of that shipper's Zone 5 firm right ("FT Into Zone 5"). All reservation and usage quantities are based on January data for the "Winter-Average" and "Peak" scenarios and July data for the "Summer-Average" scenario.

We first calculate the FT Into Zone 5 using the Transco 2012 rate case data. We include in this calculation all capacity with delivery points in Transco Zone 5, with the exception of those with receipt points in Zone 5. The 2012 data also include suppliers who bought and sold FT capacity releases. We thus calculate each FT Into Zone 5 holder based on its capacity net of capacity releases. We also accordingly credit the released capacity to the purchaser.

We then calculate the volume of deliveries into Zone 5. This includes all deliveries with delivery points in Transco Zone 5, except those with receipt points in Zone 5. Deliveries made on released capacity are credited to the purchaser of the released capacity. We do not include deliveries made on an interruptible basis.

Finally, we take the difference between deliveries into Zone 5 and FT Into Zone 5. This represents the "excess" deliveries made by a shipper above their FT rights into Zone 5. For some shippers, total deliveries are less than or equal to FT Into Zone 5. We do not allocate any Zone 5 Firm Pass-through Path Capacity to these shippers. Other shippers, however, deliver more into Zone 5 than their FT Into Zone 5 rights. For this group of shippers, we calculate each shipper's 2012 percentage share of excess deliveries to the total excess deliveries. We then use these shares to allocate the total Zone 5 Firm Pass-through Path Capacity in the Pre- and Post-ACP scenarios. Due to limitations in the Transco 2012 rate case data, however, we are unable to directly link purchasers and sellers of released capacity. Therefore, we allocate it to releasers using each shipper's total Zone 5 Firm Pass-through Path Capacity prior to releases.

F. LDC AND PEAK-SHAVING STORAGE CAPACITY

A number of shippers have LDC systems in the Carolinas and Virginia. Many of these systems have LNG storage capacity at the distribution level. Such storage facilities allow LDCs to store gas during the low-demand period (non-winter months) in order to withdraw and serve load during the high-demand period (winter). We reviewed 10-Ks from these LDCs to determine the

²⁰ See *Transcontinental Gas Pipe Line Company, LLC Fifth Revised Volume No. 1 of FERC Gas Tariff*, filed on August 31st, 2012 in FERC Docket No. RP12-993

amount of available capacity from these shippers along with data from the NG Intelligence database. For Piedmont’s capacity we used data provided by the company. We include this capacity only during the “Peak” and “Winter-Average” periods.

G. ACP CAPACITY ALLOCATION

The ACP has a maximum capacity of 1.5 MMDth/d. 1.44 of this 1.5 MMDth/d has been subscribed under the 20-year long-term agreements.²¹ In the Post-ACP scenario, we allocate the ACP rights based on the ACP’s CCN Application.²² We conservatively allocate the unsubscribed capacity to owners of the pipeline proportional to their ownership although this allocation is unlikely to occur, given that the pipeline is subject to the FERC capacity release regulation and the pipeline will be operated by Dominion.²³

H. LDCS’ LOAD OBLIGATIONS

We obtain Piedmont’s LDC load data from Piedmont. For load of other LDCs, we obtain the data from EIA’s Form 176. As the EIA Form 176 data are reported at an annual level, we derive winter-average, summer-average, and peak loads based on factors derived from Piedmont data. During the “Peak” period, we calculate the ratio of Piedmont’s on-peak sales to its annual average sales and apply this factor to the loads of all LDCs. In the “Winter-Average” period, we calculate the ratio of Piedmont’s January (2014) average sales to its average annual sales and apply this factor to the loads of all LDCs. For the “Summer-Average” period, we perform a similar calculation using Piedmont’s July 2014 average sales.

For the Post-ACP scenario, we grow Piedmont’s and Duke’s loads based on their load forecasts. Furthermore, we escalate other LDC loads using Piedmont’s forecasted design day load growth rate of 6-8% per year.

We define annual peak, winter average, and summer average based on 2014 data.

- **Annual Peak**

We define the peak day in 2014 with reference to Piedmont’s peak firm deliveries in the Carolinas, which occurred on January 7th. Because the peak occurs during the winter, we use winter FT rights for each shipper and assume that withdrawals can be made from bundled and LDC-connected storage. We estimate LDC and regulated-electric load requirements for January 7th. We use historical deliveries into Zone 5 in January in

²¹ See *Atlantic Coast Pipeline*, LLC, Docket Nos. CP15-554-000, September 18, 2015, pp. 8-9, 12.

²² *Id.*, p. 12.

²³ *Supra* Exhibit 3.1 for ownership shares.

excess of FT with delivery points in Zone 5 to determine shares of Zone 5 deliverable Firm Pass-through Path capacity.

- **Winter-Average**

We define the Winter-Average period as the average of deliveries and capacity in the month of January. This month contains Piedmont’s winter peak, but it also contains days with substantially lower gas demand that brings down the average demand. In this scenario, we use winter FT rights for each shipper and assume that withdrawals can be made from bundled and LDC-connected storage. We estimate the average LDC and regulated-electric load requirements for the month of January. We use historical deliveries into Zone 5 in January in excess of FT with delivery points in Zone 5 to determine shares of Zone 5 deliverable firm path capacity.

- **Summer-Average**

We define the Summer-Average period as the average of deliveries and capacity in the month of July. In general, gas demand is much lower in the summer than it is in the winter, though it is still variable. July of 2014 contained Piedmont’s 2nd lowest sales day, but it also contained its 92nd lowest sales day. In this scenario, we use summer FT rights for each shipper and assume that withdrawals cannot be made from LDC-connected storage. Most of Transco’s bundled storage rate schedules explicitly disallow withdrawals during the summer months. However, the GSS schedule allows deliveries to be made during the summer months. We therefore include shippers’ GSS contracts in their capacity. We use historical deliveries into Zone 5 in July in excess of FT with delivery points in Zone 5 to determine shares of Zone 5 deliverable firm path capacity.

I. REGULATED ELECTRIC LOAD

Regulated electric utilities also hold substantial quantities of FT. They use this FT to supply fuel to their generating plants, which in turn supply electricity to their regulated electric loads. Since FT used to supply regulated power plants cannot be released or used to make off-system sales, we subtract such capacity from the supply contributions of the regulated electric utilities in the market.

We obtain Duke’s gas consumption from data provided by Duke while we obtain the gas consumption of other regulated electric utilities from EIA’s Form 923. We use these data to determine use by regulated electric plants during each of the periods in our analysis. As the EIA Form 923 data are reported at a monthly level, we use Duke’s daily data to adjust for the “Peak” period. Using Duke’s daily data, we calculate the ratio of Duke’s consumption during the peak day to its January-average consumption and apply this factor to the January average consumption of all regulated electric utilities from form 923. For the “Summer-Average” and “Winter-Average” periods, we use monthly EIA 923 data for all regulated utilities except Duke, for which we use Duke’s proprietary data.

[REDACTED]

We do not anticipate that the demand for gas of other electric utilities (SCANA and Dominion) will grow at this rate, though our review of electric utility subscription to the ACP and the Integrated Resource Plans of SCANA and Dominion suggests that regulated utility natural gas use will increase.²⁵ We therefore apply a growth rate of 25% to all non-Duke shippers with electric load. Additionally, we perform sensitivity analysis to demonstrate that the growth in gas demand for the remainder of the regulated electric utility industry does not affect [REDACTED]

[REDACTED]

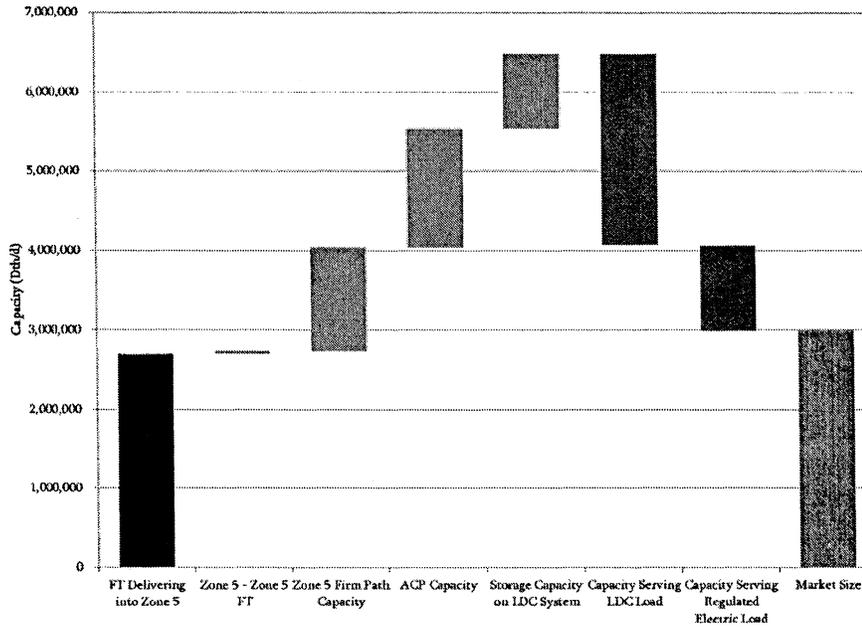
J. HHI CALCULATION

We calculate capacity share for each potential supplier based on its available firm capacity rights by summing its firm rights on: (1) Transco Zone 5—Delivery into Zone 5, Zone 5 to Zone 5 with receipt point at Cascade Creek, and Zone 5 Firm Path Capacity; (2) Bundled Storage facilities on Transco; (3) Columbia’s Pleasant Hill; (4) LNG and peak-shaving storage facilities; (5) ACP (for the Post-ACP scenario), and subtracting its load. Figure 4 illustrates our calculation method of the total market size for the winter season in the Post-ACP scenario including ACP.

²⁴ Duke internal data.

²⁵ See *2015 Integrated Resource Plan of South Carolina Electric & Gas Company*, Before the Public Service Commission of South Carolina, filed February 27th, 2015 in Docket No. 2015-9-E, and *Dominion Virginia Power and Dominion Carolina Power Integrated Resource Plan*, July 1, 2015, Available at: <https://www.dom.com/library/domcom/pdfs/electric-generation/2015-irp-final-public-version-internal-cover.pdf?la=en> -

Figure 4: Future Post-ACP Winter Total Market Size



Source: Velocity Suite, ABB Inc.; 2011/2012 G-1 Part A and Part B; All LNG Facilities Data, Natural Gas Intelligence (NGI), 2006; and client provided data.

In our calculation, we find that Duke does not have available FT rights on Transco [REDACTED]

[REDACTED]

This implies that there would not be any horizontal competitive effects of the proposed merger. Therefore, we do not further discuss the results of other scenarios except for the Winter Average period of the Post-ACP scenario.

²⁶ Most of their firm gas was supplied by third parties through long-term and short-term purchase contracts.

²⁷ [REDACTED]

[REDACTED]

[REDACTED]

IV.Changes in HHIs Results

Table 4 shows capacity shares and HHI contributions of all firms under the Winter-Average scenario. In this scenario, Piedmont and Duke control 22% of firm transportation capacity rights in the post-ACP period. This scenario is the only one in which capacity ownership concentration changes post-Transaction, and the only one in which Duke is not a net buyer of transportation capacity. However, as discussed in Exhibit B, total available third-party capacity in the Winter-Average scenario and post-ACP period would substantially exceed demand even if Piedmont and Duke were to withhold all of their available capacity.²⁸

²⁸ Exhibit B of Application, Section III.C.3.

Table 4: HHI Results in the Post-ACP Winter-Average Scenario

	Post-ACP	
	Market Share	HHI Contribution
Piedmont	15%	231
Duke	7%	46
AGL Resources Inc	14%	203
BNP Paribas	1%	0
BP	17%	277
ConocoPhillips	1%	1
Dominion Resources Inc	31%	992
EDF	1%	1
JP Morgan	2%	6
Patriots Energy Group	2%	5
Southern Co	3%	6
Talen Energy Corporation	2%	6
Tenaska	1%	1
Pre-Merger HHI Total	100%	1,776
Post-Merger Change in HHI		207
Post-Merger HHI Total		1,983

Note: Table shows the 11 holders of Transco capacity rights excluding Duke and Piedmont whose capacity share (net position relative to their gas obligations) is greater than 0.5%. Some firms may appear to have non-zero capacity share but zero HHI contribution due to rounding.

We also perform a sensitivity analysis that examines the potential effects of Transco’s Atlantic Sunrise Expansion project (“Atlantic Sunrise”). If approved by FERC, this project would increase the amount of deliverable gas from various delivery points along Transco’s Leidy Line (in Zone 6) to Station 85 (Zone 4) by approximately 850,000 Dth/d.²⁹ The project is scheduled to be online by July 2017.³⁰

²⁹ The entire project maximum capacity is approximately 1.7 million Dth/d, of which 500,000 Dth/d is for delivery in Pennsylvania, 350,000 Dth/d is for delivery to the Cove Point LNG facility in Zone 5, and the remaining 850,000 Dth/d is for delivery in Zone 4. We exclude the Cove Point capacity as it is an export facility and the Pennsylvania capacity because it is outside Zone 5. Transcontinental Gas Pipe Line Company, LLC., Application for Certificate of Public Convenience and Necessity (Atlantic Sunrise Project), Docket No. CP15-138, March 31, 2015, p. 10.

³⁰ *Id.*, p. 21.

Unlike the ACP, which terminates in the market area, Atlantic Sunrise primarily provides delivery points in Transco's Zone 4. The subscribers to Atlantic Sunrise's capacity are largely gas producers and marketers. Consequently, the full amount of the project's Zone 4 capacity is unlikely to be used to deliver into Zone 5. For the subscriptions with delivery points in Zone 4, we therefore conservatively scale each shipper's contract volume by the ratio of historical deliveries into Zone 5 to the total amount of Zone 5 Firm Pass-through Path capacity, which is approximately 47%. In the Winter-Average scenario, this sensitivity case results in a Post-Merger HHI of 1,592 and a Transaction-related change in HHI of 162, as shown in Table 5.

**Table 5: Sensitivity HHI Results
With Atlantic Sunrise in the Post-ACP Winter-Average Scenario**

	Sensitivity	
	Market Share	HHI Contribution
Piedmont Natural Gas Co Inc	13%	180
Duke Energy Corp	6%	36
AGL Resources Inc	13%	158
Anadarko Petroleum Corp	1%	0
BNP Paribas	1%	0
BP	15%	215
Chief Oil & Gas LLC	6%	34
ConocoPhillips	1%	1
Dominion Resources Inc	28%	773
EDF	1%	1
JP Morgan	2%	4
National Fuel Gas Company	3%	7
Patriots Energy Group	2%	4
Southern Co	3%	9
Southwestern Energy Services Company	1%	0
Talen Energy Corporation	2%	5
Tenaska	1%	1
WGL Holdings Inc	1%	0
Pre-Merger HHI Total	100%	1,431
Post-Merger Change in HHI		162
Post-Merger HHI Total		1,592

Note: Table shows the 16 holders of Transco capacity rights other than Duke and Piedmont whose capacity share (net position relative to their gas obligations) is greater than 0.5%. Some firms may appear to have non-zero capacity share but zero HHI contribution due to rounding.

In this sensitivity scenario, the post-Transaction HHI is slightly above 1,500. This post-Transaction HHI level is lower than the HHI in the Post-ACP without Atlantic Sunrise scenario due to an increase in supply from the Atlantic Sunrise project.

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EXHIBIT D

**PROPOSED REGULATORY
CONDITIONS**

CLEAN COPY

**DOCKET NO. E-2, SUB 1095
DOCKET NO. E-7, SUB 1100
DOCKET NO. G-9, SUB 682**

REGULATORY CONDITIONS

AS REVISED

TABLE OF CONTENTS

SECTION I	DEFINITIONS.....	1
SECTION II	AUTHORITY, SCOPE, AND EFFECT	4
2.1	Waiver of Certain Federal Rights.....	5
2.2	Limited Right to Challenge Commission Orders	5
2.3	Waiver Request	5
SECTION III	PROTECTION FROM PREEMPTION.....	5
3.1	Transactions between DEC, DEP, Piedmont, and Other Affiliates; Affiliate Contract Provisions; Advance Notice of Affiliate Contracts to Be Filed with the FERC; Annual Certification	5
3.2	Financing Transactions Involving DEC, DEP, Piedmont, Duke Energy, or Other Affiliates	7
3.3	Ownership and Control of Assets Used by DEC and DEP to Supply Electric Power to North Carolina Retail Customers; Transfer of Ownership or Control.....	7
3.4	Purchases and Sales of Electricity and Natural Gas between DEC, DEP, Piedmont, Duke Energy, Other Affiliates, or Nonpublic Utility Operations ...	8
3.5	Least Cost Integrated Resource Planning and Resource Adequacy	9
3.6	Priority of Service.....	9
3.7	Additional Provisions regarding Wholesale Contracts Entered Into by DEP, DEC, or Piedmont as Sellers.....	11
3.8	Other Protections.....	12
3.9	Filings Related to Federal Filings and Orders.....	15
SECTION IV	JOINT DISPATCH.....	15
4.1	Conditional Approval and Notification Requirement.....	16
4.2	Advance Notice Required	16
4.3	Function in DEC or DEP	16
4.4	No Limitation on Obligations	16
4.5	Protection of Retail Native Load Customers	16
4.6	Treatment of Costs and Savings.....	17
4.7	Required Records.....	17
4.8	Auditing of Negative Margins	17
4.9	Protection of Commission's Authority	17
4.10	Preventive Action Required	17
4.11	Modification and Termination.....	18
4.12	Hold Harmless Commitment	
SECTION V	TREATMENT OF AFFILIATE COSTS AND RATEMAKING.....	18
5.1	Access to Books and Records	18

5.2	Procurement or Provision of Goods and Services by DEC, DEP or Piedmont to or from Affiliates or Nonpublic Utility Operations.....	18
5.3	Location of Core Utility Functions	19
5.4	Service Agreements and Lists of Services.....	20
5.5	Charges for and Allocations of the Costs of Affiliate Transactions.....	21
5.6	Procedures regarding Interim Changes to CAMS or Lists of Goods and Services for Which 15 Days' Notice Is Required.....	21
5.7	Annual Reports of Affiliate Transactions	22
5.8	Third-Party Independent Audits of Affiliate Transactions	22
5.9	Ongoing Review by Commission	23
5.10	Future Orders	24
5.11	Review by the FERC.....	24
5.12	Biannual Review of Certain Transactions by External Auditors	24
5.13	Notice of Service Company and Non-Utility Affiliates FERC Audits	25
5.14	Acquisition Adjustment.....	25
5.15	Non-Consummation of Merger.....	25
5.16	Protection from Commitments to Wholesale Customers.....	25
5.17	Joint Owner-Specific Issues.....	26
5.18	Inclusion of Cost Savings in Future Rate Proceedings	26
5.19	Reporting of Costs to Achieve	26
5.20	Accounting for Costs to Achieve Related to Historical Events Involving DEP	26
5.21	Liabilities of Cinergy Corp. and Florida Progress Corporation	26
5.22	Hold Harmless Commitment	27
5.23	Cost of Service Manuals	27
SECTION VI	CODE OF CONDUCT	27
6.1	Obligation to Comply with Code of Conduct	27
SECTION VII	FINANCINGS	28
7.1	Accounting for Equity Investment in Holding Company Subsidiaries	28
7.2	Accounting for Capital Structure Components and Cost Rates	28
7.3	Accounting for Equity Investment in DEC, DEP, and Piedmont.....	28
7.4	Reporting of Capital Contributions	28
7.5	Identification of Long-term Debt Issued by DEC, DEP, or Piedmont.....	28
7.6	Procedures regarding Proposed Financings.....	29
7.7	Money Pool Agreement.....	30
7.8	Borrowing Arrangements.....	31
7.9	Long-Term Debt Fund Restrictions	31
SECTION VIII	CORPORATE GOVERNANCE/RING FENCING	32
8.1	Investment Grade Debt Rating.....	32
8.2	Distributions from DEC, DEP, and Piedmont to Holding Company.....	32
8.3	Debt Ratio Restrictions.....	32

8.4	Limitation on Continued Participation in Utility Money Pool Agreement and Other Joint Debt and Credit Arrangements with Affiliates.....	32
8.5	Notice of Level of Non-Utility Investment by Holding Company System.....	32
8.6	Notice by Holding Company of Certain Investments.....	33
8.7	Ongoing Review of Effect of Holding Company Structure.....	33
8.8	Investment by DEC, DEP or Piedmont in Non-Regulated Utility Assets and Non-Utility Business Ventures	33
8.9	Investment by Holding Company in Exempt Wholesale Generators.....	34
8.10	Notice by DEC, DEP and Piedmont of Default or Bankruptcy of Affiliates ...	34
8.11	Annual Report on Corporate Governance.....	34
SECTION IX	FUTURE MERGERS AND ACQUISITIONS.....	35
9.1	Mergers and Acquisitions by or Affecting DEC, DEP or Piedmont.....	35
9.2	Mergers and Acquisitions Believed Not to Have an Effect on DEC's, DEP's or Piedmont's Rates or Service	35
SECTION X	STRUCTURE/ORGANIZATION	36
10.1	Transfer of Services, Functions, Departments, Employees, Rights, Assets, or Liabilities	36
10.2	Notice and Consultation with Public Staff regarding Proposed Structural and Organizational Changes	36
SECTION XI	SERVICE QUALITY	37
11.1	Overall Service Quality	37
11.2	Best Practices.....	37
11.3	Quarterly Reliability Reports.....	37
11.4	Notice of NERC Audit.....	37
11.5	Right-of-Way Maintenance Expenditures.....	37
11.6	Right-of-Way Clearance Practices.....	38
11.7	Meetings with Public Staff.....	38
11.8	Customer Access to Service Representatives and Other Services.....	38
11.9	Call Center Operations.....	38
11.10	Customer Surveys.....	38
SECTION XII	TAX MATTERS	38
12.1	Costs under Tax Sharing Agreements.....	38
12.2	Tax Benefits Associated with Service Companies	39
SECTION XIII	PROCEDURES	39
13.1	Filings That Do Not Involve Advance Notice.....	39
13.2	Advance Notice Filings	39
SECTION XIV	COMPLIANCE WITH CONDITIONS AND CODE OF CONDUCT.....	41
14.1	Ensuring Compliance with Regulatory Conditions and Code of Conduct	41

14.2	Designation of Chief Compliance Officer	41
14.3	Annual Training.....	41
14.4	Report of Violations	42

APPENDIX __ CODE OF CONDUCT

DOCKET NO. E-2, SUB 1095
DOCKET NO. E-7, SUB 1100
DOCKET NO. G-9, SUB 682

REGULATORY CONDITIONS

These Regulatory Conditions set forth commitments made by Duke Energy and its public utility subsidiaries, Duke Energy Carolinas, LLC (DEC), Duke Energy Progress, LLC (DEP), and Piedmont Natural Gas Company, Inc. (Piedmont) as a precondition of approval of the application by Duke Energy and Piedmont pursuant to G.S. 62-111(a) for authority to engage in their proposed business combination transaction. These Regulatory Conditions, which become effective only upon closing of the Merger, shall apply jointly and severally to Duke Energy, DEC, DEP, and Piedmont, and shall be interpreted in the manner that most effectively fulfills the Commission's purposes as set forth in the preamble to Section II of these Regulatory Conditions.

SECTION I DEFINITIONS

For the purposes of these Regulatory Conditions, capitalized terms shall have the meanings set forth below. If a capitalized term is not defined below, it shall have the meaning provided elsewhere in this document or as commonly used in the electric utility industry.

Affiliate: Duke Energy and any business entity of which ten percent (10%) or more is owned or controlled, directly or indirectly, by Duke Energy. For purposes of these Regulatory Conditions, Duke Energy and each business entity so controlled by it are considered to be Affiliates of DEC, DEP, and Piedmont and DEC, DEP and Piedmont are considered to be Affiliates of each other.

Affiliate Contract: Any contract or agreement (a) between and among any of the Affiliates, including DEC, DEP, and Piedmont, if such contracts are reasonably likely to have an Effect on DEC's, DEP's or Piedmont's Rates or Service, including contracts with proposed Affiliates. Such contracts and agreements include, but are not limited to, service, operating, interchange, pooling, wholesale power sales agreements and agreements involving financings and asset transfers and sales, and the Joint Dispatch Agreement.

Catawba Joint Owners: The North Carolina Electric Membership Corporation, North Carolina Municipal Power Agency No. 1, and Piedmont Municipal Power Agency. For purposes of these Regulatory Conditions, DEC is not included in the definition of Catawba Joint Owners.

Code of Conduct: The minimum guidelines and rules approved by the Commission that govern the relationships, activities, and transactions between and among the public utility operations of DEC, DEP, Piedmont, Duke Energy, the other Affiliates of

DEC, DEP, and Piedmont, and the Nonpublic Utility Operations of DEC, DEP, and Piedmont, as those guidelines and rules may be amended by the Commission from time to time.

Commission: The North Carolina Utilities Commission.

Customer: Any retail electric customer of DEC or PEC in North Carolina and any Commission-regulated natural gas sales or natural gas transportation customer of Piedmont located in North Carolina.

DEBS: Duke Energy Business Services, LLC, and its successors, which is a service company Affiliate that provides Shared Services to DEC, DEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations of DEC, DEP or Piedmont, singly or in any combination.

DEC: Duke Energy Carolinas, LLC, the business entity, wholly owned by Duke Energy, that holds the franchise granted by the Commission to provide Electric Services within DEC's North Carolina service territory and that engages in public utility operations, as defined in G.S. 62-3(23), within the State of North Carolina.

DEP: Duke Energy Progress, LLC, the business entity wholly owned by Duke Energy that holds the franchises granted by the Commission to provide Electric Services within the DEP's North Carolina service territory and that engages in public utility operations, as defined in G.S. 62-3(23) within the State of North Carolina.

Duke Energy: Duke Energy Corporation, which is the current holding company parent of DEC, DEP, and Piedmont, and any successor company.

Effect on DEC's, DEP's, or Piedmont's Rates or Service: When used with reference to the consequences to DEC, DEP, or Piedmont, of actions or transactions involving an Affiliate or Nonpublic Utility Operation, this phrase has the same meaning that it has when the Commission interprets G.S. 62-3(23)(c) with respect to the affiliation covered therein.

Electric Services: Commission-regulated electric power generation, transmission, distribution, delivery, or 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.

Federal Law: Any federal statute or legislation, or any regulation, order, decision, rule or requirement promulgated or issued by an agency or department of the federal government.

FERC: The Federal Energy Regulatory Commission.

Fully Distributed Cost: All direct and indirect costs, including overheads and an appropriate cost of capital, incurred in providing goods or services to another business entity; provided, however, that (a) for each good and service supplied by or from DEC, DEP, or Piedmont, the return on common equity utilized in determining the appropriate cost of capital shall equal the return on common equity authorized by the Commission in the supplying utility's most recent general rate case proceeding, (b) for each good and service supplied to DEC, DEP, or Piedmont the appropriate cost of capital shall not exceed the overall cost of capital authorized in the supplying utility's most recent general rate case proceeding; and (c) for each good and service supplied by or from DEC, DEP, or Piedmont to each other, the return on common equity utilized in determining the appropriate cost of capital shall not exceed the lower of the returns on common equity authorized by the Commission in DEC's, DEP's, or Piedmont's most recent general rate case proceedings.

JDA: Joint Dispatch Agreement, which is the agreement as filed with the Commission in Docket Nos. E-7, Sub 986, and E-2, Sub 998, on June 22, 2011, and as amended and refiled on June 12, 2012.

Market Value: The price at which property, goods, and services would change hands in an arm's length transaction between a buyer and a seller without any compulsion to engage in a transaction, and both having reasonable knowledge of the relevant facts.

Merger: All transactions contemplated by the Agreement and Plan of Merger between Duke Energy and Piedmont.

Native Load Priority: Power supply service being provided or electricity otherwise being sold with a priority of service equivalent to that planned for and provided by DEC or DEP to their respective Retail Native Load Customers.

Natural Gas Services: Commission-regulated natural gas sales and natural gas transportation, and other related services, including, but not limited to, administration of Customer accounts and rate schedules, metering and billing, and standby service.

Non-Native Load Sales: DEC's or DEP's sales of energy at wholesale, not including transactions between DEC and DEP pursuant to the JDA and not including service to customers served at Native Load Priority.

Nonpublic Utility Operations: All business operations engaged in by DEC, DEP, or Piedmont involving activities (including the sales of goods or services) that are not regulated by the Commission, or otherwise subject to public utility regulation at the state or federal level.

Non-Utility Affiliate: Any Affiliate, including DEBS, other than a Utility Affiliate, DEC, DEP, or Piedmont.

Progress Energy: Progress Energy, Inc., which is the former holding company parent of DEP and is a subsidiary of Duke Energy, and any successors.

Piedmont: Piedmont Natural Gas Company, Inc., the business entity, wholly owned by Duke Energy, that holds the franchise granted by the Commission to provide natural gas services within its North Carolina service territory and that engages in public utility operations, as defined in G.S. 62-3(23) within the State of North Carolina.

Public Staff: The Public Staff of the North Carolina Utilities Commission.

PUHCA 2005: The Public Utility Holding Company Act of 2005.

Purchased Power Resources: Purchases of energy by DEC or DEP at wholesale from sellers other than each other, the contract terms for which are one year or longer.

Retail Native Load Customers: The captive retail Customers of DEC and DEP in North Carolina for which DEC and DEP have the obligation under North Carolina law to engage in long-term planning and to supply all Electric Services, including installing or contracting for capacity, if needed, to reliably meet their electricity needs.

Retained Earnings: The retained earnings currently required to be listed on page 112, line 11, of the pre-Merger DEC FERC Form 1, the pre-Merger DEP FERC Form 1, and page 112, line 11 of the pre-Merger Piedmont FERC Form 2.

Shared Services: The services that meet the requirements of these Regulatory Conditions and that the Commission has explicitly authorized DEC, DEP, and Piedmont, to take from DEBS pursuant to a service agreement (a) filed with the Commission pursuant to G.S. 62-153(b), thus requiring acceptance and authorization by the Commission, and (b) subject to all other applicable provisions of North Carolina law, the rules and orders of the Commission, and these Regulatory Conditions.

Utility Affiliates: The regulated public utility operations of Duke Energy Indiana, LLC (Duke Indiana), Duke Energy Kentucky, Inc. (Duke Kentucky), Florida Power Corporation, d/b/a Duke Energy Florida, LLC (DEF), and Duke Energy Ohio, Inc. (Duke Ohio).

SECTION II AUTHORITY, SCOPE, AND EFFECT

These Regulatory Conditions are based on the general power and authority granted to the Commission in Chapter 62 of the North Carolina General Statutes to control and supervise the public utilities of the State. The Regulatory Conditions (a) constitute specific exercises of the Commission's authority, (b) provide mechanisms

that enable the Commission to determine in advance the extent of its authority and jurisdiction over proposed activities of, and transactions involving, DEC, DEP, Piedmont, Duke Energy, other Affiliates or Nonpublic Utility Operations, and (c) protect the Commission's jurisdiction from federal preemption and its effects. The purpose of these Regulatory Conditions is to ensure that DEC's and DEP's Retail Native Load Customers and Piedmont Customers (a) are protected from any known adverse effects from the Merger, (b) are protected as much as possible from potential costs and risks resulting from the Merger, and (c) receive sufficient known and expected benefits to offset any potential costs and risks resulting from the Merger. These Regulatory Conditions are not intended to impose legal obligations on entities in which Duke Energy does not directly or indirectly have a controlling voting interest, or to affect any rights of any party to participate in subsequent proceedings.

2.1 Waiver of Certain Federal Rights. Pursuant to these conditions, DEC, DEP, Piedmont, Duke Energy, and other Affiliates waive certain of their federal rights as specified in these Regulatory Conditions, but do not otherwise agree that the Commission has authority other than as provided for in Chapter 62.

2.2 Limited Right to Challenge Commission Orders. Other than as provided for, or explicitly prohibited, in these conditions, Duke Energy, DEC, DEP, Piedmont, and other Affiliates retain the right to challenge the lawfulness of any Commission order issued pursuant to or relating to these Regulatory Conditions on the basis that such order exceeds the Commission's statutory authority under North Carolina law or the other grounds listed in G.S. 62-94(b).

2.3 Waiver Request. DEC, DEP, Piedmont, Duke Energy, and other Affiliates may seek a waiver of any aspect of these Regulatory Conditions by filing a request with the Commission showing that circumstances in a particular case justify such a waiver.

SECTION III PROTECTION FROM PREEMPTION

The following Regulatory Conditions are intended to protect the jurisdiction of the Commission against the risk of federal preemption as a result of the Merger, including risks related to agreements and transactions between and among DEC, DEP, Piedmont, and any of their Affiliates; financing transactions involving Duke Energy, DEC, DEP, or Piedmont, and any other Affiliate; the ownership, use, and disposition of assets by DEC, DEP, or Piedmont; participation in the wholesale market by DEC or DEP; and filings with federal regulatory agencies.

3.1 Transactions between DEC, DEP, Piedmont, and Other Affiliates; Affiliate Contract Provisions; Advance Notice of Affiliate Contracts to Be Filed with the FERC; Annual Certification.

- (a) DEC, DEP, or Piedmont shall not engage in any transactions with an Affiliate or proposed Affiliate without first filing, consistent with the requirements of G.S. 62-153(a) or (b), the Affiliate Contract or proposed Affiliate Contract with the Commission that memorializes any such dealings and taking such actions and obtaining from the Commission such decisions as are required under North Carolina law. DEC, DEP, or Piedmont shall submit each Affiliate Contract or proposed Affiliate Contract that will be filed pursuant to G.S. 62-153(a) or (b) to the Public Staff for informal review at least ten days before filing it with the Commission. No formal advance notice is required for agreements that DEC, DEP or Piedmont intends to file pursuant to G.S. 62-153 unless the agreements are to be filed with the FERC, in which case subsection (c) applies.
- (b) All Affiliate Contracts to which DEC, DEP, or Piedmont is a party shall contain the following provisions:
 - (i) DEC, DEP, or Piedmont may not seek to reflect in rates any (A) costs incurred under the agreement exceeding the amount allowed by the Commission or (B) revenue level earned under the agreement less than the amount imputed by the Commission; and
 - (ii) DEC, DEP, or Piedmont shall not assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of another entity’s assertions, that the Commission's authority to assign, allocate, impute, make pro-forma adjustments to, or disallow revenues and costs for retail ratemaking and regulatory accounting and reporting purposes is, in whole or in part, (A) preempted by Federal Law or (B) not within the Commission’s power, authority or jurisdiction; DEC, DEP, Piedmont, or any combination of the three, will bear the full risk of any preemptive effects of Federal Law with respect to the agreement.
- (c) To enable the Commission to determine its authority and jurisdiction, as outlined in Chapter 62 of the North Carolina General Statutes, over a proposed Affiliate Contract, a contract with a proposed Affiliate, or an amendment to an existing Affiliate Contract that involves costs that will be assigned to DEC, DEP, or Piedmont and that is required or intended to be filed with the FERC, the following procedures shall apply:
 - (i) DEC, DEP, or Piedmont shall file advance notice and a copy of the proposed Affiliate Contract, a contract with a proposed Affiliate, or an amendment to an existing Affiliate Contract with the Commission at least 30 days prior to a filing with the FERC.

All Affiliate Contracts, contracts with a proposed Affiliate, or amendments to existing Affiliate Contracts filed with the advance notice under Regulatory Condition 3.1(c) shall be unexecuted at the time of filing and remain unexecuted for the duration of the advance notice period. A copy shall be provided to the Public Staff at the time of the filing. The provisions of Regulatory Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition.

- (ii) If an objection to DEC, DEP, or Piedmont proceeding with the filing with the FERC is filed pursuant this Regulatory Condition, the proposed filing shall not be made with the FERC until the Commission issues an order resolving the objection.
- (iii) Filings of advance notices and copies of proposed Affiliate Contracts, a contract with a proposed Affiliate, and amendments to existing Affiliate Contracts pursuant to this subsection shall be in addition to filings required by G.S. 62-153, and the burden of proof as to those filings shall be as provided by statute.
- (d) DEC, DEP and Piedmont shall each certify in a filing with the Commission that (i) it has not made any filing with the FERC or any other federal regulatory agency inconsistent with the foregoing and (ii) Duke Energy, any other Affiliate and any Nonpublic Utility Operation has not made any such filing. Such certification shall be repeated annually on the anniversary of the first certification.
- (e) In the event the FERC or any other federal regulatory agency requires modification of a proposed Affiliate Contract to omit any of the provisions of Condition 3.1(b) as a condition of acceptance or approval by that agency, DEC, DEP and/or Piedmont shall remain bound by those provisions for state regulatory purposes.

