combination transaction (merger), to revise and apply Duke Energy Carolinas, LLC's (DEC) Regulatory Conditions and Code of Conduct to Progress and Progress Energy Carolinas, Inc. (PEC), and to nullify PEC's Regulatory Conditions and Code of Conduct.

The application included the following exhibits: Exhibit 1 - a copy of the Agreement and Plan of Merger between Duke Energy Corporation and Progress Energy, Inc., dated January 8, 2011 (Merger Agreement); Exhibit 2 - investment analyses of the proposed transaction by Oppenheimer, Baird, and Bank of America/Merrill Lynch; Exhibit 3 - a proposed Joint Dispatch Agreement between Duke Energy Carolinas, LLC and Progress Energy Carolinas, Inc.; Exhibit 4 - an Analysis of Economic Efficiencies under Joint Dispatch Prepared for Duke Energy Carolinas and Progress Energy Carolinas by Compass Lexecon (Compass Lexecon Study); Exhibit 5 - Fuel Synergies Review prepared by Booz & Company (Fuel Synergies Review, which was filed under seal); Exhibit 6 - Regulatory Conditions approved by the Commission in its Order Approving Merger Subject to Regulatory Conditions and Code of Conduct, issued March 24, 2006, in Docket No. E-7, Sub 795 (Sub 795 Order), revised to reflect the affiliation of Progress and PEC with Duke; and Exhibit 7 - a Market Power Study consisting of Exhibits J-3 through J-11 to the testimony of William H. Hieronymous filed with the Federal Energy Regulatory Commission (FERC) by the Applicants in support of their merger approval application (Market Power Study).

The Commission's Order Requiring Filing of Analyses, issued November 2, 2000, in Docket No M-100, Sub 129 (Sub 129 Order), requires that merger applications be accompanied by a market power analysis and a cost-benefit analysis. The Applicants asserted that the Market Power Study, the derivation of joint dispatch fuel savings in the Compass Lexecon Study and the additional fuel savings set forth in the Fuel Synergies Review complied with this requirement.

The Applicants noted that the issuance of common stock by Duke to acquire the outstanding stock of Progress is governed by Regulatory Condition Nos. 41 and 54 approved by the Commission in the Sub 795 Order. Regulatory Condition No. 41(d) provides that 'All 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 Condition No. 54.' Subsection (a) of Regulatory Condition No. 54 provides that 'For any proposed merger, acquisition, or other business combination by or affecting [DEC], [DEC] shall file an application for approval pursuant to G.S. 2-111(a) at least 180 days before the proposed closing date for merger, acquisition, or business combination.' As DEC will issue no securities in connection with the merger, Duke and DEC requested acknowledgement by the Commission that Regulatory Condition No 54 had been satisfied by the filing of the application.

***2** The application was preceded by advance notices filed on February 4, 2011, by DEC and PEC in Docket Nos. E-7, Sub 980, and E-2, Sub 995, respectively. In Docket No. E-7, Sub 980, DEC provided advance notice pursuant to Regulatory Condition Nos. 3, 9, 10, and 59(b), as approved in the Sub 795 Order, of its intent to transfer independent operational control of its generation facilities to combined operational control pursuant to a proposed Joint Dispatch Agreement (JDA) with PEC and to request that the FERC approve a Joint Open Access Transmission Tariff (Joint OATT) covering the balancing authority areas (BAA) of both DEC and PEC. DEC noted in its advance notice that the Commission may extend the advance notice period pursuant to Regulatory Condition No. 59(b) and may review and consider the proposed JDA as part of the merger proceeding. In Docket No. E-2, Sub 995, PEC provided advance notice pursuant to Regulatory Condition Nos. 33, 38, and 45, as approved in the Commission's Order Adopting Revised Regulatory Conditions and Code of Conduct, issued October 27, 2004, in Docket No. E-2, Sub 844 (Sub 844 Order), of its intention to transfer operational control of its generation assets to DEC. By Order issued April 4, 2011, the Commission gave Duke and Progress approval to file with the FERC the proposed JDA and the conformed Merger Agreement premised upon the JDA.

On April 4, 2011, in Docket No. EC11-60-000, Duke and Progress, together with their public utility subsidiaries DEC and PEC, submitted to the FERC their application for approval of the merger under Sections 203(a)(1) and 203(a)(2) of the Federal Power Act (FPA). Concurrently with this application, Duke on its own behalf and on behalf of DEC, and Progress on its own behalf and on behalf of PEC, filed with the FERC a pro forma JDA in Docket No. ER11-3306-000 and a pro forma Joint OATT in Docket No ER11-3307-000.

On April 27, 2011, the Commission issued an Order scheduling the merger application for hearing, establishing deadlines for petitions to intervene and the filing of testimony, establishing discovery guidelines, requiring public notice, and incorporating by reference into the merger dockets the record in the advance notice dockets, which the Commission then closed by separate Order. In addition, the Commission found and concluded that the application satisfied the requirements of the Sub 129 Order, Regulatory Condition No. 33 of the Sub 844 Order, and Regulatory Condition No. 54 of the Sub 795 Order.

On May 20, 2011, the Applicants prefiled the direct testimony of the following witnesses: James E. Rogers and William D. Johnson; Lynn J. Good; Alexander (Sasha) J. Weintraub; and Joseph P. Kalt.

On June 22, 2011, DEC and PEC filed a revised proposed JDA, containing minor revisions, and advance notice of their intent to make these revisions and file the proposed revised JDA with the FERC. By Order issued July 11, 2011, the Commission gave DEC and PEC approval to proceed with filing the revised JDA with the FERC

*3 Petitions to intervene in this proceeding were filed by Environmental Defense Fund (EDF), the Sierra Club, the South Carolina Coastal Conservation League, and Southern Alliance for Clean Energy (collectively, EDF, *et al.*); International Brotherhood of Electrical Workers (IBEW); North Carolina Sustainable Energy Association (NCSEA); the City of Orangeburg, South Carolina; the Commercial Group; Blue Ridge Paper Products, Inc., d/b/a Evergreen Packaging (Blue Ridge); North Carolina Waste Awareness and Reduction Network (NC WARN); Carolina Industrial Group for Fair Utility Rates II and Carolina Industrial Group for Fair Utility Rates III; Carolina Utility Customers Association, Inc.; the South Carolina Office of Regulatory Staff; North Carolina Farm Bureau Federation; Duke Wholesale Customer Group; EnergyUnited Electric Membership Corporation; Electricities of North Carolina, Inc. (Electricities), North Carolina Municipal Power Agency 1 (NCMPA1), and North Carolina Eastern Municipal Power Agency (NCEMPA); Blue Ridge Electric Membership Corporation, Haywood Electric Membership Corporation, Piedmont Electric Membership Corporation, and Rutherford Electric Membership Corporation; North Carolina Electric Membership Corporation (NCEMC); the Public Works Commission of the City of Fayetteville, North Carolina (Fayetteville); the Greenwood Commissioners of the Public Works of the City of Greenwood, South Carolina; the City of Concord, North Carolina; the City of Kings Mountain, North Carolina; the Town of Due West, South Carolina; the Town of Prosperity, North Carolina; the Town of Forest City, North Carolina; the Town of Highlands, North Carolina; the Town of Dallas, North Carolina; Lockhart Power Company; and Western Carolina University. By various orders, the Commission granted the petitions to intervene. The intervention of the Public Staff is recognized pursuant to G.S. 62-15(d) and Commission Rule R1-19(e).

Petitions to intervene out of time were filed by the North Carolina Justice Center, the North Carolina Housing Coalition, Public Citizen, Greenpeace USA, the Nuclear Information and Resource Center, the Florida Consumer Action Network, Plains and Eastern Clean Line, LLC, and the City of New Bern, North Carolina. All of these petitions were denied.

Limited admissions to practice before the Commission were granted to a number of out-of-state attorneys.

On August 25, 2011, the Public Staff filed a motion for an extension of time to file testimony and a revision to the procedural schedule. On August 26, 2011, the Commission issued an Order granting the motion and extending the time for the Public Staff, DEC, and PEC to file their settlement agreement until September 1, 2011; extending the time for intervenors to file testimony until September 7, 2011; extending the time for the Applicants to file rebuttal testimony until September 14, 2011; and providing for the filing of a response by the Public Staff to the testimony of other intervenors by September 14, 2011.

*4 On August 26, 2011, NCEMC filed a letter stating that it no longer opposed the approvals sought by the Applicants.

On September 2, 2011, having been granted an oral one-day extension of time, the Public Staff filed an Agreement and Stipulation of Settlement between the Applicants, DEC, PEC, and the Public Staff (Stipulation). Attached to the Stipulation

were proposed Regulatory Conditions and a Code of Conduct. Also on September 2, 2011, the Public Staff filed the testimony of Mathew J. Morey and James G. Hoard.

On September 6, 2011, EDF, *et al.*, filed a motion to extend the time for filing intervenor testimony and statements of position until September 8, 2011, and to extend the time for filing the Applicants' rebuttal testimony and the Public Staff's responsive filing until September 15, 2011. By Order issued September 7, 2011, the Commission granted this motion.

On September 8, 2011, EDF, *et al.*, filed the testimony of Richard S. Hahn; Blue Ridge filed the testimony of Michael Ferguson; the City of Orangeburg filed a statement of position and the testimony of John Bagwell; the Commercial Group filed the testimony of Steve W. Chriss; NCSEA filed the testimony of Ivan Urlaub; and NC WARN filed a statement of position and the testimony of Roger D. Colton. Also on September 8, 2011, the South Carolina Office of Regulatory Staff filed a notice of settlement agreement.

On September 9, 2011, IBEW filed a statement of position, dated September 7, 2011, and a motion for leave to file out of time. By Order issued September 9, 2011, the Commission granted IBEW's motion.

On September 12, 2011, the Applicants filed motions to strike all or portions of the testimony of Blue Ridge and NCSEA. On September 13, 2011, and September 14, 2011, NCSEA and Blue Ridge, respectively, filed responses to the motions to strike.

On September 14, 2011, the Applicants filed a motion to strike portions of the testimony of EDF, *et al.* On September 16, 2011, EDF, *et al.*, filed their response to the motion.

On September 14, 2011, the Applicants filed a motion to strike the testimony of the City of Orangeburg. On September 16, 2011, the City of Orangeburg filed its response to the motion.

On September 15, 2011, the Public Staff filed its response to the statements of position and prefiled testimony of the other intervenors. Included in the filing were clean corrected and redlined versions of the proposed Regulatory Conditions and Code of Conduct filed on September 2, 2011. Two substantive changes were included in the corrected version, a revision to the definition of fully distributed cost and the addition of the Town of Winterville to the list of historically served wholesale customers in Regulatory Condition No. 3.7(b). Also included in this filing were a redlined version of the Regulatory Conditions and Code of Conduct approved by the Commission in the Sub 795 Order showing the changes made by the proposed Regulatory Conditions and Code of Conduct and a redlined version of the Regulatory Conditions and Code of Conduct attached as Exhibit 6 to the merger application.

*5 Also on September 15, 2011, the Applicants filed the rebuttal testimony of Paula J. Sims, B. Mitchell Williams, Craig DeBrew, Alexander J. Weintraub, Lynn J. Good, Joseph P. Kalt, and John L. Harris.

On September 19, 2011, the Commission issued an Order denying the Applicants' motions to strike the testimony of the City of Orangeburg, NCSEA, Blue Ridge, and EDF, *et al.*, except for a limited portion of the testimony of EDF, *et al.*

By Order issued September 19, 2011, the Commission admitted into evidence the application and Exhibits 1, 2, 4, 5 (under seal), and 7 filed on April 4, 2011; the revised JDA filed on June 22, 2011, and the corrected Regulatory Conditions and Code of Conduct filed on September 2, 2011.

Also on September 19, 2011, the Public Staff filed a proposed revision to Regulatory Condition No. 4.4 pursuant to a request by Fayetteville and requested that the Regulatory Conditions that were to be admitted into evidence be revised accordingly. This revision was allowed by Chairman Finley in open hearing on September 20, 2011.

Numerous statements of position from members of the public were received by the Commission and the Public Staff and were filed in these dockets.

The matter came on for hearing as scheduled, beginning on September 20, 2011. The following persons testified as public witnesses: Dr. Freda Porter, Thyron Williams, Robert Eidus, Jon Hudson, Dan Conrad, Harry Phillips, Rebekah O'Connell, Albert Ripley, Olga Grlic, Beth Henry, Dr. Thomas Henkel, Jerry Markatos, Chris Estes, Miriam Thompson, Deborah Arnesen, Robert Rodriquez, Alice Loyd, Rev. Melvin Whitley, DeWayne Barton, Bobi Gallagher, Joan Novak, Sherri Zann Rosenthal, Ryan Thomson, Wells Eddleman, Susannah Tuttle, Jim Senter, Rev. Lynice Williams, Elizabeth Hutchby, and Audrey Schwankl.

The Applicants presented the testimony of William D. Johnson, Chairman, President, and Chief Executive Officer of Progress; James E. Rogers, Chairman, President, and Chief Executive Officer of Duke; Lynn J. Good, Chief Financial Officer of Duke and the proposed Chief Financial Officer of the combined companies upon closing; Alexander (Sasha) J. Weintraub, Vice President - Fuels and Power Optimization for PEC; and Joseph P. Kalt, Ford Foundation Professor of International Political Economy at the John F. Kennedy School of Government, Harvard University, and a senior economist at Compass Lexecon.

The Public Staff presented the testimony of James G. Hoard, Assistant Director, Public Staff Accounting Division; and Matthew J. Morey, Senior Consultant with Christensen Associates Energy Consulting, LLC.

EDF, *et al.*, presented the testimony of Richard S. Kahn, a Principal Consultant with La Capra Associates, Inc.

The City of Orangeburg presented the testimony of John Bagwell, Director of the Electric Division of the Department of Public Utilities.

The Commercial Group presented the testimony of Steve W. Chriss, Senior Manager, Energy Regulatory Analysis, for Wal-Mart Stores, Inc.

*6 NCSEA presented the testimony of Ivan Urlaub, Executive Director.

NC WARN presented the testimony of Roger D. Colton, a principal in the firm of Fisher, Sheehan and Colton, Public Finance and General Economics.

The Applicants presented the rebuttal testimony of Sasha Weintraub, Lynn J. Good; Joseph P. Kalt; Paula J. Sims, Chief Integration Officer for the Merger and Senior Vice President of Corporate Development and Improvement for Progress; B. Mitchell Williams, Manager, Regulatory Affairs, for PEC; and John L. Harris, Principal Financial Specialist in the Treasury and Enterprise Risk Management Department of Progress Energy Service Company, LLC (PESC).

On September 22, 2011, Blue Ridge filed a Settlement Agreement entered into by Duke, Progress, DEC, PEC, and Blue Ridge resolving the issues among them in these dockets. The testimony of Michael Ferguson on behalf of Blue Ridge and the rebuttal testimony of Craig DeBrew on behalf of PEC were withdrawn pursuant to this stipulated agreement.

On September 30, 2011, the FERC issued its Order on Disposition of Jurisdictional Facilities and Merger in Docket No. EC11-60-000 (FERC Merger Order). In this order, the FERC conditionally approved the proposed merger subject to approval of market power mitigation measures to be proposed by the Applicants in a compliance filing to be made within 60 days of the issuance of the FERC Merger Order to remedy the market power analysis screen failures identified by the FERC. The FERC stated that such measures could include, but need not be limited to, joining or forming a regional transmission organization (RTO), implementation of an independent coordinator of transmission (ICT) arrangement, generation divestiture, virtual divestiture of generation, and/or proposals to build new transmission to provide greater access to third-party suppliers. The purpose of these measures would be to mitigate the wholesale market power effects that the FERC concluded the merger

would have on horizontal competition in the DEC BAA and the PEC East BAA. The FERC stated that regardless of what mitigation measure or measures were proposed, the mitigation efforts would have to be sufficient to reduce the Herfindahl-Hirschman Index (HHI) changes resulting from the merger to no more than a 50 point increase for highly concentrated markets and no more than a 100 point increase for moderately concentrated markets.

On October 7, 2011, DEC filed with the Commission a motion and advance notice in Docket No E-7, Sub 995, requesting a waiver of the 30-day advance notice required prior to a filing with the FERC by Regulatory Condition No. 10 approved in the Sub 795 Order. In the alternative, DEC requested that the Commission shorten the advance notice period to seven days. DEC asserted that a waiver or shortening of the advance notice period would enable the Applicants to proceed to file the proposed market power mitigation plan in response to the FERC Merger Order.

On October 17, 2011, the Commission issued an Order granting the motion for waiver and requiring Duke to file a copy of the FERC mitigation plan in these dockest contemporaneously with the filing of the plan with the FERC. The Order stated that it did not constitute a decision by the Commission as to the merits of the proposed mitigation plan and was without prejudice to the right of any party to these dockets to contest relevant issues due to the filing of the mitigation plan with the FERC. The Order further stated that the Commission and the parties would have the opportunity to review the proposed mitigation plan prior to the issuance of an order by the Commission on the Applicants' merger application.

*7 On October 17, 2011, Duke and Progress filed their proposed mitigation plan with the FERC in Docket No. EC11-60-000. Contemporaneously therewith, Duke on its own behalf and on behalf of DEC, and Progress on its own behalf and on behalf of PEC, filed the same documents with the Commission in the present dockets.

On October 19, 2011, Duke filed on behalf of itself and DEC, with the FERC in Docket No. ER12-115-000, an executed, eTariff-compliant JDA to become effective upon consummation of the merger. On the same date, Progress filed on its own behalf and on behalf of PEC, in Docket No. ER12-118-000, its concurrence to the executed JDA. On October 20, 2011, Duke on behalf of itself and DEC, and Progress on behalf of itself and PEC, filed a motion requesting the FERC to consolidate the joint dispatch dockets and give expedited consideration to their request for approval.

Also on October 19, 2011, Duke on behalf of itself and DEC, and Progress on behalf of itself and PEC, filed an eTariff-compliant Joint OATT with the FERC in Docket Nos. ER12-116-000, ER12-119-000 and ER11-3307-000. On October 20, 2011, Duke on behalf of itself and DEC, and Progress on behalf of itself and PEC, filed a motion requesting the FERC to consolidate the Joint OATT dockets and give expedited consideration to their request for approval.

Pursuant to the Notice of Mailing of Transcript issued by the Commission on October 12, 2011, briefs and proposed orders were due to be filed by November 14, 2011.

On November 2, 2011, the Commission issued a Post-Hearing Order Requiring Verified Information (Post-Hearing Order) requiring the Applicants to answer jointly a list of 25 questions and to submit their answers under oath in the form of a verified affidavit or affidavits on or before November 17, 2011.

On November 7, 2011, EDF, *et al.*, filed a motion requesting the Commission to (a) suspend the proceedings in this case until the FERC merger proceeding is resolved and the intervenors and the Commission have the opportunity to evaluate and comment on the Applicants' responses to the Post-Hearing Order, or (b) hold the proceedings open to allow the parties to file comments on the FERC's final orders in the merger and related dockets, and extend the deadline for filing briefs and proposed orders to December 1, 2011.

On November 8, 2011, the Commission issued an Order extending the deadline for filing briefs and proposed orders until November 23, 2011

In the Matter of Application of Duke Energy Corporation..., 298 P.U.R.4th 363...

On November 17, 2011, the Applicants filed their verified responses to the questions propounded by the Commission in its November 2, 2011 Post-Hearing Order.

On December 14, 2011, the FERC issued an Order Rejecting Compliance Filing in which it found the Applicants' proposed market power mitigation plan was inadequate to address the wholesale market power concerns raised in the FERC Merger Order. On that same date, the FERC also issued orders dismissing the Applicants' applications for approval of the JDA and Joint OATT. However, all three FERC orders were without prejudice to the Applicants' right to file revised proposals.

*8 On February 22, 2012, in Docket No. E-7, Sub 995, the Applicants filed an Advance Notice of their intent to file a revised market power mitigation plan with the FERC. On March 8, 2012, the Public Staff filed its Response to the Applicants' Advance Notice. The Public Staff stated that it had no objection to the Applicants filing the revised mitigation plan with the FERC because that filing would not affect the Commission's jurisdiction to decide the merits of the proposed merger or the parties' opportunity to be heard on the effects of the plan. No other party filed a response to the Applicants' Advance Notice.

On March 26, 2012, the Applicants filed with the FERC a revised mitigation plan in Docket No. EC11-60-004. On the same date, the Applicants filed with the FERC the Joint Dispatch Agreement in Docket Nos. ER12-1338-000, ER12-1347-000, and ER11-3306-000, and Joint Open Access Transmission Tariff (Joint OATT), in Docket Nos. ER12-1343-000, ER12-1345-000, ER11-1346-000 and ER11-3307-000.

On May 8, 2012, the Public Staff and the Applicants filed a Supplemental Agreement and Stipulation of Settlement (Supplemental Stipulation) that made several changes to the original Stipulation. On the same date, the Public Staff filed a Motion for Establishment of Procedural Schedule proposing that the Public Staff and the Applicants file testimony on or about May 15, 2012, supporting and explaining the Supplemental Stipulation, and that the Commission establish dates for intervenors to file comments or testimony on the Supplemental Stipulation and the Public Staff and the Applicants to file reply comments or rebuttal testimony.

On May 15, 2012, the Commission issued an Order allowing the Public Staff and the Applicants to file testimony supporting and explaining the Supplemental Stipulation filed on May 8, 2012. Although the Commission concluded there was not good cause at that time to establish due dates for intervenors to file comments or testimony and for the Public Staff and the Applicants to file reply comments or rebuttal testimony, the Order encouraged the intevenors to conduct relevant and appropriate discovery on the Supplemental Stipulation and supporting testimony filed by the Public Staff and the Applicants to prepare as much as reasonably possible to be in position to file comments or testimony regarding the Supplemental Stipulation. The Order further stated that in the event the FERC issued a decision on or about June 8, 2012, that did not make a material change to the terms of the Stipulation or Supplemental Stipulation, the Commission intended to issue a procedural order that would expedite the filing of comments and reply comments on the Supplemental Stipulation.

On May 15, 2012, the Applicants filed the supplemental testimony of Alexander J. Weintraub explaining the Applicants' revised market power mitigation plan and Supplemental Stipulation. On the same date, the Public Staff filed the supplemental testimony of James G. Hoard discussing the impact of the Applicants' revised market power mitigation plan on the Stipulation and explaining the Supplemental Stipulation.

*9 On June 8, 2012, the FERC issued an Order Accepting Revised Compliance Filing, As Modified, And Power Sales Agreements (FERC Market Power Order), in Docket Nos. EC11-60-004, ER12-1339-000, ER12-1340-000, ER12-1341-000 and ER12-1342-000. In summary, the FERC Market Power Order accepted the Applicants' revised mitigation plan, subject to several conditions. In addition, the FERC issued an Order on Joint Dispatch Agreement and Joint Open Access Transmission Tariff (FERC JDA Order) in Docket Nos. ER12-1338-000, ER12-1343000, ER12-1345-000, ER12-1346-000 and ER12-3347-000. In summary, the FERC JDA Order approved the JDA, subject to certain modifications.

On June 11, 2012, the Commission issued an Order Establishing Procedural Schedule directing that the Applicants and Public Staff file comments or testimony regarding the impact of the FERC Market Power and JDA Orders on this proceeding and the Supplemental Stipulation by June 13, 2012, that intervenors file comments or testimony regarding the FERC Market Power and JDA Orders and the comments or testimony filed by the Applicants and the Public Staff by June 18, 2012, and that the Applicants and Public Staff file reply comments or rebuttal testimony by June 19, 2012.

On June 12, 2012, DEC and PEC filed a Motion to Waive the Advance Notice Period Pursuant to Regulatory Condition Nos 9 and 10, along with a revised version of the JDA, requesting that the Commission waive the 30-day advance notice requirement applicable to the filing of the revised JDA with the FERC.

On June 13, 2012, the Applicants filed the further supplemental testimony of Alexander J. Weintraub addressing the impact of the FERC Market Power and JDA Orders on this proceeding and the Supplemental Stipulation On the same date, the Public Staff filed comments regarding the same subjects.

On June 15, 2012, the Commission issued an Order Regarding Advance Notice granting the request of DEC and PEC for a waiver of the 30-day advance notice requirement applicable to the filing of the revised JDA with the FERC

On June 18, 2012, comments were filed by the NCSEA, City of Orangeburg, and EDF, *et al.*

In addition, on June 18, 2012, NC WARN filed an unverified document entitled Position of NC WARN (Position Statement). In its Position Statement, NC WARN identified a number of alleged new issues in addition to those issues identified in the Commission's June 11, 2012 Order. NC WARN stated that it was unable to waive cross-examination of Duke's witnesses and, therefore, it requested a hearing to conduct such cross-examination. Further, NC WARN requested that the Commission allow it to present testimony and evidence, and that the Commission receive additional testimony from public witnesses. Finally, NC WARN stated that it intended to make a motion to request that the Commission order public disclosure of certain information previously filed with the Commission as proprietary and confidential.

On June 19, 2012, the Applicants and the Public Staff filed reply comments. With regard to NC WARN's Position Statement, the Applicants stated, among other things, that the alleged additional issues identified by NC WARN were speculative and were not issues appropriate or necessary to address in the merger proceeding. Further, the Applicants asserted that to the extent these issues materialize in the future they will be addressed by the Commission in other dockets. The Applicants stated therefore, these alleged new issues do not require a further hearing by the Commission in its consideration of their merger application

***10** Also on June 19, 2012, the Public Staff filed comments stating, among other things, that NC WARN's contentions were not relevant to the issues presented in this proceeding or had already been addressed in prior hearings and, therefore, did not require a further hearing by the Commission.

On June 19, 2012, the Commission issued an Order Scheduling Hearing. The Order scheduled a hearing on Monday, June 25, 2012, at 2:00 p.m., to allow an opportunity for the introduction of the supplemental testimony of the Applicants' and the Public Staff's witnesses and to allow NC WARN to cross-examine the Applicants' and the Public Staff's witnesses regarding their supplemental testimony. Further, the Order rejected NC WARN's request to present testimony and to allow additional public witnesses to testify. In addition, the Order stated that to the extent that NC WARN desired to make motions for further actions by the Commission, as alluded to in its Position Statement, NC WARN should do so in writing in compliance with the Commission's rules.

On June 21, 2012, NC WARN filed a Motion for Reconsideration pursuant to G S. 62-80 requesting that the Commission modify its Order Scheduling Hearing to allow NC WARN to more broadly cross-examine the Applicants' and the Public Staff's witnesses.

Also on June 21, 2012, NC WARN filed a Motion to Make Settlement Documents Public.

On June 22, 2012, the Applicants filed a Response and Motion to Deny NC WARN's Motion for Reconsideration and a Response and Motion to Deny NC WARN's Motion to Make Settlement Documents Public.

On June 22, 2012, the Commission issued an Order denying NC WARN's Motion for Reconsideration

On June 25, 2012, the Commission held the hearing as scheduled in its June 19, 2012 Order Scheduling Hearing. The Applicants introduced the supplemental testimony and further supplemental testimony of Alexander J. Weintraub. The Public Staff introduced the supplemental testimony and exhibits of James G. Hoard and the Supplemental Stipulation, as amended. In addition, NC WARN cross-examined Applicants witness Weintraub and Public Staff witness Hoard regarding their supplemental testimony. At the conclusion of the hearing, NC WARN and the Applicants made oral arguments. The Commission informed the parties that they could file post-hearing briefs and/or proposed orders, but that such filings would not be considered by the Commission unless received prior to the issuance of the Commission's decision. Finally, NC WARN was granted leave to file an offer of proof.

On June 25, 2012, the Applicants provided a notice of acceptance letter to the FERC, including copies of the binding construction agreements with American Electric Power and Dominion Virginia Power that the FERC's Market Power Order required the Applicants to file within 15 days (FERC Acceptance Letter), in which they accepted the FERC's revisions to their market power mitigation proposal, as required by the FERC's Market Power Order.

*11 On June 26, 2012, the Commission issued an Order Allowing Responses to Public Records Request, allowing parties to the settlement agreements filed under seal to respond to NC WARN's request that those agreements be made public.

On June 27, 2012, NC WARN filed an Offer of Proof.

On June 28, 2012, the Applicants filed a Motion to Reject NC WARN's Offer of Proof.

On June 28, 2012, responses to NC WARN's Motion to Make Settlement Documents Public were filed by NCEMC, NCMPA1, NCEMPA, Blue Ridge Electric Membership Corporation, Haywood Electric Membership Corporation, Piedmont Electric Membership Corporation, Rutherford Electric Membership Corporation, and jointly by the Applicants, Carolina Industrial Group for Fair Utility Rates II and III and Carolina Utility Customers Association, Inc.

To the extent allowed by G.S. 8C-1, Rule 201(b), the Commission takes judicial notice of the records in the above FERC dockets, the FERC Acceptance Letter, as well as FERC Docket Nos. EC11-60-000 (merger application), ER12-118-000 (eTariff-compliant JDA), ER11-3307-000 (pro forma Joint OATT), and ER11-3307-000, ER12-116-000 and ER12-119-000 (eTariff compliant Joint OATT).

Based on the foregoing, the evidence presented at the hearings, and the entire record in this matter, the Commission makes the following

FINDINGS OF FACT

1. Duke is a corporation duly organized and existing under the laws of Delaware and headquartered in Charlotte, North Carolina. DEC, a wholly-owned subsidiary of Duke, is a limited liability company organized, existing, and operating under the laws of North Carolina.

2. DEC is engaged in the business of generating, transmitting, distributing, and selling electricity to approximately 2.4 million retail customers in a service area that covers more than 24,000 square miles in portions of central and western

North Carolina and western South Carolina. DEC also sells electricity at wholesale to municipal, cooperative, and investor-owned electric utilities.

3. DEC also is a public utility subject to the jurisdiction of this Commission and the jurisdiction of the Public Service Commission of South Carolina and a public utility under the FPA and is subject to the jurisdiction of the FERC.

4. Duke Energy Indiana, Inc. (Duke Indiana), Duke Energy Kentucky, Inc. (Duke Kentucky), and Duke Energy Ohio, Inc. (Duke Ohio; collectively, the former Cinergy utilities), are wholly owned subsidiaries of Duke that provide retail electric service in other states.

5. Progress is a corporation duly organized and existing under the laws of North Carolina and headquartered in Raleigh, North Carolina. PEC, a wholly-owned subsidiary of Progress, is a corporation organized, existing, and operating under the laws of North Carolina.

6. PEC is engaged in the business of generating, transmitting, distributing, and selling electricity to approximately 1.5 million retail customers in a service area that covers more than 34,000 square miles in portions of eastern, central, and western North Carolina and eastern South Carolina. PEC also sells electricity at wholesale to municipal, cooperative, and investor-owned electric utilities.

7. PEC also is a public utility subject to the jurisdiction of this Commission and the jurisdiction of the Public Service Commission of South Carolina and a public utility under the FPA and is subject to the jurisdiction of the FERC.

8. Florida Progress Corporation, d/b/a Progress Energy Florida (PEF), a wholly-owned subsidiary of Progress, provides retail electric service in Florida.

9. The Applicants are lawfully before the Commission pursuant to G.S. 62-111(a) with respect to the relief sought in the application and are in compliance with the filing requirements established in the Sub 129 Order with respect to the market power and cost-benefit analyses submitted with the application.

10. The Merger Agreement provides that Progress shareholders will receive 2.6125 shares of Duke common stock for each share of Progress common stock they own upon the closing of the transaction. This exchange ratio will be adjusted to 0.87083 shares of Duke common stock for each Progress share to account for a one-for-three reverse stock split to be effected by Duke in connection with the transaction.

11. After the close of the merger, Duke shareholders will own approximately 63 percent, and former Progress shareholders will own approximately 37 percent, of the post-merger Duke holding company stock. The Board of Directors will consist of 18 directors, 11 designated by Duke and seven designated by Progress.

12. The merger will occur at the holding company level, with Progress becoming a subsidiary of Duke and DEC, PEC, PEF, and the former Cinergy utilities each remaining a separate legal entity. The combined company will retain the name Duke Energy and will be headquartered in Charlotte; Progress and PEC will maintain a significant corporate and utility presence in Raleigh. At some point in the future, DEC and PEC intend to seek Commission approval to merge.

13. DEC's and PEC's respective retail rates and service will remain subject to the same degree of regulatory oversight and control by the Commission as under the pre-merger holding company structures. Further, any subsequent merger of DEC and PEC will be subject to the full authority of the Commission.

14. Known and potential benefits of the merger to North Carolina retail ratepayers, as well as to investors, include a favorable risk profile, greater diversification, and strong investment grade credit ratings for DEC and PEC that will lead to continued financial strength and reliable access to capital markets and an enhanced ability to construct and operate utility assets on reasonable financing terms.

15. The primary quantifiable benefits of the merger to North Carolina retail ratepayers consist of an estimated $364.2 million in total system fuel and fuel-related cost savings over the five-year period 2012 through 2016 through joint dispatch of DEC's and PEC's generation assets and an additional estimated $330.7 million in total system fuel and fuel-related system cost savings through sharing and implementing best practices for fuel procurement and use over the same five-year period.

16. The Stipulation guarantees that North Carolina retail ratepayers will receive their allocable share of $650 million of these cost savings, as well as a small amount of non-fuel operations and maintenance (O&M) cost savings, over five years through DEC's and PEC's annual fuel clause proceedings. Within 30 days after the merger closes, DEC and PEC will apply for approval of fuel rate decrements to begin flowing to ratepayers a pro rata portion of the projected Year 1 savings set forth in merger application Exhibits 4 and 5. These decrements will remain in effect until fuel rates are adjusted in DEC's and PEC's first fuel clause proceedings following the close of the merger. Further, if the fuel and fuel-related savings achieved by DEC and PEC exceed the guaranteed $650 million during the first five years after the merger, then North Carolina ratepayers will receive their allocable share of the additional savings.

17. The Stipulation further provides that DEC and PEC will file monthly reports of tracked fuel savings with their monthly fuel reports under Commission Rule R8-52. The Supplemental Stipulation provides that if North Carolina retail ratepayers have not received their allocable share of the $650 million of guaranteed savings at the end of the five-year period and the decline in the price of natural gas has resulted in the delivery of less coal to certain DEC coal-fired plants, then the five-year period will be extended by 18 months and the remaining savings amounts will be reflected as an adjustment in DEC's and PEC's respective fuel charge proceedings or as a separate decrement in fuel rates as realized throughout the 18-month period.

18. In addition to the immediately quantifiable benefits of the merger to North Carolina retail ratepayers, substantial non-fuel O&M cost savings are expected to result from the integration of Duke and Progress over the long term. Additional known and potential benefits include economies of scale and scope and the leveraging of best practices, both of which are expected to result in operating efficiencies and improvements over time. These savings, which are less certain than savings associated with joint dispatch and other fuel and fuel-related cost savings, will be reflected in test period costs in future general rate cases and will help to mitigate the rate impact of cost increases such as those associated with plant additions and compliance with environmental regulations.

19. The integration process will involve workforce reductions as functions are consolidated and duplicate positions are eliminated. These workforce reductions are estimated to include the elimination of approximately 1,860 positions across the combined company, mostly in the Carolinas. The elimination of these positions is expected to account for a substantial portion of the non-fuel O&M cost savings resulting from the merger and will not compromise DEC's and PEC's service reliability, safety and dependability.

20. The Regulatory Conditions and Code of Conduct attached to the Stipulation are another benefit of the merger to North Carolina retail customers in that they update, consolidate, clarify, strengthen, and expand the existing Regulatory Conditions that were approved by the Commission for Duke and Progress in the Sub 795 and Sub 844 Orders, respectively.

21. In addition to the direct benefits to North Carolina retail ratepayers, the Stipulation includes commitments by DEC and PEC to provide annual community support and charitable contributions in their North Carolina service areas over four years in amounts no less than $9.2 million and $7.28 million, respectively, based on the average of each company's annual contributions over the 2006 through 2010 period. DEC and PEC have also committed to contribute a total of $15 million during the first year after the merger for purposes such as workforce development and low income energy assistance in their service territories, to be allocated in proportion to the number of North Carolina

retail customers served by DEC and PEC. In addition to the $15 million contribution, DEC and PEC shall contribute $2 million to NC GreenPower during the first year after the merger.

22. Known and potential costs and risks of the merger to North Carolina retail ratepayers include direct merger costs and other merger-related cost increases that could impact North Carolina retail rates; the potential for preemption of the Commission's regulatory authority under the FPA, particularly as it relates to the JDA and the Joint OATT, and under the Public Utility Holding Company Act of 2005 (PUHCA 2005); potential adverse effects on DEC and PEC of transactions within the holding company family and the resulting need for increased regulatory oversight of such transactions, including the treatment of joint dispatch costs and savings; the potential for DEC and PEC to unreasonably favor their unregulated affiliates over nonaffiliated suppliers of goods and services; potential adverse impacts on DEC's and PEC's cost of capital; the exposure of DEC, PEC, and their respective retail ratepayers to costs and risks associated with Duke, Progress, and their subsidiaries; and the potential for DEC's and PEC's quality of service to deteriorate because of increased management focus on cost savings and earnings growth.

23. The Commission-approved Stipulation, Regulatory Conditions and Supplemental Stipulation protect DEC's and PEC's retail ratepayers from payment of merger-related costs by (a) requiring that direct expenses associated with costs to achieve the merger be excluded from DEC's and PEC's cost of service for retail ratemaking purposes; (b) allowing DEC and PEC to seek recovery in future rate case proceedings of capital costs associated with system integration projects and with 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, 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; however, the time limitation does not apply to DEC's capital costs associated with post-merger coal blending; (c) disallowing recovery of any merger-related employee severance costs in cost of service for retail ratemaking purposes; (d) requiring the exclusion of any acquisition adjustment that results from the merger; and (e) prohibiting the allocation of any costs associated with a failed merger.

