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June 10, 2016

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

**RE: Notice of Filing Regarding Duke Energy Corporation's Acquisition of Piedmont Natural Gas, Inc.
Docket No. ND-2015-32-G**

Dear Mrs. Boyd:

For information, please find attached the Agreement and Stipulation of Settlement between Duke Energy Corporation, Piedmont Natural Gas Company, Inc., and the Public Staff-North Carolina Utilities Commission ("NCUC") and associated documents and supporting testimony as filed by the Public Staff today with the NCUC in Docket Nos. E-2 Sub 1095, E-7 Sub 1100, and G-9 Sub 682.

A copy of this informational filing is also being provided to the Office of Regulatory Staff.

Sincerely,

A handwritten signature in blue ink that reads "Heather Shirley Smith".

Heather Shirley Smith
Deputy General Counsel

cc: C. Dukes Scott, Executive Director, Office of Regulatory Staff
Nanette S. Edwards, Deputy Executive Director, Office of Regulatory Staff
Dawn Hipp, Director - Energy Regulation, Office of Regulatory Staff
Jeffrey M. Nelson, Chief Counsel and Director of Legal Services, Office of Regulatory Staff



**NORTH CAROLINA
PUBLIC STAFF
UTILITIES COMMISSION**

June 10, 2016

Ms. Gail L. Mount, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

Re: Docket Nos. E-2, Sub 1095, E-7, Sub 1100, and G-9, Sub 682
Duke-Piedmont Merger Application

Dear Ms. Mount:

In connection with the above-referenced dockets, I transmit herewith for filing the Agreement and Stipulation of Settlement between Duke Energy Corporation, Piedmont Natural Gas Company, Inc., and the Public Staff-North Carolina Utilities Commission (Stipulation), the stipulated Regulatory Conditions, which are Attachment A to the Stipulation, and the stipulated Code of Conduct, which is attached as Appendix A to the Regulatory Conditions. Both clean and blacklined versions of the stipulated Regulatory Conditions and Code of Conduct are being transmitted.

By copy of this letter, I am forwarding a copy of the above to all parties of record.

Yours very truly,

Electronically submitted
/s/ Antoinette R. Wike
Chief Counsel
antoinette.wike@psncuc.nc.gov

ARW/bll

Enclosures

c: Parties of Record

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

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Duke Energy Corporation)	AGREEMENT AND
and Piedmont Natural Gas Company, Inc.,)	STIPULATION OF
to Engage in Business Combination)	SETTLEMENT BETWEEN
Transaction and Address Regulatory)	THE APPLICANTS AND
Conditions and Code of Conduct)	THE PUBLIC STAFF

Duke Energy Corporation (Duke Energy) and Piedmont Natural Gas Company, Inc. (Piedmont) (collectively, the Applicants), and the Public Staff – North Carolina Utilities Commission, hereinafter referred to as the Stipulating Parties, through counsel and pursuant to G.S. 62-69, respectfully submit this Agreement and Stipulation of Settlement (Stipulation) for consideration by the Commission in the above-captioned proceeding.

The Stipulating Parties agree and stipulate as follows:

1. Regulatory Conditions. The Regulatory Conditions, including the Code of Conduct, set forth in Attachment A represent commitments by the Applicants as a precondition of approval by the Commission of the application of Duke Energy and Piedmont pursuant to G.S. 62-111(a) for authority to engage in the proposed business combination transaction (Merger) as set forth in the Merger Agreement attached to the application as Exhibit A. These Regulatory Conditions will be incorporated into any order of the Commission approving the Merger. The Stipulating Parties have agreed to a number of changes to the Regulatory Conditions approved by the Commission in the *Order Approving Merger Subject to Regulatory Conditions and Code of Conduct* issued June 29,

2012, in Docket Nos. E-2, Sub 989, and E-7, Sub 986 (Duke-Progress Merger Order)¹ but have been unable to reach agreement regarding certain changes proposed by the Applicants to the Regulatory Conditions, which are not necessitated by the Merger between Duke Energy and Piedmont. The Stipulating Parties have agreed to continue their discussions of such changes and to submit the results of those discussions to the Commission for approval or resolution, as appropriate, in a separate proceeding.