3.2 Financing Transactions Involving DEC, DEP, Piedmont, Duke Energy, or Other Affiliates.

- (a) With respect to any financing transaction between or among DEC, DEP, or Piedmont or any one or more of DEC's, DEP's or Piedmont's other Affiliates, any contract memorializing such transaction shall expressly provide that DEC, DEP or Piedmont shall not enter into any such financing transaction except in accordance with North Carolina law and the rules, regulations and orders of the Commission promulgated thereunder; and
- (b) With respect to any financing transaction (i) between and among any of the Affiliates if such contracts are reasonably likely to have an Effect on

DEC's, DEP's or Piedmont's Rates or Service, or (ii) between or among DEC, PEC, and Piedmont or between DEC, DEP, or Piedmont and any other Affiliate, any contract memorializing such transaction shall expressly provide that DEC, DEP, or Piedmont shall not include the effects of any capital structure or debt or equity costs associated with such financing transaction in its North Carolina retail cost of service or rates except as allowed by the Commission.

3.3 Ownership and Control of Assets Used by DEC, DEP and Piedmont to Supply Electric Power or Natural Gas Services to North Carolina Customers; Transfer of Ownership or Control.

- (a) With respect to the transfer by DEC, DEP, or Piedmont to any entity, affiliated or not, of the control of, operational responsibility for, or ownership of generation, transmission, or distribution assets with a gross book value in excess of ten million dollars (\$10 million), DEC, DEP or Piedmont shall provide written notice to the Commission at least 30 days in advance of the proposed transfer. The provisions of Regulatory Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition.
- (b) Any contract memorializing such a transfer shall include the following language:
 - (i) DEC, DEP, or Piedmont may not commit to or carry out the transfer except in accordance with applicable law, and the rules, regulations and orders of the Commission promulgated thereunder; and
 - (ii) DEC, DEP, and Piedmont may not include in its North Carolina cost of service or rates the value of the transfer, whether or not subject to federal law, except as allowed by the Commission in accordance with North Carolina law.
- (d) Any application filed with the FERC in connection with any transfer of control, operational responsibility, or ownership that involves or potentially affects DEC, DEP, or Piedmont shall include the language set forth in subdivisions (c)(i) and (ii), above.

3.4 Purchases and Sales of Electricity and Natural Gas between DEC, DEP, Piedmont, Duke Energy, Other Affiliates, or Nonpublic Utility Operations. Subject to additional restrictions set forth in the Code of Conduct, DEC, DEP, or Piedmont shall not purchase electricity (or related ancillary services) or natural gas from Duke Energy, another Affiliate, or a Nonpublic Utility Operation under circumstances where the total all-in costs, including generation, transmission, ancillary costs, distribution, taxes and fees, and delivery point costs, incurred (whether directly or through

allocation), based on information known, anticipated, or reasonably available at the time of purchase, exceed fair Market Value for comparable service, nor shall DEC, DEP, or Piedmont sell electricity (or related ancillary services) or natural gas to Duke Energy, another Affiliate, or a Nonpublic Utility Operation for less than fair Market Value; provided, however, that such restrictions shall not apply to emergency transactions. This condition shall not apply to transactions between DEC and DEP that are governed by the JDA.

3.5 Least Cost Integrated Resource Planning and Resource Adequacy. This Regulatory Condition does not apply to Piedmont. DEC and DEP shall each retain the obligation to pursue least cost integrated resource planning for their respective Retail Native Load Customers and remain responsible for their own resource adequacy subject to Commission oversight in accordance with North Carolina law. DEC and DEP shall determine the appropriate self-built or purchased power resources to be used to provide future generating capacity and energy to their respective Retail Native Load Customers, including the siting considered appropriate for such resources, on the basis of the benefits and costs of such siting and resources to those Retail Native Load Customers.

3.6 Priority of Service.

- (a) This Regulatory Condition does not apply to Piedmont.
- (b) The planning and joint dispatch of DEC's system generation and Purchased Power Resources shall ensure that DEC's Retail Native Load Customers receive the benefits of that generation and those resources, including priority of service, to meet their electricity needs consistent with the JDA. DEC shall continue to serve its Retail Native Load Customers with the lowest-cost power it can reasonably generate or obtain as Purchase Power Resources before making power available for sales to customers that are not entitled to the same level of priority as Retail Native Load Customers.
- (c) The planning and joint dispatch of DEP's system generation and Purchase Power Resources shall ensure that DEP's Retail Native Load Customers receive the benefits of that generation and those resources, including priority of service, to meet their electricity needs consistent with the JDA. DEP shall continue to serve its Retail Native Load Customers with the lowest-cost power it can reasonably generate or obtain as Purchase Power Resources before making power available for sales to customers that are not entitled to the same level of priority as Retail Native Load Customers.

3.7 Wholesale Power Contracts Granting Native Load Priority.

- (a) This Regulatory Condition does not apply to Piedmont.
- (b) DEC is not required to file an advance notice with the Commission or receive its approval prior to entering into wholesale power contracts that grant Native Load Priority to the following historically served customers: the City of Concord, North Carolina; the City of Kings Mountain, North Carolina; the Town of Dallas, North Carolina; the Town of Forest City, North Carolina; Lockhart Power Company; the Public Works Commission of the Town of Due West, South Carolina; the Town of Prosperity, South Carolina; the City of Greenwood, South Carolina; the Town of Highlands; North Carolina; Western Carolina University (WCU); the electric membership cooperatives (EMCs) within DEC's control area; North Carolina Municipal Power Agency No. 1; Piedmont Municipal Power Agency; New River Light & Power Company; and the South Carolina distribution cooperatives historically served by Saluda River Electric Cooperative, Inc., and currently served by Central Electric Power Cooperative, Inc. (which are Blue Ridge Electric Cooperative, Inc., Broad River Electric Cooperative Inc., Laurens Electric Cooperative, Inc., Little River Electric Cooperative, Inc., and York Electric Cooperative, Inc.). Subject to the conditions set out in Regulatory Condition 3.8, the retail native loads of these historically served wholesale customers shall be considered DEC's Retail Native Load Customers for purposes of Regulatory Conditions 3.5, 3.6, and 4.5; provided, however, that this subsection applies only to the same types of supplemental load and backstand requirements services that were historically provided to the Catawba Joint Owners under the Catawba Interconnection Agreements between DEC and the Catawba Joint Owners prior to 2001, which, for the North Carolina Electric Membership Corporation, only includes the EMCs within DEC's control area.
- (b) DEP is not required to file an advance notice with the Commission or receive its approval prior to entering into wholesale power contracts that grant Native Load Priority to the Public Works Commission of the City of Fayetteville, North Carolina; the Town of Waynesville, North Carolina; the City of Camden, South Carolina; the French Broad Electric Membership Corporation; the North Carolina Eastern Municipal Power Agency; the electric membership cooperatives (EMCs) within PEC's control area, whether served through the North Carolina Electric Membership Corporation (NCEMC) or individually; the Town of Black Creek, North Carolina; the Town of Lucama, North Carolina; the Town of Stantonsburg, North Carolina; the Town of Sharpsburg, North Carolina; and the Town of Winterville, North Carolina. Subject to the conditions set out in Regulatory Condition 3.8, the retail native loads of these historically served wholesale customers shall be considered PEC's Retail Native Load Customers for purposes of Regulatory Conditions 3.5, 3.6, and 4.5.

3.8 Additional Provisions Regarding Wholesale Contracts Entered into by DEC or DEP as Sellers.

- (a) This Regulatory Condition does not apply to Piedmont.
- (b) The Commission retains the right to assign, allocate, impute, and make pro-forma adjustments with respect to the revenues and costs associated with both DEC's or DEP's wholesale contracts for retail ratemaking and regulatory accounting and reporting purposes.
- (c) Entry into wholesale contracts that grant Native Load Priority or otherwise obligate DEC or DEP to construct generating facilities or make commitments to purchase capacity and energy to meet those contractual commitments constitutes acceptance by DEC, DEP, Duke Energy, and other Affiliates or Nonpublic Utility Operations thereof of the risks that investments in generating facilities or commitments to purchase capacity and energy to meet such contractual commitments and maintain an adequate reserve margin throughout the term of such contracts may become uneconomic sunk costs that are not recoverable from DEC's or DEP's respective Retail Native Load Customers. In a future Commission retail proceeding in which cost recovery is at issue, neither DEC nor DEP shall claim that it does not bear this risk, and both DEC and DEP shall acknowledge that the Commission retains full authority under Chapter 62 to disallow such costs as not used and useful and to allocate, impute, or assign such costs away from Retail Native Load Customers. For purposes of this condition, capacity will be considered used and useful and not excess capacity to the extent the Commission determines such capacity is needed by DEC or DEP to meet the expected peak loads of DEC's or DEP's respective Retail Native Load Customers in the near term future plus a reserve margin comparable to that currently being used or otherwise considered appropriate by the Commission. Neither DEC, DEP, Duke Energy, nor any other Affiliate shall assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of any other entity's assertions that the Commission is preempted from taking the actions contemplated in this subsection.
- (d) Neither DEC, nor DEP, nor Duke Energy, nor other Affiliate shall assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of any other entity's assertions that (i) transactions entered into pursuant to DEC's or DEP's cost- or market-based rate authority or (ii) the filing with, or acceptance for filing by, the FERC of any wholesale power contract to which either is a party establishes or implies a cost allocation methodology that is

binding on the Commission, requires the pass-through of any costs or revenues under the filed rate doctrine, or preempts the Commission's authority to assign, allocate, impute, make pro-forma adjustments to, or disallow the revenues and costs associated with, DEC's or DEP's wholesale contracts for retail ratemaking and regulatory accounting and reporting purposes.

- (e) Neither DEC, nor DEP, nor Duke Energy, nor other Affiliate shall assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of any other entity's assertions that the exercise of authority by the Commission to assign, allocate, impute, make pro-forma adjustments to, or disallow the costs and revenues associated with DEC's or DEP's wholesale contracts for retail ratemaking and regulatory accounting and reporting purposes in itself constitutes an undue burden on interstate commerce or otherwise violates the Commerce Clause of the United States Constitution. DEC and DEP, however, retain the right to argue that a specific exercise of authority by the Commission violates the Commerce Clause based upon specific evidence of undue interference with interstate commerce.
- (f) Except as provided in the foregoing conditions, DEC and DEP retain the right to challenge the lawfulness of any order issued by the Commission in connection with the assignment, allocation, imputation, pro-forma adjustments to, or disallowances of the revenues and costs associated with DEC's or DEP's wholesale contracts for retail ratemaking and regulatory accounting and reporting purposes on any other grounds, including but not limited to the right outlined in G.S. 62-94(b).

3.9 Other Protections.

- (a) DEC, DEP, Piedmont, Duke Energy, another Affiliate, or a Nonpublic Utility Operation shall not assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of any other entity's assertions that approval by the FERC of market-based rates, transfers of generating facilities, or any matter that involves Affiliates in any way preempts the Commission's authority to determine the reasonableness or prudence of DEC's, DEP's, or Piedmont's decisions with respect to supply-side resources, demand-side management, or any other aspect of resource adequacy.
- (b) No agreement shall be entered into, nor shall any filing be made with the FERC, by or on behalf of DEC or DEP that alters DEC's or DEP's obligations with respect to these Regulatory Conditions, absent explicit approval of the Commission. This Regulatory Condition does not apply to Piedmont.

- (c) Any contract or filing regarding DEC's or DEP's membership in or withdrawal from an RTO or comparable entity must be contingent upon state regulatory approval. This Regulatory Condition does not apply to Piedmont.
- (d) Consistent with G.S. 62-153, DEC, DEP, and Piedmont shall file with the Commission any proposed substantive revisions to any Affiliate agreement to which one of them is a party.
- (e) DEC, DEP, and Piedmont shall obtain Commission approval before DEBS is sold, transferred, merged with any other entities, has any ownership interest therein changed, or otherwise changed so that a change of control could occur. This requirement does not apply to any movement of DEBS within the Duke Energy holding company system that does not constitute a change of control.
- (f) DEC, DEP, and Piedmont may participate in joint comments and other joint filings with Affiliates only when such participation fully complies with both the letter and the spirit of the Regulatory Conditions. Any filing made by DEBS on behalf of DEC, DEP, or Piedmont must clearly identify DEBS as an agent of DEC, DEP, or Piedmont for purposes of making the filing.
- (g) Neither DEC, DEP, Piedmont, Duke Energy, another Affiliate, nor a Nonpublic Utility Operation shall make any assertion or argument either on its own initiative or in support of any other entity's assertions in any forum – whether judicial, administrative, federal, state, or otherwise – with respect to any contract, transaction, or other matter in which DEC, DEP or Piedmont is involved or proposes to be involved or any contract, transaction, or matter involving or proposed to involve Duke Energy, any other Affiliate, or any Nonpublic Utility Operation that may have an Effect on DEC's, DEP's or Piedmont's Rates or Service, that the Commission is in any way preempted, in whole or in part, by Federal Law, or is acting beyond the Commission's power, authority or jurisdiction, in exercising its authority under Chapter 62 of the North Carolina General Statutes as follows:
 - (i) reviewing the reasonableness of any Affiliate commitment entered into or proposed to be entered into by DEC, DEP, or Piedmont, or disallowing the costs of, or imputing revenues related to such commitment to, DEC, DEP, or Piedmont;
 - (ii) exercising its authority over financings or setting rates based on the capital structure, corporate structure, debt costs, or equity costs that it finds to be appropriate for retail ratemaking purposes;
 - (iii) reviewing the reasonableness of any commitment entered into or proposed to be entered into by DEC, DEP, or Piedmont to transfer an asset;

- (iv) mandating, approving, or otherwise regulating a transfer of assets;
- (v) scrutinizing and establishing the value of any asset transfers for the purpose of determining the rates for services rendered to DEC's or DEP's Retail Native Load Customers or Piedmont's Customers; or
- (vi) exercising any other lawful authority it may have.

Should any other entity so assert, neither DEC, DEP, or Piedmont Duke Energy, other Affiliates, nor the Nonpublic Utility Operations shall support any such assertion and shall, promptly upon learning of such assertion, advise and consult with the Commission and the Public Staff regarding such assertion.

- (vii) DEC, DEP, Piedmont, Duke Energy, other Affiliates, and the Nonpublic Utility Operations shall (A) bear the full risk of any preemptive effects of Federal Law with respect to any contract, transaction, or commitment entered into or made or proposed to be entered into or made by DEC, DEP, Piedmont, or which may otherwise affect DEC's, DEP's Piedmont's operations, service, or rates and (B) shall take all actions as may be reasonably necessary and appropriate to hold North Carolina ratepayers harmless from rate increases, foregone opportunities for rate decreases or any other adverse effects of such preemption. Such actions include, but are not limited to, filing with and making reasonable efforts to obtain approval from the FERC or other applicable federal entity of such commitments as the Commission deems reasonably necessary to prevent such preemptive effects.

3.10 FERC Filings and Orders. In addition to the filing requirements of Commission Rule R8-27 and all other applicable statutes and rules, DEC and DEP shall, on a quarterly basis, file with the Commission the following: (a) a list of all active dockets at the FERC, including a sufficient description to identify the type of proceeding, in which DEC, DEP, Duke Energy, DEBS is a party, with new information in each quarterly filing tracked; and (b) a list of the periodic reports filed by DEC, DEP, Duke Energy, or DEBS with the FERC, including sufficient information to identify the subject matter of each report and how each report can be accessed. These filings shall be made in Docket Nos. E-7, Sub 1100_, and E-2, Sub 1095_, as appropriate, and updated regularly. In addition, DEC and DEP shall serve on the Public Staff all filed cost-based and market-based wholesale agreements and amendments; all filings related to their Joint Open Access Transmission Tariff; interconnection agreements and amendments; and any other filings made with the FERC, to the extent these other filings are reasonably likely to have an Effect on

DEC's or DEP's Rates or Service. This Regulatory Condition does not apply to Piedmont as relevant FERC-related information is required to be filed with the Commission in annual gas cost prudence reviews.

SECTION IV JOINT DISPATCH

The Regulatory Conditions in Section IV do not apply to Piedmont. They are intended to prevent the jurisdiction and authority of the Commission from being preempted as a result of the JDA, to ensure that DEC's and DEP's Retail Native Load Customers receive adequate benefits from the JDA, and to ensure that both joint dispatch costs and the sharing of cost savings can be appropriately audited. The Regulatory Conditions set forth in Section III and the Regulatory Conditions in Section V to the extent they are relevant to Affiliate Contracts also apply to the JDA.

4.1 Conditional Approval and Notification Requirement. DEC and DEP acknowledge that the Commission's approval of the merger and the transfer of dispatch control from DEP to DEC for purposes of implementing the JDA and any successor document is conditioned upon the JDA or successor document never being interpreted as providing for or requiring: (a) a single integrated electric system, (b) a single BAA, control area or transmission system, (c) joint planning or joint development of generation or transmission, (d) DEC or DEP to construct generation or transmission facilities for the benefit of the other, (e) the transfer of any rights to generation or transmission facilities from DEC or DEP to the other, or (f) any equalization of DEC's and DEP's production costs or rates. If, at any time, DEC, DEP or any other Affiliate learns that any of the foregoing interpretations are being considered, in whatever forum, they shall promptly notify and consult with the Commission and the Public Staff regarding appropriate action.

4.2 Advance Notice Required. To the extent that DEC and DEP desire to engage in any of items (a) through (f) listed in Regulatory Condition 4.1, above, DEC and DEP shall file advance notice with the Commission at least 30 days prior to taking any action to amend the JDA or a successor document or to enter into a separate agreement. The provisions of Regulatory Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition.

4.3 Function in DEC or DEP. The joint dispatch function, as provided in the JDA or in a successor document, shall be performed by employees of either DEC or DEP.

4.4 No Limitation on Obligations. DEC and DEP acknowledge that nothing in the JDA or any successor document is intended to alter DEC's and DEP's public utility obligations under North Carolina law or to provide for joint dispatch in a fashion that is inconsistent with those obligations, including, without limitation, the following: (a) DEC's obligation to plan for and provide least cost electric service to its Retail Native Load Customers and DEP's obligation to plan for and provide least cost electric service to its Retail Native Load Customers; (b) DEC's obligation to serve its Retail

Native Load Customers with the lowest cost power it can reasonably generate or purchase from other sources, before making power available for Non-Native Load Sales; and (c) DEP's obligation to serve its Retail Native Load Customers with the lowest cost power it can reasonably generate or purchase from other sources, before making power available for Non-Native Load Sales.

4.5 Protection of Retail Native Load Customers. All joint dispatch and other activities pursuant to the proposed JDA or successor document shall be performed in such a manner as to (a) ensure the reliable fulfillment of DEC's and DEP's respective service obligations to their Retail Native Load Customers, (b) fulfill each utility's obligation to serve its own Retail Native Load Customers with its lowest cost generation; and (c) minimize the total costs incurred by DEC and DEP to fulfill their respective obligations to their Retail Native Load Customers. In no event shall any Non-Native Load Sales be made if, based upon information known, anticipated, or reasonably available at the time a sale is made, any such sale results in higher fuel and fuel-related costs or non-fuel O&M costs, on a replacement cost basis, than would otherwise have been incurred unless the revenues credited from each such sale more than offset the higher costs.

4.6 Treatment of Costs and Savings. DEC's and DEP's respective fuel and fuel-related costs and non-fuel O&M costs, and the treatment of savings for retail ratemaking purposes, shall be calculated as provided in the JDA, unless explicitly changed by order of the Commission.

4.7 Required Records. DEC and DEP shall keep records related to the JDA or any successor document as prescribed by the Commission and in such detail as may be necessary to enable the Commission and the Public Staff to audit both the actual joint dispatch costs and the sharing of cost savings.

4.8 Auditing of Negative Margins. DEC and DEP also shall keep records that provide such detail as may be necessary to enable the Commission and the Public Staff to audit the circumstances that cause any negative margin on a Non-Native Load Sale or a negative transfer payment made pursuant to Section 7.5(a)(ii) of the JDA.

4.9 Protection of Commission's Authority. Neither DEC, DEP, nor any Affiliate shall assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of any other entity's assertions that any aspect of the JDA or successor document is intended to diminish or alter the jurisdiction or authority of the Commission over DEC or DEP, including, among other things, the jurisdiction and authority of the Commission to do the following: (a) establish the retail rates on a bundled basis for DEC or DEP, (b) to impose regulatory accounting and reporting requirements, (c) impose service quality standards, (d) require DEC and DEP to engage separately in least cost integrated resource planning, and (e) issue certificates of public convenience and necessity for new generating and transmission resources.

4.10 Preventive Action Required. DEC, DEP, Duke Energy, and other Affiliates shall take all necessary actions to prevent the generating facilities owned or controlled by DEC or DEP from being considered by the FERC to be (a) part, or all, of a power pool, (b) sufficiently integrated to be one integrated system, or (c) otherwise fully subject to the FERC's jurisdiction, as the result of DEC's and DEP's participation in the JDA or any successor document.

4.11 Modification and Termination. DEC and DEP shall modify or terminate the JDA if at any time following consummation of the Merger the Commission finds, after notice and opportunity to be heard, that the JDA does not produce overall cost savings for, or is otherwise not in the best interests of, the North Carolina ratepayers of both DEC and DEP.

4.12 Hold Harmless Commitment. DEC and DEP shall take all actions as may be reasonably appropriate and necessary to hold North Carolina retail ratepayers harmless from any adverse rate impacts related to the JDA, including any trapped costs resulting from actions taken or required by the FERC with respect to the JDA.

SECTION V TREATMENT OF AFFILIATE COSTS AND RATEMAKING

The following Regulatory Conditions are intended to ensure that the costs incurred by DEC, DEP, and Piedmont are properly incurred, accounted for, and directly charged, directly assigned, or allocated to their respective North Carolina retail operations and that only costs that produce benefits for DEC's and DEP's respective Retail Native Load Customers and Piedmont's Customers are included in DEC's, DEP's, and Piedmont's North Carolina cost of service for ratemaking purposes. The procedures set forth in Condition 13.2 do not apply to an advance notice filed pursuant to this section.

5.1 Access to Books and Records. In accordance with North Carolina law, the Commission and the Public Staff shall continue to have access to the books and records of DEC, DEP, Piedmont, Duke Energy, other Affiliates, and the Nonpublic Utility Operations.

5.2 Procurement or Provision of Goods and Services by DEC, DEP, or Piedmont to or from Affiliates or Nonpublic Utility Operations. Except as to transactions between and among DEC, DEP, and Piedmont, pursuant to filed and approved service agreements and lists of services, and subject to additional provisions set forth in the Code of Conduct, DEC, DEP, and Piedmont shall take the following actions in connection with procuring goods and services for their respective utility operations from Affiliates or Nonpublic Utility Operations and providing goods and services to Affiliates or Nonpublic Utility Operations:

- (a) DEC, DEP, and Piedmont each shall seek out and buy all goods and services from the lowest cost qualified provider of comparable goods and services, and shall have the burden of proving that any and all goods and services procured from their Utility Affiliates, Non-Utility Affiliates, and Nonpublic Utility Operations have been procured on terms and conditions comparable to the most favorable terms and conditions reasonably available in the relevant market, which shall include a showing that comparable goods or services could not have been procured at a lower price from qualified non-Affiliate sources or that DEC, DEP, and Piedmont could not have provided the services or goods for itself on the same basis at a lower cost. To this end, no less than every four years DEC, DEP, and Piedmont shall perform comprehensive non-solicitation based assessments at a functional level of the market competitiveness of the costs for goods and services they receive from a Utility Affiliate, DEBS, another Non-Utility Affiliate, and a Nonpublic Utility Operation, including periodic testing of services being provided internally or obtained individually through outside providers. To the extent the Commission approves the procurement or provision of goods and services between and among DEC, DEP, Piedmont, and the Utility Affiliates, those goods and services may be provided at the supplier's Fully Distributed Cost.
- (b) To the extent they are allowed to provide such goods and services, DEC, DEP, and Piedmont shall have the burden of proving that all goods and services provided by any one of them to Duke Energy, a Non-Utility Affiliate, any other Affiliate, or a Nonpublic Utility Operation have been provided on the terms and conditions comparable to the most favorable terms and conditions reasonably available in the market, which shall include a showing that such goods or services have been provided at the higher of cost or market price. To this end, no less than every four years DEC, DEP, and Piedmont shall perform comprehensive, non-solicitation based assessments at a functional level of the market competitiveness of the costs for goods and services provided by either of them to a Utility Affiliate, DEBS, another Non-Utility Affiliate, any other Affiliate, and a Nonpublic Utility Operation.
- (c) The periodic assessments required by subdivisions (a) and (b) of this subsection may take into consideration qualitative as well as quantitative factors. To the extent that comparable goods or services provided to DEC, DEP, or Piedmont, or by DEC, DEP, or Piedmont are not commercially available, this Regulatory Condition shall not apply.

5.3 Location of Core Utility Functions.

- (a) This Regulatory Condition does not apply to Piedmont.

- (b) Core utility functions are those functions related to Electric Services. The employees performing these core utility functions will be DEC or DEP employees and not service company employees of DEBS. Core utility functions do not include services of a governance or corporate type nature that have been traditionally provided by a service company, the specific services listed on the service company agreement services list for DEC and DEP filed with the Commission pursuant to Regulatory Condition No. 5.4(a) in Docket Nos. E-7, Sub 986A and E-2, Sub 998A and roles that provide oversight to the enterprise and are not jurisdiction-specific (Excluded functions).
- (c) All core utility functions employees charging 50% or more of their time to DEC and DEP (separately or combined) should be in the payroll company of either DEC or DEP and not on the payroll of an Affiliate such as DEBS. If it is not readily determinable that a particular function is related to the provision of Electric Services or is an Excluded Function, the appropriate payroll company decision will be governed by whether 50% or more of the affected group or individual employee's time is charged to DEC or DEP.
- (d) DEC and DEP shall annually review core utility function employees charging more than 50% of their time to DEC and DEP (separately or combined) over a six-month period from January 1 to June 30. If DEC and DEP determine that an employee performing a core utility function is direct charging 50% or more of his or her time to DEC or DEP, that employee should be transferred to DEC or DEP (if not already on the DEC or DEP payroll). Conversely, if a DEC or DEP employee is charging less than 50% of his or her time to DEC or DEP (separately or combined), and the employee is not otherwise charging the larger portion of their time to DEC or DEP, that employee should not be on the payroll of DEC or DEP.
- (e) DEC and DEP shall annually file, at least 90 days prior to January 1, a report containing the results of the annual review and advance notice of any transfers from DEC to DEP to another entity based on direct charging results (Employee Payroll Transfer Report). New organizations and reorganizations will be reflected in the Employee Payroll Transfer Reports.
- (f) If an employee transfer from DEC or DEP occurs during the middle of the year, and that transfer involves the transfer of a core utility function to the service company, the provisions of Regulatory Condition 10.1 will apply.
- (g) DEC and DEP may file a list of employees at the higher levels of management (not including those levels of management that report directly to the Chief Executive Officer for Duke Energy) for their core utility functions that they propose to be DEBS employees in their annual filing.

5.4 Service Agreements and Lists of Services.

- (a) DEC, DEP, and Piedmont shall file pursuant to G.S. 62-153 final proposed service agreements that authorize the provision and receipt of non-power goods or services between and among DEC, DEP, Piedmont, their Affiliates or Nonpublic Utility Operations, the list(s) of goods and services that DEC, DEP, and Piedmont each intend to take from DEBS, and the list(s) of goods and services DEC, DEP, and Piedmont intend to take from each other and the Utility Affiliates, and the basis for the determination of such list(s) and the elections of such services. All such lists that involve payment of fees or other compensation by DEC, DEP, or Piedmont shall require acceptance and authorization by the Commission, and shall be subject to any other Commission action required or authorized by North Carolina law and the Rules and orders of the Commission.
- (b) DEC, DEP, and Piedmont shall take goods and services from an Affiliate only in accordance with the filed service agreements and approved list(s) of services. DEC, DEP, and Piedmont shall file notice with the Commission in Docket Nos. E-7, Sub 1100_, E-2, Sub 1095_, and G-9, Sub 682_, respectively, at least 15 days prior to making any proposed changes to the service agreements or to the lists of services.

5.5 Charges for and Allocations of the Costs of Affiliate Transactions. To the maximum extent practicable, all costs of Affiliate transactions shall be directly charged. When not practicable, such costs shall be assigned in proportion to the direct charges. If such costs are of a nature that direct charging and direct assignment are not practicable, they shall be allocated in accordance with Commission-approved allocation methods. The following additional provisions shall apply:

- (a) DEC, DEP, and Piedmont shall keep on file with the Commission a cost allocation manual (CAM) with respect to goods or services provided by DEC, DEP, or Piedmont, any Utility Affiliate, DEBS, any other Non-Utility Affiliate, Duke Energy, any other Affiliates, or any Nonpublic Utility Operation to DEC, DEP, or Piedmont. Piedmont will adopt DEC's and DEP's CAM.
- (b) The CAM shall describe how all directly charged, direct assignment, and other costs for each provider of goods and services will be charged between and among DEC, DEP, Piedmont, their Utility Affiliates, Non-Utility Affiliates, Duke Energy, any other Affiliates, and the Nonpublic Utility Operations, and shall include a detailed review of the common costs to be allocated and the allocation factors to be used.
- (c) The CAM shall be updated annually, and the revised CAM shall be filed with the Commission no later than March 31 of the year that the CAM(s)

are to be in effect. DEC, DEP, and Piedmont shall review the appropriateness of the allocation bases every two years, and the results of such review shall be filed with the Commission. Interim changes shall be made to the CAM(s), if and when necessary, and shall be filed with the Commission, in accordance with Regulatory Condition 5.6.

- (d) No changes shall be made to the procedures for direct charging, direct assigning, or allocating the costs of Affiliate transactions or to the method of accounting for such transactions associated with goods and services (including Shared Services provided by DEBS) provided to or by Duke Energy, other Affiliates, and the Nonpublic Utility Operations until DEC, DEP, or Piedmont has given 15 days' notice to the Commission of the proposed changes, in accordance with Regulatory Condition 5.6.

5.6 Procedures Regarding Interim Changes to the CAM or Lists of Goods and Services for which 15 Days' Notice Is Required. With respect to interim changes to the CAM or changes to lists of goods and services, for which the 15 day notice to the Commission is required, the following procedures shall apply: the Public Staff shall file a response and make a recommendation as to how the Commission should proceed before the end of the notice period. If the Commission has not issued an order within 30 days of the end of the notice period, DEC or DEP may proceed with the changes but shall be subject to any fully adjudicated Commission order on the matter. The provisions of Regulatory Condition 13.2 do not apply to advance notices filed pursuant to Regulatory Condition 5.5(c) and (d). Such advance notices shall be filed in Docket Nos. E-7, Sub 1100_, E-2, Sub 1095_, and G-9, Sub 682_.

5.7 Annual Reports of Affiliate Transactions. DEC, DEP, and Piedmont shall file annual reports of affiliated transactions with the Commission in a format to be prescribed by the Commission in Docket Nos. E-7, Sub 1100_, E-2, Sub 1095_, and G-9, Sub 682_. The report shall be filed on or before May 30 of each year, for activity through December 31 of the preceding year. DEC, DEP, Piedmont, and other parties may propose changes to the required affiliated transaction reporting requirements and submit them to the Commission for approval, also in Docket Nos. E-7, Sub 1100_, E-2, Sub 1095_, and G-9, Sub 682_.

5.8 Third-party Independent Audits of Affiliate Transactions.

- (a) No less often than every two years, a third-party independent audit shall be conducted related to the affiliate transactions undertaken pursuant to Affiliate agreements filed in accordance with Regulatory Condition 5.4 and of DEC's, DEP's, and Piedmont's compliance with all conditions approved by the Commission concerning Affiliate transactions, including the propriety of the transfer pricing of goods and services between and/or among DEC, DEP, Piedmont, other Affiliates, and all of the Nonpublic Utility Operations.

- (i) The first audit shall begin two years from the date of the close of the Merger. It shall include whether DEC's, DEP's, and Piedmont's transactions, services, and other Affiliate dealings pursuant to the regulated utility-to-regulated utility service agreement and any other utility to utility agreements are consistent with all of the conditions related to affiliate dealings and the Code of Conduct and whether DEC, DEP, and Piedmont have operated in accordance with those conditions and Code of Conduct.
 - (ii) The second audit shall begin two years from the date of the Commission's order on the independent auditor's final report on the first audit or, if no such order is issued, two years from the date of such final report. It shall include whether DEC's, DEP's and Piedmont's transactions, services, and other Affiliate dealings pursuant to the Service Company Utility Service Agreement and other Affiliate transactions other than transactions undertaken pursuant to regulated utility to regulated utility service agreements are consistent with all of the conditions related to affiliate dealings and the Code of Conduct and whether DEC, DEP, and Piedmont have operated in accordance with those conditions and Code of Conduct.
 - (iii) Thereafter, independent audits shall occur every two years from the date of the Commission's order on the immediately preceding auditor's final report or, if no such order is issued, two years from the date of such final report. The subject matter of these audits shall alternate between the subject matters for the second and third independent audits. DEC, DEP, and Piedmont may request a change in the frequency of the audit reports in future years, subject to approval by the Commission.
- (b) The following further requirements apply:
- (i) The independent auditor shall have sufficient access to the books and records of DEC, DEP, Piedmont, Duke Energy, other Affiliates, and all of the Nonpublic Utility Operations to perform the audits.
 - (ii) For each audit, the Public Staff shall propose one or more independent auditor(s). DEC, DEP, Piedmont and other parties shall have an opportunity to comment and propose additional auditors. Selection of the independent auditor shall be made by the Commission. Any party proposing an independent auditor shall file such auditor's audit proposal with the Commission.
 - (iii) The independent auditor shall be supervised in its duties by the Public Staff, and the auditor's reports shall be filed with the Commission.

5.9 Ongoing Review by Commission.

- (a) The services rendered by DEC, DEP and Piedmont to their Affiliates and Nonpublic Utility Operations and the services received by DEC, DEP, or Piedmont from their Affiliates and Nonpublic Utility Operations pursuant to the filed service agreements, the costs and benefits assigned or allocated in connection with such services, and the determination or calculation of the bases and factors utilized to assign or allocate such costs and benefits, as well as DEC's, DEP's, and Piedmont's compliance with the Commission-approved Code of Conduct and all Regulatory Conditions, shall remain subject to ongoing review. These agreements shall be subject to any Commission action required or authorized by North Carolina law and the Rules and orders of the Commission.
- (b) The service agreements, the CAM(s) and the assignments and allocations of costs pursuant thereto, the biannual allocation factor reviews required by Regulatory Condition 5.4(c), the list(s) and the goods and services provided pursuant thereto, and any changes to these documents shall be subject to ongoing Commission review, and Commission action if appropriate.

5.10 Future Orders. For the purposes of North Carolina retail accounting, reporting, and ratemaking, the Commission may, after appropriate notice and opportunity to be heard, issue future orders relating to DEC's, DEP's, or Piedmont's cost of service as the Commission may determine are necessary to ensure that DEC's, DEP's and Piedmont's operations and transactions with their Affiliates and Nonpublic Utility Operations are consistent with the Regulatory Conditions and Code of Conduct, and with any other applicable decisions of the Commission.

5.11 Review by the FERC. Notwithstanding any of the provisions contained in these Regulatory Conditions, to the extent the allocations adopted by the Commission when compared to the allocations adopted by the other State commissions with ratemaking authority as to a Utility Affiliate of DEC, DEP, or Piedmont result in significant trapped costs related to "non-power goods or administrative or management services provided by an associate company organized specifically for the purpose of providing such goods or services to any public utility in the same holding company system," including DEC, DEP, and Piedmont, DEC, DEP, or Piedmont may request pursuant to Section 1275(b) of Subtitle F in Title XII of PUHCA 2005 that the FERC "review and authorize the allocation of the costs for such goods and services to the extent relevant to that associate company." Such review and authorization shall have whatever effect it is determined to have under the law. The quoted language in this Condition is taken directly from Section 1275(b) of Subtitle F in Title XII of PUHCA 2005. The terms "associate company" and "holding company system" are defined in Sections 1262(2) and 1262(9), respectively, of Subtitle F in Title XII of PUHCA 2005 and have the same meanings for purposes of this condition.

