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Via Electronic Delivery

Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: **Duke Energy Carolinas, LLC, Docket No. OA08-50-005**
Progress Energy Carolinas, Inc., Docket No. OA08-51-004

Dear Secretary Bose:

In compliance with *Duke Energy Carolinas, LLC*, 127 FERC ¶ 61,281 (2009) (*June 18 Order*), Duke Energy Carolinas, LLC (“Duke”) and Progress Energy Carolinas, Inc., also known as Carolina Power and Light Company (“Progress”), collectively, the “Filing Parties,” tender for filing their joint compliance filing regarding their Attachment Ks.¹ The Filing Parties’ revised OATTs will be posted on their websites.

- Attachment A, a clean copy of the Duke tariff sheets effective December 7, 2007-March 16, 2008;²
- Attachment B, a redline copy of the Duke tariff sheets effective December 7, 2007-March 16, 2008;

¹ For Duke, “Attachment K” is Attachment N to its OATT. To prevent confusion, the Filing Parties refer to the attachment as Attachment K.

² Duke revised its entire OATT in March, 2008 (from Fifth Revised to Sixth Revised). The effective date of the proposed changes – December 7, 2007, however, pre-dates this tariff revision and thus Duke understands that it is required to submit two sets of tariff sheets.

- Attachment C, a clean copy of the Duke tariff sheets effective March 17, 2008;
- Attachment D, a redline of the changes to the Duke tariff sheets effective March 17, 2008;
- Attachment E, a clean copy of the Progress tariff sheets; and
- Attachment F, a redline of the Progress tariff sheets.

I. NCTPC PROCESS

In Section I of this letter, the Filing Parties address the various compliance requirements imposed by the Commission with regard to their regional planning process - the North Carolina Transmission Planning Collaborative Process (“NCTPC Process”). Changes to the Southeast Inter-Regional Participation Process (“SIRPP”), which is the inter-regional economic coordination process in which they participate, are discussed in Section II.

A. Openness

1. Voting Process

In the *June 18 Order*, the Commission found that in defining the TAG Sector for “Eligible Customers and Ancillary Service Providers,” the Filing Parties omitted the phrase “including demand resources” in the proposed tariff language and directed that this oversight be corrected.³ The oversight has been addressed by adding the phrase “including demand response providers” in Section 2.4.4.3.

2. Confidential Information

The Filing Parties previously proposed to retain the “Form 715 Requirement”⁴ as to participants seeking critical energy infrastructure information (“CEII”) and sought clarification that this was permitted. Under the requirement, a participant would be vetted by the Commission as a person that had a legitimate interest in receiving such information prior to receiving CEII from the Filing Parties. The Commission had previously ordered the Form 715 Requirement be eliminated as to stakeholders seeking non-CEII Confidential Information. In the *June 18 Order*, the

³ *June 18 Order* at P 18.

⁴ The Filing Parties required that stakeholders seeking CEII obtain a Form 715 from FERC first.

Commission required that the Form 715 Requirement be deleted from Attachment K as to CEII.⁵ Section 9.4.4.1 has been deleted (and the remaining sections shifted upward) to reflect this requirement.

In Section 9.2 of their Attachment Ks, the Filing Parties committed to not release an NCTPC Participant's or a TAG participant's Confidential Information without the consent of such entity. The Commission did not specifically indicate that this provision had to be deleted. But, based on other portions of the *June 18 Order*, and the Filing Parties' understanding of the *SPP Order*⁶ -- that no Confidential Information needed "to participate in the transmission planning process and/or to replicate transmission planning studies" can be withheld -- they have also amended this section. It now makes clear to NCTPC Participants and TAG participants that commercially-sensitive non-CEII Confidential Information they provide can be released by the Filing Parties, subject to appropriate confidentiality arrangements.⁷ Section 9.3.3 has been amended for a similar reason.

B. Comparability

The Filing Parties' Attachment Ks stated that after the Planning Working Group compared all of the alternatives and selected the preferred solution by balancing the project cost, benefit, and associated risks, the Planning Working Group would select a preferred set of transmission solutions. The Commission found that the Attachment Ks did not explicitly state Duke and Progress could select a solution other than a transmission solution (i.e., generation or demand resource solutions) and directed the Filing Parties to identify in Attachment K how they will evaluate and select from among competing solutions such that all types of resources are considered on a comparable basis. The Commission ordered them to revise their Attachment Ks to make clear that when they select a solution, that selection will not be limited to transmission solutions but also may include generation or demand resources.⁸

The primary changes reflecting compliance are found in Sections 5.7.2, 5.7.3, and 5.8.1, although other subsections of Section 5 also reflect the fact that "solutions" are not limited to transmission solutions. Section 5.7.2 indicates that if TAG

⁵ *June 18 Order* at P 28.