24. The Commission-approved Regulatory Conditions effectively protect as much as reasonably possible the Commission's jurisdiction as a result of the merger, including risks related to agreements and transactions between and among DEC, PEC, and their affiliates, including the JDA; financing transactions involving Duke, DEC, or PEC, and any other affiliate; the ownership, use, and disposition of assets by DEC or PEC; participation in the wholesale market by DEC or PEC; and filings with federal regulatory agencies. In addition, they insulate DEC's and PEC's retail ratepayers as much as reasonably possible from any adverse consequences potentially resulting from the merger.

25. The Commission-approved Regulatory Conditions, Stipulation, and Supplemental Stipulation ensure that DEC's and PEC's retail ratepayers receive adequate benefits from the JDA and that joint dispatch costs and the sharing of cost savings can be appropriately audited.

26. The Commission-approved Stipulation, Regulatory Conditions and Code of Conduct effectively address as much as reasonably possible potential risks and concerns related to cost allocation and ratemaking arising from the merger, including ensuring that the costs incurred by DEC and PEC are properly incurred, accounted for, and directly charged, directly assigned, or allocated to their respective North Carolina retail operations.

27. The Commission-approved Stipulation and Regulatory Conditions provide appropriate and effective auditing and reporting requirements with respect to affiliate transactions and cost of service for retail ratemaking purposes.

28. The Commission-approved Stipulation, Regulatory Conditions and Code of Conduct effectively protect as much as reasonably possible DEC's and PEC's North Carolina retail ratepayers from the potential impacts of the merger relating to risks of transactions with and commitments of DEC, PEC and Duke to wholesale customers and other parties.

29. The Commission-approved Code of Conduct will effectively govern the relationships, activities, and transactions among DEC, PEC and their affiliates following the close of the merger.

30. The Commission-approved Regulatory Conditions effectively address as much as reasonably possible potential risks and concerns related to financing issues arising from the merger by ensuring that (a) neither DEC's nor PEC's capital structures and cost of capital are adversely affected because of their affiliation with Duke, each other, and other affiliates, and (b) both DEC and PEC have sufficient access to equity and debt capital at reasonable costs to adequately fund and maintain their current and future capital needs and otherwise meet their service obligations to their retail customers.

31. The Commission-approved Regulatory Conditions effectively address as much as reasonably possible potential risks and concerns related to corporate governance and ring-fencing issues arising from the merger by ensuring the continued viability of DEC and PEC and insulating and protecting DEC, PEC, and their retail ratepayers from the business and financial risks of Duke and the affiliates within the Duke holding company system, including the protection of utility assets from the liabilities of affiliates.

32. The Commission-approved Regulatory Conditions effectively enable the Commission to exercise its jurisdiction over business combinations involving Duke or other members of the Duke holding company family following the merger by ensuring that the Commission receives sufficient notice and opportunity to exercise its lawful authority.

33. The Commission-approved Regulatory Conditions effectively address as much as reasonably possible potential risks and concerns related to structure and organization arising from the merger by ensuring that the Commission will receive 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, DEC, PEC, and other affiliates, and nonpublic utility operations as they may affect North Carolina retail ratepayers.

34. The Commission-approved Regulatory Conditions provide appropriate and effective procedures for the implementation of conditions requiring advance notices and other filings arising from the merger.

35. The Commission-approved Regulatory Conditions effectively ensure monitoring of and compliance with their provisions, including the Code of Conduct, by requiring Duke, DEC, PEC, and all other affiliates to 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.

36. The Commission-approved Regulatory Conditions effectively ensure that both DEC and PEC maintain a strong commitment to customer service following the merger.

37. The Commission-approved Regulatory Conditions effectively ensure that DEC's and PEC's North Carolina retail ratepayers are protected as much as reasonably possible from any adverse effects of any tax sharing agreement and receive an appropriate portion of any income tax benefits associated with services taken by DEC and PEC from an affiliated service company.

38. The Commission-approved Regulatory Conditions effectively ensure that after the merger the Commission and the Public Staff will continue to have access to the books and records of DEC, PEC, and other members of the Duke holding company system in accordance with North Carolina law.

39. The Commission-approved Regulatory Conditions and the provisions of the Stipulation protect DEC's and PEC's North Carolina retail ratepayers as much as reasonably possible from known and potential costs and risks of the merger and provide sufficient benefits to offset known and potential costs and risks.

40. The regulatory oversight and controls in place at the retail level are sufficient to protect retail ratepayers as much as reasonably possible from any potential retail market power effects of the merger.

41. The issue of wholesale market power was addressed by the Applicants' revised market power mitigation plan, and approved with changes and conditions by the FERC in its June 8, 2012 Market Power Order. The Stipulation, Regulatory Conditions, and Supplemental Stipulation protect retail customers from most, but not all, costs associated with the Applicants' revised wholesale market power mitigation plan. Therefore, in order to fully protect retail customers, the Commission will require two additional protections. First, the Commission will require DEC and PEC to demonstrate how provision I.A.(5) of the Supplemental Stipulation will be implemented. Second, the Commission will not allow PEC to charge retail customers any costs associated with the Greenville-Kinston Dupont 230-kV line until the later of June 1, 2017, or the actual in-service date of the facility.

*12 *EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-9*

The evidence supporting these findings of fact is contained in the application and in the testimony of Applicants witnesses Rogers and Johnson. These findings are essentially informational, procedural, and jurisdictional in nature and for the most part are not in dispute.

Pursuant to the Sub 129 Order, applicants for merger approval pursuant to G.S. 62-111 are required, among other things, to file a market power analysis employing the Herfindahl-Hirschman Index (HHI) or other accepted measurement and sensitivity analyses on the impact of significant factors on markets. Applicants are also required to file a 'comprehensive list of all material areas of expected benefit, detriment, cost, and savings over a specified period (*e.g.*, three to five years) following consummation of the merger.' The purpose of such analyses is to assist the Commission in determining whether or not a merger meets the statutory standard for approval. The Commission stated in its Order dated April 27, 2011, that the application satisfied the filing requirements of the Sub 129 Order.

The Applicants stated in the application that the actual integration of Duke and Progress and their service companies is expected to produce cost savings in addition to those identified in the Compass Lexecon Study and the Fuel Synergies Review and that there will be upfront costs associated with achieving these savings The fact that the application did not include a quantification of the costs and benefits associated with these non-fuel savings, along with the exhibits quantifying direct and immediate fuel savings, does not constitute a filing deficiency insofar as the Sub 129 Order is concerned. Moreover, as discussed below, the record contains ample evidence regarding the Applicants' estimates of both fuel and non-fuel savings to support a decision as to whether the merger meets the statutory standard for approval

The Commission, therefore, finds and concludes that Duke and Progress are lawfully before the Commission with respect to the relief sought in the application and that the merger filing requirements established in Docket No. M-100, Sub 129, with respect to the market power and cost-benefit analyses submitted with the application have been met.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10-13

The evidence supporting these findings of fact is contained in the application, the Merger Agreement and the testimony of Applicants witnesses Rogers, Johnson, and Good. These findings are essentially uncontroverted.

Through the application and supporting testimony, the Applicants described the process for accomplishing the merger and the holding company structure that will exist upon closing The Applicants have indicated that the merger of DEC and PEC will not occur until a number of aspects of the utilities' operations are addressed. These include the determination of best business practices, operating procedures, equipment specifications, uniform rate schedules, service regulations, and computer systems. It is expected that the joint dispatch of generating assets and the coordination of activities related to fuel procurement and use, combined with general rate increases for DEC, will narrow the rate gap between DEC and PEC. Nevertheless, nothing in the

record in this proceeding suggests that a merger between DEC and PEC is imminent. When such a business combination is proposed, it will be subject to Commission approval under G.S. 62-111(a).

*13 The Commission, therefore, finds and concludes that the rates and service of DEC and PEC will remain subject to the same degree of regulatory oversight and control by the Commission under the proposed holding company structure as they were before the close of the merger.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence supporting this finding of fact is contained in the application and the testimony of Applicants witnesses Rogers, Johnson, and Good, and NCSEA witness Urlaub.

The Applicants state in the application that at the close of the merger the combined company will be the largest regulated electric utility in the United States. It will have the largest capitalization, the largest generating capacity, the largest nuclear generating capacity, and the largest number of customers of any group of affiliated regulated utilities in the Nation. Witnesses Rogers and Johnson testified that a larger and more diverse company with a strong balance sheet will have greater access to capital on favorable terms. Thus, the merger will enhance the Applicants' ability to construct and operate reliably the facilities needed to serve customers. The witnesses further testified that the greater size, scale and diversification of the combined company will translate into continued financial strength, significant operating cash flows, and strong investment grade ratings, all of which create an attractive investment opportunity for the debt and equity investors that are needed to finance utility operations.

Witnesses Rogers and Johnson testified that the utility industry faces an extended period of extremely large investments in infrastructure replacement, modernization and expansion. In order to meet the future demand for electricity, both companies will have to invest in new generation that will be more costly than the companies' current average embedded costs. PEC and DEC are well into this intense capital investment program. PEC is investing nearly $2 billion in new natural gas fueled generation. DEC is investing over $3 billion in new clean coal generation and natural gas fueled generation. Much of this generation is simply replacing aging plants that are no longer cost effective to operate. The companies also face significant cost increases in order to comply with new proposed Environmental Protection Agency regulations and Nuclear Regulatory Commission regulations. The resulting large infrastructure investment creates two challenges: (1) raising the capital necessary to finance the plant additions on reasonable terms; and (2) minimizing the costs to customers of building and operating these new plants. According to witnesses Rogers and Johnson, the merger of Progress and Duke will allow them to address both of these challenges and mitigate potential impacts.

Witnesses Rogers and Johnson explained that the combined company will not only have increased financial strength, a favorable risk profile, greater diversification, and strong investment grade credit ratings, it will also create operating efficiencies for PEC and DEC which will partially mitigate operating cost increases for both utilities. In addition, cost reductions will flow from the synergies produced by merging the service companies of the two Applicants, which will further help mitigate operating and maintenance cost increases. Thus, the merger will materially enhance PEC's and DEC's ability to construct the facilities their customers need today and in the future and to operate them in a reliable and cost effective manner.

*14 Finally, witnesses Rogers and Johnson emphasized that an important operational benefit of the merger will be centralized management of the two companies' nuclear fleets. Duke operates seven nuclear units, and Progress operates five. Eleven of these 12 nuclear units are in the Carolinas - a geographic proximity that further strengthens the benefits of operating as one large nuclear fleet and particularly supports the combination of these two companies. Additionally, the depth and breadth of the combined nuclear management team and workforce will also enhance the combined company's ability to operate these plants safely, reliably and cost effectively.

Witness Good described the financial strength, credit quality, and liquidity of Duke and Progress as stand-alone, unaffiliated entities and discussed the positive effect of the merger on the financial aspects of the combined company. She stated that as

of September 19, 2011, both companies had solid investment grade credit ratings, were in strong financial condition, and were expected to be able to meet their debt obligations on time and in full. Witness Good noted that both Duke and Progress operate in regulatory jurisdictions that support credit quality, and both have low business risk profiles characterized by predominantly rate-regulated utility businesses. She further stated that being the largest regulated utility in the country would translate into continued financial strength and flexibility for dealing with circumstances such as changing regulatory requirements, volatility in capital markets, economic downturns, and other external influences

Witness Good testified that during challenging or volatile market conditions, debt investors tend to favor larger entities that are active in the capital markets, have more liquidity and carry strong investment grade credit ratings. The combined company will possess all of these. The combined company will also have more geographic and regulatory diversity and a larger portion of the business associated with regulated operations, which will translate into more stable cash flows and liquidity. This diversity and greater proportion of regulated operations will allow the company greater operational flexibility and the ability to deal with unforeseen circumstances.

Witness Good noted that the major risk factors that are faced by regulated utilities such as PEC and DEC are regulatory risk, economic risk and risk resulting from increased environmental or nuclear regulations. Additionally, there are significant financial risks associated with having to make large capital investments to fund infrastructure projects. She stated that the credit rating agencies believe DEC and PEC operate in generally supportive regulatory environments that will support long-term credit quality with timely and sufficient recovery for prudently incurred costs and expenses. However, she also noted that the credit rating agencies have clearly recognized the unique challenges of managing higher than normal capital expenditure programs and the prospect of more stringent environmental mandates among the issues that could affect the credit quality of regulated utilities. Witness Good observed that the increased size, diversity and financial strength of the combined company will significantly help mitigate these risks.

*15 In addition, witness Good stated that the merger is expected to be accretive to earnings in year one, positioning the combined company in the 4% to 6% earnings growth range. The current Duke dividend policy will be maintained. These factors will equate to an attractive total shareholder return that will attract equity investors, thereby preserving reliable access to equity capital. Witness Good explained that, overall, the news of the merger has been well received by the equity analysts.

According to witness Good, both Moody's and Standard & Poor's (S&P) reviewed the proposed transaction and affirmed the credit ratings of the combined company and its subsidiaries as of the date of the merger announcement. She stated that size, scale, and financial strength are important to investors and should support the company's ability to attract capital on favorable terms. Good further stated that investors will benefit from more stable returns resulting from the fact that approximately 88 percent of Duke's business after the merger will be regulated, as opposed to 79 percent before. With respect to Progress, PEC, and Progress Energy Florida (PEF), Good testified that upon close of the merger S&P's CreditWatch with positive implications was expected to result in an upgrade to the companies' A-corporate credit rating, which will result in greater access to debt financing and a lower cost of debt than would otherwise be possible.

On cross-examination, witness Good stated that the rate of return or risk profile of the combined company should be less than the risk profile for the stand-alone companies because of the financial strength she described. However, she could not opine as to the quantification that would represent in a general rate proceeding

NCSEA witness Urlaub testified that the merger is not motivated by potential fuel savings or any operational efficiency, citing the investment analyst reports attached to the application as Exhibit 2. He noted that the witnesses for the Applicants stressed stronger balance sheets, positive credit ratings and the enhanced ability to obtain capital at lower rates as central benefits from the merger. From this, witness Urlaub concluded that a primary motive for the merger is improving the financial standing of the combined companies to allow them to pursue a strategic plan involving investments in large, capital intensive generation, including new nuclear generation. NCSEA opposes this strategy. Urlaub further asserted that the primary benefit of the merger is financial and that the benefits, such as JDA savings and lower costs of capital are by-products of the main objective, rather

than intended consequences. Nevertheless, although NCSEA opposes the merger, witness Urlaub acknowledged that the merger should produce real financial benefits and that such benefits should result in retail rates lower than those which would otherwise exist.

The Commission, therefore, finds and concludes that the merger will produce known and potential financial benefits for PEC and DEC in the form of continued financial strength, lower financing costs, and flexibility for dealing with changing circumstances. Such benefits should ultimately accrue to the benefit of PEC's and DEC's North Carolina retail ratepayers, as well as to the shareholders of the combined company Although not quantifiable, these benefits are important to North Carolina ratepayers.

*16 *EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 15-17*

The evidence supporting these findings of fact is contained in the application, Exhibits 4 and 5 to the application, the Stipulation, the Supplemental Stipulation, the testimony of Applicants witnesses Weintraub, Kalt, and Williams, the testimony of EDF, *et al.*, witness Hahn and the testimony of Public Staff witnesses Morey and Hoard.

The Applicants stated in the application that the primary and most immediate quantifiable benefit of the merger will result from combined dispatch of DEC's and PEC's generation assets through the JDA, which is expected to reduce DEC's and PEC's fuel costs by approximately $364 million over the five-year period 2012 through 2016. These savings are the result of using the lower cost resources of each company to displace the higher cost resources of the other depending on the marginal cost of production of each utility's available resources in a given hour. In addition to the fuel savings expected to result from the joint dispatch of DEC's and PEC's generation resources, fuel synergy savings totaling $330.7 million are expected to be realized over five years, consisting of the following: $115 million through sharing and implementation of best practices for fuel procurement and use; $183 9 million through the application of coal blending practices to DEC's coal use; and a total of $31.8 million through coordinating use of DEC's and PEC's natural gas pipeline capacity, efficiencies in reagent procurement, and elimination of the need for DEC to establish a natural gas trading desk. The quantification of these savings is supported by Exhibit 4, the Compass Lexecon Study, and Exhibit 5, the Fuel Synergies Review.

The Stipulation provides that North Carolina retail ratepayers will receive their allocable share of $650 million of these fuel and fuel-related cost savings in varying amounts each year of the five-year period through DEC's and PEC's annual fuel clause mechanisms, beginning with immediate decrements to fuel rates to be filed by DEC and PEC within 30 days after the close of the merger. According to the Stipulation, these initial reductions will be based on the projected fuel and fuel-related cost savings set forth in Exhibits 4 and 5. These initial reductions will be based on a pro rata amount of Year 1 savings during the period between the close of the merger and the effective date of the rate changes in DEC's and PEC's next fuel clause proceedings. A new decrement will be determined at the time of each respective fuel clause proceeding during the five-year period. The Supplemental Stipulation provides that if North Carolina retail ratepayers have not received their allocable share of the $650 million at the end of the five-year period and the decline in the price of natural gas has resulted in the delivery of less coal to certain DEC coal-fired plants, then the five-year period will be extended by 18 months and the remaining savings amounts will be reflected as an adjustment in DEC's and PEC's respective fuel charge proceedings or as a separate decrement in fuel rates as realized throughout the 18-month period.

*17 The Stipulation states that the guaranteed savings are anticipated to be achieved in six categories - coal blending, coal commodity savings, reagents, transportation, gas capacity, and the gas trading desk - but may include other merger-related savings related to joint dispatch and fuel procurement. The Stipulation also specifies the manner in which the various categories of savings will be determined, subject to ongoing review, refinement, and revision based on experience as savings are realized Finally, the Stipulation provides that, in their monthly reports under Commission Rule R8-52, DEC and PEC will file monthly reports of tracked fuel savings on the following bases: total system, DEC, DEC North Carolina retail, PEC, and PEC North Carolina retail.

Applicants witness Weintraub testified that upon the closing of the merger PEC and DEC will begin significant coordination of their operations. These coordinated operations will produce significant operational efficiencies that will directly benefit customers. The primary, and most immediate, such benefit will result from transitioning individual dispatch of PEC's and DEC's generating assets to combined dispatch via a joint dispatch agreement

Witness Weintraub testified that PEC and DEC have entered in to a Joint Dispatch Agreement (JDA) that was filed as Exhibit No. 3 to the Application. Consistent with the companies' reliability and contractual obligations as well as applicable laws and regulations, the JDA will allow DEC's and PEC's generation resources to be dispatched as a single system to meet the two utilities' retail and firm wholesale customers' requirements at the lowest reasonable cost. Under the JDA, DEC will act as the joint dispatcher for DEC's and PEC's power supply resources. The joint dispatch process will allow PEC and DEC to serve their retail and wholesale native load customers more efficiently and economically than they can on a stand-alone basis. Witness Weintraub explained that the JDA also provides a methodology for calculating the savings generated by the joint dispatch process and for equitably allocating the savings between DEC and PEC.

According to witness Weintraub, the JDA expressly provides that it is not intended to act as a system integration agreement and that DEC and PEC will retain their obligations to serve their own native load customers, to fulfill their own contractual obligations, and to operate their own transmission systems and balancing authority areas. DEC's and PEC's contractual obligations will not be changed by the JDA. This includes their contractual obligations under existing wholesale power contracts and their obligations under the Virginia-Carolinas (VACAR) reserve sharing arrangement. Thus, DEC and PEC will each retain the obligation to serve their own native load customers, fulfill contractual obligations, operate their own transmission systems, and retain their BAAs.

Witness Weintraub explained that the joint dispatcher will direct the dispatch of both DEC's and PEC's power supply resources, which include the parties' generation as well as their wholesale power purchases. In addition, the joint dispatcher will be responsible for making short-term (less than one year) wholesale power purchases and sales on behalf of DEC and PEC. DEC and PEC will retain individual responsibility for entering into wholesale power transactions of a year or longer. In carrying out its responsibilities under the JDA, the joint dispatcher is charged with achieving the most economic dispatch plan to serve DEC's and PEC's native load customers, consistent with the provision of reliable service, industry standards, and applicable laws and regulations. In effect, the joint dispatcher has the same goals as the individual utilities had prior to the implementation of the JDA. The difference is that the joint dispatcher will consider the loads and resources of both utilities, which will achieve a more economic result than the utilities could achieve on a stand-alone basis. The joint dispatch function will employ the same methodologies as the security-constrained economic dispatch function each company performs pre-merger. The post-merger process will simply integrate both companies' generation resources into the dispatch process.

***18** According to witness Weintraub, in general, the joint dispatcher will not distinguish between the utilities' resources in determining how best to serve the combined loads of DEC and PEC The joint dispatcher will have to consider various factors that might constrain the selection of power supply resources, such as contractual 'must-run' obligations for certain resources. Within such parameters, however, the joint dispatcher will treat the resources of both utilities as available to serve the load of both DEC and PEC. To the extent that this results in one utility over-generating (*i.e.*, producing more energy than its load) and the other utility under-generating, the imbalance will be handled through a dynamic schedule between the parties' balancing authority areas.

Witness Weintraub testified that each utility will bear the costs associated with its own power supply resources, as defined under the JDA. For example, DEC and PEC will incur the fuel and O&M costs associated with their own generating facilities Similarly, each utility will be responsible for the costs it incurs under its own power purchase contracts. After the fact, it will be determined which utility (over-generating utility) provided energy to the other, how much it supplied to the other utility (under-generating utility) in a given hour, and the amount of the savings. The under-generating utility will compensate the over-generating utility at cost for all its expenses for providing the energy. In order to prevent one utility from unfairly shifting costs

to the other and to ensure a reasonable sharing of the savings generated by the joint dispatch, an after-the-fact process will be used to allocate costs and benefits between the utilities.

Under the after-the-fact allocation process for each hour, the joint dispatcher allocates energy to three types of transactions that occurred during the hour: 1) New Non-Native Load Sales; 2) Existing Non-Native Load Sales; and 3) Native Load Sales. The energy allocation process is done in descending order of energy cost (other than energy from 'must-run' units) and identifies which power supply resources will be deemed to have served each class of transaction. Once the energy allocation process is complete, the joint dispatcher applies cost allocation provisions contained in the JDA to achieve a reasonable allocation of the costs and benefits of the joint dispatch.

The after-the-fact allocation process determines for each hour the costs each company would have incurred if its resources had been dispatched on a stand-alone basis, without regard to any Non-Native Load sales opportunities. The difference between the joint dispatch costs and the stand-alone costs represents the cost savings achieved by joint dispatch. These savings then are allocated between PEC and DEC based on each company's share of energy generated in each hour.

Witness Weintraub stated that the joint dispatch savings will automatically flow through to the utilities' retail customers through their respective fuel clause proceedings. He also explained that, upon the closing of the merger, both PEC and DEC will file rate decrements to pass through the forecasted fuel savings for 2012.

*19 Under the joint dispatch process, the energy cost attributable to each utility's native load will be the costs actually incurred by the utility for energy allocated to native load service, adjusted by the cost allocation payments calculated by the joint dispatcher, which will be treated as payments for energy transfers between the utilities. Thus, the energy cost ultimately incurred by each utility to serve its native load will be equal to the stand-alone costs it would have incurred but for the joint dispatch arrangement, less the utility's share of the joint dispatch savings. That will be the amount that each utility passes through its retail fuel clause and native load wholesale contracts. This process will result in an annual flow through of the joint dispatch savings for both retail and wholesale customers.

On cross-examination by the Commission, witness Weintraub testified that if the fuel and fuel-related savings achieved by DEC and PEC exceed the guaranteed $650 million during the first five years after the merger, then North Carolina ratepayers will receive their allocable share of the additional savings.

Regarding the estimated savings resulting from the joint dispatch arrangement, Applicants witness Kalt testified that the Compass Lexecon Study relied on a commonly used security-constrained dispatch production cost model to run optimized least cost production for DEC's and PEC's individual BAAs on a stand-alone basis and then ran the same model assuming joint dispatch across BAAs, holding constant assumptions about such things as load, fuel prices, and existing contracts. Witness Kalt explained that a net reduction in the total production costs required to serve both DEC's and PEC's loads represents estimated savings attributable to joint dispatch, driven largely by optimizing dispatch so as to minimize fuel costs. He further explained that lower fuel costs result because joint dispatch creates a larger, more flexible pool of operating assets from which to draw when making dispatch decisions for both utilities, and it enhances the ability to commit and substitute available capacity at a less costly unit in one BAA for a more costly unit that would otherwise be required to serve load in the other BAA absent joint dispatch.

According to the Compass Lexecon Study, total system savings over five years attributable to joint dispatch, using base case assumptions, are expected to be as follows: 2012 - $38 million; 2013 - $49 million; 2014 - $64 million; 2015 - $97 million; and 2016 - $116 million. Witness Kalt testified that to understand the sensitivity of results to input assumptions, Compass Lexecon examined the effect of changing fuel prices and load growth, which are the primary drivers of future variable generation costs. He stated that results of this analysis showed estimates of five-year joint dispatch savings ranging from $249 million with low load growth to $629 million with high fuel prices. He further stated that he considered the estimated savings of $364 million to be conservative for several reasons. One, multiple sensitivity analyses show that changes in underlying input savings generally

result in higher estimated benefits. Two, the dispatch model does not capture additional sources of benefits associated with joint dispatch as well as ancillary benefits to society in general through enhanced economic activity.

*20 EDF, *et al.*, witness Hahn testified that the benefits of the JDA are more uncertain than portrayed by the Applicants and could be achieved absent a merger of the holding companies. Therefore, he recommended that the JDA benefits not be accepted as justification for the merger. He also recommended that the JDA be revised to base the joint dispatch on a single BAA or, if the Commission does not believe a single BAA is desirable, that the Applicants be required to conduct modeling that accurately simulates the proposed JDA, as the merger would have adverse effects on the environment.

Witness Kalt asserted, both in direct testimony and in rebuttal to witness Hahn, that the use of joint dispatch as contemplated by the JDA is a benefit not realistically available absent the merger. He stated that the joint unit commitment and dispatch process represents a set of complex, interacting, day-to-day, real-time, moment-to-moment decisions that cannot be made without bringing decisions under common control through a merger. He explained that joint dispatch requires the sharing of competitively sensitive generation operating costs and a level of cooperation not practical between unaffiliated utilities. According to witness Kalt, the information needed to achieve the results of the JDA without merging is not publicly available. Most of the data are reported after the fact, with some available only on an annual basis, in contrast to the JDA, which requires DEC and PEC to use detailed real-time and projected load, resource, and operation date in the unit commitment and dispatch process. He stated that the utilities can operate and dispatch units in a way that is not possible absent a merger. Regarding witness Hahn's suggestion that DEC and PEC might implement a JDA-type arrangement by transferring functional and operational control of their generation assets to a third party (as in forming an ISO or RTO), witness Kalt stated that this would require separate and specific Commission and other regulatory approvals and could involve additional expenses that would offset joint dispatch savings. He also refuted witness Hahn's claim that the Compass Lexecon Study modeled one BAA. He stated that this was not accurate, clarifying that this type of modeling is not based on any assumptions about BAAs other than to the extent that generation assets are associated with BAA boundaries. Rather, according to witness Kalt, Compass Lexecon's modeling mapped transmission and generation of the DEC and PEC systems without regard to legal or physical boundaries. Inputs were based on physical transmission facilities, transfer capabilities, and constraints that occur in a security-constrained economic dispatch. Witness Kalt also did not agree with witness Hahn's assertion that having one BAA would produce even greater cost savings, calling this assertion speculation and the analysis and figures inconsistent with the JDA as proposed. Applicants witness Weintraub also refuted witness Hahn's claim that the retention of three BAAs prohibits DEC and PEC from conducting joint dispatch as modeled by Compass Lexecon. Witness Weintraub described this contention as 'simply wrong,' and stated that DEC and PEC will conduct one unit commitment plan and a single security-constrained economic dispatch to serve the combined loads of both DEC and PEC regardless of whether there are three BAAs or one BAA.

*21 Finally, Applicants witnesses Kalt and Williams disagreed with witness Hahn's contention that the JDA would have adverse effects on the environment. Witness Kalt stated that the modeling results do contain a projection of increased coal use - 9.3 million MWh out of 893 million MWh of total generation over five years - which he described as a *de minimis* amount. However, he explained that the composition and nature of joint dispatch savings depend on a multitude of factors, including actual composition and characteristics of supply resources, relative fuel prices, and emission control regimes. He further stated that DEC and PEC will continue to comply with all applicable state and federal emission control regulations and that having a broader base and variety of generation assets available under the JDA will enhance their ability to serve loads in an economical and efficient manner while complying with emissions requirements. Similarly, witness Williams testified that both DEC and PEC currently plan and operate their systems in a manner designed to meet the electricity needs of their customers in a least cost manner while complying with all environmental laws. He stated that the JDA simply provides additional tools and flexibility to achieve this objective more efficiently and that emissions restrictions on plants will not change as a result of the merger. The plants will still be subject to the Clean Smokestacks Act, other North Carolina air restrictions, regulations of the Department of Environment and Natural Resources, the federal Clean Air Act, and Environmental Protection Agency regulations.

Public Staff witness Morey testified that the use of security-constrained economic dispatch for both DEC's and PEC's generation fleets can be expected to benefit customers by systematically increasing the use of lower-cost, more efficient generating units,

and demand-side resources where available, relative to higher-cost, less efficient units. He stated that this can lead to lower fuel costs, lower O&M costs, and reduced emissions than would result from the commitment and dispatch of DEC's and PEC's generating units separately. He further stated that additional savings may also be realized to the extent joint dispatch enables DEC and PEC to lower their respective operating reserves.

Witness Morey also testified that, technically speaking, production costs savings through joint dispatch could be achieved absent the merger, but some of the terms would likely be different. He stated that the principal barriers to achieving joint dispatch benefits absent a merger are transaction costs and operational separation. Moreover, according to witness Morey, a joint dispatch agreement absent a merger could be construed as creating a two-utility power pool in which all transactions are made at wholesale, which would put the terms and conditions of joint dispatch and the pricing of that generation under the FERC's jurisdiction. The proposed JDA, however, contains specific language requiring each utility to continue to serve its own native load customers with the lowest cost resources available within its own generation fleet, and only the provision of energy between DEC and PEC after the lowest cost energy from each utility's resources has been dedicated to serve its native load is to be considered a wholesale transaction between them. He further stated that the proposed JDA affords the principal advantage over pre-merger transactions of permitting the dispatch of DEC's and PEC's generation fleets in real time, on an hour-to-hour basis, which will enable DEC and PEC to capture savings that could not be realized if they were engaging each other in bilateral wholesale market transactions that are not so readily adjusted to real-time circumstances.

***22** Witness Morey presented the results of his review of the Compass Lexecon Study and testified that he reviewed it to determine the accuracy of the estimated savings and the sensitivity of the estimate to key assumptions made by Compass Lexecon. Witness Morey stated that he began his analysis by replicating the results of the study using the security-constrained least-cost dispatch program used by Compass Lexecon, which is the Day-Ahead Locational Market Clearing Prices Analyzer (DAYZER), and the input data used by Compass Lexecon to conduct the study. He further testified that the results from his analysis matched the five-year savings estimated by Compass Lexecon for the Pre-Merger Case and the Joint-Dispatch Case Witness Morey also ran the DAYZER model using the input files provided by Compass Lexecon for the sensitivity cases and obtained results identical to those shown in the Compass Lexecon Study.

Witness Morey stated that he then reviewed the reasonableness and the accuracy of the assumptions regarding operating characteristics, fuel prices, load forecasts, and transmission line transfer capability and constraints used by Compass Lexecon for the Pre-Merger Case and the Joint-Dispatch Case. With the exception of transmission constraint assumptions, he checked the values used by Compass Lexecon for each category of variables against the values for the same variables that were provided to the Public Staff through discovery in connection with DEC's and PEC's 2010 Integrated Resource Plans in Docket No. E-100, Sub 128, and information provided by DEC and PEC to the Public Staff in connection with their 2010 filings in the avoided cost proceeding in Docket No. E-100, Sub 127. According to witness Morey, these comparisons revealed differences in the following generator unit characteristics: heat rates, expected outage rates, forced outage rates, and variable emission rates. He also found significant forecast differences with respect to 2013 and 2014 delivered coal prices. However, he stated that, when he reran the DAYZER program with changes to the input files, he found that the resulting savings were nearly identical to those obtained by Compass Lexecon. Finally, with respect to firm transmission assumptions, Morey concluded that the differences between firm reservations assumed in the model and existing firm reservations did not appear to be significant enough to cause a material difference in the estimated production cost savings in the Joint Dispatch Case.

Witness Morey testified that he did not necessarily agree with Compass Lexecon's assertion that the projected joint dispatch savings are conservative, since a base case should represent a middle ground - a kind of '50/50' forecast between optimistic and pessimistic scenarios - based on the most likely set of circumstances for all key factors that influence the cost of joint dispatch Morey stated that he identified several assumptions that may not have been consistent with this principle, as well as other anomalies and 'quirks' associated with Compass Lexecon's analysis. Further, he noted two shortcomings or limitations to the Study. First, the DAYZER model does not respect firm transmission rights that may limit the actual ability of DEC and PEC to jointly dispatch their generation fleets to serve both of their loads at least cost. Thus, according to witness Morey, the analysis may overstate the production cost savings, depending on the extent to which DEC and PEC are able to take advantage

of non-firm transmission available on a short-term basis over the next five years. Second, the analysis did not model off-system sales and purchases in either the Pre-Merger Case or the Joint Dispatch Case, though it was not clear to Morey what the impact of such modeling would have been.

*23 As a result of his review and assessment of the Compass Lexecon Study, witness Morey concluded that Compass Lexecon's analysis of production cost savings benefits that can be derived from joint dispatch of DEC's and PEC's combined generation fleets was conducted appropriately and that its estimate of the production cost savings arising from joint dispatch is a reasonably accurate representation of the potential savings that can be achieved over the period 2012 through 2016. He further concluded that improving or correcting the data and assumptions about which he had concerns would have little impact on the estimated savings.

With regard to monitoring the implementation of the JDA, witness Morey recommended that DEC and PEC provide the Public Staff with detailed information concerning the model that will be used to simulate the production costs of DEC and PEC on a stand-alone basis, verify the accuracy of the model by benchmarking it against a recent historical period of stand-alone generation dispatch, notify the Public Staff at least quarterly when significant changes have been made to the model, and provide the Public Staff with all information necessary to audit the model at least monthly until the utilities have gained experience with the model and then at least quarterly thereafter. This recommendation is included as a provision of the Stipulation.

Public Staff witness Hoard testified that the total amount of joint dispatch savings projected in the Compass Lexecon Study is $364 2 million over five years. He stated that he had estimated the savings for North Carolina retail ratepayers over this period to be a total of $247.6 million, $147.2 million for DEC and $100.4 million for PEC. Witness Hoard presented two examples to illustrate the proposed accounting for transactions under the JDA for fuel clause purposes, explaining that the seller will treat the transactions as intersystem sales and the buyer will treat them as an economic power purchase with only fuel and fuel-related costs being reflected in a fuel clause proceeding. As shown in these examples, both the seller and the buyer are made whole with respect to costs incurred and both receive an appropriate share of the savings.

With respect to fuel synergies, Applicants witness Weintraub testified that the estimated additional $330 7 million savings in combined fuel costs will be achieved through transporting, procuring, managing, and blending fuels and procuring reagents in conjunction with increased and broader purchasing ability. He stated that these fuel procurement savings could not be achieved absent the merger, which allows for greater purchasing capacity than either utility has standing alone, as well as the sharing of proprietary information not shared by non-affiliates for competitive reasons. Weintraub explained that both DEC and PEC have transportation contracts with common carriers and that by aligning the lowest rates across common contracts and carriers and taking advantage of opportunities to maximize economies of scale for the transportation of DEC's and PEC's combined coal requirements, the utilities can reduce their coal transportation costs. Similarly, by optimizing a combined fuel sourcing plan with greater scope across common coal suppliers, DEC and PEC together can reduce coal procurement costs. Witness Weintraub further stated that both DEC and PEC utilize common suppliers and transportation providers for limestone, and that by leveraging increased limestone volumes, the utilities expect to lower its delivered cost by reducing both commodity and transportation costs In addition, DEC and PEC intend to increase its purchasing power by consolidating ammonia volumes to achieve more competitive commodity and transportation pricing. Regarding natural gas transportation costs, he stated that DEC and PEC will utilize common natural gas transportation paths and complementary logistics for each of their natural gas generation fleets, and by maximizing the use of the combined portfolio of natural gas transportation agreements, will achieve cost savings through the short-term and potential long-term capacity releases into the market. He further stated that utilizing non-firm interstate pipeline capacity will also enable DEC and PEC to avoid additional fixed pipeline costs.

*24 With regard to coal blending, witness Weintraub explained that PEC has invested over $60 million in scrubbed coal units over the past five years to improve fuel flexibility, thus expanding the types of coal that can be reliably burned and creating competition among coal basins. He stated that this has resulted in lower fuel procurement costs and increased blending capabilities to achieve optimal quality blends and procurement economics, and that the integration of these best practices will reduce fuel costs for the combined companies

On cross-examination, witness Weintraub explained that the effect of PEC's ability to burn a wider range of coal types on the amount of coal burned would depend on the characteristics of the coal burned. He agreed, however, that different coal characteristics affect the price of coal and could affect the emissions produced by the coal. He further agreed that no analysis of NO_X, SO_X, or SO_2 was performed as part of the joint dispatch analysis and stated that no analysis had yet been conducted of post-merger emissions as a result of the proposed fuel synergies.