5.12 Biannual Review of Certain Transactions by Internal Auditors. Transactions between DEC, DEP, or Piedmont and Duke Energy, other Affiliates, or the Nonpublic Utility Operations, transactions between and among DEC, DEP and Piedmont, and other transactions between or among Affiliates if such transactions are reasonably likely to have a significant Effect on DEC's, DEP's or Piedmont's Rates or Service, shall be reviewed at least biannually by Duke Energy's internal auditors. To the extent external audits of the transactions are conducted, DEC, DEP, and Piedmont shall make available such audits for review by the Public Staff and the Commission. DEC, DEP and Piedmont also shall make available for review by the Public Staff and the Commission all workpapers, not otherwise subject to the attorney-client privilege, relating to internal audits and all other internal audit workpapers, not otherwise subject to the attorney-client privilege, if any, related to affiliate transactions, and shall not oppose Public Staff and Commission requests to review relevant, external audit workpapers that are not otherwise subject to the attorney-client privilege. If there is a dispute whether the attorney-client privilege applies to any of the listed workpapers, it shall be resolved by the Commission under its regulations and North Carolina law.

5.13 Notice of Service Company and Non-Utility Affiliates FERC Audits. At such time as DEC, DEP, Piedmont, Duke Energy, or DEBS receives notice from the FERC related to an audit of any Affiliate of DEC, DEP, or Piedmont, DEC, DEP, or Piedmont shall promptly file a notice the Commission that such an audit will be commencing. Any initial report of the FERC's audit team shall be provided to the Public Staff, and any final report shall be filed with the Commission in Docket Nos. E-7, Sub 1100_, E-2, Sub 1095_, or G-9, Sub 682_, respectively.

5.14 Acquisition Adjustment. Any acquisition adjustment that results from the Merger shall be excluded from DEC's, DEP's and Piedmont's utility accounts and treated for regulatory accounting, reporting, and ratemaking purposes so that it does not affect DEC's or DEP's North Carolina retail rates and charges for Electric Services or Piedmont's North Carolina rates and charges for Natural Gas Services.

5.15 Non-Consummation of Merger. If the Merger is not consummated, neither the cost, nor the receipt, of any termination payment between Duke Energy and Piedmont shall be allocated to DEC, DEP, or Piedmont or recorded on their books. DEC's, DEP's, or Piedmont's Customers shall not otherwise bear any direct expenses or costs associated with a failed merger.

5.16 Protection from Commitments to Wholesale Customers.

- (a) This Regulatory Condition does not apply to Piedmont.
- (b) For North Carolina retail electric cost of service/ratemaking purposes, DEC's and DEP's respective electric system costs shall be assigned or allocated between and among retail and wholesale jurisdictions based on reasonable and appropriate cost causation principles. For cost of

service/ratemaking purposes, North Carolina retail ratepayers shall be held harmless from any cost assignment or allocation of costs resulting from agreements between DEC and the Catawba Joint Owners, and between either DEC or DEP and any of their wholesale customers.

- (c) To the extent commitments to DEC's or DEP's wholesale customers relating to the 2012 merger of Duke Energy and Progress Energy are made by or imposed upon DEC or DEP the effects of which (i) decrease the bulk power revenues that are assigned or allocated to DEC's or DEP's North Carolina retail operations or credited to DEC's or DEP's jurisdictional fuel expenses, (ii) increase DEC's or DEP's North Carolina retail cost of service, or (iii) increase DEC's or DEP's North Carolina retail fuel costs under reasonable cost assignment and allocation practices approved or allowed by the Commission, those effects shall not be recognized for North Carolina retail cost of service or ratemaking purposes.
- (d) To the extent that commitments are made by or imposed upon DEC, DEP, Duke Energy Corporation, another Affiliate, or a Nonpublic Utility Operation relating to the Merger, either through an offer, a settlement, or as a result of a regulatory order, the effects of which serve to increase the North Carolina retail cost of service or North Carolina retail fuel costs under reasonable cost allocation practices, the effects of these commitments shall not be recognized for North Carolina retail ratemaking purposes.

5.17 Joint Owner-Specific Issues. Assignment or allocation of costs to the North Carolina retail jurisdiction shall not be adversely affected by the manner and amount of recovery of electric system costs from (a) the Catawba Joint Owners as a result of agreements between DEC and the Catawba Joint Owners. This Regulatory Condition does not apply to Piedmont.

5.18 Inclusion of Cost Savings in Future Rate Proceedings. None of DEC, DEP, Piedmont, Duke Energy Corporation, any other Affiliate, nor a Nonpublic Utility Operation shall assert that any interested party is prohibited from seeking the inclusion in future rate proceedings of cost savings that may be realized as a result of any business combination transaction impacting DEC, DEP, and Piedmont.

5.19 Reporting of Costs to Achieve. The North Carolina portion of costs to achieve any business combination transaction savings shall be reflected in DEC's or DEP's, North Carolina ES-1 report as recorded on its books and records under generally accepted accounting principles. DEC and DEP shall include as a footnote in the ES-1 reports the merger related costs to achieve that were expensed during the relevant period. This Regulatory Condition does not apply to Piedmont.

5.20 Accounting for Costs to Achieve Related to Historical Events Involving DEP. All costs of Carolina Power and Light Company's merger with North Carolina Natural Gas Company, the Formation of Progress Energy, and Progress Energy's merger with Florida Progress Corporation shall be excluded from DEP's utility accounts, and all direct or indirect corporate cost increases, if any, attributable to those three events shall be excluded from utility costs for all purposes that affect DEP's regulated retail rates and charges. For purposes of this condition, the term "corporate cost increases" is defined as costs in excess of the level DEP would have (a) incurred using prudent business judgment, or (b) had allocated to it, had these transactions not occurred. "Corporate cost increases" shall also include any payments made under change-of-control agreements, salary continuation agreements, and/or other severance- or personnel-type arrangements that are reasonably attributable to these transactions. This Regulatory Condition does not apply to Piedmont.

5.21 Liabilities of Cinergy Corp. and Florida Progress Corporation.

- (a) This Regulatory Condition does not apply to Piedmont.
- (b) DEC's and DEP's Retail Native Load Customers shall be held harmless from all liabilities of Cinergy Corp. and its subsidiaries, including those incurred prior to and after Duke Energy's acquisition of Cinergy Corp. in 2006. These liabilities include, but are not limited to, those associated with the following: (i) manufactured gas plant sites, (ii) asbestos claims, (iii) environmental compliance, (iv) pensions and other employee benefits, (v) decommissioning costs; and (vi) taxes.
- (c) DEC's and DEP's Retail Native Load Customers shall be held harmless from all liabilities of Florida Progress Corporation and its subsidiaries, including those incurred prior to and after Progress Energy's acquisition of Florida Progress Corporation in 2000. These liabilities include, but are not limited to, those associated with the following: (i) any outages at and repairs of Crystal River 3, (ii) manufactured gas plant sites, (iii) asbestos claims, (iv) environmental compliance, (v) pensions and other employee benefits, (vi) decommissioning costs, and (vii) taxes.
- (d) DEC's Retail Native Load Customers shall be held harmless from all current and prospective liabilities of DEP, and DEP's Retail Native Load Customers shall be held harmless from all current and prospective liabilities of DEC.

5.22 Hold Harmless Commitment. DEC, DEP, Piedmont, Duke Energy, the other Affiliates, and all of the Nonpublic Utility Operations shall take all such actions as may be reasonably necessary and appropriate to hold North Carolina retail ratepayers harmless from the effects of the Merger, including rate increases or foregone opportunities for rate decreases, and other effects otherwise adversely impacting their Customers.

5.23 Cost of Service Manuals. Within six months after the closing date of the Merger, DEC and DEP shall each file with the Commission revisions to its electric cost of service manual to reflect any changes to the cost of service determination process made necessary by the Merger, any subsequent alterations in the organizational structure of DEC, DEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations, or other circumstances that necessitate such changes. These filings shall be made in Docket Nos. E-7, Sub 1100_, and E-2, Sub 1095_, respectively. This Regulatory Condition does not apply to Piedmont.

SECTION VI CODE OF CONDUCT

These Regulatory Conditions include a Code of Conduct in Appendix ___. The Code of Conduct governs the relationships, activities and transactions between and among the public utility operations of DEC, DEP, Piedmont, Duke Energy, the Affiliates of DEC and PEC, and the Nonpublic Utility Operations of DEC, DEP and Piedmont.

6.1 Obligation to Comply with Code of Conduct. DEC, DEP, Piedmont, Duke Energy, the other Affiliates, and the Nonpublic Utility Operations shall be bound by the terms of the Code of Conduct set forth in Appendix ___ and as it may subsequently be amended.

SECTION VII FINANCINGS

The following Regulatory Conditions are intended to ensure (a) that DEC's, DEP's, and Piedmont's capital structures and cost of capital are not adversely affected through their affiliation with Duke Energy, each other, and other Affiliates and (b) that DEC, DEP, and Piedmont have sufficient access to equity and debt capital at a reasonable cost to adequately fund and maintain their current and future capital needs and otherwise meet their service obligations to their Customers.

These conditions do not supersede any orders or directives of the Commission regarding specific securities issuances by DEC, DEP, Piedmont, or Duke Energy. The approval of the Merger by the Commission does not restrict the Commission's right to review, and by order to adjust, DEC's, DEP's, or Piedmont's cost of capital for ratemaking purposes for the effect(s) of the securities-related transactions associated with the Merger.

7.1 Accounting for Equity Investment in Holding Company Subsidiaries. Duke Energy shall maintain its books and records so that any net equity investment in Cinergy Corp. and Progress Energy, their subsidiaries, or their successors, by Duke Energy or any Affiliates can be identified and made available on an ongoing basis. This information shall be provided to the Public Staff upon its request.

7.2 Accounting for capital structure components and cost rates. Duke Energy, DEC, DEP, and Piedmont shall keep their respective accounting books and records in a manner that will allow all capital structure components and cost rates of the cost of capital to be identified easily and clearly for each entity on a separate basis. This information shall be provided to the Public Staff upon its request.

7.3 Accounting for Equity Investment in DEC, DEP, and Piedmont. DEC, DEP, and Piedmont shall keep their respective accounting books and records so that the amount of Duke Energy's equity investment in DEC, DEP, and Piedmont can be identified and made available upon request on an ongoing basis. This information shall be provided to the Public Staff upon request.

7.4 Reporting of Capital Contributions. As part of their Commission ES-1 and GS-1 Reports, DEC, DEP, and Piedmont shall include a schedule of any capital contribution(s) received from Duke Energy in the applicable calendar quarter.

7.5 Identification of Long-term Debt Issued by DEC, DEP, or Piedmont. DEC, DEP, and Piedmont shall each identify as clearly as possible long-term debt (of more than one year's duration) that they issue in connection with their regulated utility operations and capital requirements or to replace existing debt.

7.6 Procedures Regarding Proposed Financings.

- (a) For all types of financings for which DEC, DEP, or Piedmont (or their subsidiaries) are the issuers of the respective securities, DEC, DEP, or Piedmont (or their subsidiaries) shall request approval from the Commission to the extent required by G.S. 62-160 through G.S. 62-169 and Commission Rule R1-16. Generally, the format of these filings should be consistent with past practices. A "shelf registration" approach (similar to Docket No. E-7, Sub 727) may be requested.
- (b) For all types of financings by Duke Energy, other than short-term debt as described in G.S. 62-167, the following shall apply:
 - (i) On or before January 15 of each year, Duke Energy shall file with the Commission and serve on the Public Staff an advance confidential plan of all securities issuances that it anticipates to occur during that calendar year. The annual confidential plan shall include a description of all financings that Duke Energy reasonably believes may occur during the applicable calendar year. A description for each financing shall include the best estimates of the following: type of security; estimate of cost rate (e.g., interest rate for debt); amount of proceeds; brief description of the purpose/reason for issue; and amount of proceeds, if any, that may flow to DEC, DEP, or Piedmont.

- (ii) If at any time material changes to the financing plans included in the filed plan appear likely, Duke Energy shall file a revised 30-day advance confidential plan that specifically addresses such changes with the Commission and serve such notice on the Public Staff.
- (iii) At the time of the confidential plan filings identified above, Duke Energy shall also file a non-confidential notice that states that a confidential plan has been filed in compliance with this Regulatory Condition 7.6(b).
- (iv) Duke Energy may proceed with equity issuances upon the filing of the confidential plan. However, actual debt issuances shall not occur until 30 days after the advance confidential plan or revised plans are filed. In the event it is not feasible for Duke Energy to file a revised advance confidential plan for a material change 30 days in advance, such plan shall be filed by a date that allows adequate time for review or a debt issuance shall be delayed to allow such review. Prior to the Commission's action on the confidential plan for the year in which the plan is filed, Duke Energy may issue securities authorized under the previous year's plan to the extent such securities were not issued during the previous year.
- (v) Within 15 days after the filing of an advance confidential plan or revised plan, the Public Staff shall file a confidential report with the Commission with respect to whether any debt issuances require approval pursuant to G.S. 62-160 through G.S. 62-169 and Commission Rule R1-16 and shall recommend that the Commission issue an order deciding how to proceed. Duke Energy shall have seven days in which to respond to the report. If the Commission determines that any debt issuance requires approval, the Commission shall issue an order requiring the filing of an application and no such issuance shall occur until the Commission approves the application. If the Commission determines that no debt issuance requires approval, the Commission shall issue an order so ruling. At the end of the notice period, Duke Energy may proceed with the debt issuance, but shall be subject to any fully adjudicated Commission order on the matter; provided, however, that nothing herein shall affect the applicability of G.S. 62-170 or other similar provision to such securities or obligations.
- (vi) On or before April 15 of each year, Duke Energy shall file with the Commission a report on all financings that were executed for the previous calendar year. The actual reports should include the same information as required above for the advance plans plus the actual issuance costs.

- (c) If a filing with the Securities and Exchange Commission or other federal agency will be made in connection with a securities issuance, the notice shall describe such filing(s) and indicate the approximate date on which it would occur.
- (d) Securities issuances or financings that are associated with a merger, acquisition, or other business combination shall be filed in conjunction with the information requirements and deadlines stated in Regulatory Conditions 9.1 and 9.2, and this Condition 7.6 shall not apply to such securities issuances or financings.

7.7 Money Pool Agreement. Subject to the limitations imposed in Regulatory Condition 8.4, DEC, DEP, and Piedmont may borrow through Duke Energy's "Utility Money Pool Agreement" (Utility MPA), provided as follows: (a) participation in the Utility MPA is limited to the parties to the Utility MPA filed with the Commission on December 1, 2011, in Docket No. E-7, Sub 986A, and E-2, Sub 998A, plus Piedmont and with the exception of the Progress Energy Service Company; and (b) the Utility MPA continues to provide that no loans through the Utility MPA will be made to, and no borrowings through the Utility MPA will be made by Duke Energy, Progress Energy, and Cinergy Corp.

7.8 Borrowing Arrangements. Subject to the limitations imposed in Regulatory Condition 8.4, DEC, DEP, and Piedmont may borrow short-term funds through one or more joint external debt or credit arrangements (a Credit Facility), provided that the following conditions are met:

- (a) No borrowing by DEC, DEP, or Piedmont under a Credit Facility shall exceed one year in duration, absent Commission approval;
- (b) No Credit Facility shall include, as a borrower, any party other than Duke Energy, DEC, DEP, Duke Indiana, Duke Kentucky, DEF, Duke Ohio; and Piedmont,
- (c) DEC's, DEP's and Piedmont's participation in any Credit Facility shall in no way cause either of them to guarantee, assume liability for, or provide collateral for any debt or credit other than its own.

7.9 Long-Term Debt Fund Restrictions. DEC, DEP, and Piedmont shall acquire their respective long-term debt funds through the financial markets, and shall neither borrow from, nor lend to, on a long-term basis, Duke Energy or any of the other Affiliates. To the extent that either DEC, DEP, or Piedmont borrows on short-term or long-term bases in the financial markets and is able to obtain a debt rating, its debt shall be rated under its own name.

SECTION VIII CORPORATE GOVERNANCE/RING FENCING

The following Regulatory Conditions are intended to ensure the continued viability of DEC, DEP, and Piedmont and to insulate and protect DEC, DEP, and their Retail Native Load Customers and Piedmont and its Customers from the business and financial risks of Duke Energy and the Affiliates within the Duke Energy holding company system, including the protection of utility assets from liabilities of Affiliates.

8.1 Investment Grade Debt Rating. DEC, DEP, and Piedmont shall manage their respective businesses so as to maintain an investment grade debt rating on all of their rated debt issuances with all of the debt rating agencies on all of their rated debt issuances. If DEC's, DEP's, or Piedmont's debt rating falls to the lowest level still considered investment grade at the time, DEC, DEP, or Piedmont shall file written notice to the Commission and the Public Staff within five (5) days of such change and an explanation as to why the downgrade occurred. Within 45 days of such notice, DEC, DEP, or Piedmont shall provide the Commission and the Public Staff with a specific plan for maintaining and improving its debt rating. The Commission, after notice and hearing, may then take whatever action it deems necessary consistent with North Carolina law to protect the interests of DEC's or DEP's Retail Native Load Customers and Piedmont's Customers in the continuation of adequate and reliable service at just and reasonable rates.

8.2 Distributions from DEC, DEP, and Piedmont to Holding Company. DEC, DEP, and Piedmont shall limit cumulative distributions paid to Duke Energy subsequent to the Merger to (a) the amount of Retained Earnings on the day prior to the closure of the Merger, plus (b) any future earnings recorded by DEC and DEP, and Piedmont subsequent to the Merger.

8.3 Debt Ratio Restrictions. To the extent any of Duke Energy's external debt or credit arrangements contain covenants restricting the ratio of debt to total capitalization on a consolidated basis to a maximum percentage of debt, Duke Energy shall ensure that the capital structures of both DEC, DEP, and Piedmont individually meet those restrictions.

8.4 Limitation on Continued Participation in Utility Money Pool Agreement and other Joint Debt and Credit Arrangements with Affiliates. DEC, DEP, and Piedmont may participate in the Utility MPA and any other authorized joint debt or credit arrangement as provided in Regulatory Conditions 7.7 and 7.8 only to the extent such participation is beneficial to DEC's and DEP's respective Retail Native Load Customers and Piedmont's Customers and does not negatively affect DEC's, DEP's, or Piedmont's ability to continue to provide adequate and reliable service at just and reasonable rates.

8.5 Notice of Level of Non-Utility Investment by Holding Company System. In order to enable the Commission to determine whether the cumulative investment by Duke Energy in assets, ventures, or entities other than regulated utilities is reasonably likely to have an Effect on DEC's, DEP's, or Piedmont's Rates or Service so as to warrant Commission action (pursuant to Regulatory Condition 8.7 or other applicable authority) to protect DEP's or DEC's Retail Native Load Customers or Piedmont's Customers, Duke Energy shall notify the Commission within 90 days following the end of any fiscal year for which Duke Energy reports to the Securities and Exchange Commission assets in its operations other than regulated utilities that are in excess of 22% of its consolidated total assets. The following procedures shall apply to such a notice:

- (a) Any interested party may file comments within 45 days of the filing of Duke Energy's notice.
- (b) If timely comments are filed, the Public Staff shall place the matter on a Commission Staff Conference agenda as soon as possible, but in no event later than 15 days after the comments are filed, and shall make a recommendation as to how the Commission should proceed. If the Commission determines that the percentage of total assets invested in Duke Energy's its operations other than regulated utilities is reasonably likely to have an Effect on DEC's, DEP's, or Piedmont's Rates or Service so as to warrant action by the Commission to protect DEC's and DEP's Retail Native Load Customers and Piedmont's Customers, the Commission shall issue an order setting the matter for further consideration. If the Commission determines that the percentage threshold being exceeded does not warrant action by the Commission, the Commission shall issue an order so ruling.

8.6 Notice by Holding Company of Certain Investments. Duke Energy shall file a notice with the Commission subsequent to Board approval and as soon as practicable following any public announcement of any investment in a regulated utility or a non-regulated business that represents five (5) percent or more of Duke Energy's book capitalization.

8.7 Ongoing Review of Effect of Holding Company Structure. The operation of DEC, DEP, and Piedmont under a holding company structure shall continue to be subject to Commission review. To the extent the Commission has authority under North Carolina law, it may order modifications to the structure or operations of Duke Energy, DEBS, another Affiliate, or a Nonpublic Utility Operation, and may take whatever action it deems necessary in the interest of Retail Native Load Customers and Piedmont's Customers to protect the economic viability of DEC, DEP, and Piedmont including the protection of DEC's, DEP's, and Piedmont's public utility assets from liabilities of Affiliates.

8.8 Investment by DEC, DEP, or Piedmont in Non-regulated Utility Assets and Non-utility Business Ventures. DEC, DEP, and Piedmont shall not invest in a non-regulated utility asset or any non-utility business venture exceeding \$50 million in purchase price or gross book value to DEC, DEP, or Piedmont unless it provides 30 days' advance notice. Regulatory Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition. Purchases of assets, including land that will be held with a definite plan for future use in providing Electric Services in DEC's, DEP's franchise area or Natural Gas Services in Piedmont's franchise area shall be excluded from this advance notice requirement.

8.9 Investment by Holding Company in Exempt Wholesale Generators. By April 15 of each year, Duke Energy shall provide to the Commission and the Public Staff a report summarizing Duke Energy's investment in exempt wholesale generators (EWGs) and foreign utility companies (FUCOs) in relation to its level of consolidated retained earnings and consolidated total capitalization at the end of the preceding year. Exempt wholesale generator and foreign utility company are defined in Section 1262(6) of Subtitle F in Title XII of PUHCA 2005 and have the same meanings for purposes of this condition.

8.10 Notice by DEC, DEP, or Piedmont of Default or Bankruptcy of Affiliate. If an Affiliate of DEC, DEP, or Piedmont experiences a default on an obligation that is material to Duke Energy or files for bankruptcy, and such bankruptcy is material to Duke Energy, DEC, DEP, or Piedmont shall notify the Commission in advance, if possible, or as soon as possible, but not later than ten days from such event.

8.11 Annual Report on Corporate Governance. No later than March 31 of each year, DEC, DEP, and Piedmont shall file a report including the following:

- (a) A complete, detailed organizational chart (i) identifying DEC, DEP, Piedmont and each Duke Energy financial reporting segment, and (ii) stating the business purpose of each Duke Energy financial reporting segment. Changes from the report for the immediately preceding year shall be summarized at the beginning of the report.
- (b) A list of all Duke Energy financial reporting segment that are considered to constitute non-regulated investments and a statement of each segment's total capitalization and the percentage it represents of Duke Energy's non-regulated investments and total investments. Changes from the report for the immediately preceding year shall be summarized at the beginning of the report.
- (c) An assessment of the risks that each unregulated Duke Energy financial reporting segment could pose to DEC, DEP, or Piedmont based upon current business activities of those affiliates and any contemplated significant changes to those activities.

- (d) A description of DEC's, DEP's, and Piedmont's and each Significant Affiliate's actual capital structure. In addition, describe Duke Energy's, DEC's, DEP's, and Piedmont's respective capital structures and plans for achieving such goals.
- (e) A list of all protective measures (other than those provided for by the Regulatory Conditions adopted in Docket Nos. E-7, Sub 1100, and E-2, Sub 1095, and G-9, Sub 682 in effect between DEC, DEP, Piedmont and any of their Affiliates, and a description of the goal of each measure and how it achieves that goal, such as mitigation of DEC's, DEP's, and Piedmont's exposure in the event of a bankruptcy proceeding involving any Affiliate(s).
- (f) A list of corporate executive officers and other key personnel that are shared between DEC, DEP, Piedmont and any Affiliate, along with a description of each person's position(s) with, and duties and responsibilities to each entity.
- (g) A calculation of Duke Energy's total book and market capitalization as of December 31 of the preceding year for common equity, preferred stock, and debt.

SECTION IX FUTURE MERGERS AND ACQUISITIONS

The following Regulatory Conditions are intended to ensure that the Commission receives sufficient notice to exercise its lawful authority over proposed mergers, acquisitions, and other business combinations involving Duke Energy, DEC, DEP, Piedmont, other Affiliates, or the Nonpublic Utility Operations. The advance notice provisions set forth in Regulatory Condition 13.2 do not apply to these conditions.

9.1 Mergers and Acquisitions by or Affecting DEC, DEP, or Piedmont. For any proposed merger, acquisition, or other business combination by DEC, DEP or Piedmont or that would have an Effect on DEC's, DEP's, or Piedmont's Rates or Service, DEC, DEP, or Piedmont shall file in a new Sub docket an application for approval pursuant to G S. 62-111(a) at least 180 days before the proposed closing date for such merger, acquisition, or other business combination.

9.2 Mergers and Acquisitions Believed Not to Have an Effect on DEC's, DEP's or Piedmont's Rates or Service. For any proposed merger, acquisition, or other business combination that is believed not to have an Effect on DEC's, DEP's or Piedmont's Rates or Service, but which involves Duke Energy, other Affiliates, or the Nonpublic Utility Operations and which has a transaction value exceeding \$1.5 billion, the following shall apply:

- (a) Advance notification shall be filed with the Commission in a new Sub docket by the merging entities at least 90 days prior to the proposed closing date for such proposed merger, acquisition or other business combination. The advance notification is intended to provide the Commission an opportunity to determine whether the proposed merger, acquisition, or other business combination is reasonably likely to affect DEC, DEP, or Piedmont so as to require approval pursuant to G S. 62-111(a). The notification shall contain sufficient information to enable the Commission to make such a determination. If the Commission determines that such approval is required, the 180-day advance filing requirement in Regulatory Condition 9.1 above, shall not apply.
- (b) Any interested party may file comments within 45 days of the filing of the advance notification.
- (c) If timely comments are filed, the Public Staff shall place the matter on a Commission Staff Conference agenda as soon as possible, but in no event later than 15 days after the comments are filed, and shall recommend that the Commission issue an order deciding how to proceed. If the Commission determines that the merger, acquisition, or other business combination requires approval pursuant to G.S. 62-111(a), the Commission shall issue an order requiring the filing of an application, and no closing can occur until and unless the Commission approves the proposed merger, acquisition, or business combination. If the Commission determines that the merger, acquisition, or other business combination does not require approval pursuant to G.S. 62-111(a), the Commission shall issue an order so ruling. At the end of the notice period, if no order has been issued, Duke Energy, any other Affiliate, or the Nonpublic Utility Operation may proceed with the merger, acquisition, or other business combination but shall be subject to any fully-adjudicated Commission order on the matter.

SECTION X STRUCTURE/ORGANIZATION

The following Regulatory Conditions are intended to ensure that the Commission receives adequate notice of, and opportunity to review and take such lawful action as is necessary and appropriate with respect to, changes to the structure and organization of Duke Energy, DEC, DEP, Piedmont, and other Affiliates, and Nonpublic Utility operations as they may affect Customers.

10.1 Transfer of Services, Functions, Departments, Employees, Rights, Assets, or Liabilities. DEC, DEP, and Piedmont shall file notice with the Commission 30 days prior to the initial transfer or any subsequent transfer of any services, functions, departments, rights, obligations, assets; or liabilities from DEC, DEP, or Piedmont to

DEBS that (a) involves services, functions, departments, rights, obligations, assets, or liabilities other than those of a governance or corporate type nature that traditionally have been provided by a service company or (b) potentially would have a significant effect on DEC's, DEP's or Piedmont's public utility operations. The provisions of Regulatory Condition 13.2 apply to an advance notice filed pursuant to this Regulatory Condition.

10.2 Notice and Consultation with Public Staff Regarding Proposed Structural and Organizational Changes. Upon request, DEC, DEP, and Piedmont shall meet and consult with, and provide requested relevant data to, the Public Staff, regarding plans for significant changes in DEC's, DEP's, Piedmont's or Duke Energy's organization, structure (including RTO developments), and activities; the expected or potential impact of such changes on DEC's, DEP's or Piedmont's retail rates, operations and service; and proposals for assuring that such plans do not adversely affect DEC's or DEP's Retail Native Load Customers or Piedmont's Customers. To the extent that proposed significant changes are planned for the organization, structure, or activities of an Affiliate or Nonpublic Utility Operation and such proposed changes are likely to have an adverse impact on DEC's, DEP's, or Piedmont's Customers, then DEC's, DEP's and Piedmont's plans and proposals for assuring that those plans do not adversely affect their Customers must be included in these meetings. DEC, DEP, and Piedmont shall inform the Public Staff promptly of any such events and changes.

SECTION XI SERVICE QUALITY

The following Regulatory Conditions are intended to ensure that DEC, DEP, and Piedmont continue to implement and further their commitment to providing superior public utility service by meeting recognized service quality indices and implementing the best practices of each other and their Utility Affiliates, to the extent reasonably practicable.

11.1 Overall Service Quality. Upon consummation of the Merger, DEC, DEP, and Piedmont each shall continue their commitment to providing superior public utility service and shall maintain the overall reliability of Electric services and Natural Gas Services at levels no less than the overall levels it has achieved in the past decade.

11.2 Best Practices. DEC, DEP, and Piedmont shall make every reasonable effort to incorporate each other's best practices into its own practices to the extent practicable.

11.3 Notice of NERC Audit. This Regulatory Condition does not apply to Piedmont. At such time as either DEC or DEP receive notice that the North American Electric Reliability Corporation and/or the SERC Reliability Corporation will be conducting a non-routine compliance audit with respect to DEC or PEC's compliance with mandatory reliability standards, DEC or DEP shall notify the Public Staff.

11.4 Right-of-Way Maintenance Expenditures. This Regulatory Condition does not apply to Piedmont. DEC and DEP shall budget and expend sufficient funds to trim and maintain their lower voltage line rights-of-way and their distribution rights-of-way in a manner consistent with their internal right-of-way clearance practices and Commission Rule R8-26. In addition, DEC and DEP shall track annually, on a major category basis, departmental or division budget requests, approved budgets and actual expenditures for right-of-way maintenance.

11.5 Right-of-Way Clearance Practices. This Regulatory Condition does not apply to Piedmont. DEC and DEP shall each provide a copy of their internal right-of-way clearance practices to the Public Staff, and shall promptly notify the Public Staff of any significant changes or modifications to the practices or maintenance schedules.

11.6 Meetings with Public Staff.

- (a) DEC, DEP, and Piedmont shall each meet annually with the Public Staff to discuss service quality initiatives and results, including (i) ways to monitor and improve service quality, (ii) right-of-way maintenance practices, budgets, and actual expenditures, and (iii) plans that could have an effect on customer service, such as changes to call center operations.
- (b) DEC, DEP, and Piedmont shall each meet with the Public Staff at least annually to discuss potential new tariffs, programs, and services that enable its customers to appropriately manage their energy bills based on the varied needs of their customers.

11.7 Customer Access to Service Representatives and Other Services. DEC, DEP, and Piedmont shall continue to have knowledgeable and experienced customer service representatives available 24 hours a day to respond to service outage calls and during normal business hours to handle all types of customer inquiries. DEC, DEP, and Piedmont shall also maintain up-to-date and user-friendly online services and automated telephone service 24 hours a day to perform routine customer interactions and to provide general billing and customer information.

11.8 Customer Surveys. DEC, DEP, and Piedmont shall continue to survey their customers regarding their satisfaction with public utility service and shall incorporate this information into their processes, programs, and services.

SECTION XII TAX MATTERS

The following Regulatory Conditions are intended to ensure that DEC's, DEP's and Piedmont's Customers do not bear any additional tax costs as a result of the merger and receive an appropriate share of any tax benefits associated with the service company Affiliates.

12.1 Costs under Tax Sharing Agreements. Under any tax sharing agreement, DEC, DEP, and Piedmont shall not seek to recover from its North Carolina retail ratepayers any tax costs that exceed DEC's, DEP's, or Piedmont's tax liability calculated as if it were a stand-alone, taxable entity for tax purposes.

12.2 Tax Benefits Associated with Service Companies. The appropriate portion of any income tax benefits associated with DEBS shall accrue to the North Carolina retail operations of DEC, DEP, and Piedmont respectively, for regulatory accounting, reporting, and ratemaking purposes.

SECTION XIII PROCEDURES

The following Regulatory Conditions are intended to apply to all filings made pursuant to these Regulatory Conditions unless otherwise expressly provided by, Commission order, rule, or statute.

13.1 Filings that Do Not Involve Advance Notice. Regulatory Condition filings that are not subject to Condition 13.2 shall be made in sub dockets of Docket Nos. E-7, Sub 1100_, E-2, Sub 1095_, and G-9, Sub 682_, as follows:

- (a) Filings related to affiliate matters required by Regulatory Conditions 5.4, 5.5, 5.6, 5.7, and 5.23 and the filing permitted by Regulatory Condition 5.3 shall be made by DEC, DEP, and Piedmont in Subs 1100, 1095 and 682 respectively;
- (b) Filings related to financings required by Regulatory Condition 7.6, and the filings required by Regulatory Conditions 8.5, 8.6, 8.9, 8.10 and 8.11 shall be made by DEC, DEP, and Piedmont in Subs 1100_, 1095_, and 682_ respectively;
- (c) Filings related to compliance as required by Regulatory Conditions 3.1(d) and 14.4 and filings required by Sections III.A.2(l), III.A.3(e), (f), and (g), III.D.5, and III.D.8 of the Code of Conduct shall be made by DEC, DEP, and Piedmont in Subs 1100, 1095, and 682, respectively;
- (d) Filings related to the independent audits required by Regulatory Condition 5.8 shall be made in Subs 1100_, 1095_, and 682_, respectively. ;

- (e) Filings related to orders and filings with the FERC, as required by Regulatory Condition 3.1(d), 3.11 and 5.13 shall be made by DEC and DEP, and Piedmont in Subs 1100_, 1095_ and 682_ respectively;

13.2 Advance Notice Filings. Advance notices filed pursuant to Regulatory Conditions 3.1(c), 3.3(b), 4.2, 5.3, 8.8, and 10.1 shall be assigned a new, separate Sub docket. Such a filing shall state what condition and notice period are involved and whether other regulatory approvals are required and shall be in the format of a pleading, with a caption, a title, allegations of the activities to be undertaken, and a verification. Advance notices may be filed under seal if necessary. The following additional procedures apply:

- (a) Advance notices of activities to be undertaken shall not be filed until sufficient details have been decided upon to allow for meaningful discovery as to the proposed activities.
- (b) The Chief Clerk shall distribute a copy of advance notice filings to each Commissioner and to appropriate members of the Commission Staff and Public Staff.
- (c) DEC or DEP and Piedmont shall serve such advance notices on each party to Docket Nos. E-7, Sub 1100, and E-2, Sub 1095 and Docket No. G-9, Sub 682, respectively, that has filed a request to receive them with the Commission within 30 days of the issuance of an order approving the Merger in this docket. These parties may participate in the advance notice proceedings without petitioning to intervene. Other interested persons shall be required to follow the Commission's usual intervention procedures.
- (d) To effectuate this Regulatory Condition, DEC, DEP, and Piedmont shall serve pertinent information on all parties at the time it serves the advance notice. During the advance notice period, a free exchange of information is encouraged, and parties may request additional relevant information. If DEC, DEP, or Piedmont objects to a discovery request, DEC, DEP or Piedmont and the requesting party shall try to resolve the matter. If the parties are unable to resolve the matter, DEC, DEP, or Piedmont may file a motion for a protective order with the Commission.
- (e) The Public Staff shall investigate and file a response with the Commission no later than 15 days before the notice period expires. Any other interested party may also file a response or objection within 15 days before the notice period expires. DEC, DEP or Piedmont may file a reply to the response(s).

- (f) The basis for any objection to the activities to be undertaken shall be stated with specificity. The objection shall allege grounds for a hearing, if such is desired.
- (g) If neither the Public Staff nor any other party files an objection to the activities within 15 days before the notice period expires, no Commission order shall be issued, and the Sub docket in which the advance notice was filed may be closed.
- (h) If the Public Staff or any other party files a timely objection to the activities to be undertaken by DEC, DEP, or Piedmont, the Public Staff shall place the matter on a Commission Staff Conference agenda as soon as possible, but in no event later than two weeks after the objection is filed, and shall recommend that the Commission issue an order deciding how to proceed as to the objection. The Commission reserves the right to extend an advance notice period by order should the Commission need additional time to deliberate or investigate any issue. At the end of the notice period, if no order, whether procedural or substantive, has been issued, DEC, DEP, Piedmont, Duke Energy, any other Affiliate, or the Nonpublic Utility Operation may execute the proposed agreement, proceed with the activity to be undertaken, or both, but shall be subject to any fully-adjudicated Commission order on the matter.
- (i) If the Commission schedules a hearing on an objection, the party filing the objection shall bear the burden of proof at the hearing.
- (j) The precedential effect of advance notice proceedings, like most issues of res judicata, will be decided on a fact-specific basis.
- (k) If some other Commission filing or Commission approval is required by statute, notice pursuant to a Regulatory Condition alone does not satisfy the statutory requirement.
- (l) DEC, DEP, Piedmont or the Public Staff, or any party may move for a waiver for good cause shown.

SECTION XIV COMPLIANCE WITH CONDITIONS AND CODE OF CONDUCT

The following Regulatory Conditions are intended to ensure that Duke Energy, DEC, DEP, Piedmont and all other Affiliates establish and maintain the structures and processes necessary to fulfill the commitments expressed in all of the Regulatory Conditions and the Code of Conduct in a timely, consistent, and effective manner.