2. Merger-related Cost Savings. In order to ensure that Piedmont's ratepayers receive a benefit from the allocable North Carolina portion of projected Merger-related cost savings that may be realized by Piedmont related to the functions identified in Exhibit B to the Merger application, the Stipulating Parties agree that, upon approval of this Stipulation by the Commission, in its entirety, and closing of the Merger, Piedmont will (1) withdraw its Application for Approval of Deferred Accounting Treatment of Certain Distribution Integrity Management Costs, filed on March 11, 2016, in Docket No. G-9, Sub 686, in which Piedmont estimates that its costs subject to deferral would be as high as \$18.03 million for North Carolina over the next five years, or approximately \$3.6 million per year, and (2) commit to credit a total of \$10 million to its North Carolina customers as follows: \$5 million per year to its North Carolina Integrity Management Deferred Account (IM Deferred Account) in each of the first two years following the close of the Merger. In the event of a Piedmont general rate

¹ The Regulatory Conditions were subsequently modified by the Commission's *Order Approving Revisions to Regulatory Conditions Nos. 7.7 and 7.8* issued March 24, 2015, in Docket Nos. E-7, Subs 986 and 986A, and E-2, Subs 998 and 998A, and *Order Approving Transfer of Employees and Amendment to Regulatory Condition [No. 5.3]* issued November 25, 2015, in Docket Nos. E-7, Sub 986, and E-2, Sub 998.

case with rates effective no more than two years from the Merger close, Piedmont reserves the right to reflect an adjustment in the general rate case that would increase its revenue requirement for a portion of the \$10 million in savings that Piedmont has agreed to credit to its IM Deferred Account. Should Piedmont exercise its right to reflect such an adjustment, the Public Staff reserves the right to incorporate the effect of additional Merger-related savings in its proposed revenue requirement calculation.

3. Annual Community Support and Charitable Contributions. In support of The Duke Energy Foundation's and Piedmont Natural Gas Foundation's community support and charitable contribution initiatives in North Carolina, beginning January 1, 2017, Duke Energy Carolinas, LLC (DEC), Duke Energy Progress, LLC (DEP), and Piedmont will fund The Duke Energy Foundation and Piedmont Natural Gas Foundation for four years from the close of the Merger at annual levels of no less than \$9.65 million, \$6.375 million, and \$1.5 million, for community support and charitable contributions in the North Carolina service territories of DEC, DEP and Piedmont, respectively.

4. Other Contributions. In support of The Duke Energy Foundation's and Piedmont Natural Gas Foundation's North Carolina workforce development and low income energy assistance in the North Carolina service territories of DEC, DEP, and Piedmont as may be agreed upon with the Public Staff, within twelve months of the close of the Merger, DEC, DEP, and Piedmont will contribute a total of \$7.5 million to The Duke Energy Foundation and Piedmont Natural Gas Foundation. The \$7.5 million will be allocated among the North

Carolina service territories of DEC, DEP, and Piedmont in proportion to the number of North Carolina jurisdictional customers served by each.

5. Merger-related Direct Expenses. Direct expenses associated with the Merger will be excluded from the regulated expenses of Piedmont, DEC, and DEP for North Carolina Utilities Commission financial reporting and ratemaking purposes. Direct merger costs are change-in-control payments made to terminated executives, regulatory process costs, and transaction costs, such as investment banker and legal fees for transaction structuring, financial market analysis, and fairness opinions based on formal agreements with investment bankers. Piedmont, DEC, and DEP will file a summary report of their final accounting for Merger-related direct expenses within 60 days after the close of the Merger, and supplemental reports within 60 days after each quarter, as necessary.

6. Merger-related Transition Costs. In order to hold the North Carolina ratepayers of Piedmont and the North Carolina retail ratepayers of DEC and DEP harmless from any adverse effect of the Merger on rates, Merger-related transition costs will be treated as follows:

- (a) DEC, DEP, and Piedmont may request recovery through depreciation or amortization, and inclusion in rate base, as appropriate and in accordance with normal ratemaking practices, their respective shares of capital costs associated with achieving merger savings, such as system integration costs and the adoption of best practices, including information technology, provided that

such costs are incurred no later than three years from the close of the Merger and result in quantifiable cost savings that offset the revenue requirement effect of including the costs in rate base. Only the net depreciated costs of such system integration projects at the time the request is made may be included, and no request for deferrals of these costs may be made.

- (b) DEC's, DEP's, and Piedmont's Merger-related severance costs will be excluded from DEC's, DEP's, and Piedmont's cost of service for ratemaking purposes.