EDF, *et al* , witness Hahn contended that PEC and DEC could achieve the fuel blending savings without merging. This assertion was rebutted by witness Weintraub. He explained that there are two primary reasons all of these savings opportunities, including fuel blending savings, could not be achieved absent the merger. First, the merger of Duke and Progress will allow for much greater purchasing efficiencies than either company possesses standing alone. Second, as with the JDA, the merger allows the sharing of proprietary information that unaffiliated companies do not willingly share due to competitive concerns. For example, after several years of blending coal for its plants, PEC has developed certain coal blending skills and practices that can be adopted by DEC and that will facilitate and hasten the application of coal blending practices to DEC's coal use. PEC has spent considerable time and money investing in the people and equipment to develop these coal blending abilities that are allowing it to lower its coal costs substantially. These proprietary skills and practices give PEC a competitive advantage and are valuable assets, which PEC would normally not share with unaffiliated entities.

Specifically with regard to fuel blending savings, witness Weintraub stated that while it is possible that DEC may have at some point in the future implemented fuel blending absent the merger, the merger ensures that DEC will do so much more quickly and efficiently than would otherwise have been the case. PEC has been blending fuel since 2006. As a result, DEC will benefit from PEC's experience, mistakes and successes. This will allow DEC to immediately adopt best practices as well as select the best technologies and equipment. With this knowledge of lessons learned and best practices, DEC will be able to start the fuel blending process in a much shorter time frame than would otherwise be possible. Moreover, the combined companies will be able to achieve greater economies of scale and scope in their fuel blending operations To achieve these efficiencies and savings, the companies would need to share confidential commercial information that would not be possible without a merger.

***25** Witness Weintraub explained that in 2012 the North Carolina retail pro rata share of the $650 million in guaranteed savings will be provided to PEC's and DEC's retail customers through a decrement rate rider filed following the closing of the merger. The rider will be designed to provide their retail customers the forecasted savings to be realized from the joint dispatch of their systems as well as other fuel costs savings during calendar year 2012. In each of DEC's and PEC's 2012-2016 fuel cost proceedings, they will incorporate the forecasted savings from the joint dispatch of their systems as well as other fuel costs savings for each of those years into the calculation of their respective fuel factors. They will also factor into the calculation of their respective annual Experience Modification Factors a true-up of the forecasted amounts for the previous year to the actually experienced savings. The actually achieved savings will be determined in the manner described in the Stipulation. At the close of 2016, if actually achieved savings do not total North Carolina's pro rata share of the $650 million in guaranteed savings, witness Weintraub testified that PEC and DEC will flow through their respective fuel riders their allocated share of the remaining obligation in their 2017 fuel cases. However, the Supplemental Stipulation provides that if North Carolina retail ratepayers have not received their allocable share of the $650 million in guaranteed savings at the end of the five-year period and the decline in the price of natural gas has resulted in the delivery of less coal to certain DEC coal-fired plants, then the five-year period will be extended by 18 months and the remaining savings amounts will be reflected as an adjustment in DEC's and PEC's respective fuel charge proceedings or as a separate decrement in fuel rates as realized throughout the 18-month period. This final 'true-up' payment will ensure that North Carolina retail customers receive their guaranteed share of the savings. It is important to note that, in the event the actual savings exceed the guarantee, those additional savings will also be flowed through to DEC's and PEC's customers.

Commercial Group witness Chriss recommended that the Commission alter the Stipulation and require PEC and DEC to guarantee annual fuel and fuel-related savings amounts. Applicants witness Weintraub rebutted this proposal. Weintraub testified that savings should be reflected in rates as they occur. They should not be provided either in advance or in arrears.

Otherwise, because the annual forecasted savings will never exactly match actual annual savings, if annual guarantees are made, it will be necessary to use deferred accounting to track the difference between forecasted and achieved savings. Such deferred accounting introduces an additional level of accounting complexity in general and creates financial reporting issues if a rate case is pending. Witness Weintraub further explained that both witness Kalt and Public Staff witness Morey confirmed the veracity of the forecasted JDA savings and fuel procurement, transportation and fuel blending savings.

*26 Public Staff witness Hoard testified that the projected $330.7 million in five-year fuel synergy savings consists of the following: transportation - $40.6 million; coal blending - $183.9 million;[2] coal price commodity savings - $74.4 million; natural gas pipeline capacity savings - $17.0 million; reagents - $12.8 million; and avoided cost of a DEC natural gas trading desk - $2.0 million. Witness Hoard stated that, except for a small amount of savings due to the elimination of the need for a separate DEC trading desk, DEC and PEC will reflect the actual amount of the additional fuel and fuel-related cost savings in their respective fuel clause proceedings. He also stated that the only new or special accounting entries that might be recorded by the utilities will result from capacity release credits received from the sharing of gas pipeline capacity.

In supplemental testimony, Public Staff witness Hoard, as well as Applicants witness Weintraub, each explained how certain provisions of the Supplemental Stipulation clarify and amend the Stipulation with respect to the fuel and fuel-related cost savings. First, Public Staff witness Hoard testified that economy purchases were not included in the Compass Lexecon Study that formed the basis of the fuel savings guarantee and such purchases were not addressed in the Stipulation. Based on the clarification related to economy purchases contained in the Supplemental Stipulation, witness Hoard testified that PEC and DEC can make economy purchases that benefit ratepayers and receive credit for purposes of calculating the $650 million fuel savings guarantee. Witness Weintraub also testified that the actual savings resulting from such purchases will flow through DEC's and PEC's annual fuel charge adjustment proceedings in the same manner that such lower costs/savings have been treated prior to the merger. The second clarification of the Supplemental Stipulation concerns the increased consumption of reagents by DEC resulting from the greater use of coal blending. Witness Hoard stated that the Fuel Synergies Study included as Exhibit 5, which was part of the basis of the $650 million fuel savings guarantee, did not include the additional reagent costs that would be incurred as a result of coal blending. Witness Hoard and witness Weintraub each testified that the Supplemental Stipulation clarifies that these increased reagent costs would not be netted against the fuel savings guarantee and that DEC and PEC would be allowed to recover their reasonable and prudently incurred reagent costs in their respective annual fuel charge adjustment proceedings. Witness Weintraub also noted that Appendix B of the Supplemental Stipulation clarifies how savings realized by DEC from greater use of coal blending are to be calculated for the purpose of the $650 million system fuel savings guarantee. Finally, witness Hoard and witness Weintraub each noted that the current price of natural gas is low and if such prices continue, it is likely that DEC and PEC will use less coal than was assumed at the time of the Stipulation. Thus, DEC and PEC will have less potential to realize fuel savings from coal commodity purchases, coal transportation, and coal blending. As a result, the Supplemental Stipulation amends the last sentence in Paragraph 2(a) of the Stipulation such that if, at the end of the five-year period, DEC and PEC have not achieved all of the $650 million in guaranteed savings and the price of natural gas has resulted in less coal being delivered to certain DEC coal-fired plants, then the five-year period will be extended by 18 months and the remaining savings will be reflected in DEC's and PEC's respective fuel charge proceedings or as a separate decrement in fuel rates as realized throughout the 18-month period. In summary, Public Staff witness Hoard testified that the Supplemental Stipulation effectively preserves the benefits of the Stipulation.

*27 Finally, in further supplemental testimony, Applicants witness Weintraub testified that none of the modifications required by FERC alter the ability of the Applicants to achieve the fuel savings described in previous testimony or otherwise impair any of the benefits of the JDA to North Carolina customers.

The Commission is of the opinion that the results of the Compass Lexecon Study, which was subjected to rigorous analysis by Public Staff witness Morey, are a reasonable estimate of the production cost savings that can be achieved by DEC and PEC under the proposed JDA and that such savings cannot realistically be achieved without the merger. Further, the Commission is of the opinion that under the terms of the Stipulation and the Supplemental Stipulation the actual savings resulting from joint

dispatch of DEC's and PEC's generation assets can be accurately identified and tracked by the utilities and monitored by the Commission and the Public Staff.

The Commission concludes that the forecasted fuel procurement, fuel transportation and fuel blending savings are real and substantial. These savings, combined with the JDA savings, total nearly $700 million over the five-year period 2012-2016. The only issue raised by the intervenors regarding these fuel procurement, transportation and blending savings was witness Hahn's assertion that the coal blending savings could potentially be achieved in the absence of the merger. The Applicants persuasively rebutted witness Hahn's suggestion. In addition, through the Stipulation the Applicants have guaranteed their Carolinas' customers $650 million of these savings.

On cross-examination witness Chriss agreed that in addition to the $650 million in guaranteed savings, the Stipulation contains numerous benefits for North Carolina customers, including comprehensive Regulatory Conditions, a commitment that Progress and Duke will continue current levels of community support for four years, and make a $15 million contribution to community colleges and low income energy assistance Further, the Commission concludes that the Stipulation and Supplemental Stipulation entered into by the Applicants and the Public Staff, PEC and DEC, guaranteeing to provide North Carolina and South Carolina customers $650 million of the forecasted $695 million in savings over the five-year period 2012-2016 greatly mitigates any concerns regarding the accuracy of the JDA and other savings forecasts. In addition, it provides a substantial benefit to PEC's and DEC's North Carolina customers that is not available to any other Duke or Progress customers.

The Commission, therefore, finds and concludes that the merger will produce direct and immediate benefits to North Carolina retail ratepayers in the form of a substantial reduction in fuel and fuel-related costs that will be passed on through fuel clause proceedings.

In their post-hearing Brief, EDF, *et al.*, proposed additional conditions for approval of the merger, including requiring Applicants to revise the language of the JDA to base the joint dispatch on a single BAA; and if necessary, require the Applicants to provide an updated economic analysis of the revised JDA; or if the Commission does not believe a single BAA is desirable, require the Applicants to conduct modeling that accurately simulates the proposed JDA The Commission is not persuaded that the JDA needs to be based on a single BAA for DEC and PEC. Further, the Commission is of the opinion that the Compass Lexecon Study provides a reasonably accurate estimate of the production cost savings that can be achieved by DEC and PEC under the proposed JDA. Therefore, the Commission is not persuaded that the proposed additional conditions recommended by EDF, *et al.*, are reasonable or appropriate.

***28** In their post-hearing Brief, EDF, *et al.*, proposed additional conditions, designated as Proposed Conditions 2.a.-c., for approval of the merger. These proposed conditions would require Applicants to mitigate the alleged increased emissions from coal-fired generation under the merger and JDA by requiring Applicants to conduct an analysis of the increased coal plant emissions from expansion of coal blending practices and increased dispatch of coal-fired generation that will result from the merger and JDA, requiring Applicants to study the potential for accelerated coal retirements based on coordinated resource planning, reserve sharing agreements, and lower operating reserves under the JDA; and directing DEC and PEC to retire all coal units that are identified for retirement in each utility's 2011 IRP on a schedule to be determined by the Commission. However, on June 18, 2012, EDF, *et al.*, filed comments in which they stated that since the filing of their post-hearing Brief, EDF, *et al.*, entered into a settlement agreement with the Applicants that resolved the issues between them in the South Carolina proceeding. As a result of this settlement agreement, EDF, *et al.*, stated that they desired to withdraw Proposed Conditions 2.a.-c.

In its post-hearing Brief, the Commercial Group asserted that the Applicants should guarantee the annual amount of fuel savings they project, particularly as the witnesses for the Applicants have testified that they have a high degree of confidence that they will achieve these savings. The Commercial Group cites witness Kalt's estimate that joint dispatch savings (base case) will be $38 million in 2012, $49 million in 2013, $64 million in 2014, $97 million in 2015 and $116 million in 2016. However, the Commission is not persuaded that projections should be used to determine the amount of savings flowed back to ratepayers each year. Rather, savings should be reflected in rates as they occur. They should not be provided either in advance or in arrears.

Otherwise, because the annual forecasted savings will never exactly match actual annual savings, if annual guarantees are made, it will be necessary to use deferred accounting to track the difference between forecasted and achieved savings. Such deferred accounting introduces an additional level of accounting complexity in general and creates financial reporting issues if a rate case is pending.

In their comments filed on June 18, 2012, EDF, *et al.*, expressed concern that the Supplemental Stipulation extends the time period for customers to receive the $650 million of guaranteed savings from five years to possibly six and one half years, if at the end of the five-year period DEC and PEC have not achieved all of the $650 million in guaranteed savings and the price of natural gas has resulted in less coal being delivered to certain DEC coal-fired plants. EDF, *et al.*, noted that this change means that ratepayers might have to wait longer than originally provided under the Stipulation to receive the benefits of the merger.

*29 In the Applicants' reply comments filed on June 19, 2012, the Applicants noted this concern of EDF, *et al.*, and also noted that EDF, *et al.*, did not mention that in consideration of the extension of the guaranteed savings period the Applicants agreed, among other things, to forego the opportunity to seek recovery of merger related severance costs that will total over $226 million.

The Commission is not persuaded that the possible extension of the time for customers to receive the $650 million of guaranteed savings from five years to possibly six and one half years materially decreases the benefit of the guaranteed $650 million in savings. The Commission finds and concludes that this provision of the Supplemental Stipulation is reasonable in light of the reduced cost of natural gas. Considered as a whole, the provisions of the Stipulation and the Supplemental Stipulation effectively preserve the benefits of the $650 million in savings. Therefore, the Commission is not persuaded that the additional conditions recommended by EDF, *et al.*, in their post-hearing Brief are reasonable or appropriate.

The Commission, therefore, finds and concludes that the estimated $364.2 million savings in total system fuel and fuel-related costs during the first five years of operation of the JDA due to the joint dispatch of DEC's and PEC's generation assets and the additional estimated $330.7 million of system fuel and fuel-related synergy savings are reasonable estimates of the primary quantifiable benefit of the merger. Any issues regarding the accuracy of these estimates, whether such savings could be achieved absent the merger, and concerns over increased emissions were persuasively rebutted as described above. Further, the Commission concludes that any concerns with respect to the accuracy or reasonableness of these cost savings and benefits are greatly mitigated by the Stipulation and Supplemental Stipulation that guarantee North Carolina retail ratepayers will receive their allocable share of $650 million of the cost savings through DEC's and PEC's fuel charge adjustment proceedings.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 18-19

The evidence supporting these findings of fact is contained in the application, the testimony of Applicants witnesses Rogers, Johnson, and Sims, the testimony of Public Staff witness Hoard, the testimony of EDF, *et al.*, witness Hahn and Items 1-16, 1-19, and 1-20 of the Applicants' responses to the Commission's Post-Hearing Order.

The Applicants state in the application that cost savings in addition to the $694 million in joint dispatch and fuel synergy savings will be created upon the actual integration of Duke and Progress and their service companies. These savings will occur over time as a result of the combination and assimilation of information technology systems, supply chain functions, corporate and administrative programs, and inventories. The application further states that future savings in these areas are expected to be significant and will benefit retail ratepayers in future rate proceedings by helping to offset rate increases associated with fleet modernization programs and compliance with new regulatory requirements.

*30 On November 17, 2011, in response to the Commission's November 2, 2011 Post-Hearing Order, the Applicants filed an updated internal study of merger integration savings. The study was entitled Preliminary Cost Savings Opportunity. It was included as Attachment 1-16 to the Applicants' November 17, 2011 response. This study showed risk adjusted O&M savings and O&M costs to achieve (CTA) for Years 1 through 3 broken down by risk of achievement or anticipated realized. The total potential savings and CTA shown for each year are as follows: Year one - $186 million in savings and $273 million in CTA,

Year two - $289 million in savings and $229 million in CTA; and Year three - $355 million in savings and $185 million in CTA. The resulting net amounts shown in the updated internal study are as follows: Year one - $87 million in net costs; Year two - $60 million in net savings; and Year three - $170 million in net savings. Summing the net amounts over the three years in question reveals net savings of $143 million.

Public Staff witness Hoard presented several tables containing estimates provided by the Applicants of corporate-wide savings and CTA in three areas: JDA savings, fuel synergy savings, and non-fuel O&M savings. Savings and costs shown on these tables were summarized by account type: Capital Costs, Cost Pools, and O&M. Hoard explained that capital cost savings reflect costs that are assumed to be avoided due to lower construction overhead charges and lower material and contractor costs expected from leveraging greater purchasing power. He stated that North Carolina retail ratepayers will receive DEC's and PEC's shares of the benefits from these savings because their rate base investments will be lower than they would be absent the merger. According to Hoard, capital account CTA reflect investments in information technology and other resources that are necessary to achieve savings. He noted that a utility typically recovers capital costs over a period of years through depreciation and amortization charges to income and indicated that DEC and PEC would likely propose to roll the undepreciated amount of these costs into rates when they file rate cases.

Public Staff witness Hoard explained that O&M account type costs consist of expenses charged to income during the current period. He stated that a major source of O&M savings is lower payroll costs resulting from the elimination of duplicate positions, and that a major CTA is severance payments. He further stated that severance payments are treated for financial reporting purposes as periodic expenses, but for ratemaking purposes are often excluded from cost of service due to the fact that they are of a non-recurring nature.

Regarding ratepayer benefits related to non-fuel O&M savings resulting from the merger, Public Staff witness Hoard stated that it is likely that both DEC and PEC will file rate cases over the next several years, due in large part to extensive plant construction. According to Hoard, the present savings should help to reduce the amounts of the increases in those cases.

***31** According to the application, Duke and Progress will manage workforce reductions resulting from the merger through normal retirements, employee attrition, voluntary retirement programs, and similar programs to the maximum extent possible.

Applicants witnesses Rogers and Johnson testified that while there inevitably will be workforce reductions, the merger will benefit the majority of employees of both companies in the long term and the short term because it will create a financially stronger company that is better able to manage the transformation occurring in the industry and better able to provide competitive employee compensation and benefits. They reiterated that to mitigate the impact of the workforce reductions the Applicants were fully committed to taking advantage of natural attrition and retirement, pledging to manage the integration process in a thoughtful, rational way that treats all employees fairly.

Applicants witnesses Rogers and Johnson explained that Progress and Duke are both known as good places to work and to enjoy a long and fulfilling career. Over the last hundred years, both organizations have developed a positive culture of high employee engagement with very strong emphasis on safety, integrity and service. They testified that as a combined company the Applicants will be able to build on this positive tradition and be even better-positioned to attract and retain the talent needed for this new era of tremendous change and challenge in the industry. Rogers and Johnson stated that a significant benefit of the merger for employees will be a larger, more diverse company that will create greater opportunities for career growth, development and advancement.

With respect to the types of positions and functions that will be affected, Applicants witnesses Rogers and Johnson stated that most of the reductions would be in corporate staff functions, rather than operational functions, that is, down where the work is done in terms of the generating plant and distribution operations. They further stated that they were not going to reduce workforce or investment in any way that would undermine safety and service reliability and that the mission given to the

integration teams was to keep in mind the need to continue to operate the way they have historically, in as reliable and safe a manner as possible.

Applicants witness Sims testified that once the Merger Agreement was signed, the Applicants created merger integration teams consisting of subject matter experts for the functional areas of the two companies. These teams were charged with determining the best means of integrating the companies and the resulting savings opportunities and potential employee impact. Sims reiterated the Applicants' commitment to managing the integration process in a way that treats employees fairly and stated that, to that end, the Applicants were offering a voluntary severance plan to a substantial number of employees. With respect to the types of positions that might be eliminated, she cited the potential adoption by PEC of a DEC best practices approach with respect to PEC's hydro fleet that could result in ten fewer positions at PEC's hydro plants. The employees in those positions would be eligible for voluntary severance and could have the opportunity to relocate to other areas of the company. She emphasized, however, that the work of the integration teams was a dynamic work in process, and that more information would be available in a month or so about the positions that would be eliminated.

*32 When asked whether the integration team had studied how the elimination of positions would impact reliability and dependability of electric service, Applicants witness Sims stated that when she and her integration team co-chair, A.R. Mullinax, gave instructions to their integration leads, they asked them to work together to identify best practices and opportunities for savings, but started the process by saying that safety, reliability, and customer service are important to their business. Sims further stated that they wanted to form not only the largest utility but also the best utility, and that they expected safety, reliability, and customer service to continue.

With respect to the merger causing the elimination of jobs, Applicants witness Sims stated that the integration team was currently analyzing job reductions resulting solely from the merger of the holding companies and, as part of that process, the team was looking at where there are duplicative jobs and best practices that could be implemented. She further stated that it was hard to predict what would happen when DEC and PEC are merged in the future, as they look at implementing best practices and improving efficiency every year, regardless of whether there is a pending merger.

Public Staff witness Hoard testified that the integration team's internal study of non-fuel O&M savings resulting from the merger was a three-year study incorporating a risk factor that measured the probability of realizing the targeted savings. He further testified that approximately 45 percent of the estimated three-year gross non-fuel O&M savings are expected to result from workforce reductions, which represents a five percent reduction in force on a risk adjusted basis, *i.e.*, incorporating a risk factor that measures the probability that certain savings may not be achievable.

On cross-examination, witness Hoard stated that the Public Staff did not analyze the effect of job losses resulting from the merger in terms of lost income tax revenue, increased cost of unemployment benefits, or social services needed by those who had lost their jobs. Rather, the Public Staff focused on the effects of the merger on utility service and ratepayers as a whole. Hoard stated that his job, as an accountant, was to analyze the estimates of merger savings produced by the Applicants' studies.

EDF, *et al.*, witness Hahn contended that the merger application was not complete because it did not include greater detail regarding the costs and benefits resulting from these non-fuel synergies and did not contain a mitigation strategy for the North Carolina workforce reductions.

Applicants witness Sims addressed witness Hahn's concerns and further elaborated upon non-fuel integration savings and the related workforce reductions. First, she explained why the Applicants did not seek to quantify and include these savings in the merger application. She testified that the application and supporting testimony describe two separate categories of merger related savings. In the first category are the near-term benefits which consist of the fuel and operating cost savings realized from the joint dispatch of PEC's and DEC's generating resources; the fuel procurement savings; fuel transportation savings; and savings from coal blending by DEC. These activities are forecasted to produce $695 million in savings during the first five years following consummation of the merger. Witness Sims explained that detailed studies supporting these savings were

filed with the merger application In the second category are the non-fuel O&M savings from consolidation and merging of various corporate functions, in particular those performed by DEBS and PESC, the two service companies. Sims testified that the amount and timing of these savings are much less certain that the fuel and fuel-related savings.

*33 Several intervenors asked the Commission to require the Applicants to take specific steps to mitigate the impact of job losses resulting from the merger. The IBEW, in its Statement of Position, criticized the Stipulation for failing to guarantee any level of employment for the Duke and Progress employees working in North Carolina. The IBEW contended that the Stipulation should not be approved until it guarantees that the merger will not result in involuntary layoffs and that the operational workforce will be maintained at a level that ensures reliability and dependability.

EDF, *et al.*, witness Hahn recommended that the Commission require the Applicants to file a mitigation plan as a condition of the merger, contending that conditioning merger approval on additional investment in energy efficiency and clean energy would generate additional jobs to offset job reductions resulting from the merger.

Attachment 1-19 to the Applicants' November 17, 2011 filing in response to the Commission's Post-Hearing Order shows that as of November 2011 Duke and Progress together have a total of 29,177 employee positions and that projected position reductions due to the merger over a three-year period total 1,860 (970 in year one, 435 in year two, and 455 in year three). Estimated vacancies of 368 leave projected headcount reductions (position reductions less vacancies) of 1,492 (1,860 - 368 = 1,492). This attachment also shows that 8,177 employees are eligible for the Voluntary Severance Plan (VSP). Assuming a 14 percent take rate for planning purposes based on previous Duke and Progress buyout packages, the number of VSP takers is estimated at 1,145. Additional reductions to address the potential gap between the projected headcount reductions and VSP takers (1,492 - 1,145 = 347) will be handled through normal attrition and involuntary severance.

In Item 1-20 of the Applicants' November 17, 2011 filing, the Applicants state that the integration process will continue after the merger closes, and it is anticipated that additional opportunities to implement best practices, eliminate duplication, and achieve efficiencies will be identified. While such opportunities may result in further position reductions, the Applicants state that they cannot predict when or how such reductions will occur, and no analysis has been conducted of potential reductions associated with combining Duke's and Progress's service companies or DEC and PEC.

The Commission is mindful of the fact that workforce reductions are an inevitable consequence of business combinations of the kind proposed by Duke and Progress in this proceeding. The Commission is also aware, as indicated by Public Staff witness Hoard and others, that a major source of O&M savings expected to be realized from the merger is lower payroll costs resulting from the elimination of duplicate positions. As a result of those cost savings, and other savings and benefits as discussed elsewhere in this Order, DEC's and PEC's North Carolina retail ratepayers are expected to receive significant potential benefits from the merger, and such benefits are expected to substantively outweigh the CTA. The Commission, therefore, in consideration of the foregoing and the entire record in this proceeding, finds and concludes that the potential workforce reductions at issue are reasonably necessary, unavoidable, and justified by the weight of the evidence in this proceeding.

*34 In their post-hearing brief, EDF, *et al.*, recommended that the Commission adopt additional conditions for approval of the merger. Several of these proposed conditions, designated as Proposed Conditions 3.a.-d., would require Applicants to mitigate the impact of job losses by making additional investments in energy efficiency. Another proposed condition, designated as Proposed Condition 5, would require additional investments in the clean energy sector. However, on June 18, 2012, EDF, *et al.*, filed comments in which they stated that since the filing of their post-hearing Brief, EDF, *et al.*, entered into a settlement agreement with the Applicants that resolved the issues between them in the South Carolina proceeding. As a result of this settlement EDF, *et al.*, stated that they desired to withdraw Proposed Conditions 3.a.-d.

The Commission is of the opinion that this merger proceeding is not the proper forum in which to determine whether additional renewable energy expenditures should be required of PEC and DEC. The Commission is further of the opinion that this

proceeding is not the proper forum in which to decide what types and how much, if any, additional renewable energy PEC and DEC should procure as part of their generation resource portfolios.

Pursuant to G.S. 62-110.1 and G.S. 62-133.9, the State's utilities are required to select the least cost mix of resources to meet the electricity needs of their customers. The Commission conducts annual IRP proceedings, pursuant to Commission Rule R8-60, for purposes of investigating the utilities' resource plans. These annual IRP proceedings are the proper forum in which to consider whether new resources - coal, natural gas, solar, wind, nuclear, or other - should be purchased or built by a public utility to meet forecasted demand.

The Commission also conducts annual proceedings, pursuant to Commission Rule R8-67, to evaluate, review and approve PEC's and DEC's efforts and plans to comply with the REPS requirements of Senate Bill 3. Those proceedings are the proper forum in which to consider the solicitation process used by PEC and DEC to obtain renewable energy resources and evaluate their decisions and plans for compliance

In addition to the fact that these dockets are not the proper forum in which to address the additional requirements recommended by EDF, *et al.*, the Commission is further of the opinion that the record in this proceeding is simply not adequate to allow the Commission to reach fully-informed, well-reasoned decisions of the nature requested by EDF, *et al.*

In their post-hearing brief, EDF, *et al.*, further recommended that the Commission require the Applicants to file with the Commission the Booz Total Cost Study and/or the Integration Studies before the Commission approves the merger. However, the Commission is not persuaded that the filing of these studies would provide any additional information needed by the Commission or the parties. The Commission recognizes that the non-fuel O&M savings projections shown in the Applicants' studies represent only the latest results of an ongoing process. In addition, the Commission notes that these projections are based on certain assumptions and are subject to several caveats, to wit: the results remain estimates, the CTA may increase, regulatory decisions may impact some savings opportunities, and the results do not reflect the impact of potential future federal regulations or other unforeseen costs. Thus, these non-fuel O&M savings are considerably less certain than the fuel and fuel-related cost savings likely to be achieved over the five-year period of 2012 through 2016.

***35** The Commission, therefore, finds and concludes that the merger is reasonably likely to produce significant non-fuel O&M cost savings and that such savings would ultimately accrue to the benefit of PEC's and DEC's North Carolina retail ratepayers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

The evidence supporting this finding of fact is contained in the application, the Stipulation, the Regulatory Conditions and Code of Conduct and the testimony of Public Staff witness Hoard. The Regulatory Conditions and Code of Conduct are attached to this Order as Appendix A.

As stated in the preamble, the Regulatory Conditions set forth commitments made by the Applicants as a precondition to approval of the merger and are to be interpreted in the manner that most effectively fulfills the exercise of the Commission's general supervisory authority over public utilities under Chapter 62 of the General Statutes of North Carolina. The various sections of the Regulatory Conditions are specifically intended to ensure that DEC's and PEC's North Carolina retail ratepayers are protected as much as reasonably possible from any known adverse effects of the merger and from potential costs and risks resulting from the merger, and that they receive sufficient benefits from the merger to offset any potential costs and risks resulting from the merger.

Public Staff witness Hoard testified that he had reviewed the existing Regulatory Conditions and Codes of Conduct currently approved for DEC and PEC and the Regulatory Conditions and Code of Conduct that were attached to the merger application and the Stipulation. He stated that as a regulatory accountant he would prefer that Duke, Progress, and their affiliates be subject to

the Regulatory Conditions and Code of Conduct attached to the Stipulation rather than either of the other two sets of Regulatory Conditions and Codes of Conduct presently in effect.

The Commission agrees with witness Hoard that from a regulator's perspective the stipulated Regulatory Conditions and Code of Conduct are preferable to those that apply to DEC and PEC today.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

The evidence supporting this finding of fact is contained in the application, the Merger Agreement, the testimony of Applicants witnesses Rogers and Johnson, the Stipulation, the testimony of Public Staff witness Hoard, the testimony of NC WARN witness Colton, the rebuttal testimony of Applicants witness Williams, and the post-hearing briefs.

In the application, Duke and Progress stated that the corporate headquarters for the combined company will be in Charlotte, North Carolina, with the continuation of a significant presence in Raleigh, North Carolina. The Applicants contended that, with the merger, the Carolinas will benefit from an industry leader being headquartered in North Carolina and from the philanthropic, cultural, and civic support associated with such a major corporate presence. Section 1.07 (d) of the Merger Agreement, attached as Exhibit 1 to the application, provides as follows:

> *36 (d) *Community Support.* The parties agree that provision of charitable contributions and community support in their respective service areas serves a number of their important corporate goals. During the two-year period immediately following the Effective Time, Duke and its subsidiaries taken as a whole intend to continue to provide charitable contributions and community support within the service areas of the parties and each of their respective subsidiaries in each service area at levels substantially comparable to the levels of charitable contributions and community support provided, directly or indirectly, by Duke and Progress within their respective service areas prior to the Effective Time.

Applicants witnesses Rogers and Johnson testified that the combined company would maintain its strong, long-standing philanthropic leadership and economic development support in the communities that DEC and PEC serve. Paragraph No. 3 of the Stipulation provides as follows:

> 3. *Annual Community Support and Charitable Contributions* DEC and PEC will provide annual community support and charitable contributions in North Carolina for four years from the close of the Merger at a level no less than $9.2 million and $7.28 million, respectively, based on the average of each company's annual contributions over the past five years (2006-2010).

No party took issue with this provision of the Stipulation.

In addition, with respect to continued community support to be provided by the combined company, Paragraph No. 4 of the Stipulation provides:

> 4. *Other Contributions.* DEC and PEC will contribute a total of $15 million dollars during the first year following the close of the Merger for purposes such as workforce development and low income energy assistance. The $15 million will be allocated between DEC's and PEC's North Carolina service territories in proportion to the number of North Carolina retail customers served by each.

On cross-examination, Public Staff witness Hoard testified that his understanding of Paragraph No. 4 of the Stipulation was that it is comparable to Regulatory Condition No. 75 approved by the Commission in Docket No. E-7, Sub 795 (Sub 795 Order),

in connection with the Duke-Cinergy merger, and that the Public Staff was expecting guidance from the Commission on how the funds would be distributed.

In the Duke-Cinergy merger proceeding, DEC proposed to share $117,517,000 of five-year net merger savings with its North Carolina retail ratepayers through a one year across-the-board decrement. The Public Staff recommended that $5 million of this amount be distributed as follows: $2 million to DEC's Share the Warmth, Cooling Assistance, and Fan-Relief Programs; $2 million for conservation and energy efficiency programs to be submitted to the Commission for approval; and $1 million to NC GreenPower In Regulatory Condition No. 75, the Commission required DEC, as a condition of the merger, to implement a one-year across-the-board decrement in rates in the amount of $117,517,000 and to contribute $12 million to various energy and environmental related and economic and educationally beneficial programs as follows: $6 million to DEC's Share the Warmth, Cooling Assistance, and Fan-Heat Relief programs; $2 million for conservation and energy efficiency programs to be approved by the Commission; $2 million to the Community College Grant Fund; and $2 million to NC GreenPower. The $12 million contribution was to be borne by DEC's shareholders. The Commission directed that DEC, the Public Staff, and the Attorney General confer and jointly develop a list of appropriate and cost-effective energy efficiency programs and submit them for Commission approval.

*37 DEC subsequently requested that agencies receiving funds for Share the Warmth, Cooling Assistance, and Fan-Heat Relief be allowed to use those funds for other programs as well, noting that under the existing Share the Warmth and Cooling Assistance programs, funds could be used only for energy bills. DEC indicated that a focus group of 15 agencies had identified the following uses for the funds: energy bills, weatherization costs, energy equipment purchases (*e.g.*, air conditioning units and space heaters), vendor payments (*e.g.*, electricians to hook up or repair systems or equipment), deposit assistance, agency capacity and infrastructure (*e.g.*, part-time staff) to handle more clients, educational materials, and joint bulk purchases of energy equipment for all energy assistance agencies. DEC stated that the funds would be distributed to the Foundation for the Carolinas, which would then distribute the funds to the agencies using the normal allocation process. DEC would execute a memorandum of understanding with each of the agencies specifying the use of the funds, and the Foundation for the Carolinas would provide an annual report to DEC on how the funds were used. The Public Staff recommended that DEC's proposal for distribution and expanded use of the funds be approved but that assistance with delinquent bills, deposits, and hookups be given priority over weatherization in the list of items for which the funds could be used. The Commission agreed with the Public Staff and by Order issued July 18, 2006, approved the proposal with this proviso.

Numerous public witnesses testified at the hearing in this proceeding advocating that the Commission address the needs of low-income customers by providing assistance in reducing their energy consumption and payment of their electricity bills. In addition, NC WARN witness Colton, contending that the merger will have an adverse impact on low-income customers, stated that the proposed $15 million contribution for workforce development and low-income energy assistance was not sufficient to overcome such adverse impact. Consequently, Colton recommended two mitigation measures: (a) a $27 million per year payment to the North Carolina Housing Finance Agency for ten years to supplement low-income weatherization and (b) an Arrearage Management Program (AMP) fully funded through a deferred cost recovery mechanism and borne by the general body of ratepayers.

In rebuttal testimony, Applicants witness Williams testified that the present proceeding is not the first time NC WARN has proposed creation of such a public benefits fund (PBF). Williams explained that in the fall of 2008, NC WARN proposed adoption of a PBF to fund an independently administered energy efficiency program and that the Commission, after considering the comments of numerous parties, in its December 2, 2008 Order in Docket No. E-100, Sub 120, concluded that 'the Commission lacks sufficient statutory authority to compel the establishment and funding of an independently administered energy efficiency program such as that proposed by NC WARN Moreover, the Commission determines that establishment of such a program at this time is inconsistent with the provisions of Senate Bill 3 and the intent of the General Assembly expressed therein.' According to Williams, nothing has changed to alter the Commission's previous conclusion in Docket No. E-100, Sub 120.

*38 With respect to the AMP recommended by NC WARN, witness Williams testified that both DEC and PEC presently have options available to assist customers with resolving arrearages. Williams explained that both utilities offer installment payment plans, equal payment plans, credit extensions, and other assistance to help customers with payment of past-due bills and that the utilities do not propose elimination of any of these currently available options.

In their post-hearing Brief, EDF, *et al.*, asserted that in order to mitigate the impact of the merger on low-income customers the Commission should require an additional contribution from the shareholders of the new combined company for the purpose of funding low-income weatherization, in an amount to be determined by the Commission.

In its post-hearing Brief, with respect to the stipulated $15 million in other contributions, NCSEA contended that the stated purpose of the fund remains too vague and the funding level too small to mitigate the potential harm presented by the merger to low-income residents and any similarly-situated entities, such as some small businesses. NCSEA requested that the Commission evaluate and consider, among other mitigating measures, the creation of a third-party administered PBF to address the financial impacts of the merger on these customer groups.

The Commission determines that the needs of low-income customers to manage their energy usage and be financially able to pay their bills are undeniably real and substantial, and the agencies and individuals who are committed to addressing those needs, particularly in times of economic hardship and high unemployment, have a considerable undertaking to manage. However, the Commission does not agree with witness Colton that the merger will adversely affect those customers or that conditions of the merger approval should be a major vehicle for addressing their energy needs. As discussed elsewhere in this Order, the Commission is persuaded that the merger will result in significant quantifiable benefits in the form of cost savings that will be reflected in rates for all customers in fuel clause and general rate case proceedings. These savings will help to mitigate the impact of cost increases over time. The Commission is also persuaded that the Applicants' commitments in the proposed Regulatory Conditions, along with the Commission's Rules and Regulations and monitoring by the Commission and the Public Staff, are sufficient to ensure that there is no diminution of resources to assist low-income customers and other customers of DEC and PEC.