⁶ See *Southwest Power Pool, Inc.*, 127 FERC ¶ 61,271 at P 41 (2009) (*SPP Order*).

⁷ As discussed in the Filing Parties' Request for Clarification, or in the Alternative Rehearing, such confidentiality arrangements should be permitted to prohibit access by individuals engaged in wholesale merchant activities.

⁸ *June 18 Order* at P 37.

participants want other solutions to be considered that they must provide the necessary information (cost, performance, lead time to install, etc.) associated with such alternative solutions so that they may be compared to transmission solutions. Section 5.7.3 reflects the commitment that all solutions will be treated comparably, while Section 5.8.1 now includes the standard that will be used to balance the solutions' costs, benefits, and associated risks. As noted there, competing solutions "will be evaluated against each other based on a comparison of their relative economics, timing, feasibility, and effectiveness of performance."

II. SIRPP PROCESS

A. CEII Data and Information

Under Appendix 1 to the Attachment Ks, SIRPP stakeholders were also subject to the Form 715 Requirement. This requirement has been deleted in accordance with the *June 18 Order* (at P 28). As a result of the elimination of the Form 715 Requirement, the SIRPP decided that a different and more flexible approach for "certifying" eligibility for CEII was merited. The section has been re-drafted to largely reflect tariff language that has already been accepted by the Commission⁹ and provides such needed flexibility, as the SIRPP does not, for example, intend to perform background checks on all persons requesting CEII.¹⁰

B. Non-CEII Confidential Information

The Filing Parties were ordered to revise their Appendix 1 tariff language "so that non-public utility transmission providers do not have more confidentiality protections than public utility transmission providers in the transmission planning process."¹¹ The Filing Parties have removed this provision affording special treatment.

⁹ In *Southern Company Servs., Inc.* Section 2.3.3, which provided similar flexibility was accepted with regard to determining eligibility to receive CEII: "The Transmission Provider reserves the discretionary right to waive the certification process, in whole or in part, for anyone that the Transmission Provider deems appropriate to receive CEII information." See 127 FERC ¶ 61,282 at P 25 (2008) (accepting Section 2.3.3).

¹⁰ For example, a person requesting CEII may be employed by a SIRPP Transmission Provider who has already performed a background check as a condition of employment. This flexible approach reflects the Commission's statement in the *June 18 Order* (at P 26) that "companies and persons that have had dealings with one another in the past will be in a better position" to judge the security of confidentiality arrangements.

¹¹ *June 18 Order* at P 29.

The Commission found that the SIRPP provisions that forbade Transmission Owners from disclosing certain resource-specific data unreasonably restricted access to data that stakeholders may need for participation in or evaluation of studies produced by the SIRPP.¹² The Commission ordered this language, which was modeled on language that had inadvertently been approved in a prior order involving the SPP, to be deleted. This deletion has been made along with minor edits to existing language that is designed to attempt to reconcile conflicting regulatory and/or contractual obligations regarding the protection and disclosure of information.

These additional edits were made because the mandated deletion of language makes it difficult to reconcile contractual, NERC,¹³ and SERC requirements not to disclose confidential information with the Order No. 890 obligation to disclose such confidential information if it is needed to participate in the planning process or replicate studies. The language allows for reasonable efforts to be made to abide by confidentiality obligations, but ensures that such obligations ultimately will not be a barrier to disclosure.¹⁴

III. CONCLUSION

Wherefore, the Filing Parties request that the Commission accept these revisions to their respective OATTs as fulfilling their compliance obligations.

Respectfully submitted on behalf of the Filing Parties,

/Jennifer L. Key/

Jennifer L. Key
Attorney for Duke Energy Carolinas, LLC

Attachments

¹² *Id.* at P 30.

¹³ The NERC Rules of Procedure (§ 1500 *et seq.*) place limits on the disclosure of Confidential Information.

¹⁴ For example, if the “owner” of Confidential Information refuses to permit disclosure and threatens litigation against the SIRPP on the grounds that NERC rules impose a confidentiality obligation, it may be reasonable for the SIRPP to obtain oral or written confirmation from this Commission that the NERC confidentiality requirement is legally trumped by the Order No. 890 disclosure requirement before releasing such Confidential Information.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at Washington, D.C., this 17th day of August, 2009.

Jennifer L. Key

Jennifer L. Key

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ATTACHMENT A

**DUKE ENERGY CAROLINAS, LLC
CLEAN TARIFF SHEETS
EFFECTIVE DECEMBER 7, 2007-MARCH 16, 2008**

2.4.4.2 A TAG Sector Entity may be any organized group (e.g., corporation, partnership, association, trust, agency, government body, etc.) but can not be an individual person. A TAG Sector Entity may be a member of only one TAG Sector. A TAG Sector Entity and its affiliates or member organizations all may register as separate TAG Sector Entities, as long as such affiliates or member organizations meet the definition of a TAG Sector Entity.