7. Employee Incentive and Benefit Plan Costs. Piedmont, DEC, and DEP will exclude from their regulated expense and plant accounts the effects of all Piedmont long-term incentive plan (performance shares and restricted stock units/shares) costs that result from the increase in the Piedmont stock price above the \$ 42.22 per share closing price on October 23, 2015, adjusted for changes in the stock price that would have occurred absent the Merger. The adjusted stock prices shall be based upon percentage changes in the average stock price experienced by a peer group of twelve natural gas utilities.

8. Revised GS-1 Report Format. Effective upon the close of the Merger, Piedmont will begin utilizing a revised NCUC GS-1 Earnings Surveillance Report format that is similar to the format of the ES-1 Earnings Surveillance Report that is submitted to the Commission by the electric utilities.

9. Interest Rate on Deferred Gas Cost Accounts. Beginning with the month in which the Merger closes, Piedmont will use the net-of-tax overall rate of

return from its last general rate case as the applicable interest rate on all amounts over-collected or under-collected from customers reflected in its Sales Customers Only, All Customers, and Hedging Deferred Gas Cost Accounts. The methods and procedures used by Piedmont for the accrual of interest on the Deferred Gas Cost Accounts will remain unchanged.

10. Plant Accounting Closing Process. Within 180 days after the close of the Merger, Piedmont will begin to implement procedures to ensure that project unitization and plant retirements are finalized within 180 days of project completion. Piedmont will file semi-annual status reports with the Commission detailing its progress in implementing these practices, with the first report due twelve months from the close of the Merger.

11. Affiliate Agreements. Unless otherwise allowed or ordered by the Commission, no later than 30 days prior to close of the Merger, and in accordance with and as provided by G.S. 62-153 and the related Regulatory Conditions, DEC, DEP, and Piedmont will file amendments to DEC's and DEP's existing Affiliate Agreements (Amended Affiliate Agreements) on file with the Commission for use by DEC, DEP, and Piedmont upon close of the Merger and, if applicable, the lists of services proposed to be taken by DEC, DEP, and Piedmont pursuant to such Amended Affiliate Agreements. Specifically, DEC, DEP, and Piedmont will file to amend the following affiliate service agreements: the Service Company/Operating Companies Service Agreement, the Operating Companies Service Agreement, the Tax Sharing Agreement, the Utility Money Pool Agreement, the Intercompany Asset Transfer Agreement, and the Operating

Companies/Nonutility Companies Service Agreement. If no order approving or accepting the Amended Affiliate Agreements under G.S. 62-153 is issued by the Commission prior to the close of the Merger, DEC, DEP, and Piedmont will operate under the Amended Affiliate Agreements as filed until the Commission issues such an order. DEC, DEP, and Piedmont acknowledge that their interim operation under the Amended Affiliate Agreements is subject to any fully adjudicated Commission order on the matter.

The foregoing provisions shall not apply to existing, Commission approved, natural gas construction, transportation and redelivery agreements between Piedmont and DEC or DEP pursuant to which Piedmont is obligated to provide natural gas redelivery service to DEC and DEP at their various generating facilities in North Carolina.

12. Approval of Merger. The terms of this Stipulation, including the Regulatory Conditions and Code of Conduct, will ensure that the proposed Merger will have no adverse impact on the rates charged and the service provided by DEC, DEP, and Piedmont to North Carolina jurisdictional ratepayers; that DEC's, DEP's, and Piedmont's North Carolina jurisdictional ratepayers are protected and insulated to the maximum extent possible from all known and potential costs and risks associated with the Merger; and that the benefits of the Merger to DEC's, DEP's, and Piedmont's North Carolina jurisdictional ratepayers are sufficient to offset those potential costs and risks. Therefore, the proposed Merger is justified by the public convenience and necessity and meets the standard for approval by the Commission under G.S. 62-111(a).

13. Effectiveness of Agreements. This Stipulation shall be binding upon the parties upon the execution hereof but its substantive terms shall be effective only upon both the approval of the Stipulation, in its entirety, by the Commission and the closing of the Merger contemplated herein. In the event one or both of these conditions fail to occur, the Stipulating Parties agree that the Stipulation shall not be binding upon the Stipulating Parties.

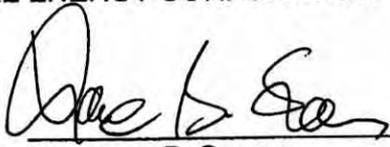
14. Support of Stipulation. The Stipulating Parties will support this Stipulation, the Regulatory Conditions, and the Code of Conduct in testimony before the Commission and in any proposed order or brief submitted to the Commission in this matter.