Further, the Commission is not persuaded that the mitigation measures recommended by NC WARN, EDF, *et al.*, or NCSEA are reasonable or appropriate in this proceeding. The Commission agrees with witness Williams that nothing has changed since the Commission issued its December 2, 2008 Order in Docket No. E-100, Sub 120, in regard to the adoption of a PBF. With regard to witness Colton's proposed AMP, the Commission observes that both DEC and PEC have options available to assist customers with resolving arrearages and that the utilities do not propose elimination of any of these currently available options. For these reasons, the Commission declines to adopt the two mitigation measures recommended by Colton or the mitigation measures proposed by EDF, *et al.*, and NCSEA. Furthermore, as discussed elsewhere in this Order, many of the mitigation methods proposed by NC WARN, EDF, *et al.*, and NCSEA relate to service quality, customer service, energy efficiency, or customer assistance programs which can be more appropriately addressed in DEC's and PEC's annual IRP, DSM/EE and REPS proceedings. Nevertheless, the Commission strongly encourages and expects DEC and PEC to actively consider and propose for Commission approval as part of their DSM/EE portfolios programs that are specifically targeted to assist low-income customers

*39 With respect to the Applicants' agreement to contribute $15 million during the first year after the merger for purposes such as workforce development and low-income energy assistance, the Commission finds and concludes that the $15 million shall be divided as follows: $10 million to low-income energy assistance and $5 million to workforce development.

DEC and PEC shall contribute $10 million to low-income energy assistance programs. This $10 million should be allocated between DEC's and PEC's service territories in proportion to the number of North Carolina retail customers served by each. As was requested in Docket No. E-7, Sub 795, DEC should work with the Foundation for the Carolinas in administering its low-income energy assistance programs for DEC's proportional share. PEC should work with a local community foundation, the North Carolina Community Foundation, in administering its low-income energy assistance programs for PEC's proportional

share. The community foundations should provide a report to DEC and PEC as to how the funds were used. DEC and PEC shall file the community foundations' reports with the Commission upon receipt.

DEC and PEC shall contribute $5 million to a Community College Grant Fund. This $5 million should be allocated between DEC's and PEC's service territories in proportion to the number of North Carolina retail customers served by each. DEC should work with the Foundation for the Carolinas to administer the grants to community colleges in its service territory. PEC should work with the North Carolina Community Foundation to administer grants to community colleges in its service territory. DEC and PEC shall file a report on the grants awarded pursuant to this condition within one year after the close of the merger.

In addition to the $15 million contribution for workforce development and low-income energy assistance agreed to in the Stipulation, DEC and PEC shall contribute $2 million to NC GreenPower. The $17 million in total contributions shall not be charged to DEC's and PEC's regulated utility operations, but shall be borne by the Applicants' shareholders.

The Commission, therefore, finds and concludes that the commitments by the Applicants in Paragraph Nos. 3 and 4 of the Stipulation, as well as the additional $2 million contribution to NC GreenPower, represent additional benefits of the merger to the communities DEC and PEC serve in North Carolina and should be approved. The Commission declines to adopt the mitigation measures proposed by NC WARN, EDF, *et al.*, and NCSEA, as such additional measures or contributions are not necessary or warranted as part of the merger.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

The evidence supporting this finding of fact is contained in the application and the testimony of Applicants witness Williams.

The known and potential costs and risks to North Carolina retail ratepayers from a merger affecting one or more regulated electric utilities have been well documented in prior merger proceedings.[3] These previously identified potential costs and risks include the following: direct merger costs and other cost increases that could impact North Carolina retail rates; the potential for preemption under the FPA and under PUHCA 1935 and PUHCA 2005; potential adverse effects on DEC's and PEC's retail ratepayers as a result of transactions within the holding company family and the resulting need for increased regulatory oversight of such transactions; the potential for DEC and PEC to unreasonably favor their unregulated affiliates over nonaffiliated suppliers of goods and services; potential adverse impacts on DEC's and PEC's cost of capital; the exposure of DEC and PEC and their respective retail ratepayers to costs and risks associated with Duke, Progress and their subsidiaries; and the potential for DEC's and PEC's quality of service to deteriorate because of increased management focus on cost savings and earnings growth. In addition, this merger presents issues with respect to the JDA and Joint OATT that have not been presented in other merger proceedings.

*10 NCSEA witness Urlaub testified that a primary motive for the merger is to improve the financial standing of the combined companies to allow them to pursue a strategic plan involving investments in large, capital intensive generation, including new nuclear generation. He further testified that the uncertainty created by this strategic plan produces significant risks that have associated costs. In addition, he identified the following risks: the real possibility of a double dip recession, a smaller economic recovery than first projected, reduced demand, rising costs, and the much stronger positioning of alternative energy resources.

EDF, *et al.*, witness Hahn testified that a result of the merger would be market dominance by the merged entities with regard to the procurement of renewable energy, leading to unaffiliated renewable energy developers foregoing North Carolina development activities. He asserted that a single-procurer market with affiliates active in the market for renewables creates an exclusive barrier to entry and does not foster a process that guarantees that the lowest cost or most favorable projects are built. As a result, the merger would have an adverse impact on the development and procurement of renewable energy in North Carolina.

In rebuttal, Applicants witness Williams testified that NCSEA's opposition to the specific utility assets in which DEC and PEC plan to invest is a risk that NCSEA faces regardless of the merger, the safeguard for which is the Commission's integrated

resource planning (IRP) procedures and the requirement that a utility obtain a certificate of public convenience and necessity (CPCN) before beginning the construction of a new generating unit. As a result, Williams stated that this is not a risk created by the merger but, rather, is a matter that should be addressed in the Commission's IRP and CPCN proceedings.

With respect to witness Hahn's concerns, Applicants witness Williams testified that EDF, *et al.*, are concerned that PEC will cease using requests for proposals to procure renewables from third parties and adopt DEC's approach of considering both self-build and third party generators. Williams testified that eliminating self-build options does not benefit retail ratepayers and that, in the final analysis, this debate is simply not appropriate for this merger proceeding. Contrary to witness Hahn's position, Williams asserted that existing statutes and Commission rules would continue, after the close of the merger, to impose on DEC and PEC the obligation to solicit the best and most cost effective projects. Therefore, concerns such as those expressed by Hahn are more appropriately addressed in the annual demand-side management/energy efficiency (DSM/EE) and Renewable Energy and Efficiency Portfolio Standard (REPS) proceedings, rather than in a vacuum in this unrelated proceeding.

Based on the foregoing, the Commission is not persuaded that the list of known and potential costs and risks of the merger to North Carolina retail ratepayers should be expanded beyond those stated in Finding of Fact No. 22. Specifically, the Commission finds and concludes that the list of known and potential costs and risks of the merger do not include the risks identified by NCSEA witness Urlaub and EDF, *et al.*, witness Hahn, for the reasons discussed below.

*41 Many of the risks cited by witness Urlaub, including the possibility of a double dip recession, a smaller economic recovery than first projected, reduced demand, rising costs, and the much stronger positioning of alternative energy resources are risks both DEC and PEC face today and will continue to face irrespective of whether the merger is consummated. They do not stem from the merger itself. In addition, Urlaub's linkage of the financial benefits of the merger to a commitment to a strategic plan to build new nuclear generation is not supported by the record in this proceeding. Urlaub presumes that a commitment to such a strategic plan would result directly from the merger, and then he asserts that the uncertainty this strategic plan creates is a significant risk of the merger. However, any link between the merger and the Applicants' future investments in nuclear generation is too tenuous to support such a conclusion. In addition, the Applicants' commitment to such a strategic plan, if it did exist, could not be accomplished without clearing the regulatory hurdles associated with the construction of nuclear generation.

The risk asserted by witness Hahn with respect to the effects on the market for procurement of renewable resources hinges on his assumption that the merger will cause DEC and PEC to purchase from affiliated interests that are in competition with renewable resource developers. Citing the FERC's stated belief that affiliate preference, or the possibility thereof, harms competition, whether in purchase power agreements or asset acquisitions, Hahn recommended that the Commission adopt a procurement process that follows the FERC's guidelines with respect to competitive solicitations for the portion of REPS compliance that would have been handled separately by PEC and DEC before the merger. However, the Commission is not persuaded that the merger will increase the renewable energy purchasing power of PEC and DEC, or otherwise materially alter their REPS requirements or processes. PEC and DEC are required to meet their REPS renewable energy obligations in the least cost manner. In doing so, they minimize the rate impact to their customers of complying with this statutory mandate. In addition, to the extent the merger allows PEC and DEC to lower their REPS compliance costs through more efficient resource procurement procedures, this will be a direct benefit to their North Carolina customers. Further, Hahn's recommendation appears to be based on the erroneous assumption that allowing a utility to propose a self-build renewable option is the equivalent of allowing a utility to purchase from an affiliate. To the contrary, there is no evidence that North Carolina regulatory laws and policies have allowed utilities to engage in imprudent or unreasonable purchases of capacity or energy from affiliated generators.

The Commission, therefore, finds and concludes that the merger will create certain known and potential costs and risks to North Carolina retail ratepayers, as stated in Finding of Fact No. 22. However, following the close of the merger DEC and PEC will each continue to have the same obligations they had before the merger to refrain from favoring or subsidizing their affiliates, to pursue the most reliable, prudent and cost-effective resources and projects, and to demonstrate that they have done so in appropriate proceedings before the Commission, such as IRP, CPCN and REPS proceedings.

In the Matter of Application of Duke Energy Corporation..., 298 P.U.R.4th 363

*42 *EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23*

The evidence supporting this finding of fact is contained in the Stipulation, Regulatory Conditions and Code of Conduct, the Supplemental Stipulation, the direct and supplemental testimony of Public Staff witness Hoard, and the supplemental testimony of Applicants witness Weintraub.

The Stipulation, Regulatory Conditions and the Supplemental Stipulation protect DEC's and PEC's retail ratepayers from payment of merger-related costs by specific provisions that:

> (1) Require direct expenses associated with costs to achieve the merger (direct merger costs) to be excluded from DEC's and PEC's cost of service for retail ratemaking purposes; (2) Allow DEC and PEC to seek recovery in future rate case proceedings of capital costs associated with system integration projects and with 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 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 any costs may be made; (3) Disallow recovery of any merger-related employee severance costs in cost of service for retail ratemaking purposes; (4) Require the exclusion of any acquisition adjustment that results from the merger; and (5) Prohibit the allocation of any costs associated with a failed merger.

As provided in Paragraph No. 12 of the Stipulation, the direct merger costs, which the Applicants have agreed to exclude from DEC's and PEC's cost of service for retail ratemaking purposes, would be composed of 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.

Paragraph No. 12 of the Stipulation provided that with respect to capital costs such as system integration costs (largely from new information technology) associated with costs to achieve (CTA) merger savings, DEC and PEC would have been allowed to request recovery through depreciation or amortization in the first application for a general rate case filed by each of them after the close of the merger and prior to December 31, 2013. In order to justify such cost recovery, DEC and PEC would need to show that these capital costs resulted in quantifiable cost savings to their respective North Carolina retail customers greater than the revenue requirement effect of the inclusion of these costs in rate base. Further, the Stipulation provided that coal-blending CTA were treated the same as other capital CTA, such that DEC and PEC could seek recovery of coal-blending costs in the first general rate case filed by each utility after the closing of the merger and prior to December 31, 2013. However, because the decline in the price of natural gas is now likely to result in DEC taking delivery of fewer tons of coal at the plants identified in the Fuel Synergies Review for coal-blending modifications, and, therefore, DEC's investments in those modifications are likely to be delayed, Public Staff witness Hoard testified in his supplemental testimony that the Public Staff has now agreed to remove the previously imposed limitation. Consequently, the Supplemental Stipulation provides that the normal ratemaking standards applicable to all capital investments be used for the coal-blending CTA. The revised coal-blending CTA provision will permit DEC to pursue coal blending as it makes economic sense to do so from a fuel procurement perspective, without the December 31, 2013 time limitation or other undue influence of rate recovery concerns.

*43 Furthermore, in supplemental testimony supporting the Supplemental Stipulation, Applicants witness Weintraub testified that due to the procedural posture of the Applicants' merger application with the FERC, the close of the merger did not occur January 1, 2012, as the Applicants had expected. Instead, according to Weintraub, the closing will occur in June or July 2012, assuming all regulatory approvals would be received in a timely manner. As a result, neither PEC nor DEC will have realized any capital CTA merger savings at the time they file their 2012 rate cases. In recognition of this changed circumstance the Applicants and the Public Staff have agreed that Paragraph No. 12 of the Stipulation should be revised as shown below in Paragraphs A(2) and (3). Public Staff witness Hoard testified that an extension of the December 31, 2013 deadline will provide each utility with a reasonable opportunity to pursue recovery in a general rate proceeding of their investments in capital CTA that are incurred within three years from the close of the merger. In addition, Applicants witness Weintraub testified that as

further consideration for the Public Staff agreeing to these modifications PEC and DEC have agreed to waive their right to seek recovery of merger-related employee severance costs.

In regard to the aforementioned capital CTA, the Applicants and the Public Staff have now agreed in the Supplemental Stipulation, Section III, that the provisions in Paragraph No. 12 of the Stipulation relating to capital CTA are superseded by the following:

> A(2) Except as provided in Paragraph (3) below, DEC and PEC may seek to recover in their respective North Carolina retail rates, 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 system integration projects and with 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. Only the net depreciated costs of the system integration projects at the time the request is made may be included, and no request for deferral of any costs may be made. (3) Because the decline in the price of natural gas is likely to result in DEC taking delivery of fewer tons of coal at its Allen, Belews Creek, and Marshall coal-fired plants than assumed in the Fuel Synergies study filed as Exhibit 5 to the Merger application, the limitation in Paragraph A(2) above shall not apply to the capital costs associated with post-merger coal blending, and DEC may request recovery of such incurred capital costs, including information technology to the extent directly related to coal blending, in any general rate cases following the closing of the merger, in accordance with normal ratemaking practices, and subject to DEC showing that the eligible capital costs were reasonable and were prudently incurred. Only the net depreciated costs of the coal-blending equipment at the time the request is made may be included, and no request for deferral for any costs may be made.

*44 As provided in Paragraph No. 12 of the Stipulation, with regard to merger-related severance costs, the Public Staff had opposed the inclusion of severance costs in cost of service for retail ratemaking purposes. Under the provisions of the Stipulation, DEC and PEC would have had the right to request recovery of these costs through amortization in the first application for a general rate case filed after the close of the merger and prior to December 31, 2013, upon a showing that these costs resulted in salary expense savings greater than the costs during the test period. The Public Staff would have had the right to oppose such recovery. However, as previously mentioned, the Applicants and the Public Staff have now agreed in the Supplemental Stipulation, Section III, that the provisions in Paragraph No. 12 of the Stipulation relating to merger-related severance costs are superseded by the following:

> A(1) DEC and PEC shall not request recovery in North Carolina retail rates of any of their allocable shares of the $226 million total post-merger combined company's estimated merger-related severance costs.

Regulatory Condition No. 5.14 provides that any acquisition adjustment that results from the merger shall be excluded from DEC's and PEC's utility accounts and treated for regulatory accounting, reporting, and ratemaking purposes in a manner such that it does not affect DEC's or PEC's North Carolina retail electric rates and charges.

Further, Regulatory Condition No. 5.15 provides that if the merger is not consummated then neither the cost nor the receipt of any termination payment between Duke and Progress shall be allocated to DEC or PEC or recorded on their books, and that neither DEC's nor PEC's North Carolina retail ratepayers will otherwise bear any direct expenses or costs associated with a failed merger.

No objections were made in the parties' briefs or proposed orders with respect to these particular provisions of the Stipulation and Regulatory Conditions, except for the following general exceptions. In particular, in its post-hearing Brief the Commercial Group simply observed that the Stipulation cites in Paragraph No. 12 a disagreement on future recovery of CTA and it reminded the Commission that it should closely watch/monitor CTA that may arise in future proceedings. Also, during the hearings some parties generally expressed concern with the possibility that DEC and PEC would be allowed to request recovery of merger-

related severance costs, but those concerns were not addressed in post-hearing briefs or proposed orders. Furthermore, because PEC and DEC have now agreed in the Supplemental Stipulation to waive their right to seek recovery of merger-related employee severance costs that issue is moot.

In their comments filed on June 18, 2012, EDF, *et al.*, expressed concern regarding the terms of the Supplemental Stipulation that remove the time limit for DEC's recovery of capital costs associated with coal blending. EDF, *et al.*, asserted that removal of the time limit facilitates the increased use of coal blending, which could result in more and dirtier coal being burned and greater emissions from DEC's coal plants. In addition, EDF, *et al.*, noted that it had proposed several conditions to address these concerns in their post-hearing Brief.

***45** In the Applicants' reply comments filed on June 19, 2012, the Applicants noted that EDF, *et al.*, raised the issue of increased coal burning and emissions during the evidentiary hearing in September 2011. The Applicants stated that this issue was addressed by Applicants witness Williams in testimony explaining that DEC and PEC will continue to be subject to compliance with the Clean Smokestacks Act and other emissions laws and regulations. Further, the Applicants noted that this provision of the Supplemental Stipulation was agreed upon because of the likelihood that low natural gas prices will incent DEC to burn more natural gas and less coal.

The Commission is not persuaded that removal of the time limit for the recovery DEC's capital costs associated with coal blending will result in increased emissions. Further, both DEC and PEC have a history of compliance with environmental regulations and will be required to continue their compliance after the merger. Therefore, the Commission is not persuaded that the proposed additional conditions recommended by EDF, *et al.*, are reasonable or appropriate.

The Commission, therefore, finds and concludes that the provisions of the Stipulation, Regulatory Conditions, and the Supplemental Stipulation will effectively protect DEC's and PEC's retail ratepayers as much as reasonably possible from paying direct merger costs, capital costs, and other merger-related cost increases that could impact DEC's and PEC's North Carolina cost of service for retail ratemaking purposes.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 24

The evidence supporting this finding of fact is contained in the Stipulation, Regulatory Conditions, Code of Conduct, testimony of Applicants witnesses and Public Staff witnesses in support thereof, testimony of City of Orangeburg witness Bagwell, and the City of Orangeburg's Statement of Position and post-hearing Brief.

Regulatory Condition Nos. 3.1 through 3.11, 4.1 through 4.10, 5.3, and 5.11 provide the protections listed in this finding of fact as well as Paragraph Nos. 6 and 10 of the JDA. These protections include risks related to agreements and transactions between and among DEC, PEC, and their affiliates, including the JDA; financing transactions involving Duke, DEC, or PEC, and any other affiliate; the ownership, use, and disposition of assets by DEC or PEC; participation in the wholesale market by DEC or PEC; and filings with federal regulatory agencies. With the exception of Regulatory Condition Nos. 3.6, 3.7(c), 3.9(a), 3.9(b), and 3.9(c) and parallel provisions to the JDA contested by Orangeburg discussed below, no party has offered evidence contesting these provisions of the Stipulation, the Regulatory Conditions (addressing issues such as joint planning, coordination, and generation dispatch), the Code of Conduct or the testimony of the witnesses in support thereof. To the extent not contested by Orangeburg, the Commission determines that the uncontested and uncontradicted evidence is sufficient to support this finding of fact and need not be repeated here.

***46** Orangeburg, through the testimony of its witness and in its post-hearing filings, objects to a number of the regulatory conditions in the Stipulation and in the structure of the JDA on the theory that they violate the federal preemption doctrine, the Supremacy and Commerce Clauses of the United States Constitution, and the public interest. Specifically, Orangeburg objects to proposed Regulatory Conditions 3.6, 3.7(e), 3.9(a), 3.9(b) and 3.9(c).

Orangeburg argues that these regulatory conditions would require DEC and PEC to submit proposed wholesale contracts for Commission review, purport to grant the Commission the authority to reallocate and reassign the revenues and costs of DEC's and PEC's wholesale costs for purposes of retail ratemaking and the authority to determine favored and disfavored wholesale native load customers and wholesale non-native load customers respectively, and bar the utilities from raising federal preemption arguments in opposition to Commission regulatory action.

Orangeburg argues that the JDA is intended to work in concert with the regulatory conditions. Orangeburg objects to the division of DEC's and PEC's customers into three categories, with customers like Orangeburg, a non-native load wholesale customer, placed in the category to which the highest cost energy dispatched under the JDA is allocated. Orangeburg argues that the JDA therefore works to create an undue preference in favor of native load customers and undue disadvantage to non-native load customers or potential customers like Orangeburg.

The Commission, the North Carolina appellate courts and FERC have been confronted by Orangeburg's arguments or by similar arguments by others on previous occasions. This history is useful in responding to Orangeburg's arguments here. The regulatory conditions at issue and the principles underlying them repeated in the framework of the JDA have been in place for many years. These regulatory conditions, designed to reserve to North Carolina native load retail customers and to similarly situated wholesale customers the cost of power from the plants they have paid for over the years, were initially approved by the Commission in past merger orders, such as the Duke-Cinergy order in 2006 and the CP&L-Progress order in 2000.

The regulatory condition requiring PEC to submit proposed wholesale contracts for review and the Commission's rulings on the scope and interpretation of that requirement were challenged in the North Carolina appellate courts. Ultimately, the North Carolina Supreme Court upheld the Commission's imposition of that requirement and rejected challenges made on federal preemption, Supremacy and Commerce Clause grounds. *State ex rel Utilities Comm'n v Carolina Power & Light Co*, 359 N.C. 516, 614 S.E. 2d 281 (2005).

> [W]e hold that federal law does not preempt NCUC's authority to conduct a pre-sale review of a utility's proposed grant of native load priority to a wholesale customer that will be supplied from the same generating plants as retail customers. The review authority that NCUC possesses is necessary to enable it to fulfill its obligations under the North Carolina Public Utilities Act by ensuring that a regulated public utility has sufficient generating resources to provide reliable and adequate service to its captive retail ratepayers.

Id. at 529, 614 S.E. 2d at 290.

*47 The Commission and the North Carolina appellate courts confronted similar challenges in 2008. DEC and Orangeburg had entered into a wholesale contract under which DEC agreed to provide Orangeburg's wholesale power needs at prices based on DEC's fully distributed costs, or costs determined on the same basis as DEC's native load retail customers. In accordance with regulatory conditions, DEC filed the contract with the Commission for review and requested a ruling that in future rate proceedings for retail customers, DEC's costs under the Orangeburg contract would be recognized at the contracted for fully distributed costs rather than higher incremental costs. Docket No. E-7, Sub 858. Rejecting arguments that the Commission should decline to provide guidance as to what its future ruling would be, the Commission informed the parties that its future ruling likely would recognize the costs under the DEC/Orangeburg contract at the incremental cost level. The Commission reasoned that this allocation of costs would provide the protection to North Carolina retail customers that the principles underlying the regulatory conditions being challenged in the present merger docket were designed to provide.

As subsequently noted by the North Carolina Court of Appeals, upon receiving this order, Orangeburg exercised its rights under the contract to terminate and entered into a substitute long-term contract with South Carolina Electric and Gas Company (SCE&G) *In re Duke Energy Carolinas*, 702 S.E. 2d 240 (NC App 16 Nov. 2010), No. COA09-1273, slip op. p. 5. Nevertheless, Orangeburg appealed the Commission's order to the North Carolina appellate courts [4]. The North Carolina Court of Appeals

rejected Orangeburg's challenge to the Commission's order on the grounds of mootness. *Id.* p. 8. The Court determined that Orangeburg's exercise of its right to terminate rendered its appeal moot. The Court also noted that Orangeburg had failed to show that avenues to challenge the Commission's order in other jurisdictions were unavailable or that Orangeburg had unsuccessfully availed itself of those options. *Id.* p. 10. The North Carolina Supreme Court rejected Orangeburg's request that it review the opinion of the Court of Appeals 709 S.E. 2d 364 (N.C. 7 June 2011) No. 537 P 10.

In addition to appealing the Commission's order to the North Carolina appellate courts, in 2009 Orangeburg filed for declaratory relief before FERC in Docket No. EL09-63-000 challenging the Commission's alleged preference on behalf of North Carolina retail ratepayers. As of this date three years later, FERC has not taken up Orangeburg's complaint in the declaratory relief docket.

The regulatory conditions at issue in this docket repeat and refine the same regulatory conditions that were first imposed years ago and that have survived the challenges discussed above. The Duke/Progress merger at issue here requires FERC approval, as does the JDA. Orangeburg raises the same argument before FERC in the merger-related dockets as it raises before the Commission. *See* Duke Energy Corp. & Progress Energy, Inc., 137 FERC ¶ 61,209. The primary argument underlying Orangeburg's challenges before FERC is that the North Carolina Commission is acting as gatekeeper to DEC's and PEC's wholesale sales and will continue to do so under the proposed regulatory conditions. In both the FERC merger and JDA dockets, Orangeburg relies heavily on cases interpreting the filed rate doctrine and holding that FERC's jurisdiction over wholesale power transactions is exclusive, thus preempting this Commission's actions establishing a preference for North Carolina retail customers. Were Orangeburg correct in its repeatedly made arguments that the Commission is intruding upon FERC's exclusive jurisdiction, FERC would be expected to agree with them.

*48 However, FERC has declined to provide Orangeburg relief in the merger docket, noting that North Carolina regulatory conditions have been in place for many years, are not new, and consequently Orangeburg has failed to establish the appropriate nexus between the North Carolina regulatory conditions and the proposed Duke/Progress merger. Order on Disposition of Jurisdictional Facilities and Merger, Sept. 30, 2011, Docket No. EC11-60-000, 136 FERC ¶ 61,247. Most recently, in its June 8, 2012 Order Accepting Revised Compliance Filing, as Modified, and Power Sales Agreements, FERC states:
The Commission rejects City of Orangeburg's arguments pertaining to the state regulatory conditions for the same reasons that we did so in the Merger Order - namely, that City of Orangeburg has 'failed to demonstrate that the alleged harms to competition stem from the Proposed Transaction.' The alleged harms that City of Orangeburg complains of are based on existing state regulatory policies, which are currently in place and will continue in effect regardless of whether the Proposed Transaction goes forward. Consequently, we will not address those arguments here.

Docket No. EC11-60-004, 139 FERC ¶ 61,194.

In the FERC JDA docket FERC likewise has rejected Orangeburg's request to modify the JDA to remove the preference for native load retail and wholesale customers. After making limited modifications to the JDA by striking provisions of section 3.2(c) that pertain to retail ratemaking on the grounds that these provisions are inappropriate to include in a wholesale agreement before FERC and concluding that the JDA's allocation of different cost levels for new and existing non-native load customers are discriminatory, FERC concluded 'we do not object to the JDA's allocation of the lowest cost power to native load customers.'

In the present dockets, in the context outlined above, the Commission rejects Orangeburg's challenges to the regulatory conditions and to the JDA and approves the challenged paragraphs of the joint stipulation and the JDA (to the extent not modified by FERC). At present, Orangeburg has a long-term wholesale power supply agreement with SCE&G lasting through 2022 or 2023. For reasons satisfactory to itself, Orangeburg exercised its right to terminate the proposed DEC/Orangeburg contract in 2009. The Commission can take no action in the present dockets before it that may provide Orangeburg relief for regulatory conditions or determinations that allegedly harmed Orangeburg in the past. There is no evidence of record that Orangeburg has requested, nor that DEC has offered, a replacement wholesale contract. In its November 23, 2011, post hearing Brief Orangeburg refers to itself only as 'a potential wholesale power customer.' Indeed, under the JDA, Orangeburg would

only fall into the category of non-native load wholesale customers. There is no evidence of record that shows that Orangeburg either is representing or could represent other similarly situated non-native load wholesale customers. Presently, only two other non-native load wholesale customers have contracts with the merger Applicants. When these two contracts expire, the 'existing non-native load [contracts] jobs' will disappear. Applicants June 12 Revisions to Joint Dispatch Agreement.

*49 For the most part the challenged regulatory conditions constrain DEC and PEC, yet in the negotiation process leading to the Stipulation the companies have acquiesced in them. Further, no party other than Orangeburg questioned the enforceability or effectiveness of these Regulatory Conditions.

The Commission determines that Orangeburg lacks standing at this time and in these dockets to raise these issues and alternatively that Orangeburg's arguments as they contemplate potential future harm are not ripe for consideration. By the time Orangeburg is back in the wholesale market, DEC and PEC may be fully integrated into a single electric power supplier and the JDA may have been terminated. As it has with respect to other wholesale customers, the Commission in spite of its earlier advisory ruling may reassess Orangeburg's status as a wholesale native local customer based on conditions and circumstances existing at the time. Orangeburg may be unwilling or unable to negotiate a wholesale power agreement with DEC or PEC or the merged company for reasons unrelated to its status as a non-native load wholesale customer.

FERC, or the courts to which FERC orders may be appealed, have these issues involving the scope of federal authority before them, and these tribunals are best positioned to address and resolve them at this time. To the extent the issues are presently judicable, the Commission defers to these tribunals.

To date, the North Carolina appellate courts have rejected every challenge to the regulatory conditions establishing the preference to which Orangeburg objects. Furthermore, FERC, with the exception of its limited modification of the JDA, has also rejected Orangeburg's challenge to the Commission's actions. Significantly, despite Orangeburg's contentions that the Commission's actions infringe on FERC jurisdiction, FERC rejected Orangeburg's substantive arguments that the JDA is unduly prejudicial to customers like Orangeburg. Moreover, FERC expressly declined to address Orangeburg's arguments on the regulatory conditions. In FERC's view, the conditions and any alleged harm they might cause exist because of existing state policy and do not arise out of or result from the proposed merger. Accordingly, FERC deliberately made no comment or finding with respect to state regulatory policy. Consequently, the Commission reaffirms its prior rulings, accepts the regulatory conditions as agreed to by the Applicants, including those challenged by Orangeburg, and rejects Orangeburg's challenges to the JDA, which FERC now has approved over Orangeburg's objections.

The Commission concludes that nothing in either the requirements imposed by the FERC in its orders issued before and after the revised filings concerning the Applicants' merger or in changes in federal energy law in this area since 2005 creates a need to add further safeguards or language to the Regulatory Conditions, with the one exception noted below. This conclusion is based largely on the breadth of the anti-preemption Regulatory Conditions and the inclusion of savings clauses in EPACT 2005 that expressly preserve state jurisdiction. However, the one exception is the FERC's recent effort to expand its authority over transmission planning and cost allocations in FERC Order No. 1000. In response to this development, the advance notice provision of Regulatory Condition No. 3.10(c) has been amended to explicitly state that advance notice is required prior to any filing made with the FERC that has the potential to reduce the Commission's jurisdiction with respect to transmission planning or any other aspect of the Commission's planning authority.

*50 *EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 25*

The evidence supporting this finding of fact is contained in the Stipulation, Regulatory Conditions, Supplemental Stipulation, as amended, the information submitted by the Applicants in response to the Commission's Post-hearing Order, the testimony of Applicants witnesses Kalt and Weintraub, the testimony of Public Staff witnesses Morey and Hoard, the testimony of EDF, *et al.*, witness Hahn, the June 22, 2011 amendments to the JDA filed by DEC and PEC, the FERC JDA Order; and the Public Staff's June 13, 2012 comments.

The primary purpose of Section IV of the Regulatory Conditions is to ensure that DEC's and PEC's respective retail customers receive adequate benefits from the JDA, and that joint dispatch costs and the sharing of cost savings can be appropriately audited.

In addition, Regulatory Condition No. 4 5 requires that all joint dispatch and other activities pursuant to the proposed JDA or successor document be performed in such a manner as to (a) ensure the reliable fulfillment of DEC's and PEC's respective service obligations to their retail customers, (b) fulfill each utility's obligation to serve its own retail customers with its lowest cost generation, and (c) minimize the total costs incurred by DEC and PEC to fulfill their respective obligations to their retail customers. With respect to the treatment of costs and savings, Regulatory Condition No 4.6 provides that DEC's and PEC'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. DEC and PEC are required by Regulatory Condition No. 4.7 to 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. To protect against transactions pursuant to the JDA that produce negative margins, Regulatory Condition No. 4 8 requires that such recordkeeping be in sufficient detail 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.

In response to questions by the Commission, DEC and PEC agreed to file with the Commission the information and notifications required by Paragraph No. 11 of the Stipulation, under seal if the information is deemed confidential

Further, the Commission's Post-Hearing Order, Question No. 15, inquired when DEC and PEC would provide the Commission with an integrated resource plan that reflects joint planning and operations, including generation resources built to serve both of them, or delayed plans for such additions. The Applicants responded that Section 3.2 (b) of the JDA provides that if they desire to conduct joint planning and the joint development of generation or transmission, they would have to amend the JDA or enter into a separate agreement and seek all required regulatory approvals. The response further stated that DEC and PEC plan to conduct some joint generation planning following the close of the merger and will be seeking all required regulatory approvals. In the near future, however, DEC and PEC will continue to file separate integrated resource plans until the integration of the operating companies or until required by order or law.

***51** With respect to transmission planning, which was included as part of Question No. 15, the Applicants stated that DEC and PEC already engage in coordinated planning of their bulk transmission systems (230 kV and above) for major projects through the North Carolina Transmission Planning Collaborative, which includes NCEMC, NCEMPA, and NCMPA 1 in addition to DEC and PEC.

The Commission notes that Regulatory Condition No. 4.7 requires DEC and PEC to 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. The Stipulation further spells out certain requirements to ensure that the implementation of the JDA is done appropriately and can be monitored in real-time. The Applicants' agreement to file the required information with the Commission also will help ensure that joint dispatch costs and the sharing of cost savings can be appropriately audited.

Although some intervenors questioned the level of benefits to be produced by the JDA, no party challenged the related Regulatory Conditions with respect to whether they ensure that DEC's and PEC's retail ratepayers receive substantial benefits from the JDA and ensure that joint dispatch costs and the sharing of cost savings can be appropriately audited.

EDF, *et al.*, witness Hahn testified that DEC and PEC should be required to modify the JDA to reflect a single balancing authority area (BAA). Witness Hahn stated that a single BAA, or 'tight power pool,' could achieve the maximum benefits of central dispatch. Applicants' witness Weintraub testified that witness Hahn appeared to believe that having three separate BAAs

prohibits PEC and DEC from conducting joint dispatch as a combined system with combined generation and load as modeled by Compass Lexecon, and that Hahn was incorrect. Witness Weintraub stated that DEC and PEC will be able to conduct joint dispatch as a combined system regardless of whether there are three BAAs or one BAA, and that the Applicants will implement one unit commitment plan and conduct a single security constrained economic dispatch to serve the combined native loads of both DEC and PEC.

The Stipulation provides that to enable the Public Staff to monitor the implementation of the JDA, DEC and PEC will (1) provide, prior to the implementation of the JDA, a detailed description of the production cost model that will be used, including the algorithms, assumptions, and inputs by the model to simulate the production costs of DEC and PEC under the stand-alone utility case; (2) verify the accuracy of the production cost model in estimating stand-alone utility production costs by benchmarking the model against a recent historical period in which DEC and PEC dispatched their generation on a stand-alone basis; (3) notify the Public Staff at least quarterly when significant changes have been made to the algorithms, assumptions and inputs to the model and provide an explanation justifying those changes; and (4) provide the Public Staff with all the information needed to audit the model inputs and outputs as often as monthly until the utilities and the Public Staff have gained experience with the model, and at least quarterly thereafter.

***52** The Applicants' March 26, 2012 revised mitigation plan established certain wholesale power sales in order to mitigate wholesale market power on an interim basis. As a result, the Supplemental Stipulation included provision A. (4), which states as follows:

> Interim Mitigation Sales shall be treated as a separate category of New Non-Native Load Sales and shall be deemed to have been satisfied by the highest energy costs assigned to New Non-Native Load Sales pursuant to JDA Section 7.2.

The June 8, 2012 FERC JDA Order required that two changes be made to the JDA. One of the changes is the removal of subsections (ii), (iii) and (iv) from Section 3.2(c). Section 3.2 of the JDA, as filed with the FERC, provided as follows:

> (c) In addition to the foregoing, DEC and PEC have agreed, in previous proceedings before the NCUC (NCUC Docket E-7, Sub 795 and NCUC Docket E-2, Sub 884, respectively), to insert into any affiliate agreements such as this Agreement the following provisions:

(i) DEC's or PEC's participation in the agreement is voluntary, DEC or PEC is not obligated to take or provide services or make any purchases or sales pursuant to the agreement, and DEC or PEC may elect to discontinue its participation in the agreement at its election after giving any required notice;

(ii) Neither DEC nor PEC may make or incur a charge under this Agreement except in accordance with North Carolina law and the rules, regulations and orders of the NCUC promulgated thereunder;

(iii) Neither DEC nor PEC may seek to reflect in its North Carolina retail rates (i) any costs incurred under this Agreement exceeding the amount allowed by the NCUC or (ii) any revenue level earned under the Agreement other than the amount imputed by the NCUC; and

(iv) Neither DEC nor PEC will assert in any forum that the NCUC's authority to assign, allocate, make pro forma adjustments to or disallow revenues or costs for retail ratemaking and regulatory accounting and reporting purposes is preempted and DEC and PEC will bear the full risk of any preemptive effects of federal law with respect to this Agreement.

The reason stated by the FERC for removing these subsections is that they pertain to retail ratemaking and, therefore, are not appropriate in a FERC-jurisdictional wholesale agreement. In the JDA Order, the FERC stated that beyond requiring removal

of these provisions the FERC offered no view on the North Carolina Utilities Commission's authority to impose or apply such requirements.

The Public Staff's June 13, 2012 comments stated that the provisions of Section 3.2(c) were first proposed in 2000 by the Public Staff, in Docket No. E-2, Sub 753, to protect the Commission's jurisdiction from preemption by the Securities and Exchange Commission when PEC applied to the Commission for approval to create a registered holding company under the Public Utility Holding Company Act of 1935 as part of PEC's acquisition of Florida Progress Corporation. According to the Public Staff, these conditions were included in the original JDA to obtain the maximum amount of protection against preemption that the Public Staff could devise. In its comments filed on June 13, 2012, the Public Staff proposed the following three amendments to the Regulatory Conditions and one new Regulatory Condition to address any loss of protection that might result from the FERC's elimination of subsections 3.2(c)(ii), (iii) and (iv) from the JDA

*53 (1) The definition of Affiliate Contract is amended to state:

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

(2) Condition 3.1 is amended by adding a new subsection (e):

(e) In the event the FERC or any other federal regulatory agency requires modification of a proposed Affiliate Contract to omit any of the provisions of Condition 3.1(b) as a condition of acceptance or approval by that agency, DEC and PEC shall remain bound by those provisions for state regulatory purposes.