2.4.4.3 A TAG Sector Entity should elect to be a member of one of the following TAG Sectors: Cooperative LSEs (that serve load in the NCTPC footprint); Municipal LSEs (that serve load in the NCTPC footprint); Investor-Owned LSEs (that serve load in the NCTPC footprint); Transmission Providers/Transmission Owners (that are not LSEs in the NCTPC footprint); Transmission Customers (a customer taking Transmission Service from at least one Transmission Provider in the NCTPC); Generator Interconnection Customers (a customer taking FERC- or state-jurisdictional generator interconnection service from at least one of the Transmission Providers in the NCTPC); Eligible Customers and Ancillary Service Providers (includes developers; ancillary service providers; power marketers not currently taking transmission service; and demand response providers); and General Public. An Individual is only eligible to join the General Public Sector.

2.4.4.4. Only one individual TAG participant that has registered as an agent or employee of a TAG Sector Entity may vote on behalf of a particular TAG Sector Entity with regard to any particular vote. An individual TAG participant may vote on behalf of more than one TAG Sector Entity, if authorized to do so. Questions to be voted on will be answerable with a Yes or No.

2.4.4.5 If a vote is to be taken, each TAG Sector that has at least one TAG Sector Entity representative, or at least one Individual or TAG Sector Entity representative in the case of the General Public Sector, present will receive a Sector Vote with a worth of 1.00. A Sector Vote is divisible. The vote of each

5.5 Technical Analysis and Study Results

5.5.1 The PWG performs the technical study analysis in accordance with the OSC approved study methodology and produces the study results.

5.5.2 Results from the technical analysis are reported to identify transmission elements approaching their limits such that all NCTPC Participants are made aware of potential issues and appropriate steps can be identified to correct these issues, including the potential of identifying previously undetected problems.

5.5.3 Study results are made available to the TAG participants for review and comment.

5.6 Assessment and Problem Identification

5.6.1 The Transmission Providers provide the summary data identifying the reliability problems and causes resulting from their assessments and comprehensively review the information with the PWG. The PWG evaluates the technical results provided by the Transmission Providers to identify problems and issues and reports to the OSC.

5.6.2 TAG participants are provided information relating to technical assessments and problem identification.

5.7 Solution Development

5.7.1 The PWG identifies potential solutions to the transmission problems identified and will test the effectiveness of the potential solutions through additional analysis as required and ensure that the solutions meet the study criteria previously developed.

5.7.2 TAG participants will have the opportunity to propose alternative transmission, generation and/or demand response solutions. TAG participants shall provide the necessary information (cost, performance, lead time to install, etc.) for proposed generation and/or demand response alternative solutions so that they may be compared with other alternatives.

5.7.3 All options that satisfactorily resolve an identified reliability problem would be given consideration on a comparable basis.

5.7.4 The Transmission Providers estimate the costs for each of the proposed solutions (e.g., cost, cash flow, present value) and develop a rough schedule estimate to implement the solution. This information is reviewed and discussed by the PWG.

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Issued on: August 17, 2009

Effective: December 7, 2007

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5.8 Selection of Preferred Transmission Plan

- 5.8.1 The PWG compares all of the alternatives and selects the preferred solution by balancing the solutions' costs, benefits, and associated risks. Competing solutions will be evaluated against each other based on a comparison of their relative economics, timing, feasibility, and effectiveness of performance.
- 5.8.2 The PWG selects a preferred set of solutions that provides the most reliable and cost effective solution while prudently managing the associated risks.
- 5.8.3 The PWG provides the OSC and the TAG participants with their recommendations based on this selection process in order to obtain their input.

5.9 Collaborative Transmission Plan Report

- 5.9.1 The PWG prepares a draft "Collaborative Transmission Plan Report" based on the study results and the recommended solutions and provides the draft to the OSC for review. The draft Report describes the plan in a manner that is understandable to the TAG participants (*e.g.*, describing any needs, the underlying assumptions, applicable planning criteria, and methodology used to determine the need), rather than simply reporting engineering results. The report includes a comprehensive summary of all the study activities as well as the recommended solutions including estimates of costs and construction schedules.
- 5.9.2 The OSC forwards the draft report to the TAG participants for their review and discussion. The PWG members are the technical points of contact that can respond to questions regarding modeling criteria, assumptions, and data underlying the Report. The TAG participants may discuss, question, or propose alternatives for any solutions identified by the draft Report.
- 5.9.3 The OSC evaluates the results and the PWG recommendations and the TAG participants' input. The OSC approves the final Collaborative Transmission Plan for posting on the NCTPC Website. The Plan also is posted on the Transmission Providers' OASIS and distributed to the TAG participants.

5.9.4 The Collaborative Transmission Plan Report allows the NCTPC Participants to identify alternative, least-cost resources to include with their respective Integrated Resource Plans. Others can

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