15. Waiver of Right to Cross-Examine. The Stipulating Parties will waive their respective rights to cross-examine each other's witnesses with respect to their prefiled testimony and exhibits. If, however, questions should be asked by any person who is not a Stipulating Party, including a member of the Commission, the Stipulating Parties reserve the right to present testimony and exhibits to respond to such questions and cross-examine any witnesses with respect to such testimony and exhibits, provided that such testimony, exhibits, and cross-examination are not inconsistent with this Stipulation.

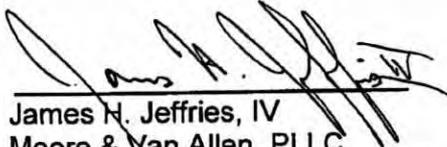
16. Acceptance of Agreement in Its Entirety. This Stipulation is the product of give-and-take negotiations, and no portion of this Stipulation will be binding on the Stipulating Parties unless the entire Stipulation is accepted by the Commission.

The foregoing is agreed and stipulated to, this the 10th day of June, 2016.

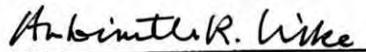
DUKE ENERGY CORPORATION

By: 
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PIEDMONT NATURAL GAS COMPANY, INC.

By: 
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PUBLIC STAFF – NORTH CAROLINA
UTILITIES COMMISSION

By: 
Antoinette R. Wike
Chief Counsel

ATTACHMENT A

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

REGULATORY CONDITIONS

JUNE 10, 2016

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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 Corporation (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 or natural gas 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: (a) Any contract or agreement between or among DEC, DEP, and Piedmont or between or among DEC, DEP, or Piedmont and any other Affiliate or proposed Affiliate, and (b) any contract or agreement between such other Affiliate or proposed Affiliate and another Affiliate that is related to the same subject matter and is reasonably likely to have an Effect on DEC's, DEP's, or Piedmont's Rates or Service. 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, and 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 DEP 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, 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.

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 or 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 or 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 or 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 proceeding, as applicable.

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, or 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.

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.

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's 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 in a particular case or circumstance for good cause shown by filing a such request with the Commission.

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, and Piedmont shall not engage in any transactions with Affiliates or proposed Affiliates without first filing the proposed contracts or agreements memorializing such transactions pursuant to G.S. 62-153 and taking such actions and obtaining from the Commission such

determinations and authorizations as may be required under North Carolina law. DEC, DEP, or Piedmont, as applicable, shall submit each proposed Affiliate Contract or substantive amendment to an existing Affiliate Contract to the Public Staff for informal review at least 15 days before filing it with the Commission. If DEC, DEP, or Piedmont and the Public Staff agree within the 15-day period that the proposed Affiliate Contract or substantive amendment to an existing Affiliate Contract does not require any action by the Commission, DEC, DEP, or Piedmont may proceed to execute the agreement subject to later disapproval and voidance by the Commission pursuant to G.S. 62-153(a). Otherwise, the proposed Affiliate Contract or substantive amendment to an existing Affiliate Contract shall not be executed until the agreement has been filed and payment of compensation has been approved by the Commission pursuant to G.S. 62-153(b). No formal advance notice pursuant to Regulatory Condition 13.2 is required for such agreements 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's, DEP's, or Piedmont's participation in the agreement is voluntary, DEC, DEP, or Piedmont is not obligated to take or provide services or make any purchases or sales pursuant the agreement, and DEC, DEP, or Piedmont may elect to discontinue its participation in the agreement at its election after giving any required notice;
 - (ii) DEC, DEP, or Piedmont 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, 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
 - (iv) 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, and

Piedmont will bear the full risk of any preemptive effects of Federal Law with respect to the agreement.

- (c) To enable the Commission to determine and exercise its lawful authority and jurisdiction over a proposed Affiliate Contract or 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. If, consistent with Regulatory Condition 13.2(h), the Commission extends the advance notice period, the Affiliate Contract, contract with a Proposed Affiliate, or amendments to existing Affiliate Contracts shall remain unexecuted until the Commission issues an order on the advance notice or the extension of the advance notice period expires without a Commission order, procedural or substantive, being issued. 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 to this Regulatory Condition, the proposed filing shall not be executed and 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 Regulatory Condition 3.1(b) as a condition of acceptance or approval by that agency, DEC, DEP 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 and Duke Energy or any one or more 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 or 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, DEP, 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) DEC, DEP, and Piedmont shall own and control all assets or portions of assets used for the generation, transmission, and distribution of electric power or the transmission, storage, or distribution of natural gas to their respective Customers (with the exception of assets solely used to provide power purchased by DEC or DEP at wholesale).
- (b) 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.