(3) The introductory paragraph for Section IV is amended by adding the following sentence at the end: *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) A new Condition 4.12 is added at the end of Section IV: *4.12 Hold Harmless Commitment. DEC and PEC 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.*

In his further supplemental testimony filed on June 13, 2012, Applicants witness Weintraub stated that the Applicants support these changes to the Regulatory Conditions.

The Commission finds that the FERC's elimination of subsections 3.2(c)(ii), (iii) and (iv) from the JDA is not a material detriment to the preemption protections afforded by the Stipulation, for three reasons. First, the language of Regulatory Condition No. 3.1 (b) is substantially similar to that of subsections 3.2(c)(ii), (iii) and (iv) of the JDA. Second, the proposed amendments to the Regulatory Conditions clarify and strengthen the application of Regulatory Condition No. 3.1(b) to the JDA. Third, new Regulatory Condition No. 4.12 is a stronger hold harmless condition than those previously offered by the Applicants. Therefore, the Commission concludes that Regulatory Condition No. 3.1(b), the proposed amendments to the Regulatory Conditions and new Regulatory Condition No. 4.12 adequately remedy any loss of protection that might result from the FERC's elimination of subsections 3.2(c)(ii), (iii) and (iv) from the JDA.

The second change to the JDA required by the FERC is the removal of the distinction between existing non-native load customers and new non-native load customers. The FERC stated that this disparate treatment of the two customer classes had

not been justified by the Applicants. However, the FERC accepted the JDA's reservation of the lowest cost power for DEC's and PEC's native load customers. In his further supplemental testimony, Applicants witness Weintraub testified that none of the modifications required by FERC alter the ability of the Applicants to achieve the fuel savings described in previous testimony or otherwise impair any of the benefits of the JDA to North Carolina customers.

*54 The Commission concludes that the proposed amendments to the Regulatory Conditions and new Regulatory Condition No. 4.12, in conjunction with the other provisions of the Stipulation, will protect as much as reasonably possible the Commission's authority to ensure least-cost service and reasonable retail rates.

As stated earlier, the FERC's JDA Order found that the Applicants had not justified the proposed disparate treatment of existing non-native load customers and new non-native load customers, and required that the two groups be merged into one. The Public Staff stated in its June 13, 2012 comments that the merging of these two classes of customers should have no impact on the savings guarantee for retail customers, because the existing non-native load customer class is very small and native load will be allocated only the costs that remain after the highest costs are allocated to non-native load sales. Similarly, the further supplemental testimony of Applicants witness Weintraub stated that:

> Merging existing non-native load sales and new non-native load sales into one class for purposes of the JDA has no impact on the $650 million savings guarantee, because this revision only deals with non-native load transactions and does not impact native load. Furthermore, the class of existing non-native load sales is small, only two contracts ... . Additionally, merging these two types of sales will not change the total costs allocated to non-native load sales for purposes of the JDA. The resources allocated to native load will only be those that remain after the highest cost resources have been allocated to non-native load sales.

In response to the FERC's June 8, 2012 JDA Order, the Public Staff recommended that Section I.A.(4) of the Supplemental Stipulation be revised to accommodate the FERC's requirement that the distinction between existing non-native load customers and new non-native load customers be removed as follows:

> Interim Mitigation Sales shall be treated as a separate category of Non-Native Load Sales and shall be deemed to have been satisfied by the highest energy costs assigned to Non-Native Load Sales pursuant to JDA Section 7.2.

Similarly, the Public Staff stated that to ensure that the mechanism approved in DEC's recent general rate cases to flow an appropriate share of the net revenues from DEC's short-term wholesale sales to its retail ratepayers through an annual rider is not adversely affected, the following new condition should be approved:

> Bulk Power Marketing Sales, as defined in DEC's BPM Net Revenues and Non-Firm Point-to-Point Transmission Revenues Adjustment Rider (NC), shall be treated as a separate category of Non-Native Load Sales and shall be deemed to have been satisfied by the next highest energy costs, after the assignment of energy costs to Interim Mitigation Sales.

In its June 18, 2012 comments, Orangeburg stated that:

> The additional and modified conditions recommended by the Public Staff to the proposals by the Applicants to comply with FERC's June 8 Orders should be rejected by this Commission because they would further unlawfully intrude upon and interfere with FERC's jurisdiction.

In the Matter of Application of Duke Energy Corporation..., 298 P.U.R.4th 363. .

*55 The Commission finds that the Public Staff's recommendations are appropriate to the extent that their application is limited to the calculation of costs and savings that are allocated to retail customers. Therefore, the Commission accepts the above revision to Section I.A.(4) of the Supplemental Stipulation and the new condition.

The FERC JDA Order stated that the Applicants had not shown whether their existing joint ownership agreements establish whether, and if so, how, co-owners of jointly-owned facilities will share in cost savings resulting from joint economic dispatch as contemplated under the JDA. The FERC directed the Applicants to submit such an explanation in a compliance filing within 60 days of the issuance of the JDA Order. The Public Staff stated in its June 13, 2012 comments that it believes that neither DEC nor PEC has any rights to the output associated with its co-owners' shares of the jointly-owned facilities. Because the JDA is an agreement between DEC and PEC and involves only the power resources of DEC and PEC, the co-owners' shares of the output of jointly-owned facilities are not, and should not be, subject to the JDA, according to the Public Staff. As a result, the co-owners' portions of the jointly-owned facilities will not be included in joint dispatch pursuant to the JDA, and the co-owners should not share in any of the JDA savings. Similarly, the Applicants' witness Weintraub stated in his June 13, 2012 further supplemental testimony that:

> Because DEC and PEC have no rights to the portions of the output of the units to which the co-owners are entitled, such output is not subject to the JDA, and the co-owners [sic] rights are not affected by the JDA.

Based on the testimony and comments cited above, as well as the FERC JDA Order, the Commission finds and concludes that the JDA, along with the relevant provisions of the Stipulation, Regulatory Conditions and Supplemental Stipulation, as amended, will ensure that North Carolina's retail customers receive adequate benefits from the JDA, that they are protected as much as reasonably possible from potential risks associated with the FERC's jurisdiction over the JDA, and that the Applicants and the Public Staff have established a workable framework for auditing the costs and benefits of the JDA. The Commission also finds and concludes that the monitoring and implementation of the JDA are central to ensuring that customers realize adequate benefits from the merger. Therefore, the Commission concludes that it is appropriate to amend the Stipulation to require DEC and PEC to file with the Commission the information that would otherwise be provided only to the Public Staff relative to the production cost models used to implement the JDA.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 26

The evidence supporting this finding of fact is contained in the Stipulation, Regulatory Conditions and Code of Conduct and the direct testimony of Public Staff witness Hoard.

*56 Regulatory Condition No. 5.1 provides that in accordance with North Carolina law the Commission and the Public Staff will continue to have access to the books and records of DEC, PEC, Duke, other affiliates, and the nonpublic utility operations of DEC and PEC.

In addition, the Stipulation and Regulatory Conditions include provisions that address risks and concerns related to cost allocation and ratemaking arising from the merger, including ensuring that the costs incurred by DEC and PEC are properly incurred, accounted for, and directly charged, directly assigned, or allocated to their respective North Carolina retail operations and that only costs that produce benefits for their respective retail ratepayers are included in DEC's and PEC's North Carolina cost of service for retail ratemaking purposes.

In this regard, Paragraph No. 8 of the Stipulation provides that for purposes of distributing the costs of services provided between and among affiliates PEC will continue to use direct charging, and all PEC employees will continue to use positive time reporting; and DEC will increase the amount of such costs that are directly charged and will complete the transition to direct charging and positive time reporting within two years following the close of the merger. This paragraph further provides that DEC will file semi-annual reports with the Commission detailing its progress in implementing these practices, with the first report due six months after the close of the merger.

Public Staff witness Hoard testified that affiliated transactions rules, such as those set forth in DEC's and PEC's current respective Regulatory Conditions and Codes of Conduct, are designed to: (1) fairly allocate the cost of common goods and services among affiliates; (2) protect ratepayers from overcharges by non-regulated affiliates; and (3) prevent cross-subsidization of non-regulated affiliates by their utility affiliates. Hoard further testified that as a part of the Stipulation the Applicants, DEC, PEC, and the Public Staff have agreed on the affiliated transaction pricing rules contained in the Code of Conduct.

Further, Public Staff witness Hoard explained that the caps that had been previously imposed on the amount of transactions that could occur between regulated utilities at fully distributed costs created a barrier that served to discourage utility affiliates from keeping some shared utility functions within one or more of the utilities and incented the utilities to transfer core utility operating functions to a service company. According to Hoard, the removal of the cap led to the Applicants agreeing to keep core utility functions within DEC and PEC, instead of placing those functions in a service company.

Regulatory Condition No. 5.2 establishes the principles that will govern the prices at which goods and services are exchanged between and among DEC, PEC, and their affiliates, subject to additional provisions set forth in the Code of Conduct. While providing for an exception with respect to transactions between DEC and PEC pursuant to filed and approved service agreements and lists of services, this condition requires DEC and PEC to seek out and buy all goods and services from the lowest cost qualified provider of comparable goods and services. Further, DEC and PEC shall have the burden of proving that any and all goods and services procured from any affiliate have been procured on terms and conditions comparable to the most favorable terms and conditions reasonably available in the relevant market, which shall include a showing that comparable goods or services could not have been procured at a lower price from qualified non-affiliate sources or that neither DEC nor PEC could have provided the services or goods for itself on the same basis at a lower cost.

*57 To the extent DEC and PEC are allowed to provide goods and services to non-utility affiliates, they will have the burden of proving that all goods and services either of them provide to any affiliate other than one of their regulated utility affiliates have been provided on terms and conditions that are 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 establish that they have met the foregoing requirements, DEC and PEC, no less than every four years, will be required to perform comprehensive, non-solicitation based assessments at a functional level of the market competitiveness of the costs for goods and services they receive from, or provide to, a utility affiliate, DEBS, PESC, another non-utility affiliate, and a nonpublic utility operation.

Further, to the extent the Commission approves the procurement or provision of goods and services between and among DEC, PEC, and the utility affiliates, those goods and services may be provided at the supplier's fully distributed cost. In the Public Staff's September 15, 2011 filing, the Public Staff provided a corrected version of the stipulated Regulatory Conditions and Code of Conduct to mainly correct typographical and formatting errors discovered subsequent to the September 2, 2011 Stipulation filing. However, there was a substantive revision to the definition of 'fully distributed cost.' According to the Public Staff, a modification had been agreed to prior to the filing of the September 2, 2011 Stipulation, but it had been inadvertently omitted. As a result, the Code of Conduct definition for 'fully distributed cost' was corrected by the Public Staff in its September 15, 2011 filing to reflect that the stipulated definition, as corrected, should provide that 'for each good and service supplied by DEC and PEC to each other, the return on common equity utilized in determining the appropriate cost of capital shall not exceed the lower of the returns on common equity authorized by the Commission in DEC's and PEC's most recent general rate case proceedings.'

Under Regulatory Condition No. 5.4, DEC and PEC will be required to 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, PEC, their affiliates or non-public utility operations, the list(s) of goods and services that DEC and PEC each intend to take from DEBS and PESC, the list(s) of goods and services DEC and PEC intend to take from each other and their regulated utility affiliates, and the basis for the determination of such list(s) and the elections of such services. All such lists that involve the payment of fees or

other compensation by DEC or PEC 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. DEC and PEC are allowed to take goods and services from an affiliate only in accordance with the filed service agreements and approved list(s) of services and notice is required prior to any changes being made to the service agreements or to the lists of services.

***58** Regulatory Condition No. 5.5 provides that 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. Both DEC and PEC are required to keep on file with the Commission cost allocation manuals (CAMs) with respect to goods or services provided by DEC or PEC, any utility affiliate, DEBS or PESC, any other non-utility affiliate, Duke, any other affiliates, or any non-public utility operation to either DEC or PEC.

In addition, Regulatory Condition No. 5.5, Subsection (c) provides for an annual update of the CAMs and the filing of the revised CAMs with the Commission no later than March 31 of the year that the CAMs are to be in effect. DEC and PEC are required to review the appropriateness of the allocation bases every two years, and the results of such review must be filed with the Commission.

Regulatory Condition No. 5.9 provides that all of the services rendered by DEC and PEC to their affiliates and nonpublic utility operations and the services received by DEC or PEC 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 and PEC's compliance with the Commission-approved Regulatory Conditions and Code of Conduct, shall remain subject to ongoing review by the Commission.

Regulatory Condition No. 5.10 provides that for the purposes of North Carolina retail accounting, reporting, and ratemaking, the Commission may, after appropriate notice and opportunity to be heard, issue orders relating to DEC's or PEC's cost of service as the Commission may determine are necessary to ensure that DEC's and PEC's operations and transactions with their affiliates and non-public utility operations are consistent with the Regulatory Conditions and Code of Conduct, and with any other applicable decisions of the Commission.

No objections were raised in the parties' briefs or proposed orders with respect to these particular provisions of the Stipulation, Regulatory Conditions and Code of Conduct.

The Commission, therefore, finds and concludes that the provisions of the Stipulation, Regulatory Conditions and Code of Conduct, as indicated above, will protect retail ratepayers as much as reasonably possible from potential risks related to cost allocation and ratemaking arising from the merger, including ensuring that the costs incurred by DEC and PEC are properly incurred, accounted for, and directly charged, directly assigned or allocated to their respective North Carolina retail operations and that only costs that produce benefits for their respective retail ratepayers are included in DEC's and PEC's North Carolina cost of service for retail ratemaking purposes.

***59** *EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO 27*

The evidence supporting this finding of fact is contained in the Stipulation, Regulatory Conditions and Code of Conduct.

The Stipulation and Regulatory Conditions impose certain auditing and reporting requirements with respect to affiliate transactions and cost of service. In particular, Regulatory Condition No. 5 7 would continue the current requirement that DEC and PEC shall each file annual reports of affiliated transactions with the Commission in a format to be prescribed by the Commission on or before May 30 of each year, for activity through December 31 of the preceding year. Such annual reports should be filed in Docket Nos. E-7, Sub 986A and E-2, Sub 998A. DEC, PEC, and other parties may propose changes to the

required affiliated transaction reporting requirements and submit them to the Commission for approval, in Docket Nos. E-7, Sub 986B and E-2, Sub 998B.

Regulatory Condition No. 5.8 clarifies and expands the third-party independent audit report requirement that currently applies only to DEC. It divides the subject matter of each audit as follows:

(a) The first audit following the close of the merger, which is required to begin two years from the date of close, includes a determination as to whether DEC and PEC have adopted systems, policies, CAMs, and other processes to ensure compliance with all of the conditions related to affiliate dealings and the Code of Conduct and have operated in accordance with those conditions and the Code of Conduct.

(b) The second audit, which is required to 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, includes a determination as to whether DEC's and PEC'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 and PEC have operated in accordance with those conditions and the Code of Conduct.

(c) The third audit, which is required to begin two years from the date of the Commission's order on the independent auditor's final report on the second audit or, if no such order is issued, two years from the date of such final report, includes a determination as to whether DEC's and PEC'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 and PEC have operated in accordance with those conditions and the Code of Conduct.

(d) 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, with the subject matter of these audits alternating between the subject matters for the second and third independent audits. DEC or PEC may request a change in the frequency of the audit reports in future years, subject to approval by the Commission.

*60 Regulatory Condition No. 5.12 provides that transactions between DEC or PEC and Duke, other affiliates, or other nonpublic utility operations, transactions between DEC and PEC, and other transactions between or among affiliates if such transactions are reasonably likely to have a significant effect on DEC's or PEC's rates or service, shall be reviewed at least biannually by Duke's internal auditors. Further, relevant workpapers relating to the internal audits must be provided to the Commission and the Public Staff. Likewise, if external audits are conducted, then their relevant workpapers must also be provided.

In addition, Regulatory Condition No. 5.13 provides that at such time as DEC, PEC, Duke, DEBS, or PESC receives notice from the FERC related to an audit of any affiliate of DEC or PEC, DEC or PEC is required to promptly file a notice with 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 must be filed with the Commission in Docket Nos. E-7, Sub 986E and E-2, Sub 998E, respectively.

No objections were raised in the parties' briefs or proposed orders with respect to these particular provisions of the Stipulation, Regulatory Conditions and Code of Conduct.

The Commission, therefore, finds and concludes that the provisions of the Stipulation, Regulatory Conditions and Code of Conduct, as indicated above, will provide appropriate and effective auditing and reporting requirements with respect to affiliate transactions and cost of service, thereby ensuring that costs will be properly recorded and can be effectively audited by the Public Staff and the Commission

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 28

The evidence supporting this finding of fact is contained in the Stipulation and Regulatory Conditions.

Regulatory Condition No. 5.16 is intended to protect DEC's and PEC's North Carolina retail ratepayers from impacts of the merger on cost of service for ratemaking purposes. In particular, Regulatory Condition No. 5.16 ensures that DEC's and PEC's North Carolina retail ratepayers are held harmless from any cost assignment or allocation of costs resulting from agreements (a) between DEC and the Catawba Joint Owners; (b) between PEC and NCEMPA as joint owner; and (c) between either DEC or PEC and any of their wholesale customers. It further provides that to the extent commitments to DEC's or PEC's wholesale customers relating to the merger are made by or imposed upon DEC or PEC that affect the benefits of bulk power revenues, increase DEC's or PEC's North Carolina retail cost of service, or increase DEC's or PEC's North Carolina retail fuel costs under reasonable cost assignment and allocation practices, those effects shall not be recognized for North Carolina retail cost of service or ratemaking purposes. Finally, this Regulatory Condition also provides that to the extent that commitments are made by or imposed upon DEC, PEC, Duke, another affiliate, or a non-public 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.

*61 Regulatory Condition No. 5.17 provides that the assignment or allocation of costs to the North Carolina retail jurisdiction shall not be adversely affected as a result of the manner and amount of recovery of electric system costs from (a) the Catawba Joint Owners as a result of agreements between DEC and the Catawba Joint Owners or (b) the NCEMPA as a result of agreements between it and PEC.

In addition, Regulatory Condition No. 5.18 prohibits DEC, PEC, Duke, and their affiliates from asserting that any interested party cannot seek the inclusion in future rate proceedings of cost savings that may be realized as a result of any business combination transaction impacting DEC and PEC.

Further, of particular significance are the protections provided by Regulatory Condition No. 5.21, which protects DEC's and PEC's retail native load customers from all liabilities of Cinergy Corporation and its subsidiaries, including those incurred prior to and after Duke's acquisition of Cinergy Corporation in 2006. These liabilities include, but are not limited to, those associated with: (i) manufactured gas plant sites; (ii) asbestos claims; (iii) environmental compliance; (iv) pensions and other employee benefits; (v) decommissioning costs; and (vi) taxes. This condition also protects DEC's and PEC's retail ratepayers from all liabilities of Florida Progress Corporation and its subsidiaries, including those incurred prior to and after Progress'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. Subsection (c) of Regulatory Condition 5.21 also provides that DEC's retail ratepayers shall be held harmless from all current and prospective liabilities of PEC, and PEC's retail ratepayers shall be held harmless from all current and prospective liabilities of DEC.

Finally, Regulatory Condition No. 5.22 is a blanket hold harmless commitment. It requires DEC, PEC, all other affiliates, and all of the non-public utility operations to take all such actions that may be reasonably necessary and appropriate to hold North Carolina retail ratepayers harmless from the effects of the merger, including rate increases or foregone opportunities for rate decreases, and other effects otherwise adversely impacting North Carolina retail ratepayers.

Although there was some mention during the hearing of Duke Indiana's Edwardsport integrated gasification combined cycle project and Progress Energy Florida's Crystal River 3 nuclear power plant outage, none of the parties took issue with the aforementioned Regulatory Conditions.

The Commission, therefore, finds and concludes that the above provisions of the Regulatory Conditions will protect DEC's and PEC's North Carolina retail ratepayers as much as reasonably possible from the potential impacts of the merger relating to risks of transactions with and commitments of PEC, DEC, and Duke to wholesale customers and other parties.

*62 *EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 29*

The evidence supporting this finding of fact is contained in the Regulatory Conditions and the Code of Conduct.

The Code of Conduct is intended to govern the relationships, activities, and transactions among and between DEC, PEC, and other members of the Duke holding company structure following the merger. Regulatory Condition No. 6.1 binds DEC, PEC, Duke, the other affiliates, and the non-public utility operations to the terms of the Code of Conduct and requires that they comply with its terms.

The proposed Code of Conduct includes revisions to the Code of Conduct approved in the Duke-Cinergy merger proceeding. The most substantive revisions are the following:

(a) Revisions to the definitions to conform them to the definitions in the stipulated Regulatory Conditions.

(b) The inclusion of the additional conditions approved by the Commission in Docket No. E-7, Sub 810, in Sections III.A.2. and III.A.3.

(c) The addition of the following to the exception to the prohibitions in III.A 2 against disclosing Customer Information: To the extent the Commission approves a list of services to be provided and taken pursuant to one or more utility-to-utility service agreements, then Customer Information may be disclosed pursuant to the foregoing exception to the extent necessary for such services to be performed.

(d) The addition of the following exceptions to the prohibitions in Section III.A.3 against the disclosure of Confidential Systems Operation Information: (i) the Information is provided to employees of DEC or PEC for the purpose of implementing, and operating pursuant to, the JDA in accordance with the Regulatory Conditions; and (ii) the Information is necessary for the performance of services approved to be performed pursuant to one or more affiliate utility-to-utility service agreements.

(e) The removal of the cap in III.D.3(d) and the addition of the provision that untariffed non-power, non-generation, and non-fuel goods and services provided by DEC or PEC to DEC, PEC, or the regulated utility affiliates or by the regulated utility affiliates to DEC or PEC, shall be transferred at the supplier's fully distributed cost (as that term is defined in the Regulatory Conditions and Code of Conduct).

(f) The exemption of DEC and PEC from the requirement of advance notice in III.D(8) when a covered technology or trade secret is being transferred between them.

No party took exception to any of the changes to DEC's and PEC's previously approved Codes of Conduct.

The Commission, therefore, finds and concludes that the Code of Conduct, as stipulated to by the Applicants, DEC, PEC, and the Public Staff and approved herein, will effectively govern and enable the Commission to review the relationships, activities, and transactions among DEC, PEC, and their affiliates following the merger.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 30

The evidence supporting this finding of fact is contained in the testimony of Applicants witness Good, the testimony of EDF, *et al.*, witness Hahn, and in Section VII of the Regulatory Conditions attached to the Stipulation.

*63 The purposes of Section VII are to ensure that (a) DEC's and PEC's capital structure and cost of capital are not adversely affected through their affiliation with Duke, each other, and other affiliates, and (b) both DEC and PEC have access to sufficient equity and debt capital at reasonable costs so as to adequately fund and maintain their current and future capital needs and otherwise meet their service obligations to their customers.

These Regulatory Conditions are similar to, or improvements on, the Regulatory Conditions related to financings approved by the Commission in the Duke-Cinergy merger proceeding. For example, a new condition, Regulatory Condition No. 7.8, governs external debt or credit arrangements and provides that, subject to the limitations imposed in Regulatory Condition No. 8.4:

(a) DEC and PEC may borrow short-term funds through one or more joint external debt or credit arrangements, provided that no borrowing by DEC or PEC under a Credit Facility exceeds one year in duration, absent Commission approval;

(b) No such arrangement shall include, as a borrower, any party other than Duke, DEC, PEC, Duke Indiana, Duke Kentucky, PEF, and, subject to certain limitations, Duke Ohio; and

(c) DEC's and PEC's participation in any such arrangement 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.

If the limitations with respect to Duke Ohio's participation are not met, DEC and PEC are required to discontinue participation within six months after the issuance of an order by the Commission

EDF, *et al.*, witness Hahn testified that the Regulatory Conditions do not prohibit money pool transactions with unregulated affiliates of DEC and PEC. In their post-hearing Brief, EDF, *et al.*, asserted that the Commission should adopt additional conditions to protect DEC and PEC ratepayers from the risk of exposure to parent and affiliate financial distress, including additional restrictions regarding the use of money pools and establishment of a special purpose entity (SPE) between regulated subsidiaries and the parent holding company.

On rebuttal, Applicants witness Good testified that apparently EDF, *et al.*, witness Hahn had not reviewed the money pool agreement provision of the Regulatory Conditions because it expressly contains the prohibition that he testified was lacking. Regulatory Condition No. 7.7 provides that, subject to the limitations imposed in Regulatory Condition No. 8.4, DEC and PEC may borrow through Duke's Utility Money Pool Agreement (Utility MPA). This condition explicitly continues the prohibition in the existing Utility MPA of loans through Utility MPA being made to, and borrowings being made by, Duke and Cinergy Corporation. Further, Progress was added to this prohibition. This condition also provides that (a) the parties to such an agreement are limited to those participating in Duke's existing Utility MPA plus PEC, PEF (a regulated utility), Progress, and PESC; and that if, after December 31, 2011, certain requirements with respect to Duke Ohio's generation assets are not met, then DEC and PEC must seek further approval from the Commission to continue to participate in the Utility MPA.

*64 Additionally, the preamble to Section VII explicitly states that these Regulatory Conditions do not supersede any orders or directives of the Commission regarding specific securities issuances by DEC, PEC, or Duke, and that approval of the merger by the Commission does not restrict the Commission's right to review, and by order to adjust, DEC's or PEC's cost of capital for ratemaking purposes for the effect(s) of the securities-related transactions associated with the merger.

Other than as discussed above, no party took exception to any of these Regulatory Conditions.

The Commission is not persuaded by the testimony of EDF, *et al.*, witness Hahn or the arguments of EDF, *et al.*, that additional Regulatory Conditions are needed to protect DEC's or PEC's cost of capital or capital structures. Rather, the Commission is of the opinion, and, therefore, finds and concludes, that the Regulatory Conditions included in the Stipulation are reasonable, appropriate and effectively address as much as reasonably possible the concerns related to potential financing issues arising

from the merger. In particular, the Commission finds and concludes that the Regulatory Conditions effectively ensure as much as reasonably possible that (a) neither DEC's nor PEC's capital structures and cost of capital are adversely affected because of their affiliation with Duke, each other, and other affiliates, and (b) both DEC and PEC 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.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 31

The evidence supporting this finding of fact is contained in the Stipulation, Regulatory Conditions, the testimony of Applicants witness Good and the testimony of EDF, *et al.*, witness Hahn.

Section VIII of the Regulatory Conditions addresses the risks and concerns related to corporate governance and ring-fencing issues arising from the merger. These Regulatory Conditions are intended to ensure the continued viability of DEC and PEC and to insulate and protect DEC, PEC, and their North Carolina retail ratepayers from the business and financial risks of Duke and the affiliates within the Duke holding company system, including the protection of utility assets from liabilities of affiliates.

'Ring-fencing' can be defined as the legal walling off of certain assets or liabilities within a corporate system, including the creation of a new subsidiary to protect (*i.e.*, ring-fence) specific assets from creditors. Ring-fencing measures are used to insulate a regulated utility from the potentially riskier activities of unregulated affiliates From a debt rating agency perspective, ring-fencing mechanisms are techniques used to isolate the credit risks of one company within an affiliated group from the risks of other companies within that group. Concurrent use of numerous ring-fencing measures, including regulatory, financial, structural, and operational restrictions, is considered to be the most effective way to separate risk.

***65** Only EDF, *et al.*, witness Hahn alleged that ring-fencing conditions in addition to those contained in the Regulatory Conditions are required. He recommended that the Commission impose four additional conditions: (a) limiting cash dividend payments to Duke from DEC and PEC to DEC's and PEC's annual net income; (b) requiring DEC and PEC to maintain a capital structure with at least 40 percent equity; (c) requiring that DEC's and PEC's boards of directors each include at least one independent director; and (d) requiring that an SPE be inserted between the parent company and PEC and DEC.

Applicants witness Good responded to each of EDF, *et al.*, witness Hahn's 'ring-fencing' proposals. Good testified that, contrary to Hahn's assertions, the rating agencies have not expressed the opinion that either DEC or PEC should be further insulated from the actions of affiliates above and beyond the protective measures that are already in place. Fitch Ratings, S&P, and Moody's Investors Service (Moody's) each reviewed the merger transaction and, on that basis, affirmed the ratings of Progress and its subsidiaries on January 10, 2011. According to witness Good, S&P placed the ratings of Progress, PEC, and PEF on 'CreditWatch with Positive Implications,' indicating a likely upgrade The credit ratings of Duke and its subsidiaries were affirmed by S&P and Moody's on the same date.

Applicants witness Good then described the ring-fencing conditions as being intended to ensure the continued viability of DEC and PEC and to insulate and protect DEC, PEC, and their North Carolina retail ratepayers from the business and financial risks of Duke and the affiliates within the Duke holding company system, including the protection of utility assets from liabilities of affiliates.

Regarding EDF, *et al.*, witness Hahn's testimony to the effect that the Regulatory Conditions do not contain any limits on PEC's and DEC's authority to pay dividends and his proposal that the cash dividends paid to Duke by DEC and PEC be limited to DEC's and PEC's annual net income, Applicants witness Good testified, on rebuttal, that both Regulatory Condition Nos. 8.1 and 8.2 provide such limitations and that those limitations are reasonable and appropriate.

Regulatory Condition No. 8.1 requires DEC and PEC to 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. If the debt rating of either DEC or PEC

falls to the lowest level still considered investment grade at the time, a written notice by DEC or PEC must be filed with the Commission and provided to the Public Staff within five days, along with an explanation as to why the downgrade occurred. Furthermore, within 45 days of such notice, DEC or PEC are required to 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 PEC's North Carolina retail ratepayers in the continuation of adequate and reliable service at just and reasonable rates. Regulatory Condition No. 8.2 limits DEC's and PEC's cumulative distributions paid to Duke subsequent to the merger to (a) the amount of retained earnings on the day prior to the closure of the merger, plus (b) any future earnings recorded by DEC and PEC subsequent to the merger.

*66 In response to cross-examination by counsel for EDF, *et al.*, with respect to whether the Regulatory Conditions would allow DEC and PEC to write a dividend check for the total amount of total retained earnings, Applicants witness Good stated that she did not believe the Regulatory Conditions would allow that because DEC and PEC would be in violation of a number of conditions. For example, Good testified that it would be difficult to maintain investment grade ratings if DEC or PEC had zero equity and difficult to meet the condition that requires DEC's and PEC's debt balance to be no more than 65 percent of total capitalization.

Turning to EDF, *et al.*, witness Hahn's second recommendation, that DEC and PEC should be required to maintain a capital structure with at least 40 percent equity, Applicants witness Good explained that, in addition to Regulatory Condition Nos. 8.1 and 8.2, the Commission has statutory authority to approve appropriate capital structures for both DEC and PEC. Furthermore, Good testified that Regulatory Condition No. 8.3 imposes requirements with respect to a minimum equity ratio.

Regarding EDF, *et al.*, witness Hahn's proposal that both DEC and PEC should be required to have at least one independent director, Applicants witness Good explained that Hahn's justification for this proposal appeared to be that it would provide additional protection for DEC's and PEC's North Carolina retail ratepayers if Duke or another affiliate filed bankruptcy. Good pointed out that Regulatory Condition No. 8.10 addresses that situation by requiring DEC or PEC to notify the Commission, in advance if possible, if an affiliate experiences a default on an obligation that is material to Duke or files for bankruptcy and such bankruptcy is material to Duke, DEC or PEC. Good explained that this notice requirement is sufficient to allow the Commission to take whatever action may be appropriate to protect customers from the risks associated with the bankruptcy of Duke or an affiliate.

Additionally, Applicants witness Good observed that Regulatory Condition No. 8.4 allows DEC and PEC to participate in Duke's Utility MPA and any other authorized external joint debt or credit arrangement only to the extent such participation is beneficial to their respective retail ratepayers and does not negatively affect DEC's or PEC's ability to continue to provide adequate and reliable service at just and reasonable rates.

Regarding EDF, *et al*, witness Hahn's last recommendation, that DEC and PEC be transferred into an SPE, Applicants witness Good testified that this measure is unnecessary. Good noted that Hahn had acknowledged that PEC will be a wholly-owned subsidiary of Progress, which will be a subsidiary of Duke after the merger. Further, given the comprehensive nature of the Regulatory Conditions, Good testified that the transfer of PEC and DEC into an SPE is not warranted, as the Regulatory Conditions require PEC and DEC to operate completely separately from their parent and affiliates, to keep separate books and accounting, and to provide the Commission and Public Staff with advance notice of any activity that might harm PEC or DEC.

*67 In its response to the pre-filed testimony of EDF, *et al.*, witness Hahn, the Public Staff provided excerpts of the Regulatory Conditions and Code of Conduct provisions with ring-fencing implications highlighted to show the revisions that had been made to the Regulatory Conditions approved in the Sub 795 Order approving the Duke-Cinergy merger. The Public Staff also highlighted the additional ring-fencing provisions agreed to by the stipulating parties. The Public Staff further stated that ring-fencing in the regulated utility context generally is intended to protect ratepayers from risks created by unregulated affiliates.

With respect to EDF, *et al.*, witness Hahn's specific recommendations, the Public Staff noted that the Regulatory Conditions require a minimum equity ratio, albeit indirectly. Also, Duke's current Master Credit Facility includes a covenant restricting the ratio of debt to total capitalization on a consolidated basis to 65 percent, which conversely imposes a minimum 35 percent equity ratio. The Public Staff stated that it pursued this approach, rather than a specific minimum percentage of equity, because financial conditions could change. For example, if a subsequent credit arrangement required Duke to limit the ratio of debt to 60 percent of total capitalization, the minimum equity ratio for DEC and PEC would increase to 40 percent.

The Public Staff's response also noted that the Regulatory Conditions explicitly provide that DEC's and PEC's North Carolina retail ratepayers shall be held harmless from all liabilities of Cinergy Corporation and Florida Progress Corporation, and all liabilities of all of their subsidiaries, including liabilities incurred both before and after the earlier mergers.

With respect to bankruptcy, the Public Staff noted that bankruptcy of one of the regulated utility subsidiaries is unlikely given the extent of current state regulation, making the real issue the risks created by unregulated affiliates. To that end, the Public Staff stated that Regulatory Condition No. 8.5, one of the new conditions proposed by the Stipulation, provides a mechanism by which the Commission can determine whether the cumulative investment by Duke in assets, ventures, or entities other than regulated utilities is reasonably likely to affect DEC or PEC. More specifically, this condition requires Duke to '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 percent of its consolidated total assets.' This condition further provides a process by which parties can file comments in response to the notice and explicitly provides that the Commission can then take action if needed to protect DEC's and PEC's retail ratepayers.

As previously discussed, Regulatory Condition No. 8.4 limits the continued participation of DEC and PEC in the Duke Utility MPA and in other joint debt and credit arrangements with affiliates. It provides that DEC and PEC may continue to participate in such arrangements only to the extent that such participation is beneficial to their respective retail ratepayers and does not negatively affect DEC's or PEC's ability to continue to provide adequate and reliable service at just and reasonable rates.

*68 As discussed above, EDF, *et al.*, contended that the Commission should adopt additional conditions to protect DEC's and PEC's ratepayers from the risk of potential exposure to parent and affiliate financial distress. The Commission, however, is not persuaded that such additional conditions are necessary or appropriate. Rather, the Commission is persuaded by the evidence, including the comprehensiveness of the Regulatory Conditions, the testimony of Applicants witness Good, and the position taken by the Public Staff, that the Regulatory Conditions included in the Stipulation are reasonable and effectively address as much as reasonably possible the potential risks and concerns related to exposure to parent and affiliate financial distress and that the additional ring-fencing measures recommended by EDF, *et al.*, witness Hahn are not necessary

The Commission, therefore, finds and concludes that the Regulatory Conditions effectively address as much as reasonably possible potential risks and concerns related to corporate governance and ring-fencing issues arising from the merger by ensuring the continued viability of DEC and PEC and insulating and protecting DEC, PEC, and their retail ratepayers from the business and financial risks of Duke and the affiliates within the Duke holding company system, including the protection of utility assets from the liabilities of affiliates.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 32

The evidence supporting this finding of fact is contained in the Regulatory Conditions attached to the Stipulation, and the testimony of Public Staff witness Hoard.

The purpose of Section IX of the Regulatory Conditions is to ensure that the Commission receives sufficient notice to exercise its lawful authority over proposed mergers, acquisitions, and other business combinations involving Duke, DEC, PEC, other affiliates, or the non-public utility operation. Regulatory Condition No. 9.1 provides for Commission approval of future proposed mergers by DEC or PEC. Regulatory Condition No. 9.2 requires that advance notification be filed with

the Commission at least 90 days prior to the proposed closing date for the proposed merger, acquisition, or other business combination that is believed not to have an effect on DEC's or PEC's rates or service, but which involves Duke, other affiliates, or the non-public utility operations and which has a transaction value exceeding $1.5 billion. Any interested party may file comments within 45 days of the filing of the advance notification, and, if timely comments are filed, the Public Staff is required to place the matter on a Commission Staff Conference agenda and recommend how the Commission should proceed. This condition further provides that, if the Commission determines that the merger, acquisition, or other business combination requires approval, an order shall be issued requiring the filing of an application, and no closing can occur until and unless the Commission approves the proposed merger, acquisition, or business combination.