14.1 Ensuring Compliance with Regulatory Conditions and Code of Conduct. Duke Energy, DEC, DEP, Piedmont, and all other Affiliates shall devote sufficient resources

into the creation, monitoring, and ongoing improvement of effective internal compliance programs to ensure compliance with all Regulatory Conditions and the DEC/DEP/Piedmont Code of Conduct, and shall take a proactive approach toward correcting any violations and reporting them to the Commission. This effort shall include the implementation of systems and protocols for monitoring, identifying, and correcting possible violations, a management culture that encourages compliance among all personnel, and the tools and training sufficient to enable employees to comply with Commission requirements.

14.2 Designation of Chief Compliance Officer. DEC, DEP, and Piedmont shall designate a chief compliance officer who will be responsible for compliance with the Regulatory Conditions and Code of Conduct. This person's name and contact information must be posted on DEC's, DEP's, and Piedmont's Internet Website.

14.3 Annual Training. DEC, DEP, and Piedmont shall provide annual training on the requirements and standards contained within the Regulatory Conditions and Code of Conduct to all of their employees (including service company employees) whose duties in any way may be affected by such requirements and standards. New employees must receive such training within the first 60 days of their employment. Each employee who has taken the training must certify electronically or in writing that s/he has completed the training.

14.4 Report of Violations. If DEC, DEP, or Piedmont discover that a violation of their requirements or standards contained within the Regulatory Conditions and Code of Conduct has occurred then DEC, DEP or Piedmont shall file a statement with the Commission in Docket Nos. E-7, Sub 1100_, E-2, Sub 1095_, or G-9, Sub 682_, respectively, describing the circumstances leading to that violation of DEC's, DEP's or Piedmont's requirements or standards, as contained within the Regulatory Conditions and Code of Conduct, and the mitigating and other steps taken to address the current or any future potential violation.

EXHIBIT D

CODE OF CONDUCT

CLEAN COPY

CODE OF CONDUCT
GOVERNING THE RELATIONSHIPS,
ACTIVITIES, AND TRANSACTIONS BETWEEN
AND AMONG THE PUBLIC UTILITY OPERATIONS
OF DEC, THE PUBLIC UTILITY OPERATIONS OF DEP,
THE PUBLIC UTILITY OPERATIONS OF PIEDMONT, DUKE ENERGY
CORPORATION, OTHER AFFILIATES, AND
THE NONPUBLIC UTILITY OPERATIONS OF DEC, DEP, AND PIEDMONT

I. DEFINITIONS

For the purposes of this Code of Conduct, the terms listed below shall have the following definitions:

Affiliate: Duke Energy and any business entity of which ten percent (10%) or more is owned or controlled, directly or indirectly, by Duke Energy. For purposes of this Code of Conduct, Duke Energy and any business entity controlled by it are considered to be Affiliates of DEC, DEP, and Piedmont and DEC, DEP and Piedmont are considered to be Affiliates of each other.

Commission: The North Carolina Utilities Commission.

Confidential Systems Operation Information: Nonpublic information that pertains to Electric Services provided by DEC or DEP, including but not limited to information concerning electric generation, transmission, distribution, or sales and nonpublic information that pertains to Commission-related Natural Gas Services provided by Piedmont, including but not limited to information concerning interstate pipeline transportation, storage, distribution, gas supply, or other similar information.

Customer: Any retail electric customer of DEC or DEP in North Carolina and any Commission-regulated natural gas sales or natural gas transportation customer of Piedmont located in North Carolina.

Customer Information: Non-public information or data specific to a Customer or a group of Customers, including, but not limited to, electricity consumption, natural gas consumption, load profile, billing history, or credit history that is or has been obtained or compiled by DEC, DEP, or Piedmont in connection with the supplying of Electric Services or Natural Gas Services to that Customer or group of Customers.

DEBS: Duke Energy Business Services, LLC, and its successors, which is a service company Affiliate that provides Shared Services to DEC, DEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations of DEC, DEP, or Piedmont, singly or in any combination.

DEC: Duke Energy Carolinas, LLC, the business entity, wholly owned by Duke Energy, that holds the franchise granted by the Commission to provide Electric Services within DEC's North Carolina service territory and that engages in public utility operations, as defined in G.S. 62-3(23), within the State of North Carolina.

DEP: Duke Energy Progress, LLC, the business entity, wholly owned by Duke Energy, that holds the franchise granted by the Commission to provide Electric Services within DEP's North Carolina service territory and that engages in public utility operations, as defined in G.S. 62-3(23), within the State of North Carolina.

Duke Energy: Duke Energy Corporation, which is the current holding company parent of DEC, DEP, and Piedmont, and any successor company.

Electric Services: 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.

Fuel and Purchased Power Supply Services: All fuel for generating electric power and purchased power obtained by DEC or DEP from sources other than DEC or DEP for the purpose of providing Electric Services.

Fully Distributed Cost: All direct and indirect costs, including overheads and an appropriate cost of capital, incurred in providing goods or services to another business entity; provided, however, that (a) for each good and service supplied by DEC, DEP, or Piedmont, the return on common equity utilized in determining the appropriate cost of capital shall equal the return on common equity authorized by the Commission in the supplying utility's most recent general rate case proceeding; (b) for each good and service supplied to DEC, DEP, or Piedmont, the appropriate cost of capital shall not exceed the overall cost of capital authorized in the supplying utility's most recent general rate case proceeding; and (c) for each good and service supplied by DEC, DEP, or Piedmont to each other, the return on common equity utilized in determining the appropriate cost of capital shall not exceed the lower of the returns on common equity authorized by the Commission in DEC's, DEP's or Piedmont's most recent general rate case proceedings.

JDA: Joint Dispatch Agreement, which is the agreement as filed with the Commission in Docket Nos. E-7, Sub 986, and E-2, Sub 998 on June 22, 2011, and as amended and refiled on June 12, 2012,

Market Value: The price at which property, goods, and services would change hands in an arm's length transaction between a buyer and a seller without any compulsion to engage in a transaction, and both having reasonable knowledge of the relevant facts.

Merger: All transactions contemplated by the Agreement and Plan of Merger between Duke Energy and Piedmont.

Natural Gas Services: Commission-regulated natural gas sales and natural gas transportation, and other related services, including, but not limited to, administration of Customer accounts and rate schedules, metering, billing and standby service.

Nonaffiliated Gas Marketer: An entity, not affiliated with DEC, DEP, or Piedmont, engaged in the unregulated sale, arrangement, brokering or management of gas supply, pipeline capacity, or gas storage.

Nonpublic Utility Operations: All business operations engaged in by DEC, DEP or Piedmont involving activities (including the sales of goods or services) that are not regulated by the Commission, or otherwise subject to public utility regulation at the state or federal level.

Non-Utility Affiliate: Any Affiliate, including DEBS, other than a Utility Affiliate, DEC, DEP, or Piedmont.

Personnel: An employee or other representative of DEC, DEP, Piedmont, Duke Energy, another Affiliate, or a Nonpublic Utility Operation, who is involved in fulfilling the business purpose of that entity.

Piedmont: Piedmont Natural Gas Company, Inc., the business entity, wholly owned by Duke Energy, that holds the franchise granted by the Commission to provide natural gas services within its North Carolina service territory and that engages in public utility operations, as defined in G.S. 62-3(23) within the State of North Carolina.

Progress Energy: Progress Energy, Inc., which is the former holding company parent of DEP and is a subsidiary of Duke Energy, and any successors.

Public Staff: The Public Staff of the North Carolina Utilities Commission.

Regulatory Conditions: The conditions imposed by the Commission in connection with or related to the Merger.

Shared Services: The services that meet the requirements of the Regulatory Conditions approved in Docket Nos. E-2, Sub 1095, E-7, Sub 1100 and G-9, Sub 682, or subsequent orders of the Commission and that the Commission has explicitly authorized DEC, DEP and Piedmont to take from DEBS pursuant to a service agreement (a) filed with the Commission pursuant to G.S. 62-153(b), thus requiring acceptance and authorization by the Commission, and (b) subject to all other applicable provisions of North Carolina law, the rules and orders of the Commission, and the Regulatory Conditions.

Shipper: A Nonaffiliated Gas Marketer, a municipal gas customer, or an end-user of gas.

Utility Affiliates: The regulated public utility operations of Duke Energy Indiana, LLC (Duke Indiana), Duke Energy Kentucky, Inc. (Duke Kentucky), and Florida Power Corporation, d/b/a Duke Energy Florida, LLC (DEF); Duke Energy Ohio, Inc. (Duke Ohio).

II. GENERAL

This Code of Conduct establishes the minimum guidelines and rules that apply to the relationships, transactions, and activities involving the public utility operations of DEC, DEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations of DEC, DEP, and Piedmont, to the extent such relationships, activities, and transactions affect the operations or costs of utility service experienced by the public utility operations of DEC, DEP, and Piedmont in their respective service areas. DEC, DEP, and Piedmont, and the other Affiliates are bound by this Code of Conduct pursuant to Regulatory Condition 6.1 approved by the Commission in Docket Nos.E-2, Sub 1095, E-7, Sub 1100 and G-9, Sub 682. This Code of Conduct is subject to modification by the Commission as the public interest may require, including, but not limited to, addressing changes in the organizational structure of DEC, DEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations; changes in the structure of the electric industry or natural gas industry; or other changes that warrant modification of this Code.

DEC, DEP, or Piedmont may seek a waiver of any aspect of this Code of Conduct by filing a request with the Commission showing that circumstances in a particular case justify such a waiver.

III. STANDARDS OF CONDUCT

A. Independence and Information Sharing

1. Separation - DEC, DEP, Piedmont, Duke Energy, and the other Affiliates shall operate independently of each other and in physically separate locations to the maximum extent practicable; however, to the extent that the Commission has approved or accepted a service company-to-utility or utility-to-utility service agreement or list, DEC, DEP, Piedmont, Duke Energy, and the other Affiliates may operate as described in the agreement or list on file at the Commission. DEC, DEP, Piedmont, Duke Energy, and each of the other Affiliates shall maintain separate books and records. Each of DEC's, DEP's, and Piedmont's Nonpublic Utility Operations shall maintain separate records from those of DEC's, DEP's, and Piedmont's public utility operations to ensure appropriate cost allocations and any arm's-length-transaction requirements.

2. Disclosure of Customer Information:

- (a) Upon request, and subject to the restrictions and conditions contained herein, DEC, DEP, and Piedmont may provide Customer Information to Duke Energy, another Affiliate, or a Nonpublic Utility Operation under the same terms and conditions that such information is provided to non-Affiliates.
- (b) Except as provided in Section III.A.2(f) below, Customer Information shall not be disclosed to any person or company, without the Customer's consent, and then only to the extent specified by the Customer. Consent to disclosure of Customer Information to Affiliates or Nonpublic Utility Operations may be obtained by means of written authorization, electronic authorization or recorded verbal authorization upon providing the Customer with the information set forth in Attachment A; provided, however, that DEC, DEP, and Piedmont retain such authorization for verification purposes for as long as the authorization remains in effect.
- (c) If the Customer allows or directs DEC, DEP, or Piedmont to provide Customer Information to Duke Energy, another Affiliate, or a Nonpublic Utility Operation, then DEC, DEP, or Piedmont shall ask the Customer if it would like the Customer Information to be provided to one or more non-Affiliates. If the Customer directs DEC, DEP, or Piedmont to provide Customer Information to one or more non-Affiliates, the Customer Information shall be disclosed to all entities designated by the Customer contemporaneously and in the same manner.
- (d) Sections III.A.2.(a), 2.(b), and 2.(c) herein shall be permanently posted on DEC's, DEP's, and Piedmont's website.
- (e) No DEC, DEP, or Piedmont employee who is transferred to Duke Energy or another Affiliate will be permitted to copy or otherwise compile any Customer Information for use by such entity except pursuant to written permission from the Customer, as reflected by a signed Data Disclosure Authorization. DEC, DEP, and Piedmont shall not transfer any employee to Duke Energy or another Affiliate for the purpose of disclosing or providing Customer Information to such entity.
- (f) Notwithstanding the prohibitions established by this Section III.A.2, DEC, DEP, or Piedmont may disclose Customer Information to DEBS, any other Affiliate, a Nonpublic Utility Operation or a non-affiliated third party without Customer consent, but only to the extent necessary for the Affiliate, Nonpublic Utility Operation or non-affiliated third party to provide

goods or services to DEC, DEP, or Piedmont and upon their explicit agreement to protect the confidentiality of such Customer Information. To the extent the Commission approves a list of services to be provided and taken pursuant to one or more utility-to-utility service agreements, then Customer Information may be disclosed pursuant to the foregoing exception to the extent necessary for such services to be performed. DEC, DEP, and Piedmont may disclose Customer Information to a state or federal regulatory agency or court having jurisdiction over the disclosure of the Information to the extent the state or federal regulatory agency or court requires the disclosure and requests the disclosure in writing or by electronic means.

- (g) DEC, DEP, and Piedmont shall take appropriate steps to store Customer Information in such a manner as to limit access to only those persons permitted to receive it and shall require all persons with access to such information to protect its confidentiality.
- (h) DEC, DEP, and Piedmont, shall establish guidelines for its employees and representatives to follow with regard to complying with this Section III.A.2.
- (i) No DEBS employee may use Customer Information to market or sell any product or service to DEC's, DEP's, or Piedmont's Customers, except in support of a Commission-approved rate schedule or program or a marketing effort managed and supervised directly by DEC, DEP, or Piedmont.
- (j) DEBS employees with access to Customer Information must be prohibited from making any improper indirect use of the data, including directing or encouraging any actions based on the Customer Information by employees of DEBS that do not have access to such information, or by other employees of Duke Energy or other Affiliates or Nonpublic Utility Operations of the Utilities.
- (k) Should any inappropriate disclosure of DEC, DEP, or Piedmont Customer Information occur at any time, DEC, DEP, or Piedmont is required to promptly file a statement with the Commission in this docket describing the circumstances of the disclosure, the Customer information disclosed, the results of the disclosure, and the mitigating and/or other steps taken to address the disclosure.

3. The disclosure of Confidential Systems Operation Information of DEC, DEP, and Piedmont (referred to hereinafter as "Information" or "CSOI") shall be governed as follows:

- (a) Such Information shall not be disclosed by DEC, DEP, or Piedmont to an Affiliate or a Nonpublic Utility Operation unless it is disclosed to all competing non-Affiliates contemporaneously and in the same manner. Disclosure to non-Affiliates is not required when disclosure to Affiliates or Nonpublic Utility Operations meets one of the following exceptions:
- (i) The Information is provided to employees of DEC or DEP for the purpose of implementing, and operating pursuant to, the JDA in accordance with the Regulatory Conditions approved in Docket Nos. E-7, Sub 986, and E-2, Sub 998;
 - (ii) The Information is necessary for the performance of services approved to be performed pursuant to one or more Affiliate utility-to-utility service agreements;
 - (iii) A state or federal regulatory agency or court having jurisdiction over the disclosure of the Information requires the disclosure;
 - (iv) The Information is provided to employees of DEBS pursuant to a service agreement filed with the Commission pursuant to G.S. 62-153;
 - (v) The Information is provided to employees of DEC's, DEP's, or Piedmont's Utility Affiliates for the purpose of sharing best practices and otherwise improving the provision of regulated utility service;
 - (vi) The Information is provided to an Affiliate pursuant to an agreement filed with the Commission pursuant to G.S. 62-153, provided that the agreement specifically describes the types of Information to be disclosed;
 - (vii) Disclosure is otherwise essential to enable DEC or DEP to provide Electric Services to their Customers, or for Piedmont to provide Natural Gas Services to its Customers;
 - (viii) Disclosure of the Information is necessary for compliance with the Sarbanes-Oxley Act of 2002.
- (b) Any Information disclosed pursuant to the exceptions in Section III.A.3 (a), above, shall be disclosed only to employees that need the information for the purposes covered by those exceptions

and in as limited a manner as possible. The employees receiving such Information must be prohibited from acting as conduits to pass the Information to any Affiliate(s) and must have explicitly agreed to protect the confidentiality of such Information.

- (c) For disclosures pursuant to exceptions (vii) and (viii) in Section III.A.3(a), above, DEC, DEP, and Piedmont shall include in their annual affiliated transaction reports the following information:
 - (i) The types of Information disclosed and the name(s) of the Affiliate(s) to which it is being, or has been, disclosed;
 - (ii) The reasons for the disclosure; and
 - (iii) Whether the disclosure is intended to be a one-time occurrence or an ongoing process.

To the extent a disclosure subject to the reporting requirement is intended to be ongoing, only the initial disclosure and a description of any processes governing subsequent disclosures need to be reported.

- (d) DEC, DEP, DEBS, and Piedmont employees with access to CSOI must be prohibited from making any improper indirect use of the data, including directing or encouraging any actions based on the CSOI by employees that do not have access to such information, or by other employees of Duke Energy or other Affiliates or Nonpublic Utility Operations of DEC, DEP, or Piedmont.
- (e) Should the handling or disclosure of Market Information, Transmission Information, or other CSOI by DEBS or another Affiliate or Nonpublic Utility Operation, or their respective employees, result in (i) a violation of DEC's or DEP's FERC Statement of Policy and Code of Conduct (FERC Code), 18 CFR 358 - Standards of Conduct for Transmission Providers (Transmission Standards), or any other relevant FERC standards or codes of conduct, (ii) the posting of such data on an OASIS or other Internet website, or (iii) other public disclosure of the data, DEC or DEP shall promptly file a statement with the Commission in Commission in Docket Nos. E-7, Sub 1100_, and E-2, Sub 1095_, respectively, describing the circumstances leading to such violation, posting, or other this docket describing the circumstances leading to such violation, posting, or other public disclosure, any data required to be posted or otherwise publicly disclosed, and the mitigating and/or other steps taken to address the current or any future potential violation, posting, or other public disclosure.

- (f) Should any inappropriate disclosure of CSOI occur at any time, DEC, DEP, or Piedmont shall promptly file a statement with the Commission in Docket Nos. E-7, Sub 1100_, or E-2, Sub 1095_, or G-9, Sub 682_, respectively, describing the circumstances of the disclosure, the CSOI disclosed, the results of the disclosure, and the mitigating and/or other steps taken to address the disclosure.
- (g) Unless publicly noticed and generally available, should the FERC Code, the Transmission Standards, or any other relevant FERC standards or codes of conduct be eliminated, amended, superseded, or otherwise replaced, DEC and DEP shall file a letter in Docket Nos. E-7, Sub 1100_, and E-2, Sub 1095_, with the Commission describing such action within 60 days of the action, along with a copy of any amended or replacement document.

B. Nondiscrimination

1. DEC's, DEP's, and Piedmont's employees and representatives shall not unduly discriminate against non-Affiliated entities.

2. In responding to requests for Electric Services, Natural Gas Services, or both, DEC, DEP, and Piedmont shall not provide any preference to Duke Energy, another Affiliate, or a Nonpublic Utility Operation, or to any customers of such an entity, as compared to non-Affiliates or their customers. Moreover, DEC, DEP, Piedmont, Duke Energy, nor any other Affiliates shall not represent to any person or entity that Duke Energy, another Affiliate, or a Nonpublic Utility Operation will receive any such preference.

3. DEC, DEP, and Piedmont shall apply the provisions of their respective tariffs equally to Duke Energy, the other Affiliates, the Nonpublic Utility Operations, and non-Affiliates.

4. DEC, DEP, and Piedmont shall process all similar requests for Electric Services, Natural Gas Services, or both in the same timely manner, whether requested on behalf of Duke Energy, another Affiliate, a Nonpublic Utility Operation, or a non-Affiliated entity.

5. Personnel and representatives of DEC, DEP, Piedmont Duke Energy, or other Affiliates shall indicate, represent, or otherwise give the appearance to another party that Duke Energy or another Affiliate speaks on behalf of DEC, DEP, or Piedmont; provided however, that this prohibition shall not apply to employees of DEBS providing Shared Services or to employees of another Affiliate to the extent explicitly provided for in an affiliate agreement that has been accepted by the Commission. In addition, no personnel or representatives of a Nonpublic Utility

Operation shall give the appearance to another party that they speak on behalf of DEC's, DEP's, or Piedmont's regulated public utility operations.

6. No personnel or representatives of DEC, DEP, Piedmont, Duke Energy, another Affiliate, or a Nonpublic Utility Operation shall indicate, represent, or otherwise give the appearance to another party that any advantage to that party with regard to Electric Services or Natural Gas Services exists as the result of that party dealing with Duke Energy, another Affiliate, or a Nonpublic Utility Operation, as compared with a non-Affiliate.

7. DEC, DEP, or Piedmont shall not condition or otherwise tie the provision or terms of any Electric Services or Natural Gas Services to the purchasing of any goods or services from, or the engagement in business of any kind with, Duke Energy, another Affiliate, or a Nonpublic Utility Operation.

8. When any employee or representative of DEC, DEP, or Piedmont receives a request for information from or provides information to a Customer about goods or services available from Duke Energy, another Affiliate, or a Nonpublic Utility Operation, the employee or representative shall advise the Customer that such goods or services may also be available from non-Affiliated suppliers.

9. Disclosure of Customer Information to Duke Energy, another Affiliate, a Nonpublic Utility Operation, or a non-Affiliated entity shall be governed by Section III.A.2 of this Code of Conduct.

C. Marketing

1. The public utility operations of DEC, DEP, and Piedmont may engage in joint sales, joint sales calls, joint proposals, or joint advertising (a joint marketing arrangement) with their Affiliates and with their Nonpublic Utility Operations, subject to compliance with other provisions of this Code of Conduct and any conditions or restrictions that the Commission may hereafter establish. DEC, DEP, and Piedmont shall not otherwise engage in such joint activities without making such opportunities available to comparable third parties.

2. Neither Duke Energy nor any of the other Affiliates shall use the names or logos of DEC, DEP, or Piedmont in any communications unless a disclaimer is included that states the following:

- (a) "[Duke Energy Corporation/Affiliate] is not the same company as [DEC/DEP /Piedmont], and [Duke Energy Corporation/Affiliate] has separate management and separate employees";
- (b) "[Duke Energy Corporation/Affiliate] is not regulated by the North Carolina Utilities Commission or in any way sanctioned by the Commission";

- (c) "Purchasers of products or services from [Duke Energy Corporation/Affiliate] will receive no preference or special treatment from [DEC/DEP/Piedmont]"; and
- (d) "A customer does not have to buy products or services from [Duke Energy Corporation/Affiliate] in order to continue to receive the same safe and reliable electric service from [DEC/DEP] or natural gas service from Piedmont."

3. Nonpublic Utility Operations may not use the names or logos of DEC, DEP, or Piedmont in any communications unless a disclaimer is included that states the following:

- (a) "[Name of Service or Good being offered by Nonpublic Utility Operation] is not part of the regulated services offered by [DEC/DEP /Piedmont] and is not in any way sanctioned by the North Carolina Utilities Commission";
- (b) "Purchasers of [name of Service or Good being offered by Nonpublic Utility Operation] from [Nonpublic Utility Operation] will receive no preference or special treatment from [DEC/DEP /Piedmont]"; and
- (c) "A customer does not have to buy this product or service to continue to receive the same safe and reliable electric service or natural gas service from [DEC/DEP /Piedmont]."

4. The required disclaimer must be sized and displayed in a way that is commensurate with the name and logo so that the disclaimer is at least the larger of one-half the size of the type that first displays the name and logo or the predominant type used in the communication.

D. Transfers of Goods and Services, Transfer Pricing, and Cost Allocation

1. Cross-subsidies involving DEC, DEP, or Piedmont and Duke Energy, other Affiliates, or the Nonpublic Utility Operations are prohibited.

2. All costs incurred by personnel or representatives of DEC, DEP, or Piedmont for or on behalf of Duke Energy, other Affiliates, or the Nonpublic Utility Operations shall be charged to the entity responsible for the costs.

3. As a general guideline, with regard to the transfer prices charged for goods and services, including the use or transfer of personnel, exchanged between and among DEC, DEP, or Piedmont and Duke Energy, the other Non-Utility Affiliates,

and the Nonpublic Utility Operations, to the extent such prices affect DEC's, DEP's, or Piedmont's operations or costs of utility service, the following conditions shall apply:

- (a) Except as otherwise provided for in this Section III.D, for untariffed goods and services provided by DEC, DEP, or Piedmont to Duke Energy, a Non-Utility Affiliate, or a Nonpublic Utility Operation, the transfer price paid to DEC, DEP, or Piedmont shall be set at the higher of Market Value or DEC's, DEP's or Piedmont's Fully Distributed Cost.
- (b) Except as otherwise provided for in this Section III.D, for goods and services provided, directly or indirectly, by Duke Energy, a Non-Utility Affiliate other than DEBS, or a Nonpublic Utility Operation to DEC, DEP, or Piedmont, the transfer price(s) charged by Duke Energy, the Non-Utility Affiliate, and the Nonpublic Utility Operation to DEC, DEP, or Piedmont shall be set at the lower of Market Value or Duke Energy's, the Non-Utility Affiliate's, or the Nonpublic Utility Operation's Fully Distributed Cost(s). If DEC, DEP, or Piedmont do not engage in competitive solicitation and instead obtain the goods or services from Duke Energy, a Non-Utility Affiliate, or a Nonpublic Utility Operation, DEC, DEP, or Piedmont shall implement adequate processes to comply with this Code provision and related Regulatory Conditions and ensure that in each case DEC's, DEP's and Piedmont's Customers receive service at the lowest reasonable cost, unless otherwise directed by order of the Commission. For goods and services provided by DEBS to DEC, DEP, Piedmont, and Utility Affiliates, the transfer price charged shall be set at DEBS' Fully Distributed Cost.
- (c) Tariffed goods and services provided by DEC, DEP and Piedmont to Duke Energy, other Affiliates, or a Nonpublic Utility Operation shall be provided at the same prices and terms that are made available to Customers having similar characteristics with regard to Electric Services or Natural Gas Services under the applicable tariff.
- (d) With the exception of gas supply transactions, transportation transactions, or both, between DEC and Piedmont or DEP and Piedmont, untariffed non-power, non-generation, or non-fuel goods and services provided by DEC, DEP, or Piedmont to DEC, DEP, Piedmont, or the Utility Affiliates or by the Utility Affiliates to DEC, DEP, or Piedmont shall be transferred at the supplier's Fully Distributed Cost, unless otherwise directed by order of the Commission

- (e) For gas supply transactions, transportation transactions, or both, between DEC and Piedmont or DEP and Piedmont, Piedmont shall provide service to DEC or DEP at the same price and terms that are made available to other similarly situated shippers.

4. To the extent that DEC, DEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations receive Shared Services from DEBS (or its successor), these Shared Services may be jointly provided to DEC, DEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations on a fully distributed cost basis, provided that the taking of such Shared Services by DEC, DEP, and Piedmont is cost beneficial on a service-by-service (e.g., accounting management, human resources management, legal services, tax administration, public affairs) basis to DEC, DEP, or Piedmont. Charges for such Shared Services shall be allocated in accordance with the cost allocation manual(s) filed with the Commission pursuant to Regulatory Condition 5.5, subject to any revisions or other adjustments that may be found appropriate by the Commission on an ongoing basis.

5. DEC, DEP, Piedmont, and their Utility Affiliates may capture economies-of-scale in joint purchases of goods and services (excluding the purchase of electricity or ancillary services intended for resale unless such purchase is made pursuant to a Commission-approved contract or service agreement), if such joint purchases result in cost savings to DEC's, DEP's, and Piedmont's Customers. DEC, DEP, Piedmont and their Utility Affiliates may capture economies-of-scale in joint purchases of coal and natural gas, if such joint purchases result in cost savings to DEC's, DEP's, or Piedmont's Customers. All joint purchases entered into pursuant to this section shall be priced in a manner that permits clear identification of each participant's portion of the purchases and shall be reported in DEC's, DEP's, and Piedmont's affiliated transaction reports filed with the Commission.

6. All permitted transactions between DEC, DEP, Piedmont, Duke Energy, other Affiliates, and the Nonpublic Utility Operations shall be recorded and accounted for in accordance with the cost allocation manuals required to be filed with the Commission pursuant to Regulatory Condition 5.5 and with Affiliate agreements accepted by the Commission or otherwise processed in accordance with North Carolina law, the rules and orders of the Commission, and the Regulatory Conditions.

7. Costs that DEC, DEP, and Piedmont incur in assembling, compiling, preparing, or furnishing requested Customer Information or Confidential Systems Operation Information for or to Duke Energy, other Affiliates, Nonpublic Utility Operations, or non-Affiliates (other than the Customer itself or its designated representative or agent) shall be recovered from the requesting party pursuant to Section III.D.3 of this Code of Conduct

8. Any technology or trade secrets developed, obtained, or held by DEC, DEP, or Piedmont in the conduct of regulated operations shall not be transferred to

Duke Energy, another Affiliate, or a Nonpublic Utility Operation without just compensation and the filing of 60-days prior notification to the Commission; provided however, that DEC, DEP, or Piedmont are not required to provide advance notice for such transfers to each other. DEC, DEP, or Piedmont may request a waiver of this requirement from the Commission with respect to such transfers to Duke Energy, a Utility Affiliate, a Non-Utility Affiliate, or a Nonpublic Utility Operation. In no case, however, shall the notice period requested be less than 20 business days.

9. DEC, DEP, and Piedmont shall receive compensation from Duke Energy, other Affiliates, and the Nonpublic Utility Operations for intangible benefits, if appropriate.

E. Regulatory Oversight

1. The State's existing requirements regarding affiliate transactions, as set forth in G.S. 62-153, shall continue to apply to all transactions between DEC, DEP, Piedmont, Duke Energy, and the other Affiliates.

2. The books and records of DEC, DEP, Piedmont, Duke Energy, other Affiliates, and the Nonpublic Utility Operations shall be open for examination by the Commission, its staff, and the Public Staff as provided in G.S. 62-34, 62-37, and 62-51.

3. If Piedmont supplies any of Natural Gas Services, with the exception of Natural Gas Services provided pursuant to Commission-approved contracts or service agreements, used by either DEC or DEP to generate electricity, DEC or DEP, respectively, shall file a report with the Commission in DEC's or DEP's (as appropriate) annual fuel and fuel-related cost recovery case demonstrating that the purchase was prudent and the price was reasonable.

4. To the extent North Carolina law, the orders and rules of the Commission, and the Regulatory Conditions permit Duke Energy, an Affiliate, or a Nonpublic Utility Operation to supply DEC, DEP or Piedmont Natural Gas Services or other Fuel and Purchased Power Supply Services used by DEC or DEP to provide Electric Services to Customers, and to the extent such Natural Gas Services or other Fuel and Purchased Power Supply Services are supplied, DEC or DEP shall demonstrate in its annual fuel adjustment clause proceeding that each such acquisition was prudent and the price was reasonable.

F. Utility Billing Format

To the extent any bill issued by DEC, DEP, Piedmont, Duke Energy, another Affiliate, a Nonpublic Utility Operation, or a non-Affiliated third party includes any charges to Customers for Electric Services and/or Natural Gas Services and non-Electric Services, non-Natural Gas Services, or both, from Duke Energy, another Affiliate, a Nonpublic Utility Operation, or a non-Affiliated third party, the charges for

the Electric Services and/or Natural Gas Services shall be separated from the charges for any other services included on the bill. Each such bill shall contain language stating that the Customer's Electric Services and/or Natural Gas Services will not be terminated for failure to pay for any other services billed.

G. Complaint Procedure

1. DEC, DEP, and Piedmont shall establish complaint procedures to resolve potential complaints that arise due to the relationship of DEC, DEP, and Piedmont with Duke Energy, its other Affiliates, and its Nonpublic Utility Operations. The complaint procedures shall provide for the following:

- (a) Verbal and written complaints shall be referred to a designated representative of DEC, DEP, or Piedmont.
- (b) The designated representative shall provide written notification to the complainant within 15 days that the complaint has been received.
- (c) DEC, DEP, or Piedmont shall investigate the complaint and communicate the results or status of the investigation to the complainant within 60 days of receiving the complaint.
- (d) DEC, DEP, or Piedmont shall each maintain a log of complaints and related records and permit inspection of documents (other than those protected by the attorney/client privilege) by the Commission, its staff, or the Public Staff.

2. Notwithstanding the provisions of Section III.G.1, any complaints received through Duke Energy's EthicsLine (or successor), which is a confidential mechanism available to the employees of the Duke Energy holding company system, shall be handled in accordance with procedures established for EthicsLine.

3. These complaint procedures do not affect a complainant's right to file a formal complaint or otherwise address questions to the Commission.

4.

**CODE OF CONDUCT
ATTACHMENT A**

DEC/DEP/PIEDMONT CUSTOMER INFORMATION DISCLOSURE
AUTHORIZATION

For Disclosure to Affiliates:

DEC's/DEP's/Piedmont's Affiliates offer products and services that are separate from the regulated services provided by DEC/DEP/Piedmont. These services are not regulated by the North Carolina Utilities Commission or the Public Service Commission of South Carolina. These products and services may be available from other competitive sources.

The Customer authorizes DEC/DEP/Piedmont to provide any data associated with the Customer account(s) residing in any DEC/DEP/Piedmont files, systems or databases **[or specify specific types of data]** to the following Affiliate(s) _____ . DEC/DEP/Piedmont will provide this data on a non-discriminatory basis to any other person or entity upon the Customer's authorization.

For Disclosure to Nonpublic Utility Operations:

DEC/DEP/Piedmont offers optional, market-based products and services that are separate from the regulated services provided by DEC/DEP/Piedmont. These services are not regulated by the North Carolina Utilities Commission or the Public Service Commission of South Carolina. These products and services may be available from other competitive sources.

The Customer authorizes DEC/DEP/Piedmont to use any data associated with the Customer account(s) residing in any DEC/DEP/Piedmont files, systems or databases **[or specify types of data]** for the purpose of offering and providing energy-related products or services to the Customer. DEC/DEP/Piedmont will provide this data on a non-discriminatory basis to any other person or entity upon the Customer's authorization.