- (c) 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, or 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, and Duke Energy, Other Affiliates, or Nonpublic Utility Operations. Subject to additional restrictions set forth in the Code of Conduct, neither DEC, DEP, nor Piedmont shall 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 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.

- (c) 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 DEP'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 DEP's Retail Native Load Customers for purposes of Regulatory Conditions 3.5, 3.6, and 4.5.
- (d) Before either DEC or DEP 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 DEP'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 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, and 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 (i) commits DEC or DEP 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 alters DEC's or DEP's obligations with respect to these Regulatory Conditions, absent explicit approval of the Commission.
- (c) DEC, DEP, 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 DEP'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 DEP 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 DEP'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 DEP, 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 DEP's Rates or Service.

- (d) 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.
- (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 any of the following actions by the Commission are preempted, in whole or in part, by Federal Law or exceed the Commission's power, authority or jurisdiction under North Carolina law:
 - (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, 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, or Piedmont, or which may otherwise affect DEC's, DEP's, or 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, or 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 between Duke Energy and Progress Energy, 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 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 Regulatory 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 from or to 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, or 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 or 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 5.4(a), 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, 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-6, 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 is 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, 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, DEP, or Piedmont 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 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 first and second 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 5.5(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 Regulatory 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 or 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 relating to internal audits and all other internal audit workpapers, if any, related to affiliate transactions, and shall not oppose Public Staff and Commission requests to review relevant external audit workpapers. The requirement to make internal audit workpapers available for review is subject to the assertion of the attorney-client privilege by attorneys for DEC, DEP, and Piedmont. Any dispute as to whether the privilege applies in a particular instance shall be resolved by the Commission in accordance with its regulations and North Carolina law, including the rules of the North Carolina State Bar.

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_, and 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, 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 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. Neither DEC, DEP, Piedmont, Duke Energy, 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 and DEP's

North Carolina ES-1 Reports and Piedmont's North Carolina GS-1 Report, as recorded on their books and records under generally accepted accounting principles. DEC, DEP, and Piedmont shall include as a footnote in their ES-1 and GS-1 Reports, as applicable, the Merger-related costs to achieve that were expensed during the relevant period.

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" means 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" also includes any payments made under change-of-control agreements, salary continuation agreements, and other severance- or personnel-type arrangements that are reasonably attributable to these transactions. This Regulatory Condition does not apply to DEC and Piedmont.

5.21 Liabilities of Cinergy Corp. and Florida Progress Corporation.

- (a) DEC's and DEP's Retail Native Load Customers and Piedmont's 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.
- (b) DEC's and DEP's Retail Native Load Customers and Piedmont's 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.
- (c) DEC's Retail Native Load Customers and Piedmont's Customers shall be held harmless from all current and prospective liabilities of DEP, and DEP's Retail Native Load Customers and Piedmont's 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 Customers harmless from the effects of the Merger, including rate increases or foregone opportunities for rate decreases, and other effects otherwise adversely impacting 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.

5.24 Direct Charging and Positive Time Reporting for Piedmont. For purposes of distributing the costs of services provided between and among Affiliates, Piedmont will use direct charging and positive time reporting to at least the same extent as DEC and DEP.

5.25 Piedmont Corporate Cost Allocations Among State Jurisdictions. Piedmont will notify the Commission and Public Staff of any plans to modify its corporate cost allocation procedures at least 90 days prior to implementation of the change.

5.26 Allocation of Fully-distributed Costs to Piedmont's Nonpublic Utility Operations. Piedmont shall direct charge or allocate fully distributed costs to its Nonpublic Utility Operations. The fully distributed costs shall include an overhead component for the cost of shared services provided to these non-regulated businesses and equity investments by Piedmont corporate, DEC, DEP, and DEBS employees.