***69** In response to questions by the Commission, Public Staff witness Hoard confirmed that Regulatory Condition No. 9.1, among other things, documents the understanding between the Applicants and the Public Staff that a future merger of DEC and PEC must be approved by the Commission.

The Commission, therefore, finds and concludes that the Regulatory Conditions will effectively enable the Commission to exercise its jurisdiction over business combinations involving Duke or other members of the Duke holding company structure following the merger by ensuring that the Commission receives sufficient notice to exercise its lawful authority over proposed mergers, acquisitions, and other business combinations involving Duke, DEC, PEC, other affiliates, or the nonpublic utility operations of DEC and PEC.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 33

The evidence supporting this finding of fact is contained in the Regulatory Conditions attached to the Stipulation.

The Regulatory Conditions in Section X 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, DEC, PEC, and other affiliates, and nonpublic utility operations of DEC and PEC as they may affect North Carolina retail ratepayers.

Regulatory Condition No. 10.1 provides that DEC and PEC are required to file notice with the Commission 30 days prior to the initial transfer or any subsequent transfer of any services, functions, departments, employees, rights, obligations, assets; or liabilities from DEC or PEC to DEBS, PESC, Duke, another affiliate, or a nonpublic utility operation that (a) involves services, functions, departments, employees, rights, obligations, assets; or liabilities other than those of a governance or corporate nature that traditionally have been provided by a service company, or (b) potentially would have a significant effect on DEC's or PEC's public utility operations.

Regulatory Condition No. 10.2 provides that, upon request, DEC and PEC shall meet and consult with, and provide requested relevant data to, the Public Staff regarding plans for significant changes in DEC's, PEC's or Duke's organization, structure (including RTO developments), and activities, the expected or potential impact of such changes on DEC's or PEC's retail rates, operations and service; and proposals for assuring that such plans do not adversely affect DEC's or PEC's retail 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 or PEC's retail customers, then DEC's and PEC's plans and proposals for assuring that those plans do not adversely affect those customers must be included in these meetings DEC and PEC shall inform the Public Staff promptly of any such events and changes.

***70** The Commission, therefore, finds and concludes that the Regulatory Conditions effectively address risks and concerns related to structure and organization arising from the merger as much as reasonably possible by ensuring that the Commission will receive adequate notice of, and an opportunity to review and take such lawful action as is necessary and appropriate with respect to, changes to the structure and organization of Duke, DEC, PEC, and other affiliates, and nonpublic utility operations of DEC and PEC as they may affect North Carolina retail ratepayers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 34

The evidence supporting this finding of fact is contained in the Regulatory Conditions attached to the Stipulation.

Section XIII of the Regulatory Conditions provides procedures for the implementation of conditions requiring advance notices and other filings arising from the merger No party stated any opposition to these Regulatory Conditions.

Regulatory Condition No. 13.1 provides detailed procedures and designated Sub dockets for filings pursuant to the Regulatory Conditions that are not subject to the advance notice provisions of Regulatory Condition No 13.2. This Regulatory Condition provides that filings related to (a) affiliate matters required by Regulatory Condition Nos. 5.4, 5.5, 5.6, 5.7, and 5.23 and the filing permitted by Regulatory Condition No. 5.3 shall be made by DEC and PEC in Sub 986A and Sub 998A, respectively; (b) financings required by Regulatory Condition No. 7.6, and the filings required by Regulatory Condition Nos. 8.5, 8.6, 8.9, 8.10 and 8.11 shall be made by DEC and PEC in Sub 986B and Sub 998B, respectively; (c) compliance filings required by Regulatory Condition Nos 3.1(d) and 14.4 and filings required by Sections III.A.2(l), III.A.3(e), (f), and (g), III.D.5, and III.D.8 of the Code of Conduct shall be made in Sub 986C and Sub 998C; (d) the independent audits required by Regulatory Condition No. 5.8 shall be made in Sub 986D; and (e) orders and filings with the FERC, as required by Regulatory Condition Nos. 3.1(d), 3.11 and 5.13 shall be made by DEC and PEC in Sub 986E and Sub 998E, respectively.

Regulatory Condition No. 13.2 provides that advance notices filed pursuant to Regulatory Condition Nos. 3.1(c), 3.3(b), 3.7(c), 3.10(c), 4.2, 5.3, 8.8, and 10.1 shall be assigned a new, separate Sub docket and imposes detailed requirements and procedures for processing such notices.

The Commission, therefore, finds and concludes that Section XIII of the Regulatory Conditions provides appropriate and effective procedures for the implementation of conditions requiring advance notices and other filings arising from the merger.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 35

The evidence supporting this finding of fact is contained in the Regulatory Conditions attached to the Stipulation.

The purpose of Section XIV of the Regulatory Conditions is to ensure that Duke, DEC, PEC, and all other affiliates establish and maintain the structures and processes necessary to fulfill the commitments expressed in the Regulatory Conditions and the Code of Conduct in a timely, consistent and effective manner. The requirements in this section are new.

*71 Regulatory Condition No. 14.1 requires Duke, DEC, PEC, and all other affiliates to devote sufficient resources to the creation, monitoring and ongoing improvement of effective internal compliance programs to ensure compliance with the Regulatory Conditions and the Code of Conduct. It further requires them to take a proactive approach toward correcting any violations and reporting them to the Commission, including 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.

Regulatory Condition No. 14.2 requires DEC and PEC to 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 and PEC's Internet Website. Regulatory Condition No. 14 3 requires that annual training be provided by DEC and PEC 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

Finally, Regulatory Condition No. 14 4 states that if DEC and PEC discover that a violation of the requirements or standards contained within the Regulatory Conditions and Code of Conduct has occurred, then they are required to file a statement with

the Commission describing the circumstances leading to that violation and the mitigating and other steps taken to address the current or any future potential violation.

The Commission, therefore, finds and concludes that these Regulatory Conditions will effectively ensure monitoring and compliance with the Regulatory Conditions and the Code of Conduct by requiring Duke, DEC, PEC, and all other affiliates to establish and maintain the structures and processes necessary to fulfill the commitments expressed in the Regulatory Conditions and the Code of Conduct in a timely, consistent and effective manner.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 36

The evidence supporting this finding of fact is contained in the application, the Stipulation, and the testimony of Applicants witnesses Rogers, Johnson, Sims, and Williams, EDF, *et al.*, witness Hahn, NC WARN witness Colton and NCSEA witness Urlaub.

The Applicants state in the application that the proposed merger in no way diminishes the Commission's authority to regulate the service quality of DEC and PEC. Section XI of the Regulatory Conditions attached to the Stipulation contains ten separate provisions that are intended to ensure that DEC and PEC continue to implement and further their commitment to providing superior 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. These provisions include overall service quality, best practices, reliability reports, notice of audits by the North American Electric Reliability Corporation and the SERC Reliability Corporation, right-of-way maintenance expenditures and clearance practices, customer access to service representatives and other services, call center operations, customer surveys, and regular meetings with the Public Staff on matters related to service quality. In addition, Paragraph No. 14 of the Stipulation provides that DEC, PEC, and the Public Staff will work together after the close of the merger to propose a rulemaking proceeding for standardizing the indices commonly used in the electric utility industry to measure service quality for use in reporting by North Carolina electric utilities.

*72 Witnesses Rogers and Johnson emphasized DEC's and PEC's commitment to safe and reliable service. Witness Sims testified that she and co-worker Mullinax started the integration process by saying that safety, reliability, and customer service are important to their business and they wanted to form not only the largest utility but also the best utility and expected safety and reliability and customer service to continue at its present quality level, if not improve. Sims stated that it is the Applicants' responsibility to deliver safe and reliable power and customer service at all times, regardless of the merger, and they would continue to monitor that as a normal part of doing business. Witness Williams pointed out that the Commission's rules governing service quality, billing, deposits, and collections will continue to apply to all customers after the merger; the Public Staff's Consumer Services Division will still investigate customer complaints and ensure that DEC and PEC comply with the Commission's rules and treat their customers fairly and respectfully; a customer can still file a formal complaint with the Commission to resolve disputes; and several of the proposed Regulatory Conditions provide added protections. Williams stated that these multiple safeguards ensure that the merger will not result in a degradation of service to DEC's and PEC's low-income and smaller customers.

NC WARN witness Colton proposed that the Commission impose additional regulatory conditions beyond those contained in the Stipulation. Witness Colton asserted that, in general, the larger the company the less responsive it is to its smaller customers and the more rigid its customer service practices. He therefore recommended that the Commission require PEC and DEC to implement several energy efficiency programs focused on low-income customers and low income assistance programs as conditions for approval of the merger. NCSEA also asked the Commission to evaluate and consider mitigating measures to address NCSEA's perceived impact of the merger on low income customers.

Applicants witness Williams questioned witness Colton's basic premise and addressed each of his recommendations. Witness Williams explained that the harms postulated by Colton are entirely speculative. There is no evidence that the combined

company will be less attentive to or less sensitive to its smaller customers. Thus, witness Williams concluded that Colton's various mitigation measures are unneeded.

Witness Williams testified that the merger will not impair or modify the Commission's oversight, consumer protection authority or regulatory control over the combined company. Williams noted that the Commission's rules governing service quality, billing, deposits and collections will still apply to PEC and DEC after the merger. These rules include: Rule R8-6 which requires a utility to thoroughly investigate all customer complaints; Rule R8-14 which requires utilities to test meters upon customer request; Rules R8-16 and 17 which establish service frequency and voltage requirements; Rule R8-20 which governs disconnection of service; Rule R8-24 which requires service extensions; Rule R8-44 which establishes billing adjustment procedures for over- and under-charges; Rule R8-51 which requires a utility to provide a customer his or her billing history upon request; and the entire Rule R12 section which contains the rules associated with establishment of service, security deposits, and disconnection for non-payment.

*73 Further, witness Williams testified that the Public Staff's Consumer Services division will still investigate customer complaints and ensure PEC and DEC comply with the Commission's rules and treat their customers fairly and with respect. Customers can still file formal complaints with the Commission and Regulatory Conditions 11.8, 11.9 and 11.10 require PEC and DEC to have knowledgeable and experienced customer service representatives available 24 hours a day to handle all types of customer service inquiries. The combined company will continue to provide quarterly reports to the Public Staff on call center performance, and conduct customer service surveys.

Witness Williams concluded that these multiple consumer safeguards remain intact and ensure that the merger will not result in a degradation of service to PEC's and DEC's low income and smaller customers.

Regarding witness Colton's claim that the combined company will implement more rigid customer service procedures, witness Williams disagreed with that assertion, explaining that each utility today has data processing and information systems that accommodate consideration of individual customer circumstances. While the systems may be consolidated or standardized at some point after the merger, that action will in no way impede a customer service representative's ability to consider individual customer circumstances. He stated that an information system is merely a tool to facilitate customer interaction. The tool does not control or constrain the range of options available to customer service representatives. Witness Williams observed that witness Colton offered no support for his allegation that adoption of a single computer system will alter or constrain discretionary decisions by customer service representatives. Neither the consolidation of information systems nor any other action resulting from the merger will erode rules adopted by the Commission. The utilities will continue to comply with all Commission rules and regulations, including those focused on 'payment-troubled' customers. In fact, the proposed Regulatory Conditions add protections above those required by the Commission's rules and regulations.

With regard to witness Colton's specific mitigation proposals, witness Williams explained that such proposals are not necessary and should only be considered in PEC's and DEC's integrated resource planning (IRP) proceedings. Witness Williams stated that all of the mitigation measures in question involve questions of resource planning. The role energy efficiency and low income customer weatherization and support should play in the provision of electric service must be considered in the Commission's annual IRP process. Only in that context can the least cost mix of resources be identified. He observed that the Commission has adopted comprehensive resource planning rules and rules governing the selection, filing and approval of energy efficiency measures and programs and that Colton's concepts and proposals should be addressed via these established Commission proceedings.

*74 With regard to Colton's recommendation that PEC and DEC be required to make annual payments to a North Carolina financing organization to provide monetary support to low income customers, witness Williams testified that this is not the first time NC WARN has proposed creation of such a public benefits fund (PBF). He noted that in the fall of 2008, NC WARN proposed adoption of a PBF to fund an independently administered energy efficiency program. After considering the comments of numerous parties, the Commission, in its December 2, 2008 Order in Docket No. E-100, Sub 120, concluded that 'the

Commission lacks sufficient statutory authority to compel the establishment and funding of an independently administered energy efficiency program such as that proposed by NC WARN. Moreover, the Commission determines that establishment of such a program at this time is inconsistent with the provisions of Senate Bill 3 and the intent of the General Assembly expressed therein.' Witness Williams asserted that nothing has changed to alter the Commission's previous conclusion.

With respect to witness Colton's recommendation that the Commission establish energy efficiency portfolio standards (EEPS), an arrearage management program (AMP), or implement best energy efficiency practices for all utilities in the combined company, witness Williams explained that again all of these mitigation measures are based upon the assumption that the merger will detrimentally impact low income and small customers. However, other than Colton's bare assertion that bigger companies are, in general, less sensitive to low income customers than smaller companies, there is nothing in the record to support this allegation.

With regard to an AMP, witness Williams testified that both DEC and PEC have options available to assist customers with resolving arrearages. Both utilities offer installment payment plans, equal payment plans, credit extensions, and other assistance to help customers with payment of past-due bills. The utilities are not proposing to eliminate any of these currently available options. In addition, witness Williams reiterated that the Commission's rules pertaining to customer payments, deposits, billing, and collections are not changing, and the Public Staff Consumer Services Division will continue to assist customers.

With regard to EEPS, witness Williams explained that Senate Bill 3 established a renewable energy and energy efficiency portfolio standard (REPS) that DEC and PEC must meet. He stated that this merger is neither the appropriate time nor place to address DSM/EE program selection. The Commission has a rigorous IRP process in place to evaluate and select resources, including DSM/EE. The Commission also requires PEC and DEC to annually file their REPS compliance plans. The Commission reviews the plans and determines whether they should be approved. In addition, the Commission has specific rules and procedures in place to guide the evaluation and approval of specific DSM/EE programs Witness Williams concluded that the proper forum to address DSM/EE options is in the IRP proceedings and during the DSM/EE approval process.

*75 The Commission has carefully considered the concerns expressed by witness Colton regarding the potential loss of attention and responsiveness by a larger company to the circumstances of individual customers. The Commission concludes that the Regulatory Conditions agreed to by the Applicants and the Public Staff and attached to the Stipulation adequately address the preservation of high quality service for all of DEC's and PEC's customers. Further, the Commission is confident of its ability and that of the Public Staff to ensure that this commitment is met.

The Commission is not persuaded that the evidence presented by witness Colton is sufficient to require that additional service quality, customer service, energy efficiency or customer assistance programs should be established as part of the Commission's approval of the merger. The Commission concludes that there has not been sufficient evidence presented that customer service or service quality will be harmed as a result of the merger. All of the current safeguards regarding customer service and service quality will continue following the merger. Furthermore, many of the mitigation methods proposed by NC WARN can be more appropriately addressed in PEC's and DEC's annual IRP, DSM/EE and/or REPS proceedings.

In their post-hearing Brief, EDF, *et al.*, asserted that the Commission should adopt additional conditions, designated as Proposed Conditions 3.a.-d., to ensure that PEC's and DEC's customers receive maximum benefits from energy efficiency. They recommended that the Commission require a commitment at the holding company level for the Carolinas operating companies to achieve the energy efficiency savings performance target approved by the Commission in Docket No. E-7, Sub 831 (save-a-watt); require a study of energy efficiency best practices by an independent consultant to ensure implementation of best practices at the merged holding company and its Carolinas operating companies; require DEC and PEC to conduct and update at least every four years a joint analysis of the potential for cost-effective energy efficiency resources; require the Applicants to convene a stakeholder process to develop and propose for Commission approval a new compensation and incentive mechanism for energy efficiency that would take effect upon expiration of the currently approved DEC and PEC mechanisms. In addition,

EDF, *et al.*, proposed a condition to require an additional contribution from Duke's shareholders for the purpose of funding low-income weatherization, in an amount to be determined by the Commission.

On June 18, 2012, EDF, *et al.*, filed comments in which it stated that since the filing of their post-hearing Brief, EDF, *et al.*, entered into a settlement agreement with the Applicants that resolved the issues between them in the South Carolina proceeding As a result of this settlement EDF, *et al.*, stated that they desired to withdraw Proposed Conditions 3.a.-d.

The Commission is not convinced that a condition requiring an additional contribution from Duke's shareholders for the purpose of funding low-income weatherization would be reasonable or appropriate in this proceeding. Senate Bill 3 established a REPS that DEC and PEC must meet. The Commission has an annual IRP process to evaluate and select resources, including DSM/EE. The Commission also requires PEC and DEC to annually file their REPS compliance plans. The Commission reviews the plans and determines whether they should be approved. In addition, the Commission has specific rules and procedures in place to guide the evaluation and approval of specific DSM/EE programs. Thus, the proper forum to address DSM/EE options is in the IRP proceedings and during the DSM/EE approval process. Therefore, the Commission is not persuaded that the proposed additional conditions are reasonable or appropriate.

*76 In its post-hearing Brief, NC WARN recommended that the Commission adopt additional conditions requiring the Applicants to make a contribution of $27 million annually over the next decade for energy efficiency and conservation-based services that NC WARN asserted would partially mitigate the impacts of the merger on low-income families; create an AMP that would partially mitigate the impacts of the merger on low-income families; require that best practices in energy efficiency and conservation programs be a priority of the new Duke Energy; and order that side agreements between the parties be entered into the record.

The Commission is not convinced that NC WARN's recommended conditions are reasonable or appropriate in this proceeding. The Commission has an annual IRP process to evaluate and select resources, including DSM/EE. As stated above, the Commission reviews the plans and determines whether they should be approved In addition, the Commission has specific rules and procedures in place to guide the evaluation and approval of specific DSM/EE programs. Thus, the proper forum to address DSM/EE options is in the IRP proceedings and during the DSM/EE approval process.

In response to NC WARN's request that all settlement agreements be filed with the Commission, in the Commission's November 2, 2011 Post-Hearing Order, Question No. 18, the Commission directed the Applicants to provide the Commission with a copy of all settlement agreements related to the merger. On November 17, 2011, the Applicants filed their verified responses to the questions propounded by the Commission in the Post-Hearing Order, including copies of 18 settlement agreements related to the merger. On May 17, 2012, the Applicants filed copies of two additional settlement agreements and 12 revised agreements. On June 14, 2012, the Applicants filed a copy of one additional settlement agreement. All of these documents were filed by the Applicants under seal as proprietary and confidential. Therefore, on and after November 17, 2011, all parties to this proceeding had the opportunity to sign a confidentiality agreement and obtain copies of the Applicants' settlement agreements with other parties.

The Commission, therefore, finds and concludes that the Commission's existing regulatory authority and procedures and the Regulatory Conditions will effectively ensure that DEC and PEC maintain a strong commitment to customer service after the merger.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 37

The evidence supporting this finding of fact is contained in the Regulatory Conditions attached to the Stipulation.

Section XII of the Regulatory Conditions is intended to ensure that DEC's and PEC's North Carolina retail ratepayers do not bear any additional tax costs as a result of the merger and that they receive an appropriate share of any tax benefits associated with the service company affiliates, as defined in Section I of the Regulatory Conditions.

Regulatory Condition No. 12.1 provides that under any tax sharing agreement neither DEC nor PEC will seek to recover from their North Carolina retail ratepayers any tax cost that exceeds DEC's or PEC's tax liability calculated as if DEC and PEC were stand-alone taxable entities for tax purposes

*77 Regulatory Condition No. 12.2 provides that the appropriate portion of any income tax benefits associated with DEBS and PESC will accrue to the North Carolina retail operations of DEC and PEC for regulatory accounting, reporting, and ratemaking purposes.

No party questioned the appropriateness or effectiveness of Regulatory Condition Nos. 12.1 and 12.2.

The Commission, therefore, finds and concludes that Regulatory Condition Nos 12.1 and 12.2 will effectively ensure as much as reasonably possible that DEC's and PEC's North Carolina retail ratepayers (a) are protected from any adverse effects of a tax sharing agreement, and (b) will receive an appropriate portion of income tax benefits associated with DEBS and PESC.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 38

The evidence supporting this finding of fact is contained in the Regulatory Conditions attached to the Stipulation.

Section V of the Regulatory Conditions is intended to ensure that (a) costs incurred by DEC and PEC arising from transactions with affiliates are properly incurred, accounted for, and directly charged, directly assigned, or allocated to DEC's and PEC's North Carolina retail operations, and (b) only those costs that produce benefits for DEC's and PEC's North Carolina retail ratepayers are included in their respective cost of service for retail ratemaking purposes.

Regulatory Condition No. 5.1 provides that in accordance with North Carolina law the Commission and the Public Staff will continue to have access to the books and records of DEC, PEC, Duke, other affiliates, and the nonpublic utility operations of DEC and PEC.

No party questioned the effectiveness of Regulatory Condition No 5.1.

The Commission, therefore, finds and concludes that the Regulatory Conditions will effectively operate to ensure as much as reasonably possible that the Commission and the Public Staff continue to have access to the books and records of DEC, PEC, and other members of the Duke holding company system in accordance with North Carolina law.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 39

The evidence supporting this finding of fact is contained in the application, the testimony of Applicants witnesses, the Applicants' verified responses to the Commission's Post-Hearing Order, and the testimony of NCSEA witness Urlaub, EDF, *et al.*, witness Hahn, Public Staff witness Morey, and Public Staff witness Hoard

NCSEA witness Urlaub testified that the merger is not motivated by potential fuel savings or any operational efficiency, citing the investment analyst reports attached to the application as Exhibit 2. Urlaub argues that these third-party analysts focused on the strategy behind the merger and that, therefore, the merger does not appear to be driven by the metrics that traditionally underlie mergers. While conceding that the merger produces benefits, he questioned whether the benefits exceed the costs. He further opined that whether benefits from the merger exceed the risks and costs cannot be easily discerned because the Applicants failed to discuss any costs, risks or potential harms resulting from the merger.

*78 The concerns expressed by EDF, *et al.*, witness Hahn have been discussed extensively in this Order and need not be repeated here. In short, EDF, *et al.*, concedes that the merger will provide benefits, but insists that it has not been shown that North Carolina would enjoy benefits commensurate with the expected costs.

As discussed earlier, Public Staff witness Heard testified that he had reviewed the existing Regulatory Conditions and Codes of Conduct approved for DEC and PEC and the set attached to the Stipulation. He stated that, as a regulatory accountant, he would prefer the Regulatory Conditions and Code of Conduct that were included with the Stipulation.

Applicants witness Williams testified that the merger application addresses the risks associated with the merger, particularly with respect to the proposed regulatory conditions. He opined that the lengthy and comprehensive conditions included in the Stipulation fully address the risks associated with the merger. With respect to NCSEA witness Urlaub's testimony, witness Williams testified that NCSEA speculates that the financial benefits of the merger will be used to invest in utility assets that NCSEA does not support, in particular nuclear generation. Williams testified that this is a risk that NCSEA faces pre-merger, the safeguard for which is the Commission's integrated resource planning (IRP) procedures and the requirement that a utility obtain a certificate of public convenience and necessity (CPCN) before beginning the construction of a new generating unit.

The Commission concludes that NCSEA witness Urlaub's reliance on the investment analyst reports filed as Exhibit 2 is misplaced because they do not support his assertion that the merger is not motivated by potential fuel savings or any operational efficiencies. Indeed, these investment analyst reports actually support the opposite conclusion. For example, the Oppenheimer report does not question that the merger will result in six percent savings from combined O&M expenses, which is identified as $344 million. In fact, it states that ten percent savings in the Carolinas have been assumed. This report further discusses the effect of the merger on the pursuit of new clean coal investments, along with nuclear, and the benefits to Duke with respect to the dilution of its unregulated operations' exposure in Ohio. The Baird analysis emphasizes the need to fund substantial infrastructure investments, which is a far broader category than nuclear. It also emphasizes the estimated annual $300 to $420 million non-fuel O&M savings and the five-year estimate of $600 to $800 million in joint dispatch and fuel savings. Finally, the Bank of America/Merrill Lynch report similarly emphasizes the substantial expected non-fuel savings and the immediate customer savings over the first five years due to fuel and dispatch savings.

As discussed previously, many of the risks cited by NCSEA witness Urlaub are risks both DEC and PEC face today and will continue to face irrespective of whether the merger is consummated. Other risks identified have been too tenuously linked to the merger to be given any weight. Further, both NCSEA and EDF, *et al.*, have conceded that the merger results in benefits. Based on the conclusions herein with respect to the benefits of the merger to DEC's and PEC's North Carolina retail ratepayers and the effectiveness of the Regulatory Conditions and Code of Conduct in protecting North Carolina retail ratepayers from merger risks, the Commission finds and concludes that the Regulatory Conditions and the provisions of the Stipulation, as approved herein, will protect DEC's and PEC's North Carolina retail ratepayers as much as reasonably possible from known and potential costs and risks of the merger and, further, that there are sufficient benefits to offset the known and potential costs and risks.

*79 *EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 40*

The evidence supporting this finding of fact is contained in the application, in G.S. 62-133.8, 62-133.9, and 62-1-01, Commission Rules R8-60, R8-61, R8-67 and R8-68, the testimony of Public Staff witness Morey, the rebuttal testimony of Applicants witnesses Williams and Harris, the testimony of NCSEA witness Urlaub and the testimony of EDF, *et al.*, witness Hahn.

Public Staff witness Morey testified that he reviewed and critiqued the market power analysis performed by the Applicants. Morey testified that in his view a full audit of the Market Power Study was unnecessary in this proceeding because the retail customers of DEC and PEC are protected by the Commission's cost-of-service ratemaking authority, and the FERC has the jurisdictional responsibility for protecting wholesale customers from market power. Morey concluded that even though the

merger increases the concentration of generation and transmission assets in the Carolinas, the regulatory oversight and controls in place at the retail and wholesale level would offset the potential market power that the merger might create. At the wholesale level, DEC and PEC will continue to have cost-based rate authority within their control areas and market-based rate authority only for sales outside of their control areas. In addition, the elimination of rate pancaking between DEC and PEC will potentially increase economic opportunities for wholesale customers in a broader wholesale energy market. Therefore, witness Morey did not believe that the Commission needed to take any steps to guard against the potential exercise of market power by DEC and PEC in post-merger North Carolina retail markets.

In response to the Market Power Study submitted as Exhibit 7 to the application, NCSEA witness Urlaub asserted that the HHI data shown therein are of very little value when the merging companies operate in separate service territories. He further asserted that the Applicants' competition analysis is limited to wholesale market power and does not examine the impact of the merger on retail markets. Finally, he asserted that the Market Power Study is inadequate because the Applicants did not study the impact of the merger on those companies that compete to sell goods and services to DEC and PEC.

Applicants witness Harris testified that Exhibit 7 contains a detailed discussion of the Market Power Study results and the modeling and input assumptions. He further stated that the purpose of the required market power study is to judge the ability of regional suppliers to compete and deliver power in DEC's and PEC's service territories. With respect to NCSEA witness Urlaub's assertion concerning the applicability of the study when the relevant utilities operate in separate service territories, witness Harris stated that this assertion displayed a lack of understanding regarding the nature of the Market Power Study. The fact that DEC and PEC are located in separate service territories in no way undercuts the validity of the study. With respect to retail markets, Harris responded that by law there is no retail competition in North Carolina and, therefore, no purpose would be served by attempting to analyze how the merger could affect retail competition.

***80** Both NCSEA witness Urlaub and EDF, *et al.*, witness Hahn asserted that the merger of Duke and Progress will detrimentally impact the market for renewable energy in North Carolina. This assertion was based on the belief that with both PEC and DEC under common ownership they will enjoy greater leverage in the purchase of renewable energy, they will invest in renewable energy resources themselves notwithstanding the availability of more cost effective renewable resources from third parties, and they will use their financial strength to pursue traditional supply side resources, such as nuclear generation, rather than renewable generation.

Applicants witness Williams addressed these concerns. He explained that the risk that PEC and DEC will invest in utility assets that NCSEA and EDF, *et al.*, do not support is the same risk they face today. The venue to discuss and debate utility resource selection is the Commission's annual integrated resource planning (IRP) proceeding established by G.S. 62-2.01 and Commission Rule R8-60, and the proceeding in which the utility seeks a certificate of public convenience and necessity from the Commission to construct a new generating resource pursuant to G.S. 62-110.1, G.S. 62-82 and Commission Rule R8-61. Williams asserted that it is through these proceedings that the Commission determines, with full input and participation from interested parties, whether the resources proposed by a utility to meet its customers' forecasted energy needs is the least cost and most appropriate resource. Thus, Williams concluded that these concerns should be addressed in the IRP and certificate proceedings and not this merger application.

With regard to witness Urlaub's recommendation that the Commission consider supporting third party sales of energy by solar generators directly to PEC's and DEC's customers, Williams testified that this proposal is misplaced for two reasons. First, G.S. 62-110.2 establishes the service rights of North Carolina's electric public utilities. Within a utility's assigned territory the utility is required to plan for and serve all customers. The Commission and the State's utilities are not allowed to waive or ignore this law. Whether the law should be changed is a policy issue to be addressed by the General Assembly. The General Assembly has in fact decided to study this issue. Second, Williams explained that assuming such third party generators were lawful, whether they should be allowed should be addressed in the utility's IRP proceeding. He testified that this merger proceeding is not the forum for the Commission to determine whether third party generation is least cost or needed to meet the electricity needs of North Carolina's citizens.

Regarding the allegations that post-merger PEC and DEC will misuse their buying power in purchasing renewable energy or to improperly participate in the renewable market, witness Williams explained that it is not necessary to engage in this debate at all, much less in this proceeding. He noted that the Commission has adopted Rule R8-67 to implement the renewable portfolio standard requirement of G.S. 62-133.8. This rule establishes annual proceedings to investigate PEC's and DEC's plans, costs, and progress in meeting their REPS obligations. In those proceedings the utilities must describe in detail their renewable energy procurement plans and strategy, accomplishments to date, incurred costs, and forecasted compliance costs. He further noted that witness Hahn's statement in his testimony that following the merger DEC and PEC will have no obligation 'to solicit the best or most cost effective projects' is simply wrong. The Commission will continue to closely monitor and regulate PEC's and DEC's renewable energy efforts and their compliance with G.S. 62-133.8. Furthermore, on cross-examination Hahn indicated he was not aware of the Commission's decision issued December 31, 2008, in Docket No. E-7, Sub 856, in which the Commission specifically ruled that the State's utilities are required to comply with G.S. 62-133.8 by selecting the least cost mix of renewable, energy efficiency and utility self-build resources to meet their REPS obligations. Thus, any concerns regarding PEC's and DEC's renewable energy resource plans or actions should be addressed in the annual REPS proceedings if and when they arise, not in this merger proceeding.

*81 With regard to witness Urlaub's concern that post-merger PEC and DEC will misuse their purchasing power to the detriment of the renewable energy market, the Commission is not persuaded that the merger will create any greater renewable energy purchasing power by PEC and DEC, or otherwise alter their REPS requirements or processes. In addition, the Commission notes, as explained in its order issued in Docket No. E-7, Sub 856, that PEC and DEC will continue to be required to meet their REPS renewable energy obligations in the least cost manner. In doing so, they minimize the rate impact to their customers of complying with the REPS statutory mandate. Further, to the extent the merger allows PEC and DEC through more efficient procurement processes to lower their REPS compliance costs, this will be a direct benefit to their North Carolina customers.

With respect to NCSEA's assertion that the Applicants should have studied the impact of the merger on companies that compete to sell goods and services to DEC and PEC, Applicants witness Harris responded that this is not a shortcoming of the Market Power Study. Harris opined that the evidence demonstrates that the merger will tend to lead to a reduction in the prices DEC and PEC pay, a result that will benefit retail ratepayers. A market power study is designed to measure the degree of competition among electricity suppliers. It is not intended to measure the costs and benefits to other businesses, and it does not relate to the impact of the combination of DEC and PEC so far as their procurement processes are concerned.

The Commission concludes that this merger proceeding is not the proper forum in which to determine whether additional energy efficiency programs should be created by PEC and DEC. It is also not the proper forum in which to adopt a renewable energy resource solicitation and selection process, nor is it the proper forum to decide what types and how much, if any, additional renewable energy PEC and DEC should procure as part of their generation resource portfolios. As discussed earlier, G.S. 62-110.1 and G.S. 62-133.9 require the State's utilities to select the least cost mix of resources to meet the electricity needs of their customers. The Commission conducts annual IRP proceedings pursuant to Commission Rule R8-60 to investigate the utilities' resource plans. These annual resource planning proceedings are the proper forum for consideration of whether new resources - coal, natural gas, solar, wind, nuclear, or other - should be purchased or built by a public utility to meet forecasted demand. It is not possible for the Commission to make a well-informed decision based on the evidence in this merger proceeding regarding what size and type of new resources should be built or obtained by PEC and DEC.

Furthermore, the Commission conducts annual proceedings pursuant to Commission Rule R8-67 to evaluate, review and approve PEC's and DEC's efforts and plans to comply with the REPS requirements of Senate Bill 3. Those proceedings are the proper forum for the Commission to consider the solicitation process used by PEC and DEC to obtain renewable energy resources and evaluate their decisions and plans for compliance

*82 Finally, the Commission has adopted Commission Rule R8-68 to govern the approval of new DSM/EE programs. This rule requires the filing of comprehensive information regarding proposed new programs, including cost-effectiveness tests, to assist the Commission in determining whether a proposed program should be approved. Consideration of new DSM/EE programs should be in proceedings conducted pursuant to Rule R8-68 where all the pertinent information is filed and examined, not in a merger proceeding such as this.

Similar to NC WARN witness Colton, NCSEA witness Urlaub also advocated that the Commission require PEC and DEC to provide additional energy efficiency programs and implement a public benefits fund (PBF) as a condition of merger approval.

With regard to witness Urlaub's proposals, witness Williams explained that such measures are not necessary and, further, would be more proper for consideration in PEC's and DEC's IRP proceedings. Witness Williams stated that all of Urlaub's suggestions involve questions of resource planning. The role energy efficiency and low-income customer weatherization and support should play in the provision of electric service must be considered in the Commission's annual IRP process According to Williams, only in that context can the least cost mix of resources be identified and fully evaluated. He observed that the Commission has adopted comprehensive resource planning rules and procedures governing the selection, filing and approval of energy efficiency measures and programs and that Urlaub's concepts and proposals should be addressed via these established Commission proceedings.

With regard to Urlaub's recommendation that the Commission adopt a PBF for North Carolina, witness Williams testified that this is not the first time a party has proposed the creation of a PBF. He noted that in the fall of 2008, NC WARN proposed adoption of a PBF to fund an independently administered energy efficiency program. After considering the comments of numerous parties, the Commission, in its December 2, 2008 Order in Docket No. E-100, Sub 120, concluded that 'the Commission lacks sufficient statutory authority to compel the establishment and funding of an independently administered energy efficiency program such as that proposed by NC WARN. Moreover, the Commission determines that establishment of such a program at this time is inconsistent with the provisions of Senate Bill 3 and the intent of the General Assembly expressed therein.' Witness Williams asserted that nothing has changed to alter the Commission's previous conclusion.

In its post-hearing brief, NCSEA recommended that the Commission adopt additional conditions requiring DEC and PEC to waive their exclusive service franchises and collaborate with NCSEA on the design and implementation of a third party sales program. Further, NCSEA recommends that the Commission evaluate and consider three measures to address the alleged impact of the merger on low income residents and similarly situated entities such as small businesses, and to shore-up what Urlaub perceives to be the limited response to these concerns in the Stipulation of the Applicants and the Public Staff. The three measures recommended by Urlaub are (1) creation of a third party administered PBF that is complimentary to existing utility efficiency programs and serves customer segments who otherwise have limited or no access to needed efficiency measures, (2) authorization for the applicants to offer on-bill financing at low interest rates to assist customers in implementing efficiency measures, and (3) ensuring that bill pay assistance programs remain adequately funded.

*83 The Commission has carefully considered the proposals advocated by witness Urlaub and the proposed additional conditions propounded by NCSEA. The Commission is not persuaded that the evidence presented by Urlaub is sufficient to support a Commission requirement as part of the Commission's approval of the merger that DEC and PEC offer on-bill financing at low interest rates to assist customers in implementing efficiency measures and to ensure that bill pay assistance programs remain adequately funded. Further, as previously discussed, the establishment of third-party sales and a PBF are matters more appropriately addressed by the General Assembly.

In their post-hearing Brief, EDF, *et al.*, proposed additional conditions that it feels are needed to mitigate the effects of the merger on renewable energy procurement and development in North Carolina, including requiring Duke to contribute $10 million annually over five years for the purposes of developing and implementing new renewable energy technologies, or implementing existing renewable energy technologies that are not being applied in the Carolinas; and requiring DEC and PEC to adopt a procurement process for renewable energy resources that is independent, transparent and project neutral.

The Commission is not convinced that this merger proceeding is a proper forum in which to adopt a renewable energy resource solicitation and selection process, nor is it the proper forum to decide what types and how much, if any, additional renewable energy PEC and DEC should procure as part of their generation resource portfolios. As discussed previously, G.S. 62-110.1 and G.S. 62-133.9 require the State's utilities to select the least cost mix of resources to meet the electricity needs of their customers. The Commission conducts annual IRP proceedings pursuant to Commission Rule R8-60 to investigate the utilities' resource plans. These annual resource planning proceedings are the proper forum for consideration of whether new resources - coal, natural gas, solar, wind, nuclear, or other - should be purchased or built by a public utility to meet forecasted demand. It is not possible for the Commission to make a well-informed decision in this merger proceeding regarding what additional resource expenditures, if any, should be made by DEC and PEC.