EXHIBIT D

PROPOSED REGULATORY CONDITIONS

BLACKLINED COPY

DOCKET NO. E-2, SUB 9981095
DOCKET NO. E-7, SUB 9861100
DOCKET NO. G-9, SUB 682

REGULATORY CONDITIONS

~~NOVEMBER 23, 2011~~
~~AS REVISED JULY 30, 2012~~

TABLE OF CONTENTS

SECTION I	DEFINITIONS.....	1
SECTION II	AUTHORITY, SCOPE, AND EFFECT	4
2.1	Waiver of Certain Federal Rights.....	5
2.2	Limited Right to Challenge Commission Orders	5
2.3	Waiver Request	5
SECTION III	PROTECTION FROM PREEMPTION.....	5
3.1	Transactions between DEC, <u>PEGDEP</u> , <u>Piedmont</u> , and Other Affiliates; Affiliate Contract Provisions; Advance Notice of Affiliate Contracts to Be Filed with the FERC; Annual Certification	5
3.2	Financing Transactions Involving DEC, <u>PEGDEP</u> , <u>Piedmont</u> , Duke Energy, or Other Affiliates	7
3.3	Ownership and Control of Assets Used by DEC and <u>PEGDEP</u> to Supply Electric Power to North Carolina Retail Customers; Transfer of Ownership or Control	7
3.4	Purchases and Sales of Electricity <u>and Natural Gas</u> between DEC, <u>PEGDEP</u> , <u>Piedmont</u> , Duke Energy, Other Affiliates, or Nonpublic Utility Operations	8
3.5	Least Cost Integrated Resource Planning and Resource Adequacy	9
3.6	Priority of Service.....	9
3.7	Wholesale Power Contracts Granting Native Load Priority.....	9
3.8	Other Wholesale Contracts.....	113.9
3.8	Additional Provisions regarding Wholesale Contracts Entered Into by <u>PEGDEP</u> , <u>DEC</u> , or <u>DEC</u> <u>Piedmont</u> as Sellers.....	11
<u>3.9</u>	<u>Other Protections.....</u>	<u>12</u>
<u>3.10</u>	<u>FERC Filings and Orders.....</u>	<u>16</u>
SECTION IV	JOINT DISPATCH.....	15
4.1	Conditional Approval and Notification Requirement.....	16
4.2	Advance Notice Required	16
4.3	Function in DEC or <u>PEGDEP</u>	16
4.4	No Limitation on Obligations	16
4.5	Protection of Retail Native Load Customers	16
4.6	Treatment of Costs and Savings.....	17
4.7	Required Records.....	17
4.8	Auditing of Negative Margins	17
4.9	Protection of Commission's Authority	17
4.10	Preventive Action Required	17
4.11	Modification and Termination.....	18
4.12	Hold Harmless Commitment	18

SECTION V	TREATMENT OF AFFILIATE COSTS AND RATEMAKING.....	18
5.1	Access to Books and Records.....	18
5.2	Procurement or Provision of Goods and Services by DEC, <u>DEP</u> or <u>Piedmont</u> or PEG to or from Affiliates or Nonpublic Utility Operations	18
5.3	Location of Core Utility Functions	19
5.4	Service Agreements and Lists of Services.....	20
5.5	Charges for and Allocations of the Costs of Affiliate Transactions.....	21
5.6	Procedures regarding Interim Changes to CAMS or Lists of Goods and Services for Which 15 Days' Notice Is Required.....	21
5.7	Annual Reports of Affiliate Transactions	22
5.8	Third-Party Independent Audits of Affiliate Transactions	22
5.9	Ongoing Review by Commission	23
5.10	Future Orders	24
5.11	Review by the FERC.....	24
5.12	Biannual Review of Certain Transactions by External Auditors	24
5.13	Notice of Service Company and Non-Utility Affiliates FERC Audits	25
5.14	Acquisition Adjustment.....	25
5.15	Non-Consummation of Merger.....	25
5.16	Protection from Commitments to Wholesale Customers.....	25
5.17	Joint Owner-Specific Issues.....	26
5.18	Inclusion of Cost Savings in Future Rate Proceedings	26
5.19	Reporting of Costs to Achieve	26
5.20	Accounting for Costs to Achieve Related to Historical Events Involving <u>PEGDEP</u>	26
5.21	Liabilities of Cinergy Corp. and Florida Progress Corporation	26
5.22	Hold Harmless Commitment	27
5.23	Cost of Service Manuals	27
SECTION VI	CODE OF CONDUCT	27
6.1	Obligation to Comply with Code of Conduct	27
SECTION VII	FINANCINGS	28
7.1	Accounting for Equity Investment in Holding Company Subsidiaries	28
7.2	Accounting for Capital Structure Components and Cost Rates	28
7.3	Accounting for Equity Investment in DEC, <u>DEP</u> , and <u>PEGPiedmont</u>	28
7.4	Reporting of Capital Contributions	28
7.5	Identification of Long-term Debt Issued by DEC, <u>DEP</u> , or <u>PEGPiedmont</u>	28
7.6	Procedures regarding Proposed Financings.....	29
7.7	Money Pool Agreement.....	30
7.8	Borrowing Arrangements.....	31
7.9	Long-Term Debt Fund Restrictions	31
SECTION VIII	CORPORATE GOVERNANCE/RING FENCING	32
8.1	Investment Grade Debt Rating.....	32

8.2	Distributions from DEC, <u>DEP</u> , and <u>PECPiedmont</u> to Holding Company	32
8.3	Debt Ratio Restrictions.....	32
8.4	Limitation on Continued Participation in Utility Money Pool Agreement and Other Joint Debt and Credit Arrangements with Affiliates.....	32
8.5	Notice of Level of Non-Utility Investment by Holding Company System.....	32
8.6	Notice by Holding Company of Certain Investments.....	33
8.7	Ongoing Review of Effect of Holding Company Structure.....	33
8.8	Investment by DEC, <u>DEP</u> or <u>PECPiedmont</u> in Non-Regulated Utility Assets and Non-Utility Business Ventures	33
8.9	Investment by Holding Company in Exempt Wholesale Generators.....	34
8.10	Notice by DEC, <u>DEP</u> and <u>PECPiedmont</u> of Default or Bankruptcy of Affiliates	34
8.11	Annual Report on Corporate Governance.....	34
SECTION IX	FUTURE MERGERS AND ACQUISITIONS.....	35
9.1	Mergers and Acquisitions by or Affecting DEC, <u>DEP</u> or <u>PECPiedmont</u>	35
9.2	Mergers and Acquisitions Believed Not to Have an Effect on DEC's, <u>DEP</u> 's or <u>PECPiedmont</u> 's Rates or Service	35
SECTION X	STRUCTURE/ORGANIZATION	36
10.1	Transfer of Services, Functions, Departments, Employees, Rights, Assets, or Liabilities	36
10.2	Notice and Consultation with Public Staff regarding Proposed Structural and Organizational Changes	36
SECTION XI	SERVICE QUALITY	37
11.1	Overall Service Quality	37
11.2	Best Practices.....	37
11.3	Quarterly Reliability Reports.....	37
11.4	Notice of NERC Audit.....	37
11.5	Right-of-Way Maintenance Expenditures.....	37
11.6	Right-of-Way Clearance Practices.....	38
11.7	Meetings with Public Staff.....	38
11.8	Customer Access to Service Representatives and Other Services.....	38
11.9	Call Center Operations.....	38
11.10	Customer Surveys.....	38
SECTION XII	TAX MATTERS	38
12.1	Costs under Tax Sharing Agreements.....	38
12.2	Tax Benefits Associated with Service Companies	39
SECTION XIII	PROCEDURES	39

13.1	Filings That Do Not Involve Advance Notice	39
13.2	Advance Notice Filings	39
SECTION XIV COMPLIANCE WITH CONDITIONS AND CODE OF CONDUCT.....		41
14.1	Ensuring Compliance with Regulatory Conditions and Code of Conduct	41
14.2	Designation of Chief Compliance Officer	41
14.3	Annual Training.....	41
14.4	Report of Violations	42
APPENDIX A <u> </u> CODE OF CONDUCT		

DOCKET NO. E-2, SUB 9981095
DOCKET NO. E-7, SUB 9861100
DOCKET NO. G-9, SUB 682

REGULATORY CONDITIONS

These Regulatory Conditions set forth commitments made by Duke Energy and ~~Progress Energy, and their~~ public utility subsidiaries, Duke Energy Carolinas, LLC (DEC), and ~~Carolina Power & Light Company, d/b/a Progress Energy Carolinas~~ Duke Energy Progress, LLC (DEP), and Piedmont Natural Gas Company, Inc. (PEG), Piedmont as a precondition of approval of the application by Duke Energy and ~~Progress Energy~~ Piedmont pursuant to G.S. 62-111(a) for authority to engage in their proposed business combination transaction. These Regulatory Conditions, which become effective only upon closing of the Merger, shall apply jointly and severally to Duke Energy and ~~Progress Energy, as well as jointly and severally to, DEC, DEP, and PEG~~ Piedmont, and shall be interpreted in the manner that most effectively fulfills the Commission's purposes as set forth in the preamble to Section II of these Regulatory Conditions.

SECTION I DEFINITIONS

For the purposes of these Regulatory Conditions, capitalized terms shall have the meanings set forth below. If a capitalized term is not defined below, it shall have the meaning provided elsewhere in this document or as commonly used in the electric utility industry.

Affiliate: Duke Energy and any business entity of which ten percent (10%) or more is owned or controlled, directly or indirectly, by Duke Energy. For purposes of these Regulatory Conditions, Duke Energy and each business entity so controlled by it are considered to be Affiliates of DEC, DEP, and ~~PEG~~ Piedmont and DEC, DEP and ~~PEG~~ Piedmont are considered to be Affiliates of each other.

Affiliate Contract: Any contract or agreement (a) between and among any of the Affiliates, including DEC, DEP, and Piedmont, if such contracts are reasonably likely to have an Effect on DEC's, DEP's or PEG Piedmont's Rates or Service, ~~or (b) to which both DEC and any Affiliate are parties or PEG and any Affiliate are parties~~, including contracts with proposed Affiliates. Such contracts and agreements include, but are not limited to, service, operating, interchange, pooling, wholesale power sales agreements and agreements involving financings and asset transfers and sales, and the Joint Dispatch Agreement.

Catawba Joint Owners: The North Carolina Electric Membership Corporation, North Carolina Municipal Power Agency No. 1, and Piedmont Municipal Power Agency. For purposes of these Regulatory Conditions, DEC is not included in the definition of Catawba Joint Owners.

Code of Conduct: The minimum guidelines and rules approved by the Commission that govern the relationships, activities, and transactions between and among the public utility operations of ~~DEC and PEC~~, DEC, DEP, Piedmont, Duke Energy, the other Affiliates of DEC, DEP, and PECPiedmont, and the Nonpublic Utility Operations of DEC, DEP, and PECPiedmont, as those guidelines and rules may be amended by the Commission from time to time.

Commission: The North Carolina Utilities Commission.

Customer: Any retail electric customer of DEC or PEC in North Carolina and any Commission-regulated natural gas sales or natural gas transportation customer of Piedmont located in North Carolina.

DEBS: Duke Energy Business Services, LLC, and its successors, which is a service company Affiliate that provides Shared Services to DEC, ~~PEC~~DEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations of DEC, DEP or PECPiedmont, singly or in any combination.

DEC: Duke Energy Carolinas, LLC, the business entity, wholly owned by Duke Energy, that holds the franchise granted by the Commission to provide Electric Services within DEC's North Carolina service territory and that engages in public utility operations, as defined in G.S. 62-3(23), within the State of North Carolina.

DEP: Duke Energy Progress, LLC, the business entity wholly owned by Duke Energy that holds the franchises granted by the Commission to provide Electric Services within the DEP's North Carolina service territory and that engages in public utility operations, as defined in G.S. 62-3(23) within the State of North Carolina.

Duke Energy: Duke Energy Corporation, which is the current holding company parent of DEC, DEP, and PECPiedmont, and any successor company.

Effect on DEC's, DEP's, or PECPiedmont's Rates or Service: When used with reference to the consequences to DEC, DEP, or PECPiedmont, of actions or transactions involving an Affiliate or Nonpublic Utility Operation, this phrase has the same meaning that it has when the Commission interprets G.S. 62-3(23)(c) with respect to the affiliation covered therein.

Electric Services: Commission-regulated electric power generation, transmission, distribution, delivery, or sales, and other related services, including, but not limited to, administration of Customer accounts and rate schedules, metering, billing, ~~and~~ standby service, backups, and changeovers of service to other suppliers.

Federal Law: Any federal statute or legislation, or any regulation, order, decision, rule or requirement promulgated or issued by an agency or department of the federal government.

FERC: The Federal Energy Regulatory Commission.

Fully Distributed Cost: All direct and indirect costs, including overheads and an appropriate cost of capital, incurred in providing goods or services to another business entity; provided, however, that (a) for each good and service supplied by or from DEC, DEP, or PEGPiedmont, the return on common equity utilized in determining the appropriate cost of capital shall equal the return on common equity authorized by the Commission in the supplying utility's most recent general rate case proceeding, (b) for each good and service supplied to DEC, DEP, or PEG, Piedmont the appropriate cost of capital shall not exceed the overall cost of capital authorized in the supplying utility's most recent general rate case proceeding; and (c) for each good and service supplied by or from DEC ~~and PEG~~, DEP, or Piedmont to each other, the return on common equity utilized in determining the appropriate cost of capital shall not exceed the lower of the returns on common equity authorized by the Commission in DEC's ~~and PEG~~, DEP's, or Piedmont's most recent general rate case proceedings.

JDA: Joint Dispatch Agreement, which is the agreement as filed with the Commission in Docket Nos. E-7, Sub 986, and E-2, Sub 998, on June 22, 2011, and as amended and refiled on June 12, 2012.

Market Value: The price at which property, goods, and services would change hands in an arm's length transaction between a buyer and a seller without any compulsion to engage in a transaction, and both having reasonable knowledge of the relevant facts.

Merger: All transactions contemplated by the Agreement and Plan of Merger between Duke Energy and ~~Progress Energy~~Piedmont.

Native Load Priority: Power supply service being provided or electricity otherwise being sold with a priority of service equivalent to that planned for and provided by DEC or ~~PEG~~DEP to their respective Retail Native Load Customers.

Natural Gas Services: Commission-regulated natural gas sales and natural gas transportation, and other related services, including, but not limited to, administration of Customer accounts and rate schedules, metering and billing, and standby service.

Non-Native Load Sales: DEC's or ~~PEG~~DEP's sales of energy at wholesale, not including transactions between DEC and ~~PEG~~DEP pursuant to the JDA and not including service to customers served at Native Load Priority.

Nonpublic Utility Operations: All business operations engaged in by DEC, DEP, or PEGPiedmont involving activities (including the sales of goods or services) that are not regulated by the Commission, or otherwise subject to public utility regulation at the state or federal level.

Non-Utility Affiliate: Any Affiliate, including DEBS and PESC, other than a Utility Affiliate, DEC, DEP, or PEG.Piedmont.

~~**PEC:** Progress Energy Carolinas, Inc., the business entity wholly owned by Duke Energy that holds the franchises granted by the Commission to provide Electric Services within the North Carolina service territory of PEC and that engages in public utility operations, as defined in G.S. 62-3(23) within the State of North Carolina.~~

~~**PESC:** Progress Energy Services Company, and its successors, which is a service company Affiliate that provides Shared Services to PEC, DEC, Duke Energy, other Affiliates, or the Nonpublic Utility Operations of DEC or PEC, individually or in combination.~~

Progress Energy: Progress Energy, Inc., which is the former holding company parent of PEG,DEP and which ~~became~~is a subsidiary of Duke Energy ~~after the close of the Merger~~, and any successors.

Piedmont: Piedmont Natural Gas Company, Inc., the business entity, wholly owned by Duke Energy, that holds the franchise granted by the Commission to provide natural gas services within its North Carolina service territory and that engages in public utility operations, as defined in G.S. 62-3(23) within the State of North Carolina.

Public Staff: The Public Staff of the North Carolina Utilities Commission.

PUHCA 2005: The Public Utility Holding Company Act of 2005.

Purchased Power Resources: Purchases of energy by DEC or PEGDEP at wholesale from sellers other than each other, the contract terms for which are one year or longer.

Retail Native Load Customers: The captive retail Customers of DEC and PEGDEP in North Carolina for which DEC and PEGDEP have the obligation under North Carolina law to engage in long-term planning and to supply all Electric Services, including installing or contracting for capacity, if needed, to reliably meet their electricity needs.

Retained Earnings: The retained earnings currently required to be listed on page 112, line 11, of the pre-Merger DEC FERC Form ~~4~~and 1, the pre-Merger PEGDEP FERC Form ~~4~~1, and page 112, line 11 of the pre-Merger Piedmont FERC Form 2.

Shared Services: The services that meet the requirements of these Regulatory Conditions and that the Commission has explicitly authorized DEC, DEP, and PEGPiedmont, to take from DEBS or PESC pursuant to a service agreement (a) filed with the Commission pursuant to G.S. 62-153(b), thus requiring acceptance and authorization by the Commission, and (b) subject to all other applicable provisions of North Carolina law, the rules and orders of the Commission, and these Regulatory Conditions.

Utility Affiliates: The regulated public utility operations of Duke Energy Indiana, ~~Inc. LLC~~ (Duke Indiana), Duke Energy Kentucky, Inc. (Duke Kentucky), ~~and Florida Power Corporation, d/b/a ProgressDuke Energy Florida, LLC (PEFDEF), and the regulated transmission and distribution operations of Duke Energy Ohio, Inc. (Duke Ohio).~~

SECTION II AUTHORITY, SCOPE, AND EFFECT

These Regulatory Conditions are based on the general power and authority granted to the Commission in Chapter 62 of the North Carolina General Statutes to control and supervise the public utilities of the State. The Regulatory Conditions (a) constitute specific exercises of the Commission's authority, (b) provide mechanisms that enable the Commission to determine in advance the extent of its authority and jurisdiction over proposed activities of, and transactions involving, DEC, ~~PEGDEP, Piedmont,~~ Duke Energy, other Affiliates or Nonpublic Utility Operations, and (c) protect the Commission's jurisdiction from federal preemption and its effects. The purpose of these Regulatory Conditions is to ensure that DEC's and ~~PEGDEP's~~ Retail Native Load Customers and Piedmont Customers (a) are protected from any known adverse effects from the Merger, (b) are protected as much as possible from potential costs and risks resulting from the Merger, and (c) receive sufficient known and expected benefits to offset any potential costs and risks resulting from the Merger. These Regulatory Conditions are not intended to impose legal obligations on entities in which Duke Energy does not directly or indirectly have a controlling voting interest, or to affect any rights of any party to participate in subsequent proceedings.

2.1 Waiver of Certain Federal Rights. Pursuant to these conditions, DEC, ~~PEGDEP, Piedmont,~~ Duke Energy, and other Affiliates waive certain of their federal rights as specified in these Regulatory Conditions, but do not otherwise agree that the Commission has authority other than as provided for in Chapter 62.

2.2 Limited Right to Challenge Commission Orders. Other than as provided for, or explicitly prohibited, in these conditions, Duke Energy, DEC, ~~PEGDEP, Piedmont,~~ and other Affiliates retain the right to challenge the lawfulness of any Commission order issued pursuant to or relating to these Regulatory Conditions on the basis that such order exceeds the Commission's statutory authority under North Carolina law or the other grounds listed in G.S. 62-94(b).

2.3 Waiver Request. DEC, ~~PEGDEP, Piedmont,~~ Duke Energy, and other Affiliates may seek a waiver of any aspect of these Regulatory Conditions by filing a request with the Commission showing that ~~exigent~~ circumstances in a particular case justify such a waiver.

SECTION III PROTECTION FROM PREEMPTION

The following Regulatory Conditions are intended to protect the jurisdiction of the Commission against the risk of federal preemption as a result of the Merger, including risks related to agreements and transactions between and among DEC, ~~PEGDEP~~, Piedmont, and any of their Affiliates; financing transactions involving Duke Energy, DEC, DEP, or PEGPiedmont, and any other Affiliate; the ownership, use, and disposition of assets by DEC, DEP, or PEGPiedmont; participation in the wholesale market by DEC or ~~PEGDEP~~; and filings with federal regulatory agencies.

3.1 Transactions between DEC, ~~PEGDEP~~, Piedmont, and Other Affiliates; Affiliate Contract Provisions; Advance Notice of Affiliate Contracts to Be Filed with the FERC; Annual Certification.

- (a) ~~Neither DEC nor PEGDEC, DEP, or Piedmont shall not engage in any transactions with an Affiliate or proposed Affiliate without first filing, consistent with the requirements of G.S. 62-153(a) or (b), the proposed Affiliate Contract or proposed Affiliate Contract with the Commission that memorializes any such dealings and taking such actions and obtaining from the Commission such decisions as are required under North Carolina law. DEC and PEG, DEP, or Piedmont shall submit each proposed Affiliate Contract or proposed Affiliate Contract that will be filed pursuant to G.S. 62-153(a) or (b) to the Public Staff for informal review at least ten days before filing it with the Commission. No formal advance notice is required for agreements that DEC, DEP or PEGPiedmont intends to file pursuant to G.S. 62-153 unless the agreements are to be filed with the FERC, in which case subsection (c) applies.~~
- (b) All Affiliate Contracts to which DEC, DEP, or PEGPiedmont is a party shall contain the following provisions:
 - (i) ~~DEC's or PEG's participation in the agreement is voluntary, DEC or PEG is not obligated to take or provide services or make any purchases or sales pursuant the agreement, and DEC or PEG may elect to discontinue its participation in the agreement at its election after giving any required notice;~~
 - (ii) ~~DEC or PEG may not make or incur a charge under the agreement except in accordance with North Carolina law and the rules, regulations and orders of the Commission promulgated thereunder;~~
 - (iii) ~~DEC or PEG, DEP, or Piedmont may not seek to reflect in rates any (A) costs incurred under the agreement exceeding the amount allowed by the Commission or (B) revenue level earned under the agreement less than the amount imputed by the Commission; and~~

- (ivii) ~~Neither DEC nor PEGDEC, DEP, or Piedmont~~ shall not assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of another entity’s assertions, that the Commission's authority to assign, allocate, impute, make pro-forma adjustments to, or disallow revenues and costs for retail ratemaking and regulatory accounting and reporting purposes is, in whole or in part, (A) preempted by Federal Law or (B) not within the Commission’s power, authority or jurisdiction; ~~DEC and PEG, DEP, Piedmont, or any combination of the three,~~ will bear the full risk of any preemptive effects of Federal Law with respect to the agreement.
- (c) ~~In order to~~To enable the Commission to ~~exercisedetermine~~ exercise its authority and jurisdiction, as outlined in Chapter 62 of the North Carolina General Statutes, over a proposed Affiliate Contract, a contract with a proposed Affiliate, or an amendment to an existing Affiliate Contract that involves costs that will be assigned to ~~DEC, DEP, or PEG~~DEC, DEP, or PEG ~~Piedmont~~ and that is required or intended to be filed with the FERC, the following procedures shall apply:
- (i) ~~DEC, DEP, or PEG~~DEC, DEP, or PEG ~~Piedmont~~ shall file advance notice and a copy of the proposed Affiliate Contract, a contract with a proposed Affiliate, or an amendment to an existing Affiliate Contract with the Commission at least 30 days prior to a filing with the FERC. All Affiliate Contracts, contracts with a proposed Affiliate, or amendments to existing Affiliate Contracts filed with the advance notice under Regulatory Condition 3.1(c) shall be unexecuted at the time of filing and remain unexecuted for the duration of the advance notice period. A copy shall be provided to the Public Staff at the time of the filing. The provisions of Regulatory Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition.
- (ii) If an objection to ~~DEC, DEP, or PEG~~DEC, DEP, or PEG ~~Piedmont~~ proceeding with the filing with the FERC is filed pursuant this Regulatory Condition, the proposed filing shall not be made with the FERC until the Commission issues an order resolving the objection.
- (iii) Filings of advance notices and copies of proposed Affiliate Contracts, a contract with a proposed Affiliate, and amendments to existing Affiliate Contracts pursuant to this subsection shall be in addition to filings required by G.S. 62-153, and the burden of proof as to those filings shall be as provided by statute.
- (d) ~~Both DEC, DEP and PEG~~Both DEC, DEP and PEG ~~Piedmont~~ shall each certify in a filing with the Commission that ~~neither DEC, PEG, Duke Energy, any other Affiliate, nor~~

~~any Nonpublic Utility Operation has~~ (i) it has not made any filing with the FERC or any other federal regulatory agency inconsistent with the foregoing and (ii) Duke Energy, any other Affiliate and any Nonpublic Utility Operation has not made any such filing. Such certification shall be repeated annually on the anniversary of the first certification.

- (e) In the event the FERC or any other federal regulatory agency requires modification of a proposed Affiliate Contract to omit any of the provisions of Condition 3.1(b) as a condition of acceptance or approval by that agency, DEC, DEP and PEG/or Piedmont shall remain bound by those provisions for state regulatory purposes.

3.2 Financing Transactions Involving DEC, PEG/DEP, Piedmont, Duke Energy, or Other Affiliates.

- (a) With respect to any financing transaction between or among DEC, DEP, or PEG and Duke Energy, Piedmont or any one or more of DEC's, DEP's or PEG/Piedmont's other Affiliates, any contract memorializing such transaction shall expressly provide that DEC, DEP or PEG/Piedmont shall not enter into any such financing transaction except in accordance with North Carolina law and the rules, regulations and orders of the Commission promulgated thereunder; and
- (b) With respect to any financing transaction (i) between and among any of the Affiliates if such contracts are reasonably likely to have an Effect on DEC's, DEP's or PEG/Piedmont's Rates or Service, or (ii) between or among DEC and PEG, and Piedmont or between DEC, DEP, or PEG/Piedmont and any other Affiliate, any contract memorializing such transaction shall expressly provide that DEC and/ DEP, or PEG/Piedmont shall not include the effects of any capital structure or debt or equity costs associated with such financing transaction in its North Carolina retail cost of service or rates except as allowed by the Commission.

3.3 Ownership and Control of Assets Used by DEC, DEP and PEG/Piedmont to Supply Electric Power or Natural Gas Services to North Carolina Retail Customers; Transfer of Ownership or Control.

- (a) ~~DEC and PEG shall each own and control all assets or portions of assets used for the generation, transmission, and distribution of electric power to their respective North Carolina retail Customers (with the exception of assets solely used to provide power purchased by DEC or PEG at wholesale).~~ (b) — With respect to the transfer by DEC, DEP, or PEG/Piedmont to any entity, affiliated or not, of the control of, operational responsibility for, or ownership of such generation, transmission, or distribution assets with a gross book value in excess of ten million dollars (\$10 million), DEC, DEP or PEG/Piedmont shall provide written notice to

the Commission at least 30 days in advance of the proposed transfer. The provisions of Regulatory Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition.

- (~~e~~b) Any contract memorializing such a transfer shall include the following language:
- (i) ~~DEC, DEP, or PEG~~Piedmont may not commit to or carry out the transfer except in accordance with applicable law, and the rules, regulations and orders of the Commission promulgated thereunder; and
 - (ii) ~~DEC or PEG, DEP, and Piedmont~~ may not include in its North Carolina ~~retail~~ cost of service or rates the value of the transfer, whether or not subject to federal law, except as allowed by the Commission in accordance with North Carolina law.
- (d) Any application filed with the FERC in connection with any transfer of control, operational responsibility, or ownership that involves or potentially affects ~~DEC, DEP, or PEG~~Piedmont shall include the language set forth in subdivisions (c)(i) and (ii), above, ~~and shall request that the FERC explicitly provide in any order approving the application that its approval in no way affects the right of the Commission to review the value of such transfer and to establish the value of the asset transfer for purposes of determining the rates for services rendered to DEC's and PEG's North Carolina retail Customers.~~

3.4 Purchases and Sales of Electricity and Natural Gas between DEC, ~~PEG~~DEP, Piedmont, Duke Energy, Other Affiliates, or Nonpublic Utility Operations. Subject to additional restrictions set forth in the Code of Conduct, ~~neither DEC nor PEG~~DEC, DEP, or Piedmont shall not purchase electricity (or related ancillary services) or natural gas from Duke Energy, another Affiliate, or a Nonpublic Utility Operation under circumstances where the total all-in costs, including generation, transmission, ancillary costs, distribution, taxes and fees, and delivery point costs, incurred (whether directly or through allocation), based on information known, anticipated, or reasonably available at the time of purchase, exceed fair Market Value for comparable service, nor shall ~~DEC, DEP, or PEG~~Piedmont sell electricity (or related ancillary services) or natural gas to Duke Energy, another Affiliate, or a Nonpublic Utility Operation for less than fair Market Value; provided, however, that such restrictions shall not apply to emergency transactions. This condition shall not apply to transactions between DEC and ~~PEG~~DEP that are governed by the JDA.

3.5 Least Cost Integrated Resource Planning and Resource Adequacy. This Regulatory Condition does not apply to Piedmont. DEC and ~~PEG~~DEP shall each retain the obligation to pursue least cost integrated resource planning for their respective Retail Native Load Customers and remain responsible for their own

resource adequacy subject to Commission oversight in accordance with North Carolina law. DEC and PEGDEP shall determine the appropriate self-built or purchased power resources to be used to provide future generating capacity and energy to their respective Retail Native Load Customers, including the siting considered appropriate for such resources, on the basis of the benefits and costs of such siting and resources to those Retail Native Load Customers.

3.6 Priority of Service.

(a) This Regulatory Condition does not apply to Piedmont.

(b) ~~(a)~~ The planning and joint dispatch of DEC's system generation and Purchased Power Resources shall ensure that DEC's Retail Native Load Customers receive the benefits of that generation and those resources, including priority of service, to meet their electricity needs consistent with the JDA. DEC shall continue to serve its Retail Native Load Customers with the lowest-cost power it can reasonably generate or obtain as Purchase Power Resources before making power available for sales to customers that are not entitled to the same level of priority as Retail Native Load Customers.

(bc) The planning and joint dispatch of PEGDEP's system generation and Purchase Power Resources shall ensure that PEGDEP's Retail Native Load Customers receive the benefits of that generation and those resources, including priority of service, to meet their electricity needs consistent with the JDA. PEGDEP shall continue to serve its Retail Native Load Customers with the lowest-cost power it can reasonably generate or obtain as Purchase Power Resources before making power available for sales to customers that are not entitled to the same level of priority as Retail Native Load Customers.

3.7 Wholesale Power Contracts Granting Native Load Priority.

(a) This Regulatory Condition does not apply to Piedmont.

(ab) DEC is not required to file an advance notice with the Commission or receive its approval prior to entering into wholesale power contracts that grant Native Load Priority to the following historically served customers: the City of Concord, North Carolina; the City of Kings Mountain, North Carolina; the Town of Dallas, North Carolina; the Town of Forest City, North Carolina; Lockhart Power Company; the Public Works Commission of the Town of Due West, South Carolina; the Town of Prosperity, South Carolina; the City of Greenwood, South Carolina; the Town of Highlands; North Carolina; Western Carolina University (WCU); the electric membership cooperatives (EMCs) within DEC's control area; North

Carolina Municipal Power Agency No. 1; Piedmont Municipal Power Agency; New River Light & Power Company; and the South Carolina distribution cooperatives historically served by Saluda River Electric Cooperative, Inc., and currently served by Central Electric Power Cooperative, Inc. (which are Blue Ridge Electric Cooperative, Inc., Broad River Electric Cooperative Inc., Laurens Electric Cooperative, Inc., Little River Electric Cooperative, Inc., and York Electric Cooperative, Inc.). Subject to the conditions set out in Regulatory Condition ~~3.9, 3.8,~~ the retail native loads of these historically served wholesale customers shall be considered DEC's Retail Native Load Customers for purposes of Regulatory Conditions 3.5, 3.6, and 4.5; provided, however, that this subsection applies only to the same types of supplemental load and backstand requirements services that were historically provided to the Catawba Joint Owners under the Catawba Interconnection Agreements between DEC and the Catawba Joint Owners prior to 2001, which, for the North Carolina Electric Membership Corporation, only includes the EMCs within DEC's control area.

~~(b)~~ (b) PEGDEP is not required to file an advance notice with the Commission or receive its approval prior to entering into wholesale power contracts that grant Native Load Priority to the Public Works Commission of the City of Fayetteville, North Carolina; the Town of Waynesville, North Carolina; the City of Camden, South Carolina; the French Broad Electric Membership Corporation; the North Carolina Eastern Municipal Power Agency; the electric membership cooperatives (EMCs) within PEC's control area, whether served through the North Carolina Electric Membership Corporation (NCEMC) or individually; the Town of Black Creek, North Carolina; the Town of Lucama, North Carolina; the Town of Stantonsburg, North Carolina; the Town of Sharpsburg, North Carolina; and the Town of Winterville, North Carolina. Subject to the conditions set out in Regulatory Condition ~~3.9, 3.8,~~ the retail native loads of these historically served wholesale customers shall be considered PEC's Retail Native Load Customers for purposes of Regulatory Conditions 3.5, 3.6, and 4.5.

~~(c) Before either DEC or PEC executes any contract that grants Native Load Priority to a wholesale customer (other than as set forth in subdivisions (a) and (b) above) or to one or more retail customers of another entity, it must provide the Commission with at least 30 days' written advance notice of its intent to grant Native Load Priority and to treat the retail native load of a proposed wholesale customer as if it were DEC's or PEC's retail native load pursuant to Regulatory Conditions 3.5, 3.6, and 4.5. The provisions set forth in Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition.~~

~~3.8 Other Wholesale Contracts. To the extent that DEC's or PEC's proposed wholesale power contracts or other sales of energy and capacity are at less~~

~~than Native Load Priority, then no advance notice is required and no approval by the Commission is needed.~~ 3.9 Additional Provisions Regarding Wholesale Contracts Entered into by DEC or PEGDEP as Sellers.

- (a) This Regulatory Condition does not apply to Piedmont.
- (b) ~~(a)~~ The Commission retains the right to assign, allocate, impute, and make pro-forma adjustments with respect to the revenues and costs associated with both DEC's or PEGDEP's wholesale contracts for retail ratemaking and regulatory accounting and reporting purposes.
- (c) ~~(b)~~ Entry into wholesale contracts that grant Native Load Priority or otherwise obligate DEC or PEGDEP to construct generating facilities or make commitments to purchase capacity and energy to meet those contractual commitments constitutes acceptance by DEC, PEGDEP, Duke Energy, and other Affiliates or Nonpublic Utility Operations thereof of the risks that investments in generating facilities or commitments to purchase capacity and energy to meet such contractual commitments and maintain an adequate reserve margin throughout the term of such contracts may become uneconomic sunk costs that are not recoverable from DEC's or PEGDEP's respective Retail Native Load Customers. In a future Commission retail proceeding in which cost recovery is at issue, neither DEC nor PEGDEP shall claim that it does not bear this risk, and both DEC and PEGDEP shall acknowledge that the Commission retains full authority under Chapter 62 to disallow such costs as not used and useful and to allocate, impute, or assign such costs away from Retail Native Load Customers. For purposes of this condition, capacity will be considered used and useful and not excess capacity to the extent the Commission determines such capacity is needed by DEC or PEGDEP to meet the expected peak loads of DEC's or PEGDEP's respective Retail Native Load Customers in the near term future plus a reserve margin comparable to that currently being used or otherwise considered appropriate by the Commission. Neither DEC, PEGDEP, Duke Energy, nor any other Affiliate shall assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of any other entity's assertions that the Commission is preempted from taking the actions contemplated in this subsection.
- (d) ~~(e)~~ Neither DEC, PEGDEP, nor Duke Energy, nor other Affiliate shall assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of any other entity's assertions that (i) transactions entered into pursuant to DEC's or PEGDEP's cost- or market-based rate authority or (ii) the filing with, or acceptance for filing by, the FERC of any wholesale power contract to which either is a party establishes or implies a cost allocation methodology that is binding on the Commission, requires the

pass-through of any costs or revenues under the filed rate doctrine, or preempts the Commission's authority to assign, allocate, impute, make pro-forma adjustments to, or disallow the revenues and costs associated with, DEC's or PEGDEP's wholesale contracts for retail ratemaking and regulatory accounting and reporting purposes.

- (~~de~~) Neither DEC, ~~PEG~~nor DEP, ~~nor~~ Duke Energy, ~~or~~nor other Affiliate shall assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of any other entity's assertions that the exercise of authority by the Commission to assign, allocate, impute, make pro-forma adjustments to, or disallow the costs and revenues associated with DEC's or PEGDEP's wholesale contracts for retail ratemaking and regulatory accounting and reporting purposes in itself constitutes an undue burden on interstate commerce or otherwise violates the Commerce Clause of the United States Constitution. ~~However,~~ DEC and PEGDEP, ~~however,~~ retain the right to argue that a specific exercise of authority by the Commission violates the Commerce Clause based upon specific evidence of undue interference with interstate commerce.
- (~~ef~~) Except as provided in the foregoing conditions, DEC and PEGDEP retain the right to challenge the lawfulness of any order issued by the Commission in connection with the assignment, allocation, imputation, pro-forma adjustments to, or disallowances of the revenues and costs associated with DEC's or PEGDEP's wholesale contracts for retail ratemaking and regulatory accounting and reporting purposes on any other grounds, including but not limited to the right outlined in G.S. 62-94(b).

3.103.9 Other Protections.

- (a) ~~Neither~~ DEC, PEGDEP, Piedmont, Duke Energy, another Affiliate, ~~nor~~or a Nonpublic Utility Operation shall not assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of any other entity's assertions that approval by the FERC of market-based rates, transfers of generating facilities, or any matter that involves Affiliates in any way preempts the Commission's authority to determine the reasonableness or prudence of DEC's, DEP's, or PEGPiedmont's decisions with respect to supply-side resources, demand-side management, or any other aspect of resource adequacy.
- (~~b~~) ~~————~~ (~~b~~) No agreement shall be entered into, nor shall any filing be made with the FERC, by or on behalf of DEC or PEG, that (i) ~~commits DEC or PEG to, or involves either of them in, joint planning, coordination, dispatch or operation of generation, transmission, or distribution facilities with each other or with one or more other Affiliates, or~~ (ii) ~~otherwise~~ DEP that alters DEC's or PEGDEP's

obligations with respect to these Regulatory Conditions, absent explicit approval of the Commission. ~~(c) DEC, PEC, Duke Energy, the other Affiliates, and the Nonpublic Utility Operations shall file notice with the Commission at least 30 days prior to filing with the FERC any agreement, tariff, or other document or any proposed amendments, modifications, or supplements to any such document that has the potential to (i) affect DEC's or PEC's retail cost of service for system power supply resources or transmission system; (ii) reduce the Commission's jurisdiction with respect to transmission planning or any other aspect of the Commission's planning authority; (iii) be interpreted as involving DEC or PEC in joint planning, coordination, dispatch, or operation of generation or transmission facilities with one or more Affiliates; or (iv) otherwise have an Effect on DEC's or PEC's Rates or Service. The provisions set forth in Regulatory Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition; provided, however, that, to the extent the filing with the FERC is not to be made by DEC or PEC, the advance notice procedures shall be for the purpose of a determination by the Commission as to whether the filing is reasonably likely to have an Effect on DEC's or PEC's Rates or Service. This Regulatory Condition does not apply to Piedmont.~~

~~(c) (d)~~ Any contract or filing regarding DEC's or ~~PEC~~DEP's membership in or withdrawal from an RTO or comparable entity must be contingent upon state regulatory approval. This Regulatory Condition does not apply to Piedmont.