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 or among the public utility operations of DEC, DEP, Piedmont, Duke Energy, the Affiliates of DEC, DEP, and Piedmont, 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 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 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 8.5, 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 Nos. 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 8.5, 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; and
- (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 Protection Against Debt Downgrade. To the extent the cost rates of any of DEC's, DEP's, or Piedmont's long-term debt (more than one year) or short-term debt (one year or less) are or have been adversely affected through a ratings downgrade attributable to the Merger, a replacement cost rate to remove the effect shall be used for all purposes affecting any of DEC's North Carolina retail rates and charges, DEP's North Carolina retail rates and charges, and Piedmont's North Carolina rates and charges. This replacement cost rate shall be applicable to all financings, refundings, and refinancings taking place following the change in ratings. This procedure shall be effective through DEC's, DEP's and Piedmont's next respective general rate cases. As part of DEC's, DEP's and Piedmont's next respective general rate cases, any future procedure relating to a replacement cost calculation will be determined. This Regulatory Condition does not indicate a preference for a specific debt rating or preferred stock rating for DEC, DEP, or Piedmont on current or prospective bases.

8.3 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, DEP, and Piedmont subsequent to the Merger.

8.4 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.

8.5 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.

8.6 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 8.8 or other applicable authority) to protect DEC's or DEP'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.

8.7 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.

8.8 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.

8.9 Investment by DEC, DEP, or Piedmont in Non-regulated Utility Assets and Non-utility Business Ventures. Neither DEC, DEP, nor Piedmont shall 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 or DEP's franchise area or Natural Gas Services in Piedmont's franchise area, shall be excluded from this advance notice requirement.

8.10 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.

8.11 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.

8.12 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, 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, 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 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 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, 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 Customer 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 Quarterly Reliability Reports. DEC and DEP 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).

11.4 Notice of NERC Audit. This Regulatory Condition does not apply to Piedmont. At such time as either DEC or DEP receives notice that the North American Electric Reliability Corporation (NERC) or the SERC Reliability Corporation will be conducting a non-routine compliance audit with respect to DEC's or DEP's compliance with mandatory reliability standards, DEC or DEP shall notify the Public Staff.

11.5 Right-of-Way Maintenance Expenditures (DEC and DEP). 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.

11.6 Right-of-Way Maintenance Expenditures (Piedmont). Piedmont shall budget and expend sufficient funds to maintain its pipeline rights-of-way so as to allow ready access by personnel and vehicles for the purpose of responding to pipeline damage, conducting leak and corrosion surveys, performing maintenance activities, and ensuring system integrity, safety, and reliability.

11.7 Right-of-Way Clearance Practices (DEC and DEP). 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.

11.8 Right-of-Way Clearance Practices (Piedmont). Piedmont shall provide a copy of its Operating and Maintenance Manual to the Public Staff and shall promptly notify the Public Staff in writing of any substantive changes to Section 9, "Right-of-Way Management Program."

11.9 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.

11.10 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.

11.11 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 North Carolina 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 North Carolina Customers 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 Regulatory 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 8.6, 8.7, 8.10, 8.11 and 8.12 shall be made by DEC, DEP, and Piedmont in Subs 1100_, 1095_, and 682_, respectively;
- (c) Files related to compliance as required by Regulatory Conditions 3.1(d) and 14.4 and filings required by Sections III.A.2(k), 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; and
- (e) Filings related to orders and filings with the FERC, as required by Regulatory Condition 3.1(d), 3.10 and 5.13 shall be made by DEC, 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), 3.7(c), 3.9(c), 4.2, 5.3, 8.9, and 10.1 shall be assigned a new, separate Sub docket. Such a filing shall identify the condition and notice period involved and state 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, DEP, or Piedmont shall serve such advance notices on each party to Docket Nos. E-7, Sub 1100, E-2, Sub 1095, and 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, or 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 objection has been filed by the Public Staff and 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.

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 Websites.

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_, and 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.

SECTION XV PROCEDURES FOR DETERMINING LONG-TERM SOURCES OF PIPELINE CAPACITY AND SUPPLY

The following Regulatory Conditions are intended to ensure the continued practices of DEC, DEP, and Piedmont for determining long-term sources of pipeline capacity and supply.

15.1 Cost-benefit Analysis. The appropriate source(s) for the interstate pipeline capacity and supply shall be determined by DEC and DEP on the basis of the benefits and costs of such source(s) specific to their respective electric customers. The appropriate source(s) for the interstate pipeline capacity and supply shall be determined by Piedmont on the basis of the specific benefits and costs of such source(s) specific to its natural gas customers, including electric power generating customers.

15.2 Ownership and Control of Contracts. Piedmont shall retain title, ownership, and management of all gas contracts necessary to ensure the provision of reliable Natural Gas Services consistent with Piedmont's best cost gas and capacity procurement methodology.