Furthermore, the Commission conducts annual proceedings pursuant to Commission Rule R8-67 to evaluate, review and approve PEC's and DEC's efforts and plans to comply with the REPS requirements of Senate Bill 3. Those proceedings are the proper forum for the Commission to consider the solicitation process used by PEC and DEC to obtain renewable energy resources and to evaluate their decisions and plans for compliance.

On June 18, 2012, NCSEA filed comments indicating that the impact of the FERC's June 8, 2012 Orders on the merger proceeding was negligible. Thereafter, NCSEA reiterated its three requested merger conditions that were set forth in its November 28, 2011 post-hearing Brief. As fully discussed above, the Commission is not persuaded that the additional conditions proposed by NCSEA are necessary or appropriate.

***84** EDF, *et al.* further stated that since the filing of their post-hearing Brief, EDF, *et al.*, entered into a settlement agreement with the Applicants that resolved the issues between them in the South Carolina proceeding. As a result of this settlement agreement, EDF, *et al.*, stated that it desired to withdraw Proposed Conditions 2.a.-c. and 3.a.-d. on page 47 of their post-hearing Brief. EDF, *et al.*, thereafter reiterated the need for the Applicants to contribute $10 million annually over five years for the purposes of developing and implementing new renewable energy technologies, or implementing existing renewable energy technologies, and to adopt an independent procurement process for renewable resources. Further, EDF, *et al.*, added that if the Commission was inclined to direct funding to renewable energy studies, that the funding should be directed to an offshore wind development fund, offshore wind meteorological towers and geotechnical studies, and third-party sales of renewable energy. As fully discussed above, the Commission is not persuaded that the additional conditions proposed by EDF, *et al.*, are necessary or appropriate.

The Commission, therefore, finds and concludes that the regulatory oversight and controls in place at the retail level are sufficient to protect retail ratepayers as much as reasonably possible from any potential retail market power effects of the merger.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 41

The evidence supporting this finding of fact is contained in the supplemental testimony and exhibits of Public Staff witness Hoard, the supplemental and further supplemental testimony of Applicants' witness Weintraub, the testimony at the June 25, 2012 hearing, the FERC's June 8, 2012 Market Power Order, the Supplemental Stipulation, as amended, the Public Staff's June 13, 2012 comments, and the Applicants' June 25, 2012 FERC Acceptance Letter.

Witness Weintraub described the three components of the revised wholesale market power mitigation plan, specifically: (1) an interim mitigation sales mechanism, which involves the sale of capacity and energy to certain wholesale entities; (2) a 'stub' mitigation proposal, which involves reserving transmission capacity between the DEC and PEC east balancing authority areas (BAAs) for use by third parties; and (3) a permanent mitigation proposal, which requires the construction of transmission facilities and the periodic non-economic operation of PEC's Roxboro and Mayo facilities.

Weintraub testified that under the interim mitigation measure, DEC and PEC will sell energy and capacity as follows:

(1) DEC will sell 150 MW during summer peak periods, 300 MW during summer off-peak periods, 25 MW during winter peak periods, and 225 MW during winter off-peak periods.

(2) PEC will sell (from its eastern BAA) 325 MW during summer peak periods and 500 MW during summer off-peak periods.

Weintraub stated that DEC and PEC have contracted to sell this capacity and energy to Cargill, EDF Trading North America, LLC, and Morgan Stanley. He said that the energy will be sold on a firm, liquidated damages basis, which means that the buyer must take the full contract amount in all hours, subject to interruption only on *force majeure* grounds. Energy prices will be based on pre-determined heat rates and the then-current gas prices.

***85** Public Staff witness Hoard testified that the interim mitigation sales would begin upon close of the merger and continue until transmission facilities had been built and placed into service pursuant to the permanent mitigation plan. Hoard explained that the Supplemental Stipulation provided for the development of decrement riders to both DEC's and PEC's retail rates that will credit North Carolina customers for the revenue requirements of capacity sold under the interim mitigation sales. Hoard testified that the decrements were computed based on the costs of the generating facilities that are assumed to be used to provide the capacity for the mitigation sales, and that production optimization models were used to determine the mix of generators that would provide power for the mitigation sales. He stated that the annual capacity cost per MW for each kind of generation used in the computation included a rate of return on production plant, step-up transformer facilities, general plant, and associated rate base items, plus fixed operation and maintenance expenses, depreciation expense, and general taxes.

The Supplemental Stipulation requires the Applicants to file decrement riders with the Commission within 30 days of the merger close that would allocate away from DEC's and PEC's respective retail jurisdictions the capacity costs, including associated reserve margins, relative to the interim mitigation sales. The Supplemental Stipulation states that the total system costs of mitigation capacity to be allocated away from retail are $43,458,315 for DEC and $21,194,759 for PEC. Public Staff witness Hoard provided confidential supplemental Exhibits 1 and 2 detailing the calculation of these costs. The Supplemental Stipulation provides that, upon Commission approval, the riders are to remain in effect without any true ups until the interim mitigation sales end, which is estimated to be May 31, 2015.

Provision I.A(5) of the Supplemental Stipulation provides that DEC and PEC shall not seek to recover from their North Carolina retail customers any of the non-fuel variable operating and maintenance costs (O&M) associated with the interim mitigation sales. However, this provision does not articulate how such costs will be identified. In order to ensure that such costs are identified and removed from retail rates, the Commission finds that this provision requires clarifications. Therefore, the Commission concludes that it is necessary for DEC and PEC to make a compliance filing within 30 days of the merger closing explaining how and when these costs will be identified and removed from retail rates.

Provision I.A(6) of the Supplemental Stipulation provides additional protections for retail customers. It states that DEC and PEC shall not seek to recover from North Carolina retail customers any revenue shortfalls resulting from, or any costs associated with, the interim mitigation sales, including any negative capacity payments, any revenue deficiency resulting from energy revenues being less than the associated costs, and any payment of liquidated damages. Sales under the interim mitigation plan would continue until the permanent mitigation plan is in place. Applicants' witness Weintraub stated that, as part of its permanent mitigation plan, the Applicants also proposed a 'stub mitigation' proposal which requires the set-aside of 25 MW of transmission capacity from the DEC BAA to the PEC east BAA. Only third parties that are unaffiliated with DEC or PEC would be able to reserve this transmission on a firm basis. The FERC Market Power Order required the Applicants to implement the stub mitigation plan in order to address wholesale market power issues in PEC's east BAA during summer off-peak periods.

***86** Applicants witness Weintraub testified that the Applicants' permanent mitigation proposal required the construction of seven transmission projects in order to increase the ability of the DEC and PEC transmission systems to import power. Public Staff witness Hoard stated that the seven transmission projects would cost about $110 million, and that none of these seven

projects is currently included in DEC's or PEC's transmission plans. Witness Hoard testified that under the Supplemental Stipulation, DEC and PEC may not request recovery of the costs of these facilities during the first five years following the close of the merger. According to Hoard, upon the expiration of this five-year period, DEC and PEC may request Commission approval for these costs in its retail rates if it can be shown that, absent the merger and the resulting mitigation requirements, the project is needed to provide adequate and reliable retail service and, at the time the request is made, the construction of the project and the incurrence of the associated costs would have been reasonable and prudent. In addition, Hoard testified that the utility must show that it intends to pursue recovery of the costs from its wholesale and firm transmission customers at the time of the request to the Commission.

In their June 18, 2012 supplemental comments, EDF, *et al.*, expressed concerns regarding the retail cost impacts of the transmission projects that are required by the permanent mitigation plan. They stated that there is an inherent conflict between DEC's and PEC's assertions that there is currently no plan to build these projects, and the Supplemental Stipulation's provision allowing cost recovery after five years upon a showing that a project is needed for service adequacy and reliability. The Commission has considered EDF, *et al.*'s concerns and carefully reviewed provision B of the Supplemental Stipulation, which addresses the potential ratepayer impacts of the transmission projects that DEC and PEC have committed to build under the permanent mitigation plan. The Supplemental Stipulation specifies that any request by DEC or PEC to recover costs associated with a permanent transmission mitigation project in its North Carolina retail rates must be supported by evidence sufficient to show that, absent the merger and the resulting mitigation requirement, the project is needed to provide adequate and reliable retail service and, at the time the request is made, the construction of the project and the incurrence of the associated costs would have been reasonable and prudent. The Supplemental Stipulation provides further that, if this showing has been made, DEC and PEC may seek inclusion of only the net depreciated cost of the projects at the time of the request, and shall not request any deferral of any costs associated with the projects for ratemaking purposes. In addition, if, subsequent to the inclusion of the costs in North Carolina retail rates, DEC or PEC is not successful in incorporating the correct jurisdictional share of those costs into its wholesale transmission tariffs, then the corresponding proportionate share of such costs that had been approved for inclusion in retail rates shall be removed and refunds shall be made. The Commission finds that these provisions in the Supplemental Stipulation effectively protect ratepayers from inappropriate charges related to the mitigation-related transmission projects, with the exception of costs for the Greenville-Kinston Dupont line.

*87 Weintraub testified that in addition to the seven projects discussed above, the Applicants are accelerating the in-service date of PEC's already planned Greenville-Kinston Dupont 230-kV line from 2017 to 2015. This line would not increase import capability, but is needed in order for four of the seven transmission expansion projects to be effective. Supplemental Stipulation provision B.(2) provides that 'PEC may seek to include the costs associated with this line [Greenville-Kinston Dupont] in its North Carolina retail rates any time after the line is placed in service in accordance with normal ratemaking practices ... .' The Commission finds that provision B.(2) does not adequately protect retail customers from the impacts of the Applicants' permanent wholesale market power mitigation. This facility had been scheduled to enter service in June of 2017. Due to the Applicants' need to mitigate their wholesale market power, the project is being accelerated by two years, but that acceleration is not needed in order to reliably serve retail customers. The Commission concludes that it is necessary to reject provision B.(2) of the Supplemental Stipulation and instead condition approval of the merger on PEC agreeing that it shall not seek to recover from its North Carolina retail customers any costs associated with the Greenville-Kinston Dupont 230-kV line until the later of: (1) June 1, 2017, or (2) the actual in-service date of the line, absent a Commission order establishing that the facility is needed in order to reliably serve North Carolina customers at an earlier date.

In his supplemental testimony, Public Staff witness Hoard explained that the permanent transmission mitigation proposal also requires PEC to operate its Roxboro and Mayo units on a non-economic basis at full output to push back against American Electric Power-PJM Interconnection power flows in order to increase import capability into PEC. Hoard testified that DEC and PEC agreed not to seek recovery from retail ratepayers of the costs related to such dispatch of the plants out of merit order. Provision B.(3) of the Supplemental Stipulation requires PEC to include in its monthly fuel report the date, time and duration of dispatching the units out of merit order, and provide a detailed description of the dispatch order that would otherwise have

occurred under the JDA. PEC must include the incremental difference in fuel, fuel-related, and variable O&M costs, on a joint dispatch basis, and the effect on the joint dispatch savings that are to be split between DEC and PEC.

In its Market Power Order, the FERC accepted the revised mitigation proposal, subject to numerous modifications, including the following:

(a) Applicants cannot use control over their transmission systems to thwart sales that they have entered into with Cargill, EDF Trading North America, LLC, and Morgan Stanley (collectively, mitigation sales).

(b) Applicants must not have any priority right over other potential buyers to re-purchase any of the energy and/or capacity sold by Applicants pursuant to the mitigation sales.

*88 (c) For so long as the interim mitigation sales shall remain in place, Applicants must not enter into transactions with the counterparties to those sales except on a spot (day-ahead or shorter) basis.

(d) For the duration of the mitigation sales, Applicants must either limit the price they pay for new purchases of natural gas at Transco Zone 5 to the index price or replace Transco Zone 5 with Transco Zone 4 as the pricing zone.

(e) On each occasion when Applicants sell power under the mitigation sales agreements, Applicants must simultaneously post on their electronic bulletin boards the amount of power that was sold and for what duration.

(f) An Independent Monitor must monitor the mitigation sales for (a) hours in which buyers did not purchase the full amount of energy that Applicants are required to deliver; and (b) hours in which the buyer sells to either DEC or PEC in the DEC and/or PEC BAAs an amount of energy or capacity equal to or more than five percent of the amount of energy or capacity purchased by the buyer.

(g) The Independent Monitor must notify the FERC within three days if, in any hour and for any reason, the actual purchases under the mitigation sales are less than the quantities offered in those agreements.

(h) Applicants must notify the Independent Monitor within two business days, and the Independent Monitor must notify the FERC within three business days if a buyer sells to either DEC or PEC in the DEC and/or PEC BAAs an amount of energy or capacity equal to or more than five percent of the amount of such energy or capacity purchased by the buyer under the mitigation sales agreements. Such notification must include the date, hour, product name, quantity, and price of such sale(s) to Applicants, as well as the quantity and price of the energy or capacity purchased by the buyer from the Applicants during that/those same hour(s).

(i) The Independent Monitor must also: (a) document the quantities of energy and capacity purchased under the mitigation sales agreements; (b) document the amount of energy purchased by DEC and PEC from the counterparties to the mitigation sales agreements; and (c) document when a buyer under one of the agreements invokes *force majeure* because transmission from the delivery point(s) under the agreement to buyer's proposed ultimate sink is interrupted or is not available in the DEC and PEC BAAs and in BAAs or markets that are first-tier to DEC and PEC.

(j) Applicants must hold transmission and wholesale requirements customers harmless from costs that Applicants may incur under the mitigation sales for five years.

In their revised mitigation proposal that they filed with the FERC, the Applicants proposed to use Potomac Economics, Ltd (Potomac), as the Independent Monitor and attached an agreement between DEC and PEC and Potomac. In its June 13, 2012 comments, the Public Staff stated that the expansion of the Independent Monitor's duties in FERC's Market Power Order is sufficient to cause its fees to be a significant expense, particularly during the three-year period during which the interim

mitigation sales are in place. The Public Staff also noted that the FERC has required the implementation of the Applicants' stub mitigation proposal. Therefore, the Public Staff recommended that the following additional condition be imposed to provide explicitly that Independent Monitor costs and stub mitigation costs cannot be recovered from DEC's and PEC's retail ratepayers:

> *89 DEC and PEC shall not seek to recover from their North Carolina retail customers any costs associated with the Permanent Transmission Mitigation other than as provided in the Supplemental Stipulation, including, but not limited to, the costs and any revenue shortfalls associated with the implementation of the set-aside of firm transmission capacity as required by the Stub Mitigation measure approved in the FERC's Mitigation Order, and any of the fees paid to, or other costs associated with, Potomac Economics in its role as Independent Monitor.

In its June 13, 2012 comments, the Public Staff noted also that the other revisions to the interim mitigation measures required by FERC could increase the losses that DEC and PEC incur on the sale of capacity and energy pursuant to the interim mitigation sales, and perhaps cause DEC and PEC to incur increased costs for replacement power to serve retail customers. The Public Staff stated that these risks are covered by the catch-all provision in Section I.A.(6) of the Supplemental Stipulation, which states:

> DEC and PEC shall not seek to recover from their North Carolina retail customers any revenue shortfalls resulting from, or any costs associated with, the Interim Mitigation Sales, including but not limited to any negative capacity payments, any revenue deficiency resulting from energy revenues being less than the associated costs and any payment of liquidated damages.

The Commission agrees with the Public Staff that the above-cited provision in the Supplemental Stipulation protects retail ratepayers as much as reasonably possible from risks of losses that DEC and PEC might incur relative to the interim mitigation sales.

The FERC made construction of all of the transmission upgrades described in the revised mitigation proposal an express condition of the Market Power Order and the merger itself. The FERC Market Power Order stated that if the Applicants fail to live up to their commitment to complete the transmission projects, it will require a further mitigation plan which might include virtual or physical divestitures The FERC required the Applicants to inform it of any change in circumstances that would reflect a departure from the facts that the FERC relied on in approving the revised mitigation proposal and the merger.

In its June 13, 2012 comments, the Public Staff noted that while the Commission would have the opportunity to review any proposed mitigation plan before it is filed with the FERC, the foregoing reservations of jurisdiction by the FERC, and its stated intention to take further action, as necessary, warrant additional protections of the Commission's ability to shield ratepayers from any adverse impacts of any such subsequent action. The Public Staff recommended that the Commission approve a new condition as follows:

> To the extent the FERC imposes conditions, revisions, mitigation measures, and the like that expose retail ratepayers to additional costs, risks, or harms not covered by the 2011 Stipulation, including the Regulatory Conditions, or the Supplemental Stipulation, then the Applicants agree that, except as provided in Condition 2.2, they will not oppose the Commission taking further action as necessary to protect retail ratepayers from the effects of any such subsequent action. [5]

*90 In addition, the Public Staff recommended that, given the possibility of further action by the FERC, DEC and PEC should be required to file promptly with the Commission and serve on the Public Staff all of the reports that are filed with the FERC by the Independent Monitor. The Commission agrees with the Public Staff and will, therefore, impose these additional conditions upon the Applicants.

In the Matter of Application of Duke Energy Corporation..., 298 P.U.R.4th 363 ,

In its June 18, 2012 comments, NC WARN stated that:

> ...provisions in the [FERC Market Power] Order significantly alter the benefits and costs associated with the merger ...the final FERC Order requires the extension of transmission lines connecting to the PJM regional transmission organization with the stated purpose of allowing competitive sales of electricity to eastern North Carolina ... . The FERC Order does not address the question about whether the approved transmission projects will then allow the new Duke Energy unrestricted access to sales outside its present service area into the PJM and Northeastern markets. This position is in line with FERC policy but does nothing to benefit the North Carolina ratepayers. If this is the case, Duke Energy will in all likelihood require new generation facilities to meet this potential demand, as it arguably did for its proposed sales to Orangeburg and other markets in South Carolina. Any cost savings through competition in eastern North Carolina would be more than offset by the costs of new generation facilities required for increased Duke Energy sales.

NC WARN argued that the need to build transmission projects in order to provide wholesale market power mitigation was one of several significant changes that had occurred since the public and evidentiary hearings were held in this proceeding. It requested a hearing to cross-examine Duke's witnesses regarding these changes. On June 19, 2012, the Commission issued an Order scheduling a hearing to allow an opportunity for the introduction of the supplemental testimony of the Applicants' and the Public Staff's witnesses and to allow NC WARN to cross-examine the Applicants' and the Public Staff's witnesses, with such cross-examination limited to the supplemental testimony filed on May 15, 2012, and the further supplemental testimony filed on June 13, 2012.

At the June 25, 2012 hearing, the Applicants and the Public Staff introduced supplemental testimony and the Supplemental Stipulation, as amended. In addition, NC WARN cross examined Applicants witness Weintraub and Public Staff witness Hoard regarding their supplemental testimony.

Witness Weintraub testified that while it is likely that the transmission projects that are required to be built pursuant to the FERC Market Power Order will increase the amount of power that could be exported from the DEC and PEC east BAAs, he did not know by what amount. Weintraub testified that the projects were designed to increase the ability to import power, rather than the ability to export power.

Weintraub further testified that the changed circumstances referenced on page 9 of the Supplemental Stipulation were the delay in closing the merger beyond the original target closing date and the further reductions in natural gas prices. He stated that the reductions in natural gas prices and the effect of those reductions on DEC's and PEC's use of coal were the reasons for the agreement in the Supplemental Stipulation to potentially extend the period for receipt of the $650 million in savings by 18 months

*91 Public Staff witness Hoard testified that the changed circumstances were the delay in closing the merger beyond the original target closing date and the further reductions in natural gas prices. He further testified that the settlement agreements between the Applicants and parties other than the Public Staff were considered by the Public Staff in its negotiations of its settlement with the Applicants.

The Commission finds and concludes that the ratepayer protections provided by the Stipulation, and the Supplemental Stipulation, as amended, along with the additional provisions recommended by the Public Staff and those imposed by the Commission as discussed above, will protect retail customers as much as reasonably possible from costs and revenue shortfalls associated with the mitigation sales, the set-aside of firm transmission capacity as required by the "stub mitigation" measure and the transmission projects approved in FERC's Market Power Order. Further, the Commission finds and concludes that existing statutes and regulations are sufficient to address the alleged changed circumstances that NC WARN asserts could change the costs and benefits of the merger for retail customers if and when those changed circumstances present themselves

and are ripe for decision-making. For example, in the event that DEC or PEC seeks authorization to construct additional electric generating facilities in North Carolina, such requests will be governed by G.S. 62-110.1, which requires DEC and PEC to first obtain from the Commission a certificate of public convenience and necessity upon a showing that such generating facilities are needed. Finally, the Commission notes that it is not the Commission's role to approve or disapprove those settlement agreements between the Applicants and parties other than the Public Staff. However, the Commission is not bound by the terms of those settlement agreements.

CONCLUSIONS OF LAW

The Commission concludes that the Stipulation, Regulatory Conditions, Code of Conduct, Supplemental Stipulation, as amended, guaranteed fuel and fuel-related savings, Applicants' contributions to various work force development, low-income assistance, environmental and charitable programs, and the potential for future merger cost savings for ratepayers are sufficient to ensure that: (1) the merger will have no adverse impact on the rates and service of DEC's and PEC's North Carolina retail ratepayers; (2) DEC's and PEC's North Carolina retail ratepayers are protected as much as reasonably possible from potential costs and risks resulting from the merger; and (3) there are sufficient benefits from the merger to offset the potential costs and risks. Therefore, the Commission further concludes that the proposed business combination between Duke and Progress is justified by the public convenience and necessity.

Accordingly, the Commission finds good cause to approve Duke's and Progress' application to enter into a business combination transaction, provided that Duke and Progress shall file a statement in this docket notifying the Commission that they accept and agree to all the terms, conditions and provisions of this Order, as well as the Commission-approved Regulatory Conditions and Code of Conduct.

*92 IT IS, THEREFORE, ORDERED as follows:

1. That the application of Duke and Progress pursuant to G.S. 62-111(a) to engage in a business combination transaction shall be, and is hereby, approved, subject to the provisions of this Order and the Regulatory Conditions and Code of Conduct attached hereto and incorporated herein.

2. That the request of Duke and Progress to nullify PEC's Regulatory Conditions and Code of Conduct, as revised and approved in Docket No. E-2, Sub 844, shall be, and is hereby, granted, subject to the merger being consummated and the Regulatory Conditions and Code of Conduct approved herein becoming effective, whereupon DEC's Regulatory Conditions and Code of Conduct, as approved in Docket No. E-7, Sub 795, also shall be nullified.

3. That DEC's and PEC's North Carolina retail customers shall be guaranteed receipt of their allocable share of $650 million in fuel and fuel-related cost savings resulting from the merger, as discussed herein. The percentages of such savings allocated to the North Carolina retail jurisdiction shall be consistent with current practice. Further, if the fuel and fuel-related savings achieved by DEC and PEC exceed the guaranteed $650 million after the merger, then North Carolina ratepayers shall receive their allocable share of the additional savings.

4. That within 30 days from the close of the merger DEC and PEC shall file for a decrement in fuel rates for North Carolina retail customers to remain in effect until rates are adjusted in their next fuel cost proceedings. These reductions shall be based upon the projected fuel and fuel-related savings for Year 1 as set forth in Exhibits 4 (JDA) and 5 (Fuel Synergies Review) to the Merger Application. The initial rate reduction shall be based on the pro rata amount of Year 1 savings to be achieved during the period between the close of the merger and the effective date of the rate changes in DEC's and PEC's next fuel cost proceedings.

5. That a new decrement for fuel savings shall be determined at the time of each respective fuel cost proceeding during the guaranteed savings period and shall be implemented at the time new rates in those proceedings take effect.

If at the end of the guaranteed savings period DEC's and PEC's respective North Carolina retail customers have not received their allocable shares of the $650 million of guaranteed savings, the remaining amount shall be reflected as an adjustment in DEC's and PEC's first fuel cost proceedings following the end of the guaranteed savings period.

6. That the methods of determining fuel and fuel-related cost savings resulting from the merger shall be subject to ongoing review, and shall be refined and revised as allowed by further Commission order based on experience as savings are realized.

7. That DEC and PEC shall file with their fuel reports required pursuant to Commission Rule R8-52 monthly reports of tracked fuel savings on the bases of (a) total system, (b) DEC, (c) DEC North Carolina retail, (d) PEC, and (e) PEC North Carolina retail.

8. That within 30 days from the close of the merger DEC and PEC shall file the decrement riders as provided for under the Supplemental Stipulation that will allocate away from DEC's and PEC's retail jurisdictions the capacity costs, including reserve margins, relative to the interim mitigation sales.

9. That within 30 days from the close of the merger DEC and PEC shall file with the Commission an explanation of how and when non-fuel variable O&M costs associated with interim mitigation sales will be identified and removed from retail sales.

10. That provision B(2) of the Supplemental Stipulation is hereby rejected, and PEC shall not seek to recover from retail customers any costs associated with the Greenville-Kinston Dupont 230-kV line until the later of: (1) June 1, 2017, or (2) the actual in-service date of the line, absent a Commission order establishing that the facility is needed in order to reliably serve North Carolina customers at an earlier date.

11. That PEC and DEC shall timely serve on the Public Staff and the Commission all reports of the Independent Monitor that are filed with the FERC.

12. That DEC and PEC shall not seek to recover from their North Carolina retail customers any costs associated with the permanent transmission mitigation other than as provided in the Supplemental Stipulation, including, but not limited to, the costs and any revenue shortfalls associated with the implementation of the set-aside of firm transmission capacity as required by the Stub Mitigation measure required by FERC's Market Power Order, and any of the fees paid to, or other costs associated with, Potomac Economics in its role as Independent Monitor.

13. That approval of the merger is conditioned upon the following: to the extent the FERC imposes conditions, revisions, mitigation measures and the like that expose retail ratepayers to additional costs, risks, or harms not covered by the Stipulation, Regulatory Conditions, or the Supplemental Stipulation, as amended, then the Applicants agree that, except as provided in Condition 2.2, they will not oppose the Commission taking further action as necessary to protect retail ratepayers from the effects of any such subsequent FERC action.

14. That DEC and PEC shall provide annual community support and charitable contributions in North Carolina for four years from the close of the merger at a level no less than $9.2 million and $7.28 million, respectively, based on the average of each company's annual contributions over the past five years (2006 through 2010).

15. That DEC and PEC shall contribute a total of $15 million during the first year following the close of the merger for workforce development and low-income energy assistance, as well as an additional $2 million to NC GreenPower, as fully detailed in this Order.

16. That Progress Energy and PEC shall maintain a significant corporate and utility presence in downtown Raleigh following the close of the merger.

17. That PEC's generation dispatch function and PEC's employees engaged in the generation dispatch function shall remain located in PEC's Energy Control Center in Raleigh until further order of the Commission.

18. That for purposes of distributing the costs of services provided between and among their affiliates, PEC shall continue to use direct charging, and all PEC employees shall continue to use positive time reporting. DEC shall increase the amount of such costs that are directly charged and shall complete the transition to direct charging and positive time reporting within two years following the close of the merger. DEC shall file semi-annual reports with the Commission detailing its progress in implementing these practices, with the first report due six months from the close of the merger.

19. That merger and merger-related costs shall be treated as follows:

***93** (a) Direct expenses associated with costs to achieve the merger, including 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, shall be excluded from DEC's and PEC's cost of service for retail ratemaking purposes.

(b) DEC and PEC may request recovery through depreciation or amortization 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 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. However, this limitation shall not apply to DEC's capital costs associated with post-merger coal blending.

(c) In order to justify such cost recovery, DEC and PEC must show that the capital costs described in subsection (b) above resulted in quantifiable cost savings to their respective North Carolina retail ratepayers greater than the revenue requirement effect of the inclusion of these costs in rate base.

(d) DEC's and PEC's merger-related severance costs shall be excluded from DEC's and PEC's cost of service for retail ratemaking purposes.

20. That the following shall be filed in accordance with and as provided in the Regulatory Conditions, unless otherwise ordered by the Commission: any and all affiliate agreements contemplated to be used upon the close of the merger; the lists of services proposed to be taken pursuant to each such service agreement; and the process by which all costs shall be accumulated, directly charged, assigned, or allocated and any proposed allocation ratios. Each service agreement or other affiliate agreement entered into by DEC and PEC following the close of the merger shall reference the specific Regulatory Conditions and Code of Conduct provisions that are relevant to such agreements.

21. That the JDA shall be, and is hereby, approved. With respect to the monitoring and implementation of the JDA, DEC and PEC shall do the following:

(a) Provide to the Public Staff and file with the Commission, prior to the implementation of the JDA, a detailed description of the production cost model that will be used, including the algorithms, assumptions, and inputs to the model, to simulate the production costs of DEC and PEC under the stand-alone utility case;

(b) Verify the accuracy of the production cost model in estimating stand-alone utility production costs by benchmarking the model against a recent historical period (*e g* , 2009-2011) in which DEC and PEC dispatched their generation on a stand-alone basis;

(c) Notify the Commission and the Public Staff at least quarterly when significant changes have been made to algorithms, assumptions and inputs to the model and provide an explanation justifying those changes; and

*94 (d) File with the Commission and provide to the Public Staff all the information necessary to conduct an audit (*i.e.*, spot check) of the model inputs and outputs as often as monthly, until the utilities and the Public Staff have gained experience with the model, and at least quarterly thereafter.

22. That DEC, PEC and the Public Staff will work with other interested parties to propose within 90 days after the close of the merger a Commission rulemaking to standardize the indices used to measure and report electric utility service quality.

23. That within 30 days of this Order the Applicants and Public Staff shall make a joint compliance filing that provides the Commission with one set of all the Regulatory Conditions, the final Code of Conduct and a final version of the Stipulation, including terms of the Supplemental Stipulation, as amended.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of June, 2012.

APPENDIX A

REGULATORY CONDITIONS

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

SECTION I

DEFINITIONS

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

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

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

In the Matter of Application of Duke Energy Corporation..., 298 P.U.R.4th 363...

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

Code of Conduct: The minimum guidelines and rules approved by the Commission that govern the relationships, activities, and transactions between and among the public utility operations of DEC and PEC, Duke Energy, the other Affiliates of DEC and PEC, and the Nonpublic Utility Operations of DEC and PEC, as those guidelines and rules may be amended by the Commission from time to time.

Commission. The North Carolina Utilities Commission.

Customer: Any retail electric customer of DEC or PEC in North Carolina.

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

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

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

Electric Services: Commission-regulated electric power generation, transmission, distribution, delivery, or sales, and other related services, including, but not limited to, administration of Customer accounts and rate schedules, metering, billing, and standby service.

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

FERC. The Federal Energy Regulatory Commission.

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

***96** *JDA*: Joint Dispatch Agreement, which is the agreement as filed with the Commission on April 1, 2011, and as revised and filed on April 4, 2011, in Docket Nos. E-7, Sub 980, and E-2, Sub 995, and allowed by the Commission to be filed with the

FERC, by Order dated April 4, 2011, and as further revised and filed on June 22, 2011, and allowed to be filed with the FERC by Order dated July 11, 2011, in Docket Nos. E-7, Sub 986, and E-2, Sub 998.

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

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

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 PEC to their respective Retail Native Load Customers.

Non-Native Load Sales: DEC's or PEC's sales of energy at wholesale, not including transactions between DEC and PEC 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 or PEC involving activities (including the sales of goods or services) that are not regulated by the Commission, or otherwise subject to public utility regulation at the state or federal level.

Non-Utility Affiliate: Any Affiliate, including DEBS and PESC, other than a Utility Affiliate, DEC, or PEC.

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

PESC: Progress Energy Services Company, and its successors, which is a service company Affiliate that provides Shared Services to PEC, DEC, Duke Energy, other Affiliates, or the Nonpublic Utility Operations of DEC or PEC, individually or in combination.

Progress Energy: Progress Energy, Inc., which is the former holding company parent of PEC, and which became a subsidiary of Duke Energy after the close of the Merger, and any successors.

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

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

Purchased Power Resources: Purchases of energy by DEC or PEC 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 PEC in North Carolina for which DEC and PEC 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.

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

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

Utility Affiliates: The regulated public utility operations of Duke Energy Indiana, Inc. (Duke Indiana), Duke Energy Kentucky, Inc. (Duke Kentucky), and Florida Power Corporation, d/b/a Progress Energy Florida (PEF), and the regulated transmission and distribution operations of Duke Energy Ohio, Inc. (Duke Ohio).

SECTION II

AUTHORITY, SCOPE, AND EFFECT

These Regulatory Conditions are based on the general power and authority granted to the Commission in Chapter 62 of the North Carolina General Statutes to control and supervise the public utilities of the State. The Regulatory Conditions (a) constitute specific exercises of the Commission's authority, (b) provide mechanisms that enable the Commission to determine in advance the extent of its authority and jurisdiction over proposed activities of, and transactions involving, DEC, PEC, 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 PEC's Retail Native Load 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, PEC, 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, PEC, 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, PEC, Duke Energy, and other Affiliates may seek a waiver of any aspect of these Regulatory Conditions by filing a request with the Commission showing that exigent circumstances in a particular case justify such a waiver.

SECTION III

PROTECTION FROM PREEMPTION

***98** 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, PEC, and any of their Affiliates; financing transactions involving Duke Energy, DEC, or PEC, and any other Affiliate; the ownership, use, and disposition of assets by DEC or PEC; participation in the wholesale market by DEC or PEC, and filings with federal regulatory agencies.

3.1 *Transactions between DEC, PEC, and Other Affiliates; Affiliate Contract Provisions; Advance Notice of Affiliate Contracts to Be Filed with the FERC, Annual Certification.*

(a) Neither DEC nor PEC shall engage in any transactions with an Affiliate or proposed Affiliate without first filing the proposed Affiliate Contract with the Commission that memorializes any such dealings and taking such actions and obtaining from the Commission such decisions as are required under North Carolina law. DEC and PEC shall submit each proposed Affiliate

Contract to the Public Staff for informal review at least ten days before filing it with the Commission. No formal advance notice is required for agreements that DEC or PEC intends to file pursuant to G S 62-153 unless the agreements are to be filed with the FERC, in which case subsection (c) applies.

(b) All Affiliate Contracts to which DEC or PEC is a party shall contain the following provisions:

(ii) DEC's or PEC's participation in the agreement is voluntary, DEC or PEC is not obligated to take or provide services or make any purchases or sales pursuant the agreement, and DEC or PEC may elect to discontinue its participation in the agreement at its election after giving any required notice;

(iii) DEC or PEC 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;

(iv) DEC or PEC 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) Neither DEC nor PEC shall assert in any forum - whether judicial, administrative, federal, state, local or otherwise - either on its own initiative or in support of another entity's assertions, that the Commission's authority to assign, allocate, impute, make pro-forma adjustments to, or disallow revenues and costs for retail ratemaking and regulatory accounting and reporting purposes is, in whole or in part, (A) preempted by Federal Law or (B) not within the Commission's power, authority or jurisdiction; DEC and PEC will bear the full risk of any preemptive effects of Federal Law with respect to the agreement.

(c) In order to enable the Commission to exercise its jurisdiction over a proposed Affiliate Contract, a contract with a proposed Affiliate, or an amendment to an existing Affiliate Contract that involves costs that will be assigned to DEC or PEC and that is required or intended to be filed with the FERC, the following procedures shall apply:

*99 (i) DEC or PEC 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. 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 or PEC proceeding with the filing with the FERC is filed pursuant this Regulatory Condition, the proposed filing shall not be made with the FERC until the Commission issues an order resolving the objection.

(iii) Filings of advance notices and copies of proposed Affiliate Contracts, a contract with a proposed Affiliate, and amendments to existing Affiliate Contracts pursuant to this subsection shall be in addition to filings required by G S 62-153, and the burden of proof as to those filings shall be as provided by statute.

(d) Both DEC and PEC shall certify in a filing with the Commission that neither DEC, PEC, Duke Energy, any other Affiliate, nor any Nonpublic Utility Operation has made any filing with the FERC or any other federal regulatory agency inconsistent with the foregoing Such certification shall be repeated annually on the anniversary of the first certification.

3.2 *Financing Transactions Involving DEC, PEC, Duke Energy, or Other Affiliates.*

(a) With respect to any financing transaction between DEC or PEC and Duke Energy, or any one or more of DEC's or PEC's other Affiliates, any contract memorializing such transaction shall expressly provide that DEC or PEC shall not enter into any such financing transaction except in accordance with North Carolina law and the rules, regulations and orders of the Commission promulgated thereunder; and

(b) With respect to any financing transaction (i) between and among any of the Affiliates if such contracts are reasonably likely to have an Effect on DEC's or PEC's Rates or Service, or (ii) between DEC and PEC or between DEC or PEC and any other Affiliate, any contract memorializing such transaction shall expressly provide that DEC and/or PEC 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 and PEC to Supply Electric Power to North Carolina Retail Customers; Transfer of Ownership or Control*

(a) DEC and PEC shall each own and control all assets or portions of assets used for the generation, transmission, and distribution of electric power to their respective North Carolina retail Customers (with the exception of assets solely used to provide power purchased by DEC or PEC at wholesale).

(b) With respect to the transfer by DEC or PEC to any entity, affiliated or not, of the control of, operational responsibility for, or ownership of such assets with a gross book value in excess of ten million dollars ($10 million), DEC or PEC 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.

*100 (c) Any contract memorializing such a transfer shall include the following language:

(i) DEC or PEC may not commit to or carry out the transfer except in accordance with applicable law, and the rules, regulations and orders of the Commission promulgated thereunder; and

(ii) DEC or PEC may not include in its North Carolina retail cost of service or rates the value of the transfer, whether or not subject to federal law, except as allowed by the Commission in accordance with North Carolina law.