~~(d) (e)~~ Consistent with G.S. 62-153, DEC, DEP, and ~~PEC~~Piedmont shall ~~obtain prior approval of~~ file with the Commission any proposed substantive revisions to any Affiliate agreement to which ~~either one~~ one of them is a party.

~~(e) (f)~~ DEC, DEP, and ~~PEC~~Piedmont shall obtain Commission approval before ~~either DEBS or PESC~~ is sold, transferred, merged with any other entities, has any ownership interest therein changed, or otherwise changed so that a change of control could occur. This requirement does not apply to any movement of DEBS ~~or PESC~~ within the Duke Energy holding company system that does not constitute a change of control.

~~(f) (g)~~ DEC, DEP, and ~~PEC~~Piedmont may participate in joint comments and other joint filings with Affiliates only when such participation fully complies with both the letter and the spirit of the Regulatory Conditions. Any filing made by DEBS ~~or PESC~~ on behalf of DEC ~~or PEC~~, or in which DEC ~~or PEC~~ participates, DEP, or Piedmont must clearly identify DEBS ~~or PESC~~ as an agent of DEC, DEP, or Piedmont for purposes of making the filing.

~~(g) (h)~~ Neither DEC, ~~PEC~~DEP, Piedmont, Duke Energy, another Affiliate, nor a Nonpublic Utility Operation shall make any assertion or argument either on its own initiative or in support of any other entity's assertions in any forum – whether judicial, administrative, federal, state, or otherwise – with respect to

any contract, transaction, or other matter in which DEC, DEP or PEGPiedmont is involved or proposes to be involved or any contract, transaction, or matter involving or proposed to involve Duke Energy, any other Affiliate, or any Nonpublic Utility Operation that may have an Effect on DEC's, DEP's or PEGPiedmont's Rates or Service, that the Commission is in any way preempted, in whole or in part, by Federal Law, or is acting beyond the Commission's power, authority or jurisdiction, in exercising its authority under Chapter 62 of the North Carolina lawGeneral Statutes as follows:

- (i) reviewing the reasonableness of any Affiliate commitment entered into or proposed to be entered into by DEC, DEP, or PEGPiedmont, or disallowing the costs of, or imputing revenues related to such commitment to, DEC, DEP, or PEGPiedmont;
- (ii) exercising its authority over financings or setting rates based on the capital structure, corporate structure, debt costs, or equity costs that it finds to be appropriate for retail ratemaking purposes;
- (iii) reviewing the reasonableness of any commitment entered into or proposed to be entered into by DEC, DEP, or PEGPiedmont to transfer an asset;
- (iv) mandating, approving, or otherwise regulating a transfer of assets;
- (v) scrutinizing and establishing the value of any asset transfers for the purpose of determining the rates for services rendered to DEC's or PEGDEP's Retail Native Load Customers or Piedmont's Customers; or
- (vi) exercising any other lawful authority it may have.

Should any other entity so assert, neither DEC, PEG, DEP, or Piedmont Duke Energy, other Affiliates, nor the Nonpublic Utility Operations shall support any such assertion and shall, promptly upon learning of such assertion, advise and consult with the Commission and the Public Staff regarding such assertion.

- (vii) DEC, PEG, DEP, Piedmont, Duke Energy, other Affiliates, and the Nonpublic Utility Operations shall (A) bear the full risk of any preemptive effects of Federal Law with respect to any contract, transaction, or commitment entered into or made or proposed to be entered into or made by DEC ~~or PEG, DEP, Piedmont~~, or which may otherwise affect DEC's ~~or PEG, DEP's~~ Piedmont's operations, service, or rates and (B) shall take all actions as may be reasonably necessary and appropriate to hold North Carolina ratepayers harmless from rate increases, foregone opportunities for rate decreases or any other adverse effects of such

preemption. Such actions include, but are not limited to, filing with and making reasonable efforts to obtain approval from the FERC or other applicable federal entity of such commitments as the Commission deems reasonably necessary to prevent such preemptive effects.

3.113.10 FERC Filings and Orders. In addition to the filing requirements of Commission Rule R8-27 and all other applicable statutes and rules, DEC and PEGDEP shall, on a quarterly basis, file with the Commission the following: (a) a list of all active dockets at the FERC, including a sufficient description to identify the type of proceeding, in which DEC, PEGDEP, Duke Energy, DEBS, ~~or PESC~~ is a party, with new information in each quarterly filing tracked; and (b) a list of the periodic reports filed by DEC, PEGDEP, Duke Energy, or DEBS, ~~or PESC~~ with the FERC, including sufficient information to identify the subject matter of each report and how each report can be accessed. These filings shall be made in Docket Nos. E-7, Sub ~~986E1100~~, and E-2, Sub ~~998E1095~~, as appropriate, and updated regularly. In addition, DEC and PEGDEP shall serve on the Public Staff all filed cost-based and market-based wholesale agreements and amendments; all filings related to their Joint Open Access Transmission Tariff; interconnection agreements and amendments; and any other filings made with the FERC, to the extent these other filings are reasonably likely to have an Effect on DEC's or PEGDEP's Rates or Service. This Regulatory Condition does not apply to Piedmont as relevant FERC-related information is required to be filed with the Commission in annual gas cost prudence reviews.

SECTION IV JOINT DISPATCH

The ~~following~~ Regulatory Conditions in Section IV do not apply to Piedmont. They are intended to prevent the jurisdiction and authority of the Commission from being preempted as a result of the JDA, to ensure that DEC's and PEGDEP's Retail Native Load Customers receive adequate benefits from the JDA, and to ensure that both joint dispatch costs and the sharing of cost savings can be appropriately audited. The Regulatory Conditions set forth in Section III and the Regulatory Conditions in Section V to the extent they are relevant to Affiliate Contracts also apply to the JDA.

4.1 Conditional Approval and Notification Requirement. DEC and PEGDEP acknowledge that the Commission's approval of the merger and the transfer of dispatch control from PEGDEP to DEC for purposes of implementing the JDA and any successor document is conditioned upon the JDA or successor document never being interpreted as providing for or requiring: (a) a single integrated electric system, (b) a single BAA, control area or transmission system, (c) joint planning or joint development of generation or transmission, (d) DEC or PEGDEP to construct generation or transmission facilities for the benefit of the other, (e) the transfer of any rights to generation or transmission facilities from DEC or PEGDEP to the other, or (f) any equalization of DEC's and PEGDEP's production costs or rates. If, at any time, DEC, PEGDEP or any other Affiliate learns that any of the foregoing interpretations are

being considered, in whatever forum, they shall promptly notify and consult with the Commission and the Public Staff regarding appropriate action.

4.2 Advance Notice Required. To the extent that DEC and PEGDEP desire to engage in any of items (a) through (f) listed in Regulatory Condition 4.1, above, DEC and PEGDEP shall file advance notice with the Commission at least 30 days prior to taking any action to amend the JDA or a successor document or to enter into a separate agreement. The provisions of Regulatory Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition.

4.3 Function in DEC or PEGDEP. The joint dispatch function, as provided in the JDA or in a successor document, shall be performed by employees of either DEC or PEGDEP.

4.4 No Limitation on Obligations. DEC and PEGDEP acknowledge that nothing in the JDA or any successor document is intended to alter DEC's and PEGDEP's public utility obligations under North Carolina law or to provide for joint dispatch in a fashion that is inconsistent with those obligations, including, without limitation, the following: (a) DEC's obligation to plan for and provide least cost electric service to its Retail Native Load Customers and PEGDEP's obligation to plan for and provide least cost electric service to its Retail Native Load Customers; (b) DEC's obligation to serve its Retail Native Load Customers with the lowest cost power it can reasonably generate or purchase from other sources, before making power available for Non-Native Load Sales; and (c) PEGDEP's obligation to serve its Retail Native Load Customers with the lowest cost power it can reasonably generate or purchase from other sources, before making power available for Non-Native Load Sales.

4.5 Protection of Retail Native Load Customers. All joint dispatch and other activities pursuant to the proposed JDA or successor document shall be performed in such a manner as to (a) ensure the reliable fulfillment of DEC's and PEGDEP's respective service obligations to their Retail Native Load Customers, (b) fulfill each utility's obligation to serve its own Retail Native Load Customers with its lowest cost generation; and (c) minimize the total costs incurred by DEC and PEGDEP to fulfill their respective obligations to their Retail Native Load Customers. In no event shall any Non-Native Load Sales be made if, based upon information known, anticipated, or reasonably available at the time a sale is made, any such sale results in higher fuel and fuel-related costs or non-fuel O&M costs, on a replacement cost basis, than would otherwise have been incurred unless the revenues credited from each such sale more than offset the higher costs.

4.6 Treatment of Costs and Savings. DEC's and PEGDEP's respective fuel and fuel-related costs and non-fuel O&M costs, and the treatment of savings for retail ratemaking purposes, shall be calculated as provided in the JDA, unless explicitly changed by order of the Commission.

4.7 Required Records. DEC and PEGDEP shall keep records related to the JDA or any successor document as prescribed by the Commission and in such detail as may be necessary to enable the Commission and the Public Staff to audit both the actual joint dispatch costs and the sharing of cost savings.

4.8 Auditing of Negative Margins. DEC and PEGDEP also shall keep records that provide such detail as may be necessary to enable the Commission and the Public Staff to audit the circumstances that cause any negative margin on a Non-Native Load Sale or a negative transfer payment made pursuant to Section 7.5(a)(ii) of the JDA.

4.9 Protection of Commission's Authority. Neither DEC, PEGDEP, nor any Affiliate shall assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of any other entity's assertions that any aspect of the JDA or successor document is intended to diminish or alter the jurisdiction or authority of the Commission over DEC or PEGDEP, including, among other things, the jurisdiction and authority of the Commission to do the following: (a) establish the retail rates on a bundled basis for DEC or PEGDEP, (b) to impose regulatory accounting and reporting requirements, (c) impose service quality standards, (d) require DEC and PEGDEP to engage separately in least cost integrated resource planning, and (e) issue certificates of public convenience and necessity for new generating and transmission resources.

4.10 Preventive Action Required. DEC, PEGDEP, Duke Energy, and other Affiliates shall take all necessary actions to prevent the generating facilities owned or controlled by DEC or PEGDEP from being considered by the FERC to be (a) part, or all, of a power pool, (b) sufficiently integrated to be one integrated system, or (c) otherwise fully subject to the FERC's jurisdiction, as the result of DEC's and PEGDEP's participation in the JDA or any successor document.

4.11 Modification and Termination. DEC and PEGDEP shall modify or terminate the JDA if at any time following consummation of the Merger the Commission finds, after notice and opportunity to be heard, that the JDA does not produce overall cost savings for, or is otherwise not in the best interests of, the North Carolina ratepayers of both DEC and PEGDEP.

4.12 Hold Harmless Commitment. DEC and PEGDEP shall take all actions as may be reasonably appropriate and necessary to hold North Carolina retail ratepayers harmless from any adverse rate impacts related to the JDA, including any trapped costs resulting from actions taken or required by the FERC with respect to the JDA.

SECTION V TREATMENT OF AFFILIATE COSTS AND RATEMAKING

The following Regulatory Conditions are intended to ensure that the costs incurred by DEC, DEP, and PEGPiedmont are properly incurred, accounted for, and directly charged, directly assigned, or allocated to their respective North Carolina retail

operations and that only costs that produce benefits for ~~their~~ DEC's and DEP's respective Retail Native Load Customers and Piedmont's Customers are included in DEC's, DEP's, and PEGPiedmont's North Carolina ~~retail~~ cost of service for ratemaking purposes. The procedures set forth in Condition 13.2 do not apply to an advance notice filed pursuant to this section.

5.1 Access to Books and Records. In accordance with North Carolina law, the Commission and the Public Staff shall continue to have access to the books and records of DEC, ~~PEGDEP,~~ Piedmont, Duke Energy ~~Corporation,~~ other Affiliates, and the Nonpublic Utility Operations.

5.2 Procurement or Provision of Goods and Services by DEC, DEP, or PEGPiedmont to or from Affiliates or Nonpublic Utility Operations. Except as to transactions between and among DEC, DEP, and PEGPiedmont, pursuant to filed and approved service agreements and lists of services, and subject to additional provisions set forth in the Code of Conduct, DEC, DEP, and PEGPiedmont shall take the following actions in connection with procuring goods and services for their respective utility operations from Affiliates or Nonpublic Utility Operations and providing goods and services to Affiliates or Nonpublic Utility Operations:

- (a) DEC, DEP, and PEGPiedmont each shall seek out and buy all goods and services from the lowest cost qualified provider of comparable goods and services, and shall have the burden of proving that any and all goods and services procured from their Utility Affiliates, Non-Utility Affiliates, and Nonpublic Utility Operations have been procured on terms and conditions comparable to the most favorable terms and conditions reasonably available in the relevant market, which shall include a showing that comparable goods or services could not have been procured at a lower price from qualified non-Affiliate sources or that ~~neither DEC nor PEGDEC,~~ DEP, and Piedmont could not have provided the services or goods for itself on the same basis at a lower cost. To this end, no less than every four years DEC, DEP, and PEGPiedmont shall perform comprehensive, non-solicitation based assessments at a functional level of the market competitiveness of the costs for goods and services they receive from a Utility Affiliate, DEBS, ~~PESC,~~ another Non-Utility Affiliate, and a Nonpublic Utility Operation, including periodic testing of services being provided internally or obtained individually through outside providers. To the extent the Commission approves the procurement or provision of goods and services between and among DEC, ~~PEGDEP,~~ Piedmont, and the Utility Affiliates, those goods and services may be provided at the supplier's Fully Distributed Cost.
- (b) To the extent they are allowed to provide such goods and services, DEC, DEP, and PEGPiedmont shall have the burden of proving that all goods and services provided by either any one of them to Duke Energy, a Non-Utility Affiliate, any other Affiliate, or a Nonpublic Utility Operation have been

provided on the terms and conditions comparable to the most favorable terms and conditions reasonably available in the market, which shall include a showing that such goods or services have been provided at the higher of cost or market price. To this end, no less than every four years DEC, ~~DEP~~, and ~~PEGPiedmont~~ shall perform comprehensive, non-solicitation based assessments at a functional level of the market competitiveness of the costs for goods and services provided by either of them to a Utility Affiliate, DEBS, ~~PESC~~, another Non-Utility Affiliate, any other Affiliate, and a Nonpublic Utility Operation.

- (c) The periodic assessments required by subdivisions (a) and (b) of this subsection may take into consideration qualitative as well as quantitative factors. To the extent that comparable goods or services provided to DEC, ~~DEP~~, or ~~PEGPiedmont~~, or by DEC, ~~DEP~~, or ~~PEGPiedmont~~ are not commercially available, this Regulatory Condition shall not apply.

5.3 Location of Core Utility Functions.

- (a) This Regulatory Condition does not apply to Piedmont.

- (b) ~~5.3 — Location of Core Utility Functions. Core utility functions (i.e., are those that are considered public utility operations and support functions) will be part of DEC and PEC, and the functions related to Electric Services. The employees performing these core utility functions will be DEC and PEC or DEP employees and not service company employees of DEBS or PESC. If in the future DEC or PEC desires to move these functions to another entity, Regulatory Condition 13.2 will apply and 30 days' advance notice will be required. The following functions are core utility functions for DEC and PEC: Core utility functions do not include services of a governance or corporate type nature that have been traditionally provided by a service company, the specific services listed on the service company agreement services list for DEC and DEP filed with the Commission pursuant to Regulatory Condition No. 5.4(a) in Docket Nos. E-7, Sub 986A and E-2, Sub 998A and roles that provide oversight to the enterprise and are not jurisdiction-specific (Excluded functions).~~

- ~~(a) — Outage and Maintenance Services Fuels and System Optimization Power Generation Operations;~~
- ~~(b) — Electric Transmission and Distribution Operations, Engineering and Construction; (except for grid modernization functions, which may remain in DEBS);~~
- ~~(c) — Project Management and Construction (except for Enterprise Project Management Center of Excellence, Project Development and Initiation, Fossil/Hydro Retrofits, Major Project Services, Commercial and~~

~~International Major Projects and Performance Improvement, which may remain in DEBS);~~

~~(d) Environmental Health and Safety (except for Health and Safety, Environmental Programs and Compliance, EHS Support Systems, and Duke Energy International, which may remain in DEBS);~~

(c) All core utility functions employees charging 50% or more of their time to DEC and DEP (separately or combined) should be in the payroll company of either DEC or DEP and not on the payroll of an Affiliate such as DEBS. If it is not readily determinable that a particular function is related to the provision of Electric Services or is an Excluded Function, the appropriate payroll company decision will be governed by whether 50% or more of the affected group or individual employee's time is charged to DEC or DEP.

~~(e) Central Programs and Services for Fossil/Hydro Services (except for Central Programs, Application Support, NERC/CIP, SMEs, Discipline Engineering, CT Services, Lab Services, Environmental Compliance Strategy, and Emerging Technology, which may remain in DEBS);~~

~~(f) Customer Operations/Customer Relations;~~

~~(g) Rates and Regulatory (except for Rate Design and Analysis and State Support and Research, which may remain in DEBS);~~

~~(h) Nuclear Generation (except for Nuclear Development, which may remain in DEBS);~~

(d) DEC and DEP shall annually review core utility function employees charging more than 50% of their time to DEC and DEP (separately or combined) over a six-month period from January 1 to June 30. If DEC and DEP determine that an employee performing a core utility function is direct charging 50% or more of his or her time to DEC or DEP, that employee should be transferred to DEC or DEP (if not already on the DEC or DEP payroll). Conversely, if a DEC or DEP employee is charging less than 50% of his or her time to DEC or DEP (separately or combined), and the employee is not otherwise charging the larger portion of their time to DEC or DEP, that employee should not be on the payroll of DEC or DEP.

~~(i) Wholesale Power and Renewable Generation; and~~

(e) DEC and DEP shall annually file, at least 90 days prior to January 1, a report containing the results of the annual review and advance notice of any transfers from DEC to DEP to another entity based on direct charging results (Employee Payroll Transfer Report). New organizations and reorganizations will be reflected in the Employee Payroll Transfer Reports.

~~(j) Integrated Resource Planning and Analytics (except for Production Cost Modeling & Data Management, which may remain in DEBS).~~

- (f) If an employee transfer from DEC or DEP occurs during the middle of the year, and that transfer involves the transfer of a core utility function to the service company, the provisions of Regulatory Condition 10.1 will apply.
- (g) Notwithstanding the foregoing, DEC and PEGDEP may file a list of employees at the higher levels of management (not including those levels of management that report directly to the Chief Executive Officer for Duke Energy) for their core utility functions that they propose to remain or become DEBS or PESC employees. Within 30 days of this filing, the Public Staff shall file a response and make a recommendation as to how the Commission should proceed. This filing shall be made in Docket No. E-7, Sub 986A, and will not be subject to the provisions of Regulatory Condition 13.2. in their annual filing.

5.4 Service Agreements and Lists of Services.

- (a) DEC, DEP, and PEGPiedmont shall file pursuant to G.S. 62-153 final proposed service agreements that authorize the provision and receipt of non-power goods or services between and among DEC, PEGDEP, Piedmont, their Affiliates or Nonpublic Utility Operations, the list(s) of goods and services that DEC, DEP, and PEGPiedmont each intend to take from DEBS, and PESC, the list(s) of goods and services DEC, DEP, and PEGPiedmont intend to take from each other and the Utility Affiliates, and the basis for the determination of such list(s) and the elections of such services. All such lists that involve payment of fees or other compensation by DEC, DEP, or PEGPiedmont shall require acceptance and authorization by the Commission, and shall be subject to any other Commission action required or authorized by North Carolina law and the Rules and orders of the Commission.
- (b) DEC, DEP, and PEGPiedmont shall take goods and services from an Affiliate only in accordance with the filed service agreements and approved list(s) of services. DEC, DEP, and PEGPiedmont shall file notice with the Commission in Docket Nos. E-7, Sub 986A, and 1100, E-2, Sub 998A, 1095, and G-9, Sub 682, respectively, at least 15 days prior to making any proposed changes to the service agreements or to the lists of services.

5.5 Charges for and Allocations of the Costs of Affiliate Transactions. To the maximum extent practicable, all costs of Affiliate transactions shall be directly charged. When not practicable, such costs shall be assigned in proportion to the direct charges. If such costs are of a nature that direct charging and direct assignment are not practicable, they shall be allocated in accordance with Commission-approved allocation methods. The following additional provisions shall apply:

- (a) ~~DEC, DEP, and PEGPiedmont shall keep on file with the Commission a cost allocation manuals (CAMs) manual (CAM) with respect to goods or services provided by DEC, DEP, or PEGPiedmont, any Utility Affiliate, DEBS or PESC, any other Non-Utility Affiliate, Duke Energy, any other Affiliates, or any Nonpublic Utility Operation to either DEC, DEP, or PEGPiedmont. Piedmont will adopt DEC's and DEP's CAM.~~
- (b) ~~Each~~The CAM shall describe how all directly charged, direct assignment, and other costs for each provider of goods and services will be charged between and among DEC, ~~PEGDEP, Piedmont~~, their Utility Affiliates, Non-Utility Affiliates, Duke Energy, any other Affiliates, and the Nonpublic Utility Operations, and shall include a detailed review of the common costs to be allocated and the allocation factors to be used.
- (c) The CAM(s) shall be updated annually, and the revised CAM(s) shall be filed with the Commission no later than March 31 of the year that the CAM(s) are to be in effect. ~~DEC, DEP, and PEGPiedmont~~ shall review the appropriateness of the allocation bases every two years, and the results of such review shall be filed with the Commission. Interim changes shall be made to the CAM(s), if and when necessary, and shall be filed with the Commission, in accordance with Regulatory Condition 5.6.
- (d) No changes shall be made to the procedures for direct charging, direct assigning, or allocating the costs of Affiliate transactions or to the method of accounting for such transactions associated with goods and services (including Shared Services provided by DEBS ~~or PESC~~) provided to or by Duke Energy, other Affiliates, and the Nonpublic Utility Operations until ~~DEC, DEP, or PEGPiedmont~~ has given 15 days' notice to the Commission of the proposed changes, in accordance with Regulatory Condition 5.6.

5.6 Procedures Regarding Interim Changes to the ~~CAMs~~CAM or Lists of Goods and Services for which 15 Days' Notice Is Required. With respect to interim changes to the ~~CAMs~~CAM or changes to lists of goods and services, for which the 15 day notice to the Commission is required, the following procedures shall apply: the Public Staff shall file a response and make a recommendation as to how the Commission should proceed before the end of the notice period. If the Commission has not issued an order within 30 days of the end of the notice period, DEC or ~~PEGDEP~~ may proceed with the changes but shall be subject to any fully adjudicated Commission order on the matter. The provisions of Regulatory Condition 13.2 do not apply to advance notices filed pursuant to Regulatory Condition 5.5(c) and (d). Such advance notices shall be filed in Docket Nos. E-7, Sub ~~986A, and 1100~~, E-2, Sub ~~998A-1095~~, and G-9, Sub ~~682~~.

5.7 Annual Reports of Affiliate Transactions. ~~DEC, DEP, and PEGPiedmont~~ shall file annual reports of affiliated transactions with the Commission in a format to be prescribed by the Commission in Docket Nos. E-7, Sub ~~986A, and 1100~~, E-2, Sub

998A-1095, and G-9, Sub 682. The report shall be filed on or before May 30 of each year, for activity through December 31 of the preceding year. DEC, PEGDEP, Piedmont, and other parties may propose changes to the required affiliated transaction reporting requirements and submit them to the Commission for approval, also in Docket Nos. E-7, Sub 986B, and 1100, E-2, Sub 998B-1095, and G-9, Sub 682.

5.85-8 Third-party Independent Audits of Affiliate Transactions.

(a) — ~~(a)~~ — No less often than every two years, a third-party independent audit shall be conducted related to the affiliate transactions undertaken pursuant to Affiliate agreements filed in accordance with Regulatory Condition 5.4 and of DEC's, DEP's, and PEGPiedmont's compliance with all conditions approved by the Commission concerning Affiliate transactions, including the propriety of the transfer pricing of goods and services between and/or among DEC, PEGDEP, Piedmont, other Affiliates, and all of the Nonpublic Utility Operations.

~~(i)~~ — The first audit following the close of the transaction shall begin two years from the date of close and shall include whether DEC and PEG have adopted systems, policies, CAMs, and other processes to ensure compliance with all of the conditions related to Affiliate dealings and the Code of Conduct and have operated in accordance with those conditions and Code of Conduct.

(i) ~~(ii)~~ — The ~~second~~first audit shall begin two years from the date of the Commission's order on the independent auditor's final report on the first audit or, if no such order is issued, two years from the date of such final report close of the Merger. It shall include whether DEC's, DEP's, and PEGPiedmont's transactions, services, and other Affiliate dealings pursuant to the regulated utility-to-regulated utility service agreement and any other utility to utility agreements are consistent with all of the conditions related to affiliate dealings and the Code of Conduct and whether DEC, DEP, and PEGPiedmont have operated in accordance with those conditions and Code of Conduct.

(ii) ~~(iii)~~ — The ~~third~~second audit shall begin two years from the date of the Commission's order on the independent auditor's final report on the ~~second~~first audit or, if no such order is issued, two years from the date of such final report. It shall include whether DEC's, DEP's and PEGPiedmont's transactions, services, and other Affiliate dealings pursuant to the Service Company Utility Service Agreement and other Affiliate transactions other than transactions undertaken pursuant to regulated utility to regulated utility service agreements are consistent with all of the conditions related to affiliate dealings and the Code of Conduct and whether DEC, DEP, and PEGPiedmont have operated in accordance with those conditions and Code of Conduct.

~~(iii)~~(iv) Thereafter, independent audits shall occur every two years from the date of the Commission's order on the immediately preceding auditor's final report or, if no such order is issued, two years from the date of such final report. The subject matter of these audits shall alternate between the subject matters for the second and third independent audits. ~~DEC or PEG~~, DEP, and Piedmont may request a change in the frequency of the audit reports in future years, subject to approval by the Commission.

- (b) The following further requirements apply:
- (i) The independent auditor shall have sufficient access to the books and records of DEC, PEG, DEP, Piedmont, Duke Energy, other Affiliates, and all of the Nonpublic Utility Operations to perform the audits.
 - (ii) For each audit, the Public Staff shall propose one or more independent auditor(s). DEC, PEG, DEP, Piedmont and other parties shall have an opportunity to comment and propose additional auditors. Selection of the independent auditor shall be made by the Commission. Any party proposing an independent auditor shall file such auditor's audit proposal with the Commission.
 - (iii) The independent auditor shall be supervised in its duties by the Public Staff, and the auditor's reports shall be filed with the Commission.

5.9 Ongoing Review by Commission.

- (a) The services rendered by DEC, DEP and PEG, Piedmont to their Affiliates and Nonpublic Utility Operations and the services received by DEC, DEP, or PEG, Piedmont from their Affiliates and Nonpublic Utility Operations pursuant to the filed service agreements, the costs and benefits assigned or allocated in connection with such services, and the determination or calculation of the bases and factors utilized to assign or allocate such costs and benefits, as well as DEC's, DEP's, and PEG, Piedmont's compliance with the Commission-approved Code of Conduct and all Regulatory Conditions, shall remain subject to ongoing review. These agreements shall be subject to any Commission action required or authorized by North Carolina law and the Rules and orders of the Commission.
- (b) The service agreements, the CAM(s) and the assignments and allocations of costs pursuant thereto, the biannual allocation factor reviews required by Regulatory Condition 5.4(c), the list(s) and the goods and services provided pursuant thereto, and any changes to these documents shall be subject to ongoing Commission review, and Commission action if appropriate.

5.10 Future Orders. For the purposes of North Carolina retail accounting, reporting, and ratemaking, the Commission may, after appropriate notice and opportunity to be heard, issue future orders relating to DEC's, DEP's, or PECPiedmont's cost of service as the Commission may determine are necessary to ensure that DEC's, DEP's and PECPiedmont's operations and transactions with their Affiliates and Nonpublic Utility Operations are consistent with the Regulatory Conditions and Code of Conduct, and with any other applicable decisions of the Commission.

5.11 Review by the FERC. Notwithstanding any of the provisions contained in these Regulatory Conditions, to the extent the allocations adopted by the Commission when compared to the allocations adopted by the other State commissions with ratemaking authority as to a Utility Affiliate of DEC, DEP, or PECPiedmont result in significant trapped costs related to "non-power goods or administrative or management services provided by an associate company organized specifically for the purpose of providing such goods or services to any public utility in the same holding company system," including DEC, DEP, and PECPiedmont, ~~DEC and PEC, DEP, or Piedmont~~ may request pursuant to Section 1275(b) of Subtitle F in Title XII of PUHCA 2005 that the FERC "review and authorize the allocation of the costs for such goods and services to the extent relevant to that associate company." Such review and authorization shall have whatever effect it is determined to have under the law. The quoted language in this Condition is taken directly from Section 1275(b) of Subtitle F in Title XII of PUHCA 2005. The terms "associate company" and "holding company system" are defined in Sections 1262(2) and 1262(9), respectively, of Subtitle F in Title XII of PUHCA 2005 and have the same meanings for purposes of this condition.

5.12 Biannual Review of Certain Transactions by Internal Auditors. Transactions between DEC, DEP, or PECPiedmont and Duke Energy, other Affiliates, or the Nonpublic Utility Operations, transactions between and among DEC, DEP and PECPiedmont, and other transactions between or among Affiliates if such transactions are reasonably likely to have a significant Effect on DEC's, DEP's or PECPiedmont's Rates or Service, shall be reviewed at least biannually by Duke Energy ~~Corporation's~~ internal auditors. To the extent external audits of the transactions are conducted, DEC, DEP, and PECPiedmont shall make available such audits for review by the Public Staff and the Commission. DEC, DEP and PECPiedmont also shall make available for review by the Public Staff and the Commission all workpapers, not otherwise subject to the attorney-client privilege, relating to internal audits and all other internal audit workpapers, not otherwise subject to the attorney-client privilege, if any, related to affiliate transactions, and shall not oppose Public Staff and Commission requests to review relevant, external audit workpapers that are not otherwise subject to the attorney-client privilege. If there is a dispute whether the attorney-client privilege applies to any of the listed workpapers, it shall be resolved by the Commission under its regulations and North Carolina law.

5.13 Notice of Service Company and Non-Utility Affiliates FERC Audits. At such time as either DEC, PECD, Piedmont, Duke Energy, or DEBS, or PESC receives notice from the FERC related to an audit of any Affiliate of DEC, DEP, or PECPiedmont, DEC, DEP, or PECPiedmont shall

DEC, or PEGPiedmont shall promptly file a notice the Commission that such an audit will be commencing. Any initial report of the FERC's audit team shall be provided to the Public Staff, and any final report shall be filed with the Commission in Docket Nos. E-7, Sub ~~986E~~, and 1100, E-2, Sub ~~998E~~1095, or G-9, Sub 682, respectively.

5.14 Acquisition Adjustment. Any acquisition adjustment that results from the Merger shall be excluded from DEC's, DEC's and PEGPiedmont's utility accounts and treated for regulatory accounting, reporting, and ratemaking purposes so that it does not affect DEC's or PEGDEC's North Carolina retail ~~electric~~ rates and charges for Electric Services or Piedmont's North Carolina rates and charges for Natural Gas Services.

5.15 Non-Consummation of Merger. If the ~~merge~~Merger is not consummated, neither the cost, nor the receipt, of any termination payment between Duke Energy and ~~Progress Energy~~Piedmont shall be allocated to DEC, DEC, or PEGPiedmont or recorded on their books. DEC's, DEC's, or ~~PEG's~~ North Carolina retail ~~customers~~Piedmont's Customers shall not otherwise bear any direct expenses or costs associated with a failed merger.

5.16 ~~5.16~~ Protection from Commitments to Wholesale Customers.

(a) This Regulatory Condition does not apply to Piedmont.

(b) ~~(a)~~—For North Carolina retail electric cost of service/ratemaking purposes, DEC's and PEGDEC's respective electric system costs shall be assigned or allocated between and among retail and wholesale jurisdictions based on reasonable and appropriate cost causation principles. For cost of service/ratemaking purposes, North Carolina retail ratepayers shall be held harmless from any cost assignment or allocation of costs resulting from agreements between DEC and the Catawba Joint Owners, ~~between PEG and the North Carolina Eastern Municipal Power Agency as joint owner~~, and between either DEC or PEGDEC and any of their wholesale customers.

(c) ~~(b)~~—To the extent commitments to DEC's or PEGDEC's wholesale customers relating to the ~~Merger~~2012 merger of Duke Energy and Progress Energy are made by or imposed upon DEC or PEGDEC, the effects of which (i) decrease the bulk power revenues that are assigned or allocated to DEC's or PEGDEC's North Carolina retail operations or credited to DEC's or PEGDEC's jurisdictional fuel expenses, (ii) increase DEC's or PEGDEC's North Carolina retail cost of service, or (iii) increase DEC's or PEGDEC's North Carolina retail fuel costs under reasonable cost assignment and allocation practices approved or allowed by the Commission, those effects shall not be recognized for North Carolina retail cost of service or ratemaking purposes.

(d) ~~(c)~~—To the extent that commitments are made by or imposed upon DEC, PEGDEP, Duke Energy Corporation, another Affiliate, or a Nonpublic Utility Operation relating to the Merger, either through an offer, a settlement, or as a result of a regulatory order, the effects of which serve to increase the North Carolina retail cost of service or North Carolina retail fuel costs under reasonable cost allocation practices, the effects of these commitments shall not be recognized for North Carolina retail ratemaking purposes.

5.17 Joint Owner-Specific Issues. Assignment or allocation of costs to the North Carolina retail jurisdiction shall not be adversely affected by the manner and amount of recovery of electric system costs from (a) the Catawba Joint Owners as a result of agreements between DEC and the Catawba Joint Owners ~~or (b) the North Carolina Eastern Municipal Power Agency as a result of agreements between it and PEG~~. This Regulatory Condition does not apply to Piedmont.

5.18 Inclusion of Cost Savings in Future Rate Proceedings. ~~Neither~~None of DEC, PEGDEP, Piedmont, Duke Energy Corporation, any other Affiliate, nor a Nonpublic Utility Operation shall assert that any interested party is prohibited from seeking the inclusion in future rate proceedings of cost savings that may be realized as a result of any business combination transaction impacting DEC, DEP, and PEGPiedmont.

5.19 Reporting of Costs to Achieve. The North Carolina portion of costs to achieve any business combination transaction savings shall be reflected in DEC's ~~and PEG or DEP's~~ North Carolina ES-1 report as recorded on its books and records under generally accepted accounting principles. DEC and PEGDEP shall include as a footnote in the ES-1 reports the merger related costs to achieve that were expensed during the relevant period. This Regulatory Condition does not apply to Piedmont.

5.20 Accounting for Costs to Achieve Related to Historical Events Involving PEGDEP. All costs of PEGCarolina Power and Light Company's merger with North Carolina Natural Gas Company, the Formation of Progress Energy, and Progress Energy's merger with Florida Progress Corporation shall be excluded from PEGDEP's utility accounts, and all direct or indirect corporate cost increases, if any, attributable to those three events shall be excluded from utility costs for all purposes that affect PEGDEP's regulated retail rates and charges. For purposes of this condition, the term "corporate cost increases" is defined as costs in excess of the level PEGDEP would have (a) incurred using prudent business judgment, or (b) had allocated to it, had these transactions not occurred. "Corporate cost increases" shall also include any payments made under change-of-control agreements, salary continuation agreements, and/or other severance- or personnel-type arrangements that are reasonably attributable to these transactions. This Regulatory Condition does not apply to Piedmont.

5.21 Liabilities of Cinergy Corp. and Florida Progress Corporation.

- (a) This Regulatory Condition does not apply to Piedmont.
- (b) (a)—DEC's and PEGDEP's Retail Native Load Customers shall be held harmless from all liabilities of Cinergy Corp. and its subsidiaries, including those incurred prior to and after Duke Energy's acquisition of Cinergy Corp. in 2006. These liabilities include, but are not limited to, those associated with the following: (i) manufactured gas plant sites, (ii) asbestos claims, (iii) environmental compliance, (iv) pensions and other employee benefits, (v) decommissioning costs; and (vi) taxes.
- (c) (b)—DEC's and PEGDEP's Retail Native Load Customers shall be held harmless from all liabilities of Florida Progress Corporation and its subsidiaries, including those incurred prior to and after Progress Energy's acquisition of Florida Progress Corporation in 2000. These liabilities include, but are not limited to, those associated with the following: (i) any outages at and repairs of Crystal River 3, (ii) manufactured gas plant sites, (iii) asbestos claims, (iv) environmental compliance, (v) pensions and other employee benefits, (vi) decommissioning costs, and (vii) taxes.
- (ed) DEC's Retail Native Load Customers shall be held harmless from all current and prospective liabilities of PEGDEP, and PEGDEP's Retail Native Load Customers shall be held harmless from all current and prospective liabilities of DEC.

5.22 Hold Harmless Commitment. DEC, PEGDEP, Piedmont, Duke Energy, the other Affiliates, and all of the Nonpublic Utility Operations shall take all such actions as may be reasonably necessary and appropriate to hold North Carolina retail ratepayers harmless from the effects of the Merger, including rate increases or foregone opportunities for rate decreases, and other effects otherwise adversely impacting ~~North Carolina retail customers~~their Customers.

5.23 Cost of Service Manuals. Within six months after the closing date of the Merger, DEC and PEGDEP shall each file with the Commission revisions to its electric cost of service manual to reflect any changes to the cost of service determination process made necessary by the Merger, any subsequent alterations in the organizational structure of DEC, PEGDEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations, or other circumstances that necessitate such changes. These filings shall be made in Docket Nos. E-7, Sub 986A1100, and E-2, Sub 998A1095, respectively. This Regulatory Condition does not apply to Piedmont.

**SECTION VI
CODE OF CONDUCT**

These Regulatory Conditions include a Code of Conduct in Appendix A____. The Code of Conduct governs the relationships, activities and transactions between and among the public utility operations of DEC, ~~PEC~~DEP, Piedmont, Duke Energy, the Affiliates of DEC and PEC, and the Nonpublic Utility Operations of DEC, DEP and ~~PEC~~. Piedmont.

6.1 Obligation to Comply with Code of Conduct. DEC, ~~PEC~~DEP, Piedmont, Duke Energy, the other Affiliates, and the Nonpublic Utility Operations shall be bound by the terms of the Code of Conduct set forth in Appendix A____ and as it may subsequently be amended.

SECTION VII FINANCINGS

The following Regulatory Conditions are intended to ensure (a) that DEC's, DEP's, and PEGPiedmont's capital structures and cost of capital are not adversely affected through their affiliation with Duke Energy, each other, and other Affiliates and (b) that ~~both~~ DEC, DEP, and PEGPiedmont have sufficient access to equity and debt capital at a reasonable cost to adequately fund and maintain their current and future capital needs and otherwise meet their service obligations to their Customers.

These conditions do not supersede any orders or directives of the Commission regarding specific securities issuances by DEC, PEGDEP, Piedmont, or Duke Energy. The approval of the Merger by the Commission does not restrict the Commission's right to review, and by order to adjust, DEC's, DEP's, or PEGPiedmont's cost of capital for ratemaking purposes for the effect(s) of the securities-related transactions associated with the Merger.

7.1 Accounting for Equity Investment in Holding Company Subsidiaries. Duke Energy shall maintain its books and records so that any net equity investment in Cinergy Corp. and Progress Energy, their subsidiaries, or their successors, by Duke Energy or any Affiliates can be identified and made available on an ongoing basis. This information shall be provided to the Public Staff upon its request.

7.2 Accounting for capital structure components and cost rates. Duke Energy, DEC, DEP, and PEGPiedmont shall keep their respective accounting books and records in a manner that will allow all capital structure components and cost rates of the cost of capital to be identified easily and clearly for each entity on a separate basis. This information shall be provided to the Public Staff upon its request.

7.3 Accounting for Equity Investment in DEC, DEP, and PEGPiedmont. DEC, DEP, and PEGPiedmont shall keep their respective accounting books and records so that the amount of Duke Energy's equity investment in DEC, DEP, and PEGPiedmont can be identified and made available upon request on an ongoing basis. This information shall be provided to the Public Staff upon request.

7.4 Reporting of Capital Contributions. As part of their Commission ES-1 and GS-1 Reports, DEC, DEP, and PEGPiedmont shall include a schedule of any capital contribution(s) received from Duke Energy in the applicable calendar quarter.

7.5 Identification of Long-term Debt Issued by DEC, DEP, or PEGPiedmont. DEC, DEP, and PEGPiedmont shall each identify as clearly as possible long-term debt (of more than one year's duration) that they issue in connection with their regulated utility operations and capital requirements or to replace existing debt.

7.6 Procedures Regarding Proposed Financings.

- (a) For all types of financings for which DEC, DEP, or PECPiedmont (or their subsidiaries) are the issuers of the respective securities, DEC, DEP, or PECPiedmont (or their subsidiaries) shall request approval from the Commission to the extent required by G.S. 62-160 through G.S. ~~62-169~~62-169 and Commission Rule R1-16. Generally, the format of these filings should be consistent with past practices. A "shelf registration" approach (similar to Docket No. E-7, Sub 727) may be requested.
- (b) For all types of financings by Duke Energy, other than short-term debt as described in G.S. 62-167, the following shall apply:
- (i) On or before January 15 of each year, Duke Energy shall file with the Commission and serve on the Public Staff an advance confidential plan of all securities issuances that it anticipates to occur during that calendar year. The annual confidential plan shall include a description of all financings that Duke Energy reasonably believes may occur during the applicable calendar year. A description for each financing shall include the best estimates of the following: type of security; estimate of cost rate (e.g., interest rate for debt); amount of proceeds; brief description of the purpose/reason for issue; and amount of proceeds, if any, that may flow to DEC, DEP, or PECPiedmont.
 - (ii) If at any time material changes to the financing plans included in the filed plan appear likely, Duke Energy shall file a revised 30-day advance confidential plan that specifically addresses such changes with the Commission and serve such notice on the Public Staff.
 - (iii) At the time of the confidential plan filings identified above, Duke Energy shall also file a non-confidential notice that states that a confidential plan has been filed in compliance with this Regulatory Condition 7.6(b).
 - (iv) Duke Energy may proceed with equity issuances upon the filing of the confidential plan. However, actual debt issuances shall not occur until 30 days after the advance confidential plan or revised plans are filed. In the event it is not feasible for Duke Energy to file a revised advance confidential plan for a material change 30 days in advance, such plan shall be filed by a date that allows adequate time for review or a debt issuance shall be delayed to allow such review. Prior to the Commission's action on the confidential plan for the year in which the plan is filed, Duke Energy may issue securities authorized under the previous year's plan to the extent such securities were not issued during the previous year.

- (v) Within 15 days after the filing of an advance confidential plan or revised plan, the Public Staff shall file a confidential report with the Commission with respect to whether any debt issuances require approval pursuant to G.S. 62-160 through G.S. 62-169 and Commission Rule R1-16 and shall recommend that the Commission issue an order deciding how to proceed. Duke Energy shall have seven days in which to respond to the report. If the Commission determines that any debt issuance requires approval, the Commission shall issue an order requiring the filing of an application and no such issuance shall occur until the Commission approves the application. If the Commission determines that no debt issuance requires approval, the Commission shall issue an order so ruling. At the end of the notice period, Duke Energy may proceed with the debt issuance, but shall be subject to any fully adjudicated Commission order on the matter; provided, however, that nothing herein shall affect the applicability of G.S. 62-170 or other similar provision to such securities or obligations.
- (vi) On or before April 15 of each year, Duke Energy shall file with the Commission a report on all financings that were executed for the previous calendar year. The actual reports should include the same information as required above for the advance plans plus the actual issuance costs.
- (c) If a filing with the Securities and Exchange Commission or other federal agency will be made in connection with a securities issuance, the notice shall describe such filing(s) and indicate the approximate date on which it would occur.
- (d) Securities issuances or financings that are associated with a merger, acquisition, or other business combination shall be filed in conjunction with the information requirements and deadlines stated in Regulatory Conditions 9.1 and 9.2, and this Condition 7.6 shall not apply to such securities issuances or financings.

7.7 Money Pool Agreement. Subject to the limitations imposed in Regulatory Condition 8.4, DEC, DEP, and PEC Piedmont may borrow through Duke Energy's "Utility Money Pool Agreement" (Utility MPA), provided as follows: (a) participation in the Utility MPA is limited to the parties to the Utility MPA ~~dated November 1, 2008, as filed with the Commission on November 17, 2008, December 1, 2011, in Docket No. E-7, Subs 795 Sub 986A, and 840, plus PEC, PEF, E-2, Sub 998A, plus Piedmont and with the exception of the Progress Energy, and PESC Service Company;~~ and (b) the Utility MPA continues to provide that no loans through the Utility MPA will be made to, and no borrowings through the Utility MPA will be made by, Duke Energy, Progress Energy, and Cinergy Corp. ~~If after December 31, 2011, Duke Ohio's generation~~

~~assets are no longer dedicated to serving retail load in its service territory and subject to the Electric Security Plan (as approved in Case No. 08-920-EL-SSO, *et al.*), and Duke Ohio continues to be a participant in the Utility MPA, then DEC and PEC shall seek Commission approval within six months of such occurrence, in order to continue participating in the Utility MPA. DEC and PEC shall discontinue such participation within six months after the issuance of a Commission order denying such approval.~~

7.8 Borrowing Arrangements. Subject to the limitations imposed in Regulatory Condition 8.4, DEC, DEP, and PEGPiedmont may borrow short-term funds through one or more joint external debt or credit arrangements (a Credit Facility), provided that the following conditions are met:

- (a) No borrowing by DEC, DEP, or PEGPiedmont under a Credit Facility shall exceed one year in duration, absent Commission approval;
- (b) No Credit Facility shall include, as a borrower, any party other than Duke Energy, DEC, PECDEP, Duke Indiana, Duke Kentucky, PEF, and, ~~subject to the limitations described in this section~~ DEF, Duke Ohio; and Piedmont;
- (c) DEC's, DEP's and PEGPiedmont's participation in any Credit Facility shall in no way cause either of them to guarantee, assume liability for, or provide collateral for any debt or credit other than its own; and _____;
- ~~(d) Duke Ohio may participate in a Credit Facility to the extent the above conditions are met and its generation assets remain dedicated to serving retail load in its service territory and subject to the Electric Security Plan (as approved in Case No. 08-920-EL-SSO, *et al.*), or subject to traditional utility regulation.~~

~~If after December 31, 2011, Duke Ohio's generation assets are no longer dedicated to serving retail load in its service territory and subject to the Electric Security Plan (as approved in Case No. 08-920-EL-SSO, *et al.*), then DEC and PEC shall be required to seek Commission approval within six months of such occurrence, in order to continue to participate in a Credit Facility in which Duke Ohio is or will be a participant. DEC and PEC shall discontinue such participation within six months after the issuance of an order by the Commission denying such approval.~~

7.9 Long-Term Debt Fund Restrictions. DEC, DEP, and PEGPiedmont shall acquire their respective long-term debt funds through the financial markets, and shall neither borrow from, nor lend to, on a long-term basis, Duke Energy or any of the other Affiliates. To the extent that either DEC, DEP, or PEGPiedmont borrows on short-term or long-term bases in the financial markets and is able to obtain a debt rating, its debt shall be rated under its own name.

SECTION VIII CORPORATE GOVERNANCE/RING FENCING

The following Regulatory Conditions are intended to ensure the continued viability of DEC, DEP, and PEGPiedmont and to insulate and protect DEC, PEGDEP, and their Retail Native Load Customers and Piedmont and its Customers from the business and financial risks of Duke Energy and the Affiliates within the Duke Energy holding company system, including the protection of utility assets from liabilities of Affiliates.

8.1 Investment Grade Debt Rating. DEC, DEP, and PEGPiedmont shall manage their respective businesses so as to maintain an investment grade debt rating on all of their rated debt issuances with all of the debt rating agencies on all of their rated debt issuances. If DEC's, DEP's, or PEGPiedmont's debt rating falls to the lowest level still considered investment grade at the time, DEC, DEP, or PEGPiedmont shall file written notice to the Commission and the Public Staff within five (5) days of such change and an explanation as to why the downgrade occurred. Within 45 days of such notice, DEC, DEP, or PEGPiedmont shall provide the Commission and the Public Staff with a specific plan for maintaining and improving its debt rating. The Commission, after notice and hearing, may then take whatever action it deems necessary consistent with North Carolina law to protect the interests of DEC's or PEGDEP's Retail Native Load Customers and Piedmont's Customers in the continuation of adequate and reliable service at just and reasonable rates.

8.2 Distributions from DEC, DEP, and PEGPiedmont to Holding Company. DEC, DEP, and PEGPiedmont shall limit cumulative distributions paid to Duke Energy subsequent to the Merger to (a) the amount of Retained Earnings on the day prior to the closure of the Merger, plus (b) any future earnings recorded by DEC and PEGDEP, and Piedmont subsequent to the Merger.

8.3 Debt Ratio Restrictions. To the extent any of Duke Energy's external debt or credit arrangements contain covenants restricting the ratio of debt to total capitalization on a consolidated basis to a maximum percentage of debt, Duke Energy shall ensure that the capital structures of both DEC, DEP, and PEGPiedmont individually meet those restrictions.

8.4 Limitation on Continued Participation in Utility Money Pool Agreement and other Joint Debt and Credit Arrangements with Affiliates. DEC, DEP, and PEGPiedmont may ~~continue to~~ participate in the Utility MPA and any other authorized joint debt or credit arrangement as provided in Regulatory Conditions 7.7 and 7.8 only to the extent such participation is beneficial to ~~their~~ DEC's and DEP's respective Retail Native Load Customers and Piedmont's Customers and does not negatively affect DEC's, DEP's, or PEGPiedmont's ability to continue to provide adequate and reliable service at just and reasonable rates.

8.5 Notice of Level of Non-Utility Investment by Holding Company System. In order to enable the Commission to determine whether the cumulative investment by Duke Energy in assets, ventures, or entities other than regulated utilities is reasonably likely to have an Effect on DEC's, DEP's, or PEGPiedmont's Rates or Service so as to warrant Commission action (pursuant to Regulatory Condition 8.7 or other applicable authority) to protect DEP's or DEC's Retail Native Load Customers or Piedmont's Customers, Duke Energy shall notify the Commission within 90 days following the end of any fiscal year for which Duke Energy reports to the Securities and Exchange Commission assets in its operations other than regulated utilities that are in excess of 22% of its consolidated total assets. The following procedures shall apply to such a notice:

- (a) Any interested party may file comments within 45 days of the filing of Duke Energy's notice.
- (b) If timely comments are filed, the Public Staff shall place the matter on a Commission Staff Conference agenda as soon as possible, but in no event later than 15 days after the comments are filed, and shall make a recommendation as to how the Commission should proceed. If the Commission determines that the percentage of total assets invested in Duke Energy's its operations other than regulated utilities is reasonably likely to have an Effect on DEC's, DEP's, or PEGPiedmont's Rates or Service so as to warrant action by the Commission to protect DEC's and PEGDEP's Retail Native Load Customers and Piedmont's Customers, the Commission shall issue an order setting the matter for further consideration. If the Commission determines that the percentage threshold being exceeded does not warrant action by the Commission, the Commission shall issue an order so ruling.

8.6 Notice by Holding Company of Certain Investments. Duke Energy shall file a notice with the Commission subsequent to Board approval and as soon as practicable following any public announcement of any investment in a regulated utility or a non-regulated business that represents five (5) percent or more of Duke Energy's book capitalization.

8.7 Ongoing Review of Effect of Holding Company Structure. The operation of DEC, DEP, and PEGPiedmont under a holding company structure shall continue to be subject to Commission review. To the extent the Commission has authority under North Carolina law, it may order modifications to the structure or operations of Duke Energy, DEBS, ~~PESC~~, another Affiliate, or a Nonpublic Utility Operation, and may take whatever action it deems necessary in the interest of Retail Native Load Customers and Piedmont's Customers to protect the economic viability of DEC, DEP, and PEGPiedmont including the protection of DEC's, DEP's, and PEGPiedmont's public utility assets from liabilities of Affiliates.

8.8 Investment by DEC, DEP, or PEGPiedmont in Non-regulated Utility Assets and Non-utility Business Ventures. ~~Neither DEC nor PEGDEC, DEP, and Piedmont shall not~~ invest in a non-regulated utility asset or any non-utility business venture exceeding \$50 million in purchase price or gross book value to DEC, DEP, or PEGPiedmont unless it provides 30 days' advance notice. Regulatory Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition. Purchases of assets, including land, that will be held with a definite plan for future use in providing Electric Services in DEC's ~~or PEG~~, DEP's franchise area or Natural Gas Services in Piedmont's franchise area shall be excluded from this advance notice requirement.

8.9 Investment by Holding Company in Exempt Wholesale Generators. By April 15 of each year, Duke Energy shall provide to the Commission and the Public Staff a report summarizing Duke Energy's investment in exempt wholesale generators (EWGs) and foreign utility companies (FUCOs) in relation to its level of consolidated retained earnings and consolidated total capitalization at the end of the preceding year. Exempt wholesale generator and foreign utility company are defined in Section 1262(6) of Subtitle F in Title XII of PUHCA 2005 and have the same meanings for purposes of this condition.

8.10 Notice by DEC, DEP, or PEGPiedmont of Default or Bankruptcy of Affiliate. If an Affiliate of DEC, DEP, or PEGPiedmont experiences a default on an obligation that is material to Duke Energy or files for bankruptcy, and such bankruptcy is material to Duke Energy, DEC, DEP, or PEGPiedmont shall notify the Commission in advance, if possible, or as soon as possible, but not later than ten days from such event.

8.11 Annual Report on Corporate Governance. No later than March 31 of each year, DEC, DEP, and PEGPiedmont shall file a report including the following:

- (a) A complete, detailed organizational chart (i) identifying DEC, PEGDEP, Piedmont and each Duke Energy financial reporting segment, and (ii) stating the business purpose of each Duke Energy financial reporting segment. Changes from the report for the immediately preceding year shall be summarized at the beginning of the report.
- (b) A list of all Duke Energy financial reporting segment that are considered to constitute non-regulated investments and a statement of each segment's total capitalization and the percentage it represents of Duke Energy's non-regulated investments and total investments. Changes from the report for the immediately preceding year shall be summarized at the beginning of the report.
- (c) An assessment of the risks that each unregulated Duke Energy financial reporting segment could pose to DEC, DEP, or PEGPiedmont based upon current business activities of those affiliates and any contemplated significant changes to those activities.

- (d) A description of DEC's, PEGDEP's, and Piedmont's and each Significant AffiliatesAffiliate's actual capital structure. In addition, describe Duke Energy's, ~~DEC's~~ and ~~PEG's~~ ~~goals for DEC's and PEG's~~, DEP's, and Piedmont's ~~respective~~ capital structurestructures and plans for achieving such goals.
- (e) A list of all protective measures (other than those provided for by the Regulatory Conditions adopted in Docket Nos. E-7, Sub ~~986~~,1100, and E-2, Sub ~~998~~,1095, and G-9, Sub 682 in effect between DEC, PEG,DEP, Piedmont and any of their Affiliates, and a description of the goal of each measure and how it achieves that goal, such as mitigation of DEC's, DEP's, and PEGPiedmont's exposure in the event of a bankruptcy proceeding involving any Affiliate(s).
- (f) A list of corporate executive officers and other key personnel that are shared between DEC, PEGDEP, Piedmont and any Affiliate, along with a description of each person's position(s) with, and duties and responsibilities to each entity.
- (g) A calculation of Duke Energy's total book and market capitalization as of December 31 of the preceding year for common equity, preferred stock, and debt.

SECTION IX FUTURE MERGERS AND ACQUISITIONS

The following Regulatory Conditions are intended to ensure that the Commission receives sufficient notice to exercise its lawful authority over proposed mergers, acquisitions, and other business combinations involving Duke Energy, DEC, PEGDEP, Piedmont, other Affiliates, or the Nonpublic Utility Operations. The advance notice provisions set forth in Regulatory Condition 13.2 do not apply to these conditions.

9.1 Mergers and Acquisitions by or Affecting DEC, DEP, or PEGPiedmont. For any proposed merger, acquisition, or other business combination by DEC, DEP or PEGPiedmont or that would have an Effect on DEC's, DEP's, or PEGPiedmont's Rates or Service, DEC, DEP, or PEGPiedmont shall file in a new Sub docket an application for approval pursuant to G S. 62-111(a) at least 180 days before the proposed closing date for such merger, acquisition, or other business combination.

9.2 Mergers and Acquisitions Believed Not to Have an Effect on DEC's, DEP's or PEGPiedmont's Rates or Service. For any proposed merger, acquisition, or other business combination that is believed not to have an Effect on DEC's, DEP's or PEGPiedmont's Rates or Service, but which involves Duke Energy, other Affiliates, or

the Nonpublic Utility Operations and which has a transaction value exceeding \$1.5 billion, the following shall apply:

- (a) Advance notification shall be filed with the Commission in a new Sub docket by the merging entities at least 90 days prior to the proposed closing date for such proposed merger, acquisition or other business combination. The advance notification is intended to provide the Commission an opportunity to determine whether the proposed merger, acquisition, or other business combination is reasonably likely to affect DEC, DEP, or PECPiedmont so as to require approval pursuant to G.S. 62-111(a). The notification shall contain sufficient information to enable the Commission to make such a determination. If the Commission determines that such approval is required, the 180-day advance filing requirement in ~~subsection (a)~~, Regulatory Condition 9.1 above, shall not apply.
- (b) Any interested party may file comments within 45 days of the filing of the advance notification.
- (c) If timely comments are filed, the Public Staff shall place the matter on a Commission Staff Conference agenda as soon as possible, but in no event later than 15 days after the comments are filed, and shall recommend that the Commission issue an order deciding how to proceed. If the Commission determines that the merger, acquisition, or other business combination requires approval pursuant to G.S. 62-111(a), the Commission shall issue an order requiring the filing of an application, and no closing can occur until and unless the Commission approves the proposed merger, acquisition, or business combination. If the Commission determines that the merger, acquisition, or other business combination does not require approval pursuant to G.S. 62-111(a), the Commission shall issue an order so ruling. At the end of the notice period, if no order has been issued, Duke Energy, any other Affiliate, or the Nonpublic Utility Operation may proceed with the merger, acquisition, or other business combination but shall be subject to any fully-adjudicated Commission order on the matter.

SECTION X STRUCTURE/ORGANIZATION

The following Regulatory Conditions are intended to ensure that the Commission receives adequate notice of, and opportunity to review and take such lawful action as is necessary and appropriate with respect to, changes to the structure and organization of Duke Energy, DEC, PECDEP, Piedmont, and other Affiliates, and Nonpublic Utility operations as they may affect ~~North Carolina retail ratepayers~~Customers.

10.1 Transfer of Services, Functions, Departments, Employees, Rights, Assets, or Liabilities. DEC, DEP, and PECPiedmont shall file notice with the Commission 30 days prior to the initial transfer or any subsequent transfer of any services, functions, departments, ~~employees~~, rights, obligations, assets, or liabilities from DEC, DEP, or PEG to DEBS, PESC, Duke Energy, another Affiliate, or a Nonpublic Utility Operation Piedmont to DEBS that (a) involves services, functions, departments, ~~employees~~, rights, obligations, assets, or liabilities other than those of a governance or corporate type nature that traditionally have been provided by a service company or (b) potentially would have a significant effect on DEC's, DEP's or PECPiedmont's public utility operations. The provisions of Regulatory Condition 13.2 apply to an advance notice filed pursuant to this Regulatory Condition.

10.2 Notice and Consultation with Public Staff Regarding Proposed Structural and Organizational Changes. Upon request, DEC, DEP, and PECPiedmont shall meet and consult with, and provide requested relevant data to, the Public Staff, regarding plans for significant changes in DEC's, PECDEP's, Piedmont's or Duke Energy's organization, structure (including RTO developments), and activities; the expected or potential impact of such changes on DEC's, DEP's or PECPiedmont's retail rates, operations and service; and proposals for assuring that such plans do not adversely affect DEC's or PECDEP's Retail Native Load Customers or Piedmont's Customers. To the extent that proposed significant changes are planned for the organization, structure, or activities of an Affiliate or Nonpublic Utility Operation and such proposed changes are likely to have an adverse impact on DEC's, DEP's, or PECPiedmont's Customers, then DEC's, DEP's and PECPiedmont's plans and proposals for assuring that those plans do not adversely affect their Customers must be included in these meetings. DEC, DEP, and PECPiedmont shall inform the Public Staff promptly of any such events and changes.

SECTION XI SERVICE QUALITY

The following Regulatory Conditions are intended to ensure that DEC, DEP, and PECPiedmont continue to implement and further their commitment to providing superior public utility service by meeting recognized service quality indices and implementing the best practices of each other and their Utility Affiliates, to the extent reasonably practicable.

11.1 Overall Service Quality. Upon consummation of the Merger, DEC, DEP, and PECPiedmont each shall continue their commitment to providing superior public utility service and shall maintain the overall reliability of ~~electric service~~ Electric services and Natural Gas Services at levels no less than the overall levels it has achieved in the past decade.

11.2 Best Practices. DEC, DEP, and PECPiedmont shall make every reasonable effort to incorporate each other's best practices into its own practices to the extent practicable.

~~11.3 Quarterly Reliability Reports.~~ DEC and PEC shall each provide quarterly service reliability reports to the Public Staff on the following measures: System Average Interruption Duration Index (SAIDI) and System Average Interruption Frequency Index (SAIFI). The Public Staff may make such quarterly service reliability reports available to the public upon request.~~11.4 Notice of NERC Audit.~~ This Regulatory Condition does not apply to Piedmont. At such time as either DEC or ~~PEC~~DEP receive notice that the North American Electric Reliability Corporation and/or the SERC Reliability Corporation will be conducting a non-routine compliance audit with respect to DEC or PEC's compliance with mandatory reliability standards, DEC or ~~PEC~~DEP shall notify the Public Staff.

~~11.5~~11.4 Right-of-Way Maintenance Expenditures. This Regulatory Condition does not apply to Piedmont. DEC and ~~PEC~~DEP shall budget and expend sufficient funds to trim and maintain their lower voltage line rights-of-way and their distribution rights-of-way in a manner consistent with their internal right-of-way clearance practices and Commission Rule R8-26. In addition, DEC and ~~PEC~~DEP shall track annually, on a major category basis, departmental or division budget requests, approved budgets and actual expenditures for right-of-way maintenance.

~~11.6~~11.5 Right-of-Way Clearance Practices. This Regulatory Condition does not apply to Piedmont. DEC and ~~PEC~~DEP shall each provide a copy of their internal right-of-way clearance practices to the Public Staff, and shall promptly notify the Public Staff of any significant changes or modifications to the practices or maintenance schedules.

~~11.7~~11.6 Meetings with Public Staff.

- (a) DEC, ~~DEP,~~ and ~~PEC~~Piedmont shall each meet annually with the Public Staff to discuss service quality initiatives and results, including (i) ways to monitor and improve service quality, (ii) right-of-way maintenance practices, budgets, and actual expenditures, and (iii) plans that could have an effect on customer service, such as changes to call center operations.
- (b) DEC, ~~DEP,~~ and ~~PEC~~Piedmont shall each meet with the Public Staff at least annually to discuss potential new tariffs, programs, and services that enable its customers to appropriately manage their energy bills based on the varied needs of their customers.

~~11.8~~11.7 Customer Access to Service Representatives and Other Services. DEC, ~~DEP,~~ and ~~PEC~~Piedmont shall continue to have knowledgeable and experienced customer service representatives available 24 hours a day to respond to ~~power~~service outage calls and during normal business hours to handle all types of customer inquiries. DEC, ~~DEP,~~ and ~~PEC~~Piedmont shall also maintain up-to-date and user-friendly online services and automated telephone service 24 hours a day to

perform routine customer interactions and to provide general billing and customer information.

~~11.9 Call Center Operations. DEC and PEC shall each provide quarterly reports to the Public Staff regarding measurements of call center performance, including answer times, and customer satisfaction with call center operations.~~

~~11.10~~11.8 Customer Surveys. DEC, DEP, and PECPiedmont shall continue to survey their customers regarding their satisfaction with public utility service and shall incorporate this information into their processes, programs, and services.

SECTION XII TAX MATTERS

The following Regulatory Conditions are intended to ensure that DEC's, DEP's and ~~PEC's North Carolina retail ratepayers~~Piedmont's Customers do not bear any additional tax costs as a result of the merger and receive an appropriate share of any tax benefits associated with the service company Affiliates.

12.1 Costs under Tax Sharing Agreements. Under any tax sharing agreement, ~~neither DEC nor PEC~~DEC, DEP, and Piedmont shall not seek to recover from its North Carolina retail ratepayers any tax costs that exceed DEC's, DEP's, or ~~PEC~~Piedmont's tax liability calculated as if it were a stand-alone, taxable entity for tax purposes.

12.2 Tax Benefits Associated with Service Companies. The appropriate portion of any income tax benefits associated with DEBS ~~and PESC~~ shall accrue to the North Carolina retail operations of DEC, DEP, and ~~PEC~~Piedmont respectively, for regulatory accounting, reporting, and ratemaking purposes.

SECTION XIII PROCEDURES

The following Regulatory Conditions are intended to apply to all filings made pursuant to these Regulatory Conditions unless otherwise expressly provided by, Commission order, rule, or statute.

13.1 Filings that Do Not Involve Advance Notice. Regulatory Condition filings that are not subject to Condition 13.2 shall be made in sub dockets of Docket Nos. E-7, Sub ~~986,~~ 1100, E-2, Sub ~~998,~~ 1095, and G-9, Sub ~~682~~, as follows:

- (a) Filings related to affiliate matters required by Regulatory Conditions 5.4, 5.5, 5.6, 5.7, and 5.23 and the filing permitted by Regulatory Condition 5.3 shall be made by DEC, DEP, and ~~PEC~~Piedmont in ~~Sub 986A~~Subs 1100, 1095 and ~~Sub 998A,~~682 respectively;

- (b) Filings related to financings required by Regulatory Condition 7.6, and the filings required by Regulatory Conditions 8.5, 8.6, 8.9, 8.10 and 8.11 shall be made by DEC, DEP, and PEC Piedmont in Sub 986B Subs 1100, 1095, and Sub 998B, 682 respectively;
- (c) ~~Files~~Filings related to compliance as required by Regulatory Conditions 3.1(d) and 14.4 and filings required by Sections III.A.2(l), III.A.3(e), (f), and (g), III.D.5, and III.D.8 of the Code of Conduct shall be made by DEC, DEP, and PEC Piedmont in Sub 986C and Sub 998C Subs 1100, 1095, and 682, respectively;
- (d) Filings related to the independent audits required by Regulatory Condition 5.8 shall be made in Sub 986D Subs 1100, 1095, and 682, respectively.
;
- (e) Filings related to orders and filings with the FERC, as required by Regulatory Condition 3.1(d), 3.11 and 5.13 shall be made by DEC and PEC in Sub 986E DEP, and Piedmont in Subs 1100, 1095 and Sub 998E, 682, respectively;

13.2 Advance Notice Filings. Advance notices filed pursuant to Regulatory Conditions 3.1(c), 3.3(b), ~~3.7(c), 3.10(c)~~, 4.2, 5.3, 8.8, and 10.1 shall be assigned a new, separate Sub docket. Such a filing shall state what condition and notice period are involved and whether other regulatory approvals are required and shall be in the format of a pleading, with a caption, a title, allegations of the activities to be undertaken, and a verification. Advance notices may be filed under seal if necessary. The following additional procedures apply:

- (a) Advance notices of activities to be undertaken shall not be filed until sufficient details have been decided upon to allow for meaningful discovery as to the proposed activities.
- (b) The Chief Clerk shall distribute a copy of advance notice filings to each Commissioner and to appropriate members of the Commission Staff and Public Staff.
- (c) DEC or PEC DEP and Piedmont shall serve such advance notices on each party to Docket Nos. E-7, Sub 986, 1100, and E-2, Sub 998, 1095 and Docket No. G-9, Sub 682, respectively, that has filed a request to receive them with the Commission within 30 days of the issuance of an order approving the Merger in this docket. These parties may participate in the advance notice proceedings without petitioning to intervene. Other interested persons shall be required to follow the Commission's usual intervention procedures.

- (d) To effectuate this Regulatory Condition, ~~DEC or PEG~~, DEC, DEP, and Piedmont shall serve pertinent information on all parties at the time it serves the advance notice. During the advance notice period, a free exchange of information is encouraged, and parties may request additional relevant information. If DEC, DEP, or PEGPiedmont objects to a discovery request, DEC, DEP or PEGPiedmont and the requesting party shall try to resolve the matter. If the parties are unable to resolve the matter, DEC, DEP, or PEGPiedmont may file a motion for a protective order with the Commission.
- (e) The Public Staff shall investigate and file a response with the Commission no later than 15 days before the notice period expires. Any other interested party may also file a response or objection within 15 days before the notice period expires. DEC, DEP or PEGPiedmont may file a reply to the response(s).
- (f) The basis for any objection to the activities to be undertaken shall be stated with specificity. The objection shall allege grounds for a hearing, if such is desired.
- (g) If neither the Public Staff nor any other party files an objection to the activities within 15 days before the notice period expires, no Commission order shall be issued, and the Sub docket in which the advance notice was filed may be closed.
- (h) If the Public Staff or any other party files a timely objection to the activities to be undertaken by DEC, DEP, or PEGPiedmont, the Public Staff shall place the matter on a Commission Staff Conference agenda as soon as possible, but in no event later than two weeks after the objection is filed, and shall recommend that the Commission issue an order deciding how to proceed as to the objection. The Commission reserves the right to extend an advance notice period by order should the Commission need additional time to deliberate or investigate any issue. At the end of the notice period, if no order, whether procedural or substantive, has been issued, DEC, PEGDEP, Piedmont, Duke Energy, any other Affiliate, or the Nonpublic Utility Operation may execute the proposed agreement, proceed with the activity to be undertaken, or both, but shall be subject to any fully-adjudicated Commission order on the matter.
- (i) If the Commission schedules a hearing on an objection, the party filing the objection shall bear the burden of proof at the hearing.
- (j) The precedential effect of advance notice proceedings, like most issues of res judicata, will be decided on a fact-specific basis.

- (k) If some other Commission filing or Commission approval is required by statute, notice pursuant to a Regulatory Condition alone does not satisfy the statutory requirement.
- (l) DEC, ~~PEG~~DEP, Piedmont or the Public Staff, or any party may move for a waiver ~~if exigent circumstances in a particular case justify such~~ for good cause shown.

SECTION XIV COMPLIANCE WITH CONDITIONS AND CODE OF CONDUCT

The following Regulatory Conditions are intended to ensure that Duke Energy, DEC, ~~PEG~~DEP, Piedmont and all other Affiliates establish and maintain the structures and processes necessary to fulfill the commitments expressed in all of the Regulatory Conditions and the Code of Conduct in a timely, consistent, and effective manner.

14.1 Ensuring Compliance with Regulatory Conditions and Code of Conduct. Duke Energy, DEC, ~~PEG~~DEP, Piedmont, and all other Affiliates shall devote sufficient resources into the creation, monitoring, and ongoing improvement of effective internal compliance programs to ensure compliance with all Regulatory Conditions and the DEC/~~PEG~~DEP/Piedmont Code of Conduct, and shall take a proactive approach toward correcting any violations and reporting them to the Commission. This effort shall include the implementation of systems and protocols for monitoring, identifying, and correcting possible violations, a management culture that encourages compliance among all personnel, and the tools and training sufficient to enable employees to comply with Commission requirements.

14.2 Designation of Chief Compliance Officer. DEC, DEP, and ~~PEG~~Piedmont shall designate a chief compliance officer who will be responsible for compliance with the Regulatory Conditions and Code of Conduct. This person's name and contact information must be posted on DEC's, DEP's, and ~~PEG~~Piedmont's Internet Website.

14.3 Annual Training. DEC, DEP, and ~~PEG~~Piedmont shall provide annual training on the requirements and standards contained within the Regulatory Conditions and Code of Conduct to all of their employees (including service company employees) whose duties in any way may be affected by such requirements and standards. New employees must receive such training within the first 60 days of their employment. Each employee who has taken the training must certify electronically or in writing that s/he has completed the training.

14.4 Report of Violations. If DEC ~~and PEG~~, DEP, or Piedmont discover that a violation of their requirements or standards contained within the Regulatory Conditions and Code of Conduct has occurred then DEC ~~and PEG~~, DEP or Piedmont shall file a statement with the Commission in Docket Nos. E-7, Sub ~~986G~~, and 1100, E-2, Sub ~~998G~~ 1095, or G-9, Sub 682, respectively, describing the circumstances leading to that violation of DEC's, DEP's or ~~PEG~~Piedmont's requirements or standards, as contained within the

Regulatory Conditions and Code of Conduct, and the mitigating and other steps taken to address the current or any future potential violation.