(d) Any application filed with the FERC in connection with any transfer of control, operational responsibility, or ownership that involves or potentially affects DEC or PEC shall include the language set forth in subdivisions (c)(i) and (ii), above, and shall request that the FERC explicitly provide in any order approving the application that its approval in no way affects the right of the Commission to review the value of such transfer and to establish the value of the asset transfer for purposes of determining the rates for services rendered to DEC's and PEC's North Carolina retail Customers.

3.4 *Purchases and Sales of Electricity between DEC, PEC, Duke Energy, Other Affiliates, or Nonpublic Utility Operations.* Subject to additional restrictions set forth in the Code of Conduct, neither DEC nor PEC shall purchase electricity (or related ancillary services) 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 or PEC sell electricity (or related ancillary services) 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 PEC that are governed by the JDA.

3.5 *Least Cost Integrated Resource Planning and Resource Adequacy.* DEC and PEC shall each retain the obligation to pursue least cost integrated resource planning for their respective Retail Native Load Customers and remain responsible for their own resource adequacy subject to Commission oversight in accordance with North Carolina law. DEC and PEC 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) 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.

***101** (b) The planning and joint dispatch of PEC's system generation and Purchase Power Resources shall ensure that PEC'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. PEC 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) DEC is not required to file an advance notice with the Commission or receive its approval prior to entering into wholesale power contracts that grant Native Load Priority to the following historically served customers: the City of Concord, North Carolina; the City of Kings Mountain, North Carolina; the Town of Dallas, North Carolina; the Town of Forest City, North Carolina; Lockhart Power Company; the Public Works Commission of the Town of Due West, South Carolina; the Town of Prosperity, South Carolina; the City of Greenwood, South Carolina; the Town of Highlands; North Carolina; Western Carolina University (WCU); the electric membership cooperatives (EMCs) within DEC's control area; North Carolina Municipal Power Agency No. 1, Piedmont Municipal Power Agency; New River Light & Power Company; and the South Carolina distribution cooperatives historically served by Saluda River Electric Cooperative, Inc., and currently served by Central Electric Power Cooperative, Inc. (which are Blue Ridge Electric Cooperative, Inc., Broad River Electric Cooperative Inc., Laurens Electric Cooperative, Inc., Little River Electric Cooperative, Inc., and York Electric Cooperative, Inc.). Subject to the conditions set out in Regulatory Condition 3.9, the retail native loads of these historically served wholesale customers shall be considered DEC's Retail Native Load Customers for purposes of Regulatory Conditions 3.5, 3.6, and 4.5, provided, however, that this subsection applies only to the same types of supplemental load and backstand requirements services that were historically provided to the Catawba Joint Owners under the Catawba Interconnection Agreements between DEC and the Catawba Joint Owners prior to 2001, which, for the North Carolina Electric Membership Corporation, only includes the EMCs within DEC's control area.

(b) PEC is not required to file an advance notice with the Commission or receive its approval prior to entering into wholesale power contracts that grant Native Load Priority to the Public Works Commission of the City of Fayetteville, North Carolina; the Town of Waynesville, North Carolina; the City of Camden, South Carolina; the French Broad Electric Membership Corporation; the North Carolina Eastern Municipal Power Agency, the electric membership cooperatives (EMCs) within PEC's control area, whether served through the North Carolina Electric Membership Corporation (NCEMC) or individually; the Town of Black Creek, North Carolina; the Town of Lucama, North Carolina; the Town of Stantonsburg, North Carolina; the Town of Sharpsburg, North Carolina; and the Town of Winterville, North Carolina. Subject to the conditions set out in Regulatory Condition 3.9, the retail native loads of these historically served wholesale customers shall be considered PEC's Retail Native Load Customers for purposes of Regulatory Conditions 3.5, 3.6, and 4.5.

***102** (c) Before either DEC or PEC executes any contract that grants Native Load Priority to a wholesale customer (other than as set forth in subdivisions (a) and (b) above) or to one or more retail customers of another entity, it must provide the Commission with at least 30 days' written advance notice of its intent to grant Native Load Priority and to treat the retail native

load of a proposed wholesale customer as if it were DEC's or PEC's retail native load pursuant to Regulatory Conditions 3.5, 3.6, and 4.5. The provisions set forth in Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition.

3.8 *Other Wholesale Contracts.* To the extent that DEC's or PEC's proposed wholesale power contracts or other sales of energy and capacity are at less than Native Load Priority, then no advance notice is required and no approval by the Commission is needed.

3.9 *Additional Provisions Regarding Wholesale Contracts Entered into by DEC or PEC as Sellers.*

(a) The Commission retains the right to assign, allocate, impute, and make pro-forma adjustments with respect to the revenues and costs associated with both DEC's or PEC's wholesale contracts for retail ratemaking and regulatory accounting and reporting purposes.

(b) Entry into wholesale contracts that grant Native Load Priority or otherwise obligate DEC or PEC to construct generating facilities or make commitments to purchase capacity and energy to meet those contractual commitments constitutes acceptance by DEC, PEC, 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 PEC's respective Retail Native Load Customers. In a future Commission retail proceeding in which cost recovery is at issue, neither DEC nor PEC shall claim that it does not bear this risk, and both DEC and PEC 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 PEC to meet the expected peak loads of DEC's or PEC'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, PEC, 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.

*103 (c) Neither DEC, PEC, Duke Energy, or 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 PEC'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 PEC's wholesale contracts for retail ratemaking and regulatory accounting and reporting purposes.

(d) Neither DEC, PEC, Duke Energy, or 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 PEC's wholesale contracts for retail ratemaking and regulatory accounting and reporting purposes in itself constitutes an undue burden on interstate commerce or otherwise violates the Commerce Clause of the United States Constitution. However, DEC and PEC 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.

(e) Except as provided in the foregoing conditions, DEC and PEC 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 PEC'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).

3.10 *Other Protections.*

(a) Neither DEC, PEC, Duke Energy, another Affiliate, nor a Nonpublic Utility Operation 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 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 or PEC'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 PEC, that (i) commits DEC or PEC 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 PEC's obligations with respect to these Regulatory Conditions, absent explicit approval of the Commission.

***104** (c) DEC, PEC, Duke Energy, the other Affiliates, and the Nonpublic Utility Operations shall file notice with the Commission at least 30 days prior to filing with the FERC any agreement, tariff, or other document or any proposed amendments, modifications, or supplements to any such document that has the potential to (i) affect DEC's or PEC's retail cost of service for system power supply resources or transmission system; (ii) reduce the Commission's jurisdiction with respect to transmission planning or any other aspect of the Commission's planning authority; (iii) be interpreted as involving DEC or PEC in joint planning, coordination, dispatch, or operation of generation or transmission facilities with one or more Affiliates; or (iv) otherwise have an Effect on DEC's or PEC's Rates or Service. The provisions set forth in Regulatory Condition 13.2 shall apply to an advance notice filed pursuant to this Regulatory Condition; provided, however, that, to the extent the filing with the FERC is not to be made by DEC or PEC, the advance notice procedures shall be for the purpose of a determination by the Commission as to whether the filing is reasonably likely to have an Effect on DEC's or PEC's Rates or Service.

(d) Any contract or filing regarding DEC's or PEC's membership in or withdrawal from an RTO or comparable entity must be contingent upon state regulatory approval.

(e) Consistent with G.S. 62-153, DEC and PEC shall obtain prior approval of any proposed substantive revisions to any Affiliate agreement to which either of them is a party.

(f) DEC and PEC shall obtain Commission approval before either DEBS or PESC is sold, transferred, merged with any other entities, has any ownership interest therein changed, or otherwise changed so that a change of control could occur. This requirement does not apply to any movement of DEBS or PESC within the Duke Energy holding company system that does not constitute a change of control.

(g) DEC and PEC may participate in joint comments and other joint filings with Affiliates only when such participation fully complies with both the letter and the spirit of the Regulatory Conditions. Any filing made by DEBS or PESC on behalf of DEC or PEC, or in which DEC or PEC participates, must clearly identify DEBS or PESC as an agent of DEC or PEC for purposes of making the filing.

(h) Neither DEC, PEC, 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 or PEC 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 or PEC's Rates or Service, that the Commission is in any way preempted, in whole or in part, by Federal Law, or is acting beyond the Commission's power, authority or jurisdiction, in exercising its authority under North Carolina law as follows:

*105 (i) reviewing the reasonableness of any Affiliate commitment entered into or proposed to be entered into by DEC or PEC, or disallowing the costs of, or imputing revenues related to such commitment to, DEC or PEC;

(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 or PEC 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 PEC's Retail Native Load Customers; or

(vi) exercising any other lawful authority it may have. Should any other entity so assert, neither DEC, PEC, 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, PEC, Duke Energy, other Affiliates, and the Nonpublic Utility Operations shall (A) bear the full risk of any preemptive effects of Federal Law with respect to any contract, transaction, or commitment entered into or made or proposed to be entered into or made by DEC or PEC or which may otherwise affect DEC's or PEC'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.

3.11 *FERC Filings and Orders.* In addition to the filing requirements of Commission Rule R8-27 and all other applicable statutes and rules, DEC and PEC 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, PEC, Duke Energy, DEBS, or PESC is a party, with new information in each quarterly filing tracked; and (b) a list of the periodic reports filed by DEC, PEC, Duke Energy, DEBS, or PESC with the FERC, including sufficient information to identify the subject matter of each report and how each report can be accessed. These filings shall be made in Docket Nos. E-7, Sub 986E, and E-2, Sub 998E, as appropriate, and updated regularly. In addition, DEC and PEC 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 PEC's Rates or Service.

SECTION IV

JOINT DISPATCH

*106 The following Regulatory Conditions 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 PEC'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.

4.1 *Conditional Approval and Notification Requirement.* DEC and PEC acknowledge that the Commission's approval of the merger and the transfer of dispatch control from PEC 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 PEC 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 PEC to the other, or (f) any equalization of DEC's and PEC's production costs or rates. If, at any time, DEC, PEC 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 PEC desire to engage in any of items (a) through (f) listed in Regulatory Condition 4.1, above, DEC and PEC 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 PEC.* The joint dispatch function, as provided in the JDA or in a successor document, shall be performed by employees of either DEC or PEC.

4.4 *No Limitation on Obligations.* DEC and PEC acknowledge that nothing in the JDA or any successor document is intended to alter DEC's and PEC'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 PEC'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) PEC's obligation to serve its Retail Native Load Customers with the lowest cost power it can reasonably generate or purchase from other sources, before making power available for Non-Native Load Sales.

4.5 *Protection of Retail Native Load Customers.* All joint dispatch and other activities pursuant to the proposed JDA or successor document shall be performed in such a manner as to (a) ensure the reliable fulfillment of DEC's and PEC'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 PEC 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 PEC'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 PEC 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 PEC 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, PEC, 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 PEC, 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 PEC, (b) to impose regulatory accounting and reporting requirements, (c) impose service quality standards, (d) require DEC and PEC 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, PEC, Duke Energy, and other Affiliates shall take all necessary actions to prevent the generating facilities owned or controlled by DEC or PEC 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 PEC's participation in the JDA or any successor document.**

4.11 ***Modification and Termination.*** **DEC and PEC 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 PEC.**

SECTION V

***107** *TREATMENT OF AFFILIATE COSTS AND RATEMAKING*

The following Regulatory Conditions are intended to ensure that the costs incurred by DEC and PEC are properly incurred, accounted for, and directly charged, directly assigned, or allocated to their respective North Carolina retail operations and that only costs that produce benefits for their respective Retail Native Load Customers are included in DEC's and PEC's North Carolina retail cost of service for ratemaking purposes. The procedures set forth in Condition 13.2 do not apply to an advance notice filed pursuant to this section.

5.1 ***Access to Books and Records.*** **In accordance with North Carolina law, the Commission and the Public Staff shall continue to have access to the books and records of DEC, PEC, Duke Energy Corporation, other Affiliates, and the Nonpublic Utility Operations.**

5.2 ***Procurement or Provision of Goods and Services by DEC or PEC to or from Affiliates or Nonpublic Utility Operations.*** **Except as to transactions between DEC and PEC pursuant to filed and approved service agreements and lists of services, and subject to additional provisions set forth in the Code of Conduct, DEC and PEC 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 and PEC shall seek out and buy all goods and services from the lowest cost qualified provider of comparable goods and services, and shall have the burden of proving that any and all goods and services procured from their Utility Affiliates, Non-Utility Affiliates, and Nonpublic Utility Operations have been procured on terms and conditions comparable to the most favorable terms and conditions reasonably available in the relevant market, which shall include a showing that comparable goods or services could not have been procured at a lower price from qualified non-Affiliate sources or that neither DEC nor PEC could 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 and PEC shall perform comprehensive, non-solicitation based assessments at a functional level of the market competitiveness of the costs for goods and services they receive from a Utility Affiliate, DEBS, PESC, another Non-Utility Affiliate, and a Nonpublic Utility Operation, including periodic testing of services being provided internally or obtained individually through outside providers. To the extent the Commission approves the procurement or provision of goods and services between and among DEC, PEC, 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 and PEC shall have the burden of proving that all goods and services provided by either 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 and PEC shall perform comprehensive, non-solicitation based assessments at a functional level of the market competitiveness of the costs for goods and services provided by either of them to a Utility Affiliate, DEBS, PESC, another Non-Utility Affiliate, any other Affiliate, and a Nonpublic Utility Operation.

*108 (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 or PEC or by DEC or PEC are not commercially available, this Regulatory Condition shall not apply.

5.3 *Location of Core Utility Functions.* Core utility functions (*i.e.*, those that are considered public utility operations and support functions) will be part of DEC and PEC, and the employees performing these functions will be DEC and PEC employees and not service company employees of DEBS or PESC. If in the future DEC or PEC desires to move these functions to another entity, Regulatory Condition 13.2 will apply and 30 days' advance notice will be required. The following functions are core utility functions for DEC and PEC:

(a) Outage and Maintenance Services Fuels and System Optimization Power Generation Operations;

(b) Electric Transmission and Distribution Operations, Engineering and Construction; (except for grid modernization functions, which may remain in DEBS);

(c) Project Management and Construction (except for Enterprise Project Management Center of Excellence, Project Development and Initiation, Fossil/Hydro Retrofits, Major Project Services, Commercial and International Major Projects and Performance Improvement, which may remain in DEBS);

(d) Environmental Health and Safety (except for Health and Safety, Environmental Programs and Compliance, EHS Support Systems, and Duke Energy International, which may remain in DEBS);

(e) Central Programs and Services for Fossil/Hydro Services (except for Central Programs, Application Support, NERC CIP, SMEs, Discipline Engineering, CT Services, Lab Services, Environmental Compliance Strategy, and Emerging Technology, which may remain in DEBS);

(f) Customer Operations/Customer Relations;

(g) Rates and Regulatory (except for Rate Design and Analysis and State Support and Research, which may remain in DEBS);

(h) Nuclear Generation (except for Nuclear Development, which may remain in DEBS);

(i) Wholesale Power and Renewable Generation; and

(j) Integrated Resource Planning and Analytics (except for Production Cost Modeling & Data Management, which may remain in DEBS).

Notwithstanding the foregoing, DEC and PEC may file a list of employees at the higher levels of management for their core utility functions that they propose to remain or become DEBS or PESC employees. Within 30 days of this filing, the Public Staff shall file a response and make a recommendation as to how the Commission should proceed. This filing shall be made in Docket No. E-7, Sub 986A, and will not be subject to the provisions of Regulatory Condition 13.2.

5.4 *Service Agreements and Lists of Services.*

(a) DEC and PEC 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, PEC, their Affiliates or Nonpublic Utility Operations, the list(s) of goods and services that DEC and PEC each intend to take from DEBS and PESC, the list(s) of goods and services DEC and PEC 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 or PEC 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.

*109 (b) DEC and PEC shall take goods and services from an Affiliate only in accordance with the filed service agreements and approved list(s) of services. DEC and PEC shall file notice with the Commission in Docket Nos. E-7, Sub 986A, and E-2, Sub 998A, 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 and PEC shall keep on file with the Commission cost allocation manuals (CAMs) with respect to goods or services provided by DEC or PEC, any Utility Affiliate, DEBS or PESC, any other Non-Utility Affiliate, Duke Energy, any other Affiliates, or any Nonpublic Utility Operation to either DEC or PEC.

(b) Each 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, PEC, their Utility Affiliates, Non-Utility Affiliates, Duke Energy, any other Affiliates, and the Nonpublic Utility Operations, and shall include a detailed review of the common costs to be allocated and the allocation factors to be used.

(c) The CAM(s) shall be updated annually, and the revised CAM(s) shall be filed with the Commission no later than March 31 of the year that the CAM(s) are to be in effect. DEC and PEC shall review the appropriateness of the allocation bases every two years, and the results of such review shall be filed with the Commission. Interim changes shall be made to the CAM(s), if and when necessary, and shall be filed with the Commission, in accordance with Regulatory Condition 5.6.

(d) No changes shall be made to the procedures for direct charging, direct assigning, or allocating the costs of Affiliate transactions or to the method of accounting for such transactions associated with goods and services (including Shared Services provided by DEBS or PESC) provided to or by Duke Energy, other Affiliates, and the Nonpublic Utility Operations until DEC or PEC has given 15 days' notice to the Commission of the proposed changes, in accordance with Regulatory Condition 5.6.

5.6 *Procedures Regarding Interim Changes to the CAMs or Lists of Goods and Services for which 15 Days' Notice Is Required.* **With respect to interim changes to the CAMs or changes to lists of goods and services, for which the 15 day notice to the Commission is required, the following procedures shall apply: the Public Staff shall file a response and make a recommendation as to how the Commission should proceed before the end of the notice period. If the Commission has not issued an order within 30 days of the end of the notice period, DEC or PEC may proceed with the changes but shall be subject to any fully adjudicated Commission order on the matter. The provisions of Regulatory Condition 13.2 do not apply to advance notices filed pursuant to Regulatory Condition 5.5(c) and (d). Such advance notices shall be filed in Docket Nos. E-7, Sub 986A, and E-2, Sub 998A.**

5.7 *Annual Reports of Affiliate Transactions.* DEC and PEC shall file annual reports of affiliated transactions with the Commission in a format to be prescribed by the Commission in Docket Nos. E-7, Sub 986A, and E-2, Sub 998A. The report shall be filed on or before May 30 of each year, for activity through December 31 of the preceding year. DEC, PEC, and other parties may propose changes to the required affiliated transaction reporting requirements and submit them to the Commission for approval, also in Docket Nos. E-7, Sub 986B, and E-2, Sub 998B.

5.8 ***Third-party Independent Audits of Affiliate Transactions.***

*110 (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 and PEC's compliance with all conditions approved by the Commission concerning Affiliate transactions, including the propriety of the transfer pricing of goods and services between and/or among DEC, PEC, other Affiliates, and all of the Nonpublic Utility Operations.

(i) The first audit following the close of the transaction shall begin two years from the date of close and shall include whether DEC and PEC have adopted systems, policies, CAMs, and other processes to ensure compliance with all of the conditions related to Affiliate dealings and the Code of Conduct and have operated in accordance with those conditions and Code of Conduct.

(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 and PEC'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 and PEC have operated in accordance with those conditions and Code of Conduct.

(iii) The third audit shall begin two years from the date of the Commission's order on the independent auditor's final report on the second audit or, if no such order is issued, two years from the date of such final report. It shall include whether DEC's and PEC'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 and PEC have operated in accordance with those conditions and Code of Conduct.

(iv) Thereafter, independent audits shall occur every two years from the date of the Commission's order on the immediately preceding auditor's final report or, if no such order is issued, two years from the date of such final report. The subject matter of these audits shall alternate between the subject matters for the second and third independent audits. DEC or PEC 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, PEC, 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, PEC, 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.

*111 (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 On-Going Review by Commission.

(a) The services rendered by DEC and PEC to their Affiliates and Nonpublic Utility Operations and the services received by DEC or PEC 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 and PEC's compliance with the Commission-approved Code of Conduct and all Regulatory Conditions, shall remain subject to ongoing review. These agreements shall be subject to any Commission action required or authorized by North Carolina law and the Rules and orders of the Commission.

(b) The service agreements, the CAM(s) and the assignments and allocations of costs pursuant thereto, the biannual allocation factor reviews required by Regulatory Condition 5.4(c), the list(s) and the goods and services provided pursuant thereto, and any changes to these documents shall be subject to ongoing Commission review, and Commission action if appropriate

5.10 ***Future Orders.*** **For the purposes of North Carolina retail accounting, reporting, and ratemaking, the Commission may, after appropriate notice and opportunity to be heard, issue future orders relating to DEC's or PEC's cost of service as the Commission may determine are necessary to ensure that DEC's and PEC'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 or PEC 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 and PEC, DEC and PEC may request pursuant to Section 1275(b) of Subtitle F in Title XII of PUHCA 2005 that the FERC 'review and authorize the allocation of the costs for such goods and services to the extent relevant to that associate company.' Such review and authorization shall have whatever effect it is determined to have under the law. The quoted language in this Condition is taken directly from Section 1275(b) of Subtitle F in Title XII of PUHCA 2005. The terms 'associate company' and 'holding company system' are defined in Sections 1262(2) and 1262(9), respectively, of Subtitle F in Title XII of PUHCA 2005 and have the same meanings for purposes of this condition.**

5.12 ***Biannual Review of Certain Transactions by Internal Auditors.*** **Transactions between DEC or PEC and Duke Energy, other Affiliates, or the Nonpublic Utility Operations, transactions between DEC and PEC, and other transactions between or among Affiliates if such transactions are reasonably likely to have a significant Effect on DEC's or PEC's Rates or Service, shall be reviewed at least biannually by Duke Energy Corporation's internal auditors. To the extent external audits of the transactions are conducted, DEC and PEC shall make available such audits for review by the Public Staff and the Commission. DEC and PEC 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.**

5.13 ***Notice of Service Company and Non-Utility Affiliates FERC Audits.*** **At such time as either DEC, PEC, Duke Energy, DEBS, or PESC receives notice from the FERC related to an audit of any Affiliate of DEC or PEC, DEC or PEC shall promptly file a notice the Commission that such an audit will be commencing. Any initial report of the FERC's audit team shall be provided to the Public Staff, and any final report shall be filed with the Commission in Docket Nos. E-7, Sub 986E, and E-2, Sub 998E, respectively.**

5.14 ***Acquisition Adjustment.*** **Any acquisition adjustment that results from the Merger shall be excluded from DEC's and PEC's utility accounts and treated for regulatory accounting, reporting, and ratemaking purposes so that it does not affect DEC's or PEC's North Carolina retail electric rates and charges.**

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 Progress Energy shall be allocated to DEC or PEC or recorded on their books. DEC's or PEC's North Carolina retail customers shall not otherwise bear any direct expenses or costs associated with a failed merger.**

5.16 ***Protection from Commitments to Wholesale Customers.***

***112** (a) For North Carolina retail electric cost of service/ratemaking purposes, DEC's and PEC's respective electric system costs shall be assigned or allocated between and among retail and wholesale jurisdictions based on reasonable and appropriate cost causation principles. For cost of service/ratemaking purposes, North Carolina retail ratepayers shall be held harmless from any cost assignment or allocation of costs resulting from agreements between DEC and the Catawba Joint Owners, between PEC and the North Carolina Eastern Municipal Power Agency as joint owner, and between either DEC or PEC and any of their wholesale customers.

(b) To the extent commitments to DEC's or PEC's wholesale customers relating to the Merger are made by or imposed upon DEC or PEC, the effects of which (i) decrease the bulk power revenues that are assigned or allocated to DEC's or PEC's North Carolina retail operations or credited to DEC's or PEC's jurisdictional fuel expenses, (ii) increase DEC's or PEC's North Carolina retail cost of service, or (iii) increase DEC's or PEC'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.

(c) To the extent that commitments are made by or imposed upon DEC, PEC, Duke Energy Corporation, another Affiliate, or a Nonpublic Utility Operation relating to the Merger, either through an offer, a settlement, or as a result of a regulatory order, the effects of which serve to increase the North Carolina retail cost of service or North Carolina retail fuel costs under reasonable cost allocation practices, the effects of these commitments shall not be recognized for North Carolina retail ratemaking purposes.

5.17 ***Joint Owner-Specific Issues.*** **Assignment or allocation of costs to the North Carolina retail jurisdiction shall not be adversely affected by the manner and amount of recovery of electric system costs from (a) the Catawba Joint Owners as a result of agreements between DEC and the Catawba Joint Owners or (b) the North Carolina Eastern Municipal Power Agency as a result of agreements between it and PEC.**

5.18 ***Inclusion of Cost Savings in Future Rate Proceedings.*** **Neither DEC, PEC, Duke Energy Corporation, any other Affiliate, nor a Nonpublic Utility Operation shall assert that any interested party is prohibited from seeking the inclusion in future rate proceedings of cost savings that may be realized as a result of any business combination transaction impacting DEC and PEC.**

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 PEC's North Carolina ES-1 report as recorded on its books and records under generally accepted accounting principles. DEC and PEC shall include as a footnote in the ES-1 reports 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 PEC.*** **All costs of PEC'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 PEC'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**

PEC's regulated retail rates and charges. For purposes of this condition, the term 'corporate cost increases' is defined as costs in excess of the level PEC would have (a) incurred using prudent business judgment, or (b) had allocated to it, had these transactions not occurred. 'Corporate cost increases' shall also include any payments made under change-of-control agreements, salary continuation agreements, and/or other severance- or personnel-type arrangements that are reasonably attributable to these transactions.

5.21 ***Liabilities of Cinergy Corp. and Florida Progress Corporation.***

*113 (a) DEC's and PEC's Retail Native Load Customers shall be held harmless from all liabilities of Cinergy Corp. and its subsidiaries, including those incurred prior to and after Duke Energy's acquisition of Cinergy Corp. in 2006. These liabilities include, but are not limited to, those associated with the following: (i) manufactured gas plant sites, (ii) asbestos claims, (iii) environmental compliance, (iv) pensions and other employee benefits, (v) decommissioning costs; and (vi) taxes.

(b) DEC's and PEC's Retail Native Load Customers shall be held harmless from all liabilities of Florida Progress Corporation and its subsidiaries, including those incurred prior to and after Progress Energy's acquisition of Florida Progress Corporation in 2000. These liabilities include, but are not limited to, those associated with the following: (i) any outages at and repairs of Crystal River 3, (ii) manufactured gas plant sites, (iii) asbestos claims, (iv) environmental compliance, (v) pensions and other employee benefits, (vi) decommissioning costs, and (vii) taxes.

(c) DEC's Retail Native Load Customers shall be held harmless from all current and prospective liabilities of PEC, and PEC's Retail Native Load Customers shall be held harmless from all current and prospective liabilities of DEC.

5.22 ***Hold Harmless Commitment.*** **DEC, PEC, Duke Energy, the other Affiliates, and all of the Nonpublic Utility Operations shall take all such actions as may be reasonably necessary and appropriate to hold North Carolina retail ratepayers harmless from the effects of the Merger, including rate increases or foregone opportunities for rate decreases, and other effects otherwise adversely impacting North Carolina retail customers.**

5.23 ***Cost of Service Manuals.*** **Within six months after the closing date of the Merger, DEC and PEC 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, PEC, 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 986A, and E-2, Sub 998A, respectively.**

SECTION VI

CODE OF CONDUCT

These Regulatory Conditions include a Code of Conduct in Appendix A The Code of Conduct governs the relationships, activities and transactions between and among the public utility operations of DEC, PEC, Duke Energy, the Affiliates of DEC and PEC, and the Nonpublic Utility Operations of DEC and PEC.

6.1 ***Obligation to Comply with Code of Conduct.*** **DEC, PEC, 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

In the Matter of Application of Duke Energy Corporation..., 298 P.U.R.4th 363...

The following Regulatory Conditions are intended to ensure (a) that DEC's and PEC's capital structures and cost of capital are not adversely affected through their affiliation with Duke Energy, each other, and other Affiliates and (b) that both DEC and PEC 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.

*114 These conditions do not supersede any orders or directives of the Commission regarding specific securities issuances by DEC, PEC, 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 or PEC'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, and PEC 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 and PEC.* DEC and PEC shall keep their respective accounting books and records so that the amount of Duke Energy's equity investment in DEC and PEC 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 Reports, DEC and PEC 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 or PEC.* DEC and PEC 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 or PEC (or their subsidiaries) are the issuers of the respective securities, DEC or PEC (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 62-160, 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 or PEC.

*115 (ii) If at any time material changes to the financing plans included in the filed plan appear likely, Duke Energy shall file a revised 30-day advance confidential plan that specifically addresses such changes with the Commission and serve such notice on the Public Staff.

(iii) At the time of the confidential plan filings identified above, Duke Energy shall also file a non-confidential notice that states that a confidential plan has been filed in compliance with this Regulatory Condition 7 6(b).

(iv) Duke Energy may proceed with equity issuances upon the filing of the confidential plan. However, actual debt issuances shall not occur until 30 days after the advance confidential plan or revised plans are filed. In the event it is not feasible for Duke Energy to file a revised advance confidential plan for a material change 30 days in advance, such plan shall be filed by a date that allows adequate time for review or a debt issuance shall be delayed to allow such review. Prior to the Commission's action on the confidential plan for the year in which the plan is filed, Duke Energy may issue securities authorized under the previous year's plan to the extent such securities were not issued during the previous year.

(v) Within 15 days after the filing of an advance confidential plan or revised plan, the Public Staff shall file a confidential report with the Commission with respect to whether any debt issuances require approval pursuant to G S 62-160 through G S 62-169 and Commission Rule R1-16 and shall recommend that the Commission issue an order deciding how to proceed. Duke Energy shall have seven days in which to respond to the report. If the Commission determines that any debt issuance requires approval, the Commission shall issue an order requiring the filing of an application and no such issuance shall occur until the Commission approves the application. If the Commission determines that no debt issuance requires approval, the Commission shall issue an order so ruling. At the end of the notice period, Duke Energy may proceed with the debt issuance, but shall be subject to any fully adjudicated Commission order on the matter; provided, however, that nothing herein shall affect the applicability of G S 62-170 or other similar provision to such securities or obligations.

(vi) On or before April 15 of each year, Duke Energy shall file with the Commission a report on all financings that were executed for the previous calendar year. The actual reports should include the same information as required above for the advance plans plus the actual issuance costs.

(c) If a filing with the Securities and Exchange Commission or other federal agency will be made in connection with a securities issuance, the notice shall describe such filing(s) and indicate the approximate date on which it would occur.

(d) Securities issuances or financings that are associated with a merger, acquisition, or other business combination shall be filed in conjunction with the information requirements and deadlines stated in Regulatory Conditions 9.1 and 9.2, and this Condition 7.6 shall not apply to such securities issuances or financings.

7.7 *Money Pool Agreement.* Subject to the limitations imposed in Regulatory Condition 8.4, DEC and PEC may borrow through Duke Energy's 'Utility Money Pool Agreement' (Utility MPA), provided as follows: (a) participation in the Utility MPA is limited to the parties to the Utility MPA dated November 1, 2008, as filed with the Commission on November 17, 2008, in Docket No. E-7, Subs 795A and 810, plus PEC, PEF, Progress Energy, and PESC; and (b) the Utility MPA continues to provide that no loans through the Utility MPA will be made to, and no borrowings through the Utility MPA will be made by, Duke Energy, Progress Energy, and Cinergy Corp. If after December 31, 2011, Duke Ohio's generation assets are no longer dedicated to serving retail load in its service territory and subject to the Electric Security Plan (as approved in Case No. 08-920-EL-SSO, *et al.*), and Duke Ohio continues to be a participant in the Utility MPA, then DEC and PEC shall seek Commission approval within six months of such occurrence, in order to continue participating in the Utility MPA. DEC and PEC shall discontinue such participation within six months after the issuance of a Commission order denying such approval.

7.8 *Borrowing Arrangements.* Subject to the limitations imposed in Regulatory Condition 8.4, DEC and PEC 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:

*116 (a) No borrowing by DEC or PEC 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, PEC, Duke Indiana, Duke Kentucky, PEF, and, subject to the limitations described in this section, Duke Ohio;

(c) DEC's and PEC's participation in any Credit Facility shall in no way cause either of them to guarantee, assume liability for, or provide collateral for any debt or credit other than its own; and

(d) Duke Ohio may participate in a Credit Facility to the extent the above conditions are met and its generation assets remain dedicated to serving retail load in its service territory and subject to the Electric Security Plan (as approved in Case No. 08-920-EL-SSO, *et al.*), or subject to traditional utility regulation.

If after December 31, 2011, Duke Ohio's generation assets are no longer dedicated to serving retail load in its service territory and subject to the Electric Security Plan (as approved in Case No 08-920-EL-SSO, *et al.*), then DEC and PEC shall be required to seek Commission approval within six months of such occurrence, in order to continue to participate in a Credit Facility in which Duke Ohio is or will be a participant. DEC and PEC shall discontinue such participation within six months after the issuance of an order by the Commission denying such approval.

7.9 *Long-Term Debt Fund Restrictions.* DEC and PEC 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 or PEC 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 and PEC and to insulate and protect DEC, PEC, and their Retail Native Load 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 and PEC 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 or PEC's debt rating falls to the lowest level still considered investment grade at the time, DEC or PEC 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 or PEC 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 PEC's Retail Native Load Customers in the continuation of adequate and reliable service at just and reasonable rates.

8.2 *Distributions from DEC and PEC to Holding Company.* DEC and PEC shall limit cumulative distributions paid to Duke Energy subsequent to the Merger to (a) the amount of Retained Earnings on the day prior to the closure of the Merger, plus (b) any future earnings recorded by DEC and PEC subsequent to the Merger.

8.3 *Debt Ratio Restrictions.* To the extent any of Duke Energy's external debt or credit arrangements contain covenants restricting the ratio of debt to total capitalization on a consolidated basis to a maximum percentage of debt, Duke Energy shall ensure that the capital structures of both DEC and PEC individually meet those restrictions.

8.4 ***Limitation on Continued Participation in Utility Money Pool Agreement and other Joint Debt and Credit Arrangements with Affiliates.*** **DEC and PEC may continue to participate in the Utility MPA and any other authorized joint debt or credit arrangement as provided in Regulatory Conditions 7.7 and 7.8 only to the extent such participation is beneficial to their respective Retail Native Load Customers and does not negatively affect DEC's or PEC's ability to continue to provide adequate and reliable service at just and reasonable rates.**

8.5 ***Notice of Level of Non-Utility Investment by Holding Company System.*** **In order to enable the Commission to determine whether the cumulative investment by Duke Energy in assets, ventures, or entities other than regulated utilities is reasonably likely to have an Effect on DEC's or PEC's Rates or Service so as to warrant Commission action (pursuant to Regulatory Condition 8.7 or other applicable authority) to protect Retail Native Load 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:**

*117 (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 or PEC's Rates or Service so as to warrant action by the Commission to protect DEC's and PEC's Retail Native Load Customers, the Commission shall issue an order setting the matter for further consideration. If the Commission determines that the percentage threshold being exceeded does not warrant action by the Commission, the Commission shall issue an order so ruling.

8.6 ***Notice by Holding Company of Certain Investments.*** **Duke Energy shall file a notice with the Commission subsequent to Board approval and as soon as practicable following any public announcement of any investment in a regulated utility or a non-regulated business that represents five (5) percent or more of Duke Energy's book capitalization.**

8.7 ***Ongoing Review of Effect of Holding Company Structure.*** **The operation of DEC and PEC under a holding company structure shall continue to be subject to Commission review. To the extent the Commission has authority under North Carolina law, it may order modifications to the structure or operations of Duke Energy, DEBS, PESC, another Affiliate, or a Nonpublic Utility Operation, and may take whatever action it deems necessary in the interest of Retail Native Load Customers to protect the economic viability of DEC and PEC, including the protection of DEC's and PEC's public utility assets from liabilities of Affiliates.**

8.8 ***Investment by DEC or PEC in Non-regulated Utility Assets and Non-utility Business Ventures.*** **Neither DEC nor PEC 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 or PEC 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 PEC's franchise area shall be excluded from this advance notice requirement.**

8.9 ***Investment by Holding Company in Exempt Wholesale Generators.*** **By April 15 of each year, Duke Energy shall provide to the Commission and the Public Staff a report summarizing Duke Energy's investment in exempt wholesale generators (EWGs) and foreign utility companies (FUCOs) in relation to its level of consolidated retained earnings and consolidated total capitalization at the end of the preceding year. Exempt wholesale generator and foreign utility**

company are defined in Section 1262(6) of Subtitle F in Title XII of PUHCA 2005 and have the same meanings for purposes of this condition.

8.10 ***Notice by DEC or PEC of Default or Bankruptcy of Affiliate.*** **If an Affiliate of DEC or PEC 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 or PEC shall notify the Commission in advance, if possible, or as soon as possible, but not later than ten days from such event.**

8.11 ***Annual Report on Corporate Governance.*** **No later than March 31 of each year, DEC and PEC shall file a report including the following:**

***118** (a) A complete, detailed organizational chart (i) identifying DEC, PEC 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 or PEC based upon current business activities of those affiliates and any contemplated significant changes to those activities

(d) A description of DEC's, PEC's and each Significant Affiliates actual capital structure. In addition, describe Duke Energy's, DEC's and PEC's goals for DEC's and PEC's capital structure and plans for achieving such goals.

(e) A list of all protective measures (other than those provided for by the Regulatory Conditions adopted in Docket Nos. E-7, Sub 986, and E-2, Sub 998) in effect between DEC, PEC, 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 and PEC'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, PEC 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, PEC, 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 or PEC.*** **For any proposed merger, acquisition, or other business combination by DEC or PEC or that would have an Effect on DEC's or PEC's Rates or Service, DEC or PEC 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 or PEC's Rates or Service.*** **For any proposed merger, acquisition, or other business combination that is believed not to