Document comparison by Workshare Compare on Friday, January 15, 2016
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Input:	
Document 1 ID	file:///U:\Holton\Clean_Duke-Progress Merger Compliance Regulatory Conditions Revised7_25 cleandocxTWKCF.docx
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Document 2 ID	file:///U:\Holton\Redlined_Duke-Progress Merger Compliance Regulatory Conditions_Working Draft.docx
Description	Redlined_Duke-Progress Merger Compliance Regulatory Conditions_Working Draft
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Deletions	590
Moved from	5
Moved to	5
Style change	0
Format changed	0
Total changes	1385

EXHIBIT D

CODE OF CONDUCT

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APPENDIX B

CODE OF CONDUCT GOVERNING THE RELATIONSHIPS, ACTIVITIES, AND TRANSACTIONS BETWEEN AND AMONG THE PUBLIC UTILITY OPERATIONS OF DEC, THE PUBLIC UTILITY OPERATIONS OF PEGDEP, THE PUBLIC UTILITY OPERATIONS OF PIEDMONT, DUKE ENERGY CORPORATION, OTHER AFFILIATES, AND THE NONPUBLIC UTILITY OPERATIONS OF DEC, DEP, AND PEGPIEDMONT

I. DEFINITIONS

For the purposes of this Code of Conduct, the terms listed below shall have the following definitions:

Affiliate: Duke Energy and any business entity of which ten percent (10%) or more is owned or controlled, directly or indirectly, by Duke Energy. For purposes of this Code of Conduct, Duke Energy and any business entity controlled by it are considered to be Affiliates of ~~each other and~~ DEC, DEP, and PEGPiedmont and DEC, DEP and Piedmont are considered to be Affiliates of each other.

Commission: The North Carolina Utilities Commission.

Confidential Systems Operation Information: Nonpublic information that pertains to Electric Services provided by DEC or PEGDEP, including but not limited to information concerning electric generation, transmission, distribution, or sales and nonpublic information that pertains to Commission-related Natural Gas Services provided by Piedmont, including but not limited to information concerning interstate pipeline transportation, storage, distribution, gas supply, or other similar information.

Customer: Any retail electric customer of DEC or PEGDEP in North Carolina and any Commission-regulated natural gas sales or natural gas transportation customer of Piedmont located in North Carolina.

Customer Information: Non-public information or data specific to a Customer or a group of Customers, including, but not limited to, electricity consumption, natural gas consumption, load profile, billing history, or credit history that is or has been obtained or compiled by DEC, DEP, or PEGPiedmont in connection with the supplying of Electric Services or Natural Gas Services to that Customer or group of Customers.

DEBS: Duke Energy Business Services, LLC, and its successors, which is a service company Affiliate that provides Shared Services to DEC, PEGDEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations of DEC, DEP, or PEGPiedmont, singly or in any combination.

DEC: Duke Energy Carolinas, LLC, the business entity, wholly owned by Duke Energy, that holds the franchise granted by the Commission to provide Electric Services within DEC's North Carolina service territory and that engages in public utility operations, as defined in G.S. 62-3(23), within the State of North Carolina.

DEP: Duke Energy Progress, LLC, the business entity, wholly owned by Duke Energy, that holds the franchise granted by the Commission to provide Electric Services within DEP's North Carolina service territory and that engages in public utility operations, as defined in G.S. 62-3(23), within the State of North Carolina.

Duke Energy: Duke Energy Corporation, which is the current holding company parent of DEC, DEP, and PEGPiedmont, and any successor company.

Electric Services: 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.

Fuel and Purchased Power Supply Services: All fuel for generating electric power and purchased power obtained by DEC or PEGDEP from sources other than DEC or PEGDEP for the purpose of providing Electric Services.

Fully Distributed Cost: All direct and indirect costs, including overheads and an appropriate cost of capital, incurred in providing goods or services to another business entity; provided, however, that (a) for each good and service supplied by DEC, DEP, or PEGPiedmont, the return on common equity utilized in determining the appropriate cost of capital shall equal the return on common equity authorized by the Commission in the supplying utility's most recent general rate case proceeding; (b) for each good and service supplied to DEC, DEP, or PEGPiedmont, the appropriate cost of capital shall not exceed the overall cost of capital authorized in the supplying utility's most recent general rate case proceeding; and (c) for each good and service supplied by DEC and PEG, DEP, or Piedmont to each other, the return on common equity utilized in determining the appropriate cost of capital shall not exceed the lower of the returns on common equity authorized by the Commission in DEC's and PEG, DEP's or Piedmont's most recent general rate case proceedings.

JDA: Joint Dispatch Agreement, which is the agreement as filed with the Commission in Docket Nos. E-7, Sub 986, and E-2, Sub 998. on June 22, 2011, and as amended and refiled on June 12, 2012, in Docket Nos. E-7, Sub 986, and E-2, Sub 998.

Market Value: The price at which property, goods, and services would change hands in an arm's length transaction between a buyer and a seller without any compulsion to engage in a transaction, and both having reasonable knowledge of the relevant facts.

Merger: All transactions contemplated by the Agreement and Plan of Merger between Duke Energy and Progress EnergyPiedmont.

Natural Gas Services: ~~Natural~~Commission-regulated natural gas sales and natural gas transportation, and other related services, including, but not limited to, administration of Customer accounts and rate schedules, ~~metering and billing and standby service.~~

Nonaffiliated Gas Marketer: An entity, not affiliated with DEC, DEP, or Piedmont, engaged in the unregulated sale, arrangement, brokering or management of gas supply, pipeline capacity, or gas storage.

Nonpublic Utility Operations: All business operations engaged in by DEC, DEP or PEGPiedmont involving activities (including the sales of goods or services) that are not regulated by the Commission, or otherwise subject to public utility regulation at the state or federal level.

Non-Utility Affiliate: Any Affiliate, including ~~DEBS and PESC~~, other than a Utility Affiliate, DEC, or PEG. ~~PEC: Progress Energy Carolinas, Inc., the business entity, wholly owned by Duke Energy, that holds the franchises granted by the Commission to provide Electric Services within the North Carolina service territory of PEG and that engages in public utility operations, as defined in G.S. 62-3(23), within the State of North Carolina~~DEP, or Piedmont.

Personnel: An employee or other representative of DEC, ~~PEG~~DEP, Piedmont, Duke Energy, another Affiliate, or a Nonpublic Utility Operation, who is involved in fulfilling the business purpose of that entity.

~~**PESC:** Progress Energy Services Company and its successors, which is a service company Affiliate that provides Shared Services to PEG, DEC, Duke Energy, other Affiliates, or the Nonpublic Utility Operations of DEC or PEG, individually or in combination.~~

Piedmont: Piedmont Natural Gas Company, Inc., the business entity, wholly owned by Duke Energy, that holds the franchise granted by the Commission to provide natural gas services within its North Carolina service territory and that engages in public utility operations, as defined in G.S. 62-3(23) within the State of North Carolina.

Progress Energy: Progress Energy, Inc., which is the former holding company parent of PEG,DEP and which ~~became~~is a subsidiary of Duke Energy ~~after the close of the Merger~~, and any successors.

Public Staff: The Public Staff of the North Carolina Utilities Commission.

Regulatory Conditions: The conditions imposed by the Commission in connection with or related to the Merger.

Shared Services: The services that meet the requirements of the Regulatory Conditions approved in Docket Nos. E-2, Sub 1095, E-7, Sub 986, 1100 and EG-2, 9,

Sub ~~998,682~~, or subsequent orders of the Commission and that the Commission has explicitly authorized ~~DEC or PEG, DEP and Piedmont~~ to take from ~~DEBS or PESC~~ pursuant to a service agreement (a) filed with the Commission pursuant to G.S. 62-153(b), thus requiring acceptance and authorization by the Commission, and (b) subject to all other applicable provisions of North Carolina law, the rules and orders of the Commission, and the Regulatory Conditions.

Shipper: A Nonaffiliated Gas Marketer, a municipal gas customer, or an end-user of gas.

Utility Affiliates: The regulated public utility operations of Duke Energy Indiana, Inc.~~LLC~~ (Duke Indiana), Duke Energy Kentucky, Inc. (Duke Kentucky), and Florida Power Corporation, d/b/a ~~Progress~~Duke Energy Florida, ~~LLC~~ (PEF); ~~and the regulated transmission and distribution operations of~~DEF; Duke Energy Ohio, Inc. (Duke Ohio).

II. **GENERAL**

This Code of Conduct establishes the minimum guidelines and rules that apply to the relationships, transactions, and activities involving the public utility operations of DEC, ~~PEG~~DEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations of DEC, ~~DEP, and PEG~~Piedmont, to the extent such relationships, activities, and transactions affect the operations or costs of utility service experienced by the public utility operations of DEC, ~~DEP, and PEG~~Piedmont in their respective service areas. DEC, ~~PEG~~DEP, and Piedmont, and the other Affiliates are bound by this Code of Conduct pursuant to Regulatory Condition 6.1 approved by the Commission in Docket Nos. E-2, Sub ~~998, and 1095~~, E-7, Sub ~~986, 1100 and G-9, Sub 682~~. This Code of Conduct is subject to modification by the Commission as the public interest may require, including, but not limited to, addressing changes in the organizational structure of DEC, ~~PEG~~DEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations; changes in the structure of the electric industry or natural gas industry; or other changes that warrant modification of this Code.

DEC, ~~DEP, or PEG~~Piedmont may seek a waiver of any aspect of this Code of Conduct by filing a request with the Commission showing that ~~exigent~~ circumstances in a particular case justify such a waiver.

III. **STANDARDS OF CONDUCT**

A. **Independence and Information Sharing**

1. Separation - DEC, ~~PEG~~DEP, Piedmont, Duke Energy, and the other Affiliates shall operate independently of each other and in physically separate locations to the maximum extent practicable. ~~DEC, PEG; however, to the extent that the Commission has approved or accepted a service company-to-utility or utility-to-utility service agreement or list, DEC, DEP, Piedmont, Duke Energy, and the other Affiliates may operate as described in the agreement or list on file at the~~

Commission, DEC, DEP, Piedmont, Duke Energy, and each of the other Affiliates shall maintain separate books and records. Each of DEC's, DEP's, and PEGPiedmont's Nonpublic Utility Operations shall maintain separate records from those of DEC's, DEP's, and PEGPiedmont's public utility operations to ensure appropriate cost allocations and any arm's-length-transaction requirements.

2. Disclosure of Customer Information:

- (a) Upon request, and subject to the restrictions and conditions contained herein, DEC, DEP, and PEGPiedmont may provide Customer Information to Duke Energy, another Affiliate, or a Nonpublic Utility Operation under the same terms and conditions that such information is provided to non-Affiliates.
- (b) Except as provided in Section III.A.2.2(f) below, Customer Information shall not be disclosed to any person or company, without the Customer's consent, and then only to the extent specified by the Customer. Consent to disclosure of Customer Information to Affiliates or Nonpublic Utility Operations may be obtained by means of written authorization, electronic authorization or recorded verbal authorization upon providing the Customer with the information set forth in Attachment A; provided, however, that DEC, DEP, and PEGPiedmont retain such authorization for verification purposes for as long as the authorization remains in effect.
- (c) If the Customer allows or directs DEC, DEP, or PEGPiedmont to provide Customer Information to Duke Energy, another Affiliate, or a Nonpublic Utility Operation, then DEC, DEP, or PEGPiedmont shall ask the Customer if ~~he, she,~~ it would like the Customer Information to be provided to one or more non-Affiliates. If the Customer directs DEC, DEP, or PEGPiedmont to provide Customer Information to one or more non-Affiliates, the Customer Information shall be disclosed to all entities designated by the Customer contemporaneously and in the same manner.
- (d) Sections III.A.2.(a), 2.(b), and 2.(c) herein shall be permanently posted on DEC's, DEP's, and PEGPiedmont's website.
- (e) No DEC, DEP, or PEGPiedmont employee who is transferred to Duke Energy or another Affiliate will be permitted to copy or otherwise compile any Customer Information for use by such entity except pursuant to written permission from the Customer, as reflected by a signed Data Disclosure Authorization. ~~Neither DEC nor PEGDEC, DEP, and Piedmont~~ shall not transfer any employee

to Duke Energy or another Affiliate for the purpose of disclosing or providing Customer Information to such entity.

- (f) Notwithstanding the prohibitions established by this Section III.A.2, ~~DEC and PEG~~, DEC, DEP, or Piedmont may disclose Customer Information to ~~DEBS, PESC~~, any other Affiliate, a Nonpublic Utility Operation or a non-affiliated third party without Customer consent, but only to the extent necessary for the Affiliate, Nonpublic Utility Operation or non-affiliated third party to provide goods or services to ~~DEC, DEP, or PEG~~Piedmont and upon their explicit agreement to protect the confidentiality of such Customer Information. To the extent the Commission approves a list of services to be provided and taken pursuant to one or more utility-to-utility service agreements, then Customer Information may be disclosed pursuant to the foregoing exception to the extent necessary for such services to be performed. DEC, DEP, and Piedmont may disclose Customer Information to a state or federal regulatory agency or court having jurisdiction over the disclosure of the Information to the extent the state or federal regulatory agency or court requires the disclosure and requests the disclosure in writing or by electronic means.
- (g) ~~DEC, DEP, and PEG~~Piedmont shall take appropriate steps to store Customer Information in such a manner as to limit access to only those persons permitted to receive it and shall require all persons with access to such information to protect its confidentiality.
- (h) ~~DEC, DEP, and PEG~~Piedmont, shall establish guidelines for its employees and representatives to follow with regard to complying with this Section III.A.2.
- (i) No ~~DEBS or PESC~~ employee may use Customer Information to market or sell any product or service to ~~DEC's, DEP's, or PEG~~Piedmont's Customers, except in support of a Commission-approved rate schedule or program or a marketing effort managed and supervised directly by ~~DEC, DEP, or PEG~~Piedmont.
- (j) ~~DEBS and PESC~~ employees with access to Customer Information must be prohibited from making any improper indirect use of the data, including directing or encouraging any actions based on the Customer Information by employees of ~~DEBS or PESC~~ that do not have access to such information, or by other employees of Duke Energy or other Affiliates or Nonpublic Utility Operations of the Utilities.
- (k) Should any inappropriate disclosure of ~~DEC, DEP, or PEG~~Piedmont

Customer Information occur at any time, DEC, DEP, or PECPiedmont is required to promptly file a statement with the Commission in this docket describing the circumstances of the disclosure, the Customer information disclosed, the results of the disclosure, and the mitigating and/or other steps taken to address the disclosure.

3. The disclosure of Confidential Systems Operation Information of DEC, DEP, and PECPiedmont (referred to hereinafter as "Information" or "CSOI") shall be governed as follows:

- (a) Such Information shall not be disclosed by DEC, DEP, or PECPiedmont to an Affiliate or a Nonpublic Utility Operation unless it is disclosed to all competing non-Affiliates contemporaneously and in the same manner. Disclosure to non-Affiliates is not required when disclosure to Affiliates or Nonpublic Utility Operations meets one of the following exceptions:
 - (i) The Information is provided to employees of DEC or PECD for the purpose of implementing, and operating pursuant to, the JDA in accordance with the Regulatory Conditions approved in Docket Nos. E-7, Sub 986, and E-2, Sub 998;
 - (ii) The Information is necessary for the performance of services approved to be performed pursuant to one or more Affiliate utility-to-utility service agreements;
 - (iii) A state or federal regulatory agency or court having jurisdiction over the disclosure of the Information requires the disclosure;
 - (iv) The Information is provided to employees of DEBS or PESG pursuant to a service agreement filed with the Commission pursuant to G.S. 62-153;
 - (v) The Information is provided to employees of DEC's, DEP's, or PECPiedmont's Utility Affiliates for the purpose of sharing best practices and otherwise improving the provision of regulated utility service;
 - (vi) The Information is provided to an Affiliate pursuant to an agreement filed with the Commission pursuant to G.S.

62-153, provided that the agreement specifically describes the types of Information to be disclosed;

- (vii) Disclosure is otherwise essential to enable DEC or ~~PEGDEP~~ to provide Electric Services to their Customers; or, or for Piedmont to provide Natural Gas Services to its Customers:
 - (viii) Disclosure of the Information is necessary for compliance with the Sarbanes-Oxley Act of 2002.
- (b) Any Information disclosed pursuant to the exceptions in Section III.A.3 (a), above, shall be disclosed only to employees that need the information for the purposes covered by those exceptions and in as limited a manner as possible. The employees receiving such Information must be prohibited from acting as conduits to pass the Information to any Affiliate(s) and must have explicitly agreed to protect the confidentiality of such Information.
- (c) For disclosures pursuant to exceptions (vii) and (viii) in Section III.A.3(a), above, DEC, ~~DEP,~~ and ~~PEG~~Piedmont shall include in their annual affiliated transaction reports the following information:
- (i) The types of Information disclosed and the name(s) of the Affiliate(s) to which it is being, or has been, disclosed;
 - (ii) The reasons for the disclosure; and
 - (iii) Whether the disclosure is intended to be a one-time occurrence or an ongoing process.

To the extent a disclosure subject to the reporting requirement is intended to be ongoing, only the initial disclosure and a description of any processes governing subsequent disclosures need to be reported.

- (d) DEC, ~~PEGDEP,~~ DEBS, and ~~PESC~~Piedmont employees with access to CSOI must be prohibited from making any improper indirect use of the data, including directing or encouraging any actions based on the CSOI by employees that do not have access to such information, or by other employees of Duke Energy or other Affiliates or Nonpublic Utility Operations of DEC ~~and PEG,~~ DEP, or Piedmont.
- (e) Should the handling or disclosure of Market Information, Transmission Information, or other CSOI by DEBS, ~~PESC,~~ or another Affiliate or Nonpublic Utility Operation, or their respective

employees, result in (i) a violation of DEC's or PEGDEP's FERC Statement of Policy and Code of Conduct (FERC Code), 18 CFR 358 - Standards of Conduct for Transmission Providers (Transmission Standards), or any other relevant FERC standards or codes of conduct, (ii) the posting of such data on an OASIS or other Internet website, or (iii) other public disclosure of the data, DEC or PEGDEP shall promptly file a statement with the Commission in Commission in Docket Nos. E-7, Sub 986G1100, and E-2, Sub 998G1095, respectively, describing the circumstances leading to such violation, posting, or other this docket describing the circumstances leading to such violation, posting, or other public disclosure, any data required to be posted or otherwise publicly disclosed, and the mitigating and/or other steps taken to address the current or any future potential violation, posting, or other public disclosure.

- (f) Should any inappropriate disclosure of CSOI occur at any time, DEC, DEP, or PEC Piedmont shall promptly file a statement with the Commission in Docket Nos. E-7, Sub 986G1100, or E-2, Sub 998G1095, or G-9, Sub 682, respectively, describing the circumstances of the disclosure, the CSOI disclosed, the results of the disclosure, and the mitigating and/or other steps taken to address the disclosure.
- (g) Unless publicly noticed and generally available, should the FERC Code, the Transmission Standards, or any other relevant FERC standards or codes of conduct be eliminated, amended, superseded, or otherwise replaced, DEC and PEGDEP shall file a letter in Docket Nos. E-7, Sub 986E1100, and E-2, Sub 998E1095, with the Commission describing such action within 60 days of the action, along with a copy of any amended or replacement document.

B. Nondiscrimination

1. DEC's, DEP's, and PEC Piedmont's employees and representatives shall not unduly discriminate against non-Affiliated entities.

2. In responding to requests for Electric Services, ~~neither DEC nor PEG Natural Gas Services, or both, DEC, DEP, and Piedmont~~ shall not provide any preference to Duke Energy, another Affiliate, or a Nonpublic Utility Operation, ~~nor~~ to any customers of such an entity, as compared to non-Affiliates or their customers. Moreover, ~~neither~~ DEC, PEGDEP, Piedmont, Duke Energy, nor any other Affiliates shall not represent to any person or entity that Duke Energy, another Affiliate, or a Nonpublic Utility Operation will receive any such preference.

3. DEC, DEP, and PEGPiedmont shall apply the provisions of their respective tariffs equally to Duke Energy, the other Affiliates, the Nonpublic Utility Operations, and non-Affiliates.

4. DEC, DEP, and PEGPiedmont shall process all similar requests for Electric Services, Natural Gas Services, or both in the same timely manner, whether requested on behalf of Duke Energy, another Affiliate, a Nonpublic Utility Operation, or a non-Affiliated entity.

5. ~~No personnel or~~ Personnel and representatives of DEC, PEGDEP, Piedmont Duke Energy, or ~~another Affiliate~~ other Affiliates shall indicate, represent, or otherwise give the appearance to another party that Duke Energy or another Affiliate speaks on behalf of DEC, DEP, or PEGPiedmont; provided however, that this prohibition shall not apply to employees of ~~DEBS or PESC~~ providing Shared Services or to employees of another Affiliate to the extent explicitly provided for in an affiliate agreement that has been accepted by the Commission. In addition, no personnel or representatives of a Nonpublic Utility Operation shall ~~indicate, represent, or otherwise~~ give the appearance to another party that they speak on behalf of DEC's, DEP's, or PEGPiedmont's regulated public utility operations.

6. No personnel or representatives of DEC, PEGDEP, Piedmont, Duke Energy, another Affiliate, or a Nonpublic Utility Operation shall indicate, represent, or otherwise give the appearance to another party that any advantage to that party with regard to Electric Services or Natural Gas Services exists as the result of that party dealing with Duke Energy, another Affiliate, or a Nonpublic Utility Operation, as compared with a non-Affiliate.

7. ~~Neither DEC nor PEGDEC, DEP, or Piedmont~~ shall not condition or otherwise tie the provision or terms of any Electric Services or Natural Gas Services to the purchasing of any goods or services from, or the engagement in business of any kind with, Duke Energy, another Affiliate, or a Nonpublic Utility Operation.

8. When any employee or representative of DEC, DEP, or PEGPiedmont receives a request for information from or provides information to a Customer about goods or services available from Duke Energy, another Affiliate, or a Nonpublic Utility Operation, the employee or representative shall advise the Customer that such goods or services may also be available from non-Affiliated suppliers.

9. Disclosure of Customer Information to Duke Energy, another Affiliate, a Nonpublic Utility Operation, or a non-Affiliated entity shall be governed by Section III.A.2 of this Code of Conduct.

C. Marketing

1. The public utility operations of DEC, DEP, and PEGPiedmont may engage in joint sales, joint sales calls, joint proposals, or joint advertising (a joint

marketing arrangement) with their ~~Utility~~ Affiliates and with their Nonpublic Utility Operations, subject to compliance with other provisions of this Code of Conduct and any conditions or restrictions that the Commission may hereafter establish. ~~Neither DEC nor PEGDEC, DEP, and Piedmont~~ shall not otherwise engage in such joint activities without making such opportunities available to comparable third parties.

2. Neither Duke Energy nor any of the other Affiliates shall use the names or logos of ~~DEC, DEP, or PEG~~Piedmont in any communications unless a disclaimer is included that states the following:

- (a) "[Duke Energy Corporation/Affiliate] is not the same company as [~~DEC/PEG~~DEP /Piedmont], and [Duke Energy Corporation/Affiliate] has separate management and separate employees";
- (b) "[Duke Energy Corporation/Affiliate] is not regulated by the North Carolina Utilities Commission or in any way sanctioned by the Commission";
- (c) "Purchasers of products or services from [Duke Energy Corporation/Affiliate] will receive no preference or special treatment from [~~DEC/PEG~~DEP/Piedmont]"; and
- (d) "A customer does not have to buy products or services from [Duke Energy Corporation/Affiliate] in order to continue to receive the same safe and reliable electric service from [~~DEC/PEG~~DEP] or natural gas service from Piedmont."

3. Nonpublic Utility Operations may not use the names or logos of ~~DEC, DEP, or PEG~~Piedmont in any communications unless a disclaimer is included that states the following:

- (a) "[Name of Service or Good being offered by Nonpublic Utility Operation] is not part of the regulated services offered by [~~DEC/PEG~~DEP /Piedmont] and is not in any way sanctioned by the North Carolina Utilities Commission";
- (b) "Purchasers of ~~products or services~~[name of Service or Good being offered by Nonpublic Utility Operation] from [Nonpublic Utility Operation] will receive no preference or special treatment from [~~DEC/PEG~~DEP /Piedmont]"; and
- (c) "A customer does not have to buy ~~products or services from [Nonpublic Utility Operation]~~ in order this product or service to continue to receive the same safe and reliable electric service or natural gas service from [~~DEC/PEG~~DEP /Piedmont]."

4. The required disclaimer must be sized and displayed in a way that is commensurate with the name and logo so that the disclaimer is at least the larger of one-half the size of the type that first displays the name and logo or the predominant type used in the communication.

D. Transfers of Goods and Services, Transfer Pricing, and Cost Allocation

1. Cross-subsidies involving DEC, DEP, or PECPiedmont and Duke Energy, other Affiliates, or the Nonpublic Utility Operations are prohibited.

2. All costs incurred by personnel or representatives of DEC, DEP, or PECPiedmont for or on behalf of Duke Energy, other Affiliates, or the Nonpublic Utility Operations shall be charged to the entity responsible for the costs.

3. As a general guideline, with regard to the transfer prices charged for goods and services, including the use or transfer of personnel, exchanged between and among DEC, DEP, or PECPiedmont and Duke Energy, the other Non-Utility Affiliates, and the Nonpublic Utility Operations, to the extent such prices affect DEC's, DEP's, or PECPiedmont's operations or costs of utility service, the following conditions shall apply:

- (a) Except as otherwise provided for in this Section III.D, for untariffed goods and services provided by DEC, DEP, or PECPiedmont to Duke Energy, a Non-Utility Affiliate, or a Nonpublic Utility Operation, the transfer price paid to DEC, DEP, or PECPiedmont shall be set at the higher of Market Value or DEC's, DEP's or PECPiedmont's Fully Distributed Cost.
- (b) Except as otherwise provided for in this Section III.D, for goods and services provided, directly or indirectly, by Duke Energy, a Non-Utility Affiliate other than DEBS or PESC, or a Nonpublic Utility Operation to DEC, DEP, or PECPiedmont, the transfer price(s) charged by Duke Energy, the Non-Utility Affiliate, and the Nonpublic Utility Operation to DEC, DEP, or PECPiedmont shall be set at the lower of Market Value or Duke Energy's, the Non-Utility Affiliate's, or the Nonpublic Utility Operation's Fully Distributed Cost(s). If DEC, DEP, or PECPiedmont do not engage in competitive solicitation and instead obtain the goods or services from Duke Energy, a Non-Utility Affiliate, or a Nonpublic Utility Operation, DEC and PECPiedmont shall implement adequate processes to comply with this Code provision and related Regulatory Conditions and ensure that in each case DEC's and PECPiedmont's Customers receive service at the lowest reasonable cost, unless otherwise directed by order of the Commission. For goods and services provided by DEBS and PESC

to DEC, PEGDEP, Piedmont, and Utility Affiliates, the transfer price charged shall be set at DEBS' and PESC's Fully Distributed Cost.

- (c) Tariffed goods and services provided by DEC, DEP and PEGPiedmont to Duke Energy, other Affiliates, or a Nonpublic Utility Operation shall be provided at the same prices and terms that are made available to Customers having similar characteristics with regard to Electric Services (such as time of use, manner of use, customer class, load factor, and relevant Standard Industrial Classification) or Natural Gas Services under the applicable tariff.
- (d) ~~Subject to and in compliance with all conditions placed upon DEC and PEG by the Commission~~ With the exception of gas supply transactions, transportation transactions, or both, between DEC and Piedmont or DEP and Piedmont, untariffed non-power, non-generation, or non-fuel goods and services provided by DEC, DEP, or PEGPiedmont to DEC, PEGDEP, Piedmont, or the Utility Affiliates or by the Utility Affiliates to DEC, DEP, or PEGPiedmont shall be transferred at the supplier's Fully Distributed Cost, unless otherwise directed by order of the Commission
- (e) For gas supply transactions, transportation transactions, or both, between DEC and Piedmont or DEP and Piedmont, Piedmont shall provide service to DEC or DEP at the same price and terms that are made available to other similarly situated shippers.

4. To the extent that DEC, PEGDEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations receive Shared Services from DEBS or PESC (or their ~~successors~~ its successor), these Shared Services may be jointly provided to DEC, PEGDEP, Piedmont, Duke Energy, other Affiliates, or the Nonpublic Utility Operations on a fully distributed cost basis, provided that the taking of such Shared Services by DEC, DEP, and PEGPiedmont is cost beneficial on a service-by-service (e.g., accounting management, human resources management, legal services, tax administration, public affairs) basis to DEC ~~and PEG~~, DEP, or Piedmont. Charges for such Shared Services shall be allocated in accordance with the cost allocation manual(s) filed with the Commission pursuant to Regulatory Condition 5.5, subject to any revisions or other adjustments that may be found appropriate by the Commission on an ongoing basis.

5. DEC, PEGDEP, Piedmont, and their Utility Affiliates may capture economies-of-scale in joint purchases of goods and services (excluding the purchase of natural gas, coal, and electricity or ancillary services intended for resale unless such purchase is made pursuant to a Commission-approved contract or service agreement), if such joint purchases result in cost savings to DEC's, DEP's, and PEGPiedmont's Customers. DEC, PEG, Duke Indiana, Duke Kentucky, and

~~PEF, DEP, Piedmont and their Utility Affiliates~~ may capture economies-of-scale in joint purchases of coal and natural gas, if such joint purchases result in cost savings to DEC's and PEC's Customers. ~~Notwithstanding the foregoing, if any of the coal or natural gas jointly purchased by DEC, PEC, Duke Indiana, Duke Kentucky, or PEF is transferred to or utilized by another Affiliate within 12 months of the joint purchase, DEC and PEC will file a notification of such with the Commission, DEP's, or Piedmont's Customers.~~ All joint purchases entered into pursuant to this section shall be priced in a manner that permits clear identification of each participant's portion of the purchases and shall be reported in DEC's, DEP's, and PEGPiedmont's affiliated transaction reports filed with the Commission.

6. All permitted transactions between DEC, PEGDEP, Piedmont, Duke Energy, other Affiliates, and the Nonpublic Utility Operations shall be recorded and accounted for in accordance with the cost allocation manuals required to be filed with the Commission pursuant to Regulatory Condition 5.5 and with Affiliate agreements accepted by the Commission or otherwise processed in accordance with North Carolina law, the rules and orders of the Commission, and the Regulatory Conditions.

7. Costs that DEC, DEP, and PEGPiedmont incur in assembling, compiling, preparing, or furnishing requested Customer Information or Confidential Systems Operation Information for or to Duke Energy, other Affiliates, Nonpublic Utility Operations, or non-Affiliates (other than the Customer itself or its designated representative or agent) shall be recovered from the requesting party pursuant to Section III.D.3 of this Code of Conduct.

8. Any technology or trade secrets developed, obtained, or held by DEC, DEP, or PEGPiedmont in the conduct of regulated operations shall not be transferred to Duke Energy, another Affiliate, or a Nonpublic Utility Operation without just compensation and the filing of 60-days prior notification to the Commission; provided however, that DEC and PEG, DEP, or Piedmont are not required to provide advance notice for such transfers to each other. ~~DEC and PEG,~~ DEP, or Piedmont may request a waiver of this requirement from the Commission with respect to such transfers to Duke Energy, a Utility Affiliate, a Non-Utility Affiliate, or a Nonpublic Utility Operation. In no case, however, shall the notice period requested be less than 20 business days.

9. DEC, DEP, and PEGPiedmont shall receive compensation from Duke Energy, other Affiliates, and the Nonpublic Utility Operations for intangible benefits, if appropriate.

E. Regulatory Oversight

1. The State's existing requirements regarding affiliate transactions, as set forth in G.S. 62-153, shall continue to apply to all transactions between DEC, PEGDEP, Piedmont, Duke Energy, and the other Affiliates.

2. The books and records of DEC, ~~PEGDEP~~, Piedmont, Duke Energy, other Affiliates, and the Nonpublic Utility Operations shall be open for examination by the Commission, its staff, and the Public Staff as provided in G.S. 62-34, 62-37, and 62-51.

3. If Piedmont supplies any of Natural Gas Services, with the exception of Natural Gas Services provided pursuant to Commission-approved contracts or service agreements, used by either DEC or DEP to generate electricity, DEC or DEP, respectively, shall file a report with the Commission in DEC's or DEP's (as appropriate) annual fuel and fuel-related cost recovery case demonstrating that the purchase was prudent and the price was reasonable.

4. 3.—To the extent North Carolina law, the orders and rules of the Commission, and the Regulatory Conditions permit Duke Energy, an Affiliate, or a Nonpublic Utility Operation to supply DEC, ~~DEP~~ or ~~PEG~~ with Piedmont Natural Gas Services or other Fuel and Purchased Power Supply Services used by DEC or ~~PEGDEP~~ to provide Electric Services to Customers, and to the extent such Natural Gas Services or other Fuel and Purchased Power Supply Services are supplied, DEC or ~~PEGDEP~~ shall demonstrate in its annual fuel adjustment clause proceeding that each such acquisition was prudent and the price was reasonable.

F. Utility Billing Format

To the extent any bill issued by DEC and ~~PEG~~, DEP, Piedmont, Duke Energy, another Affiliate, a Nonpublic Utility Operation, or a non-Affiliated third party includes any charges to Customers for Electric Services and/or Natural Gas Services and non-Electric Services, non-Natural Gas Services, or both, from Duke Energy, another Affiliate, a Nonpublic Utility Operation, or a non-Affiliated third party, the charges for the Electric Services and/or Natural Gas Services shall be separated from the charges for any other services included on the bill. Each such bill shall contain language stating that the Customer's Electric Services and/or Natural Gas Services will not be terminated for failure to pay for any other services billed.

G. Complaint Procedure

1. DEC, DEP, and ~~PEG~~Piedmont shall establish complaint procedures to resolve potential complaints that arise due to the relationship of DEC, DEP, and ~~PEG~~Piedmont with Duke Energy, its other Affiliates, and its Nonpublic Utility Operations. The complaint procedures shall provide for the following:

- (a) Verbal and written complaints shall be referred to a designated representative of DEC, DEP, or ~~PEG~~Piedmont.
- (b) The designated representative shall provide written notification to the complainant within 15 days that the complaint has been received.

- (c) ~~DEC, DEP, or PEC~~Piedmont shall investigate the complaint and communicate the results or status of the investigation to the complainant within 60 days of receiving the complaint.
- (d) ~~DEC and PEC, DEP, or Piedmont~~ shall each maintain a log of complaints and related records and permit inspection of documents (other than those protected by the attorney/client privilege) by the Commission, its staff, or the Public Staff.

2. Notwithstanding the provisions of Section III.G.1, any complaints received through Duke Energy's EthicsLine (or successor), which is a confidential mechanism available to the employees of the Duke Energy holding company system, shall be handled in accordance with procedures established for EthicsLine.

3. These complaint procedures do not affect a complainant's right to file a formal complaint or otherwise address questions to the Commission.

**CODE OF CONDUCT
ATTACHMENT A**

DEC/PEGDEP/PIEDMONT CUSTOMER INFORMATION DISCLOSURE
AUTHORIZATION

For Disclosure to Affiliates:

DEC's/PEGDEP's/Piedmont's Affiliates offer products and services that are separate from the regulated services provided by DEC/PEGDEP/Piedmont. These services are not regulated by the North Carolina Utilities Commission or the Public Service Commission of South Carolina. These products and services may be available from other competitive sources.

The Customer authorizes DEC/PEGDEP/Piedmont to provide any data associated with the Customer account(s) residing in any DEC/PEGDEP/Piedmont files, systems or databases **[or specify specific types of data]** to the following Affiliate(s) _____ . DEC/PEGDEP/Piedmont will provide this data on a non-discriminatory basis to any other person or entity upon the Customer's authorization.

For Disclosure to Nonpublic Utility Operations:

DEC/PEGDEP/Piedmont offers optional, market-based products and services that are separate from the regulated services provided by DEC/PEGDEP/Piedmont. These services are not regulated by the North Carolina Utilities Commission or the Public Service Commission of South Carolina. These products and services may be available from other competitive sources.

The Customer authorizes DEC/PEGDEP/Piedmont to use any data associated with the Customer account(s) residing in any DEC/PEGDEP/Piedmont files, systems or databases **[or specify types of data]** for the purpose of offering and providing energy-related products or services to the Customer. DEC/PEGDEP/Piedmont will provide this data on a non-discriminatory basis to any other person or entity upon the Customer's authorization.

Document comparison by Workshare Compare on Friday, January 15, 2016
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Description	New_Duke-Piedmont Merger Compliance Code of Conduct working draft
Rendering set	Standard

Legend:	
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Deletion	
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Padding cell	

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Moved to	5
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Format changed	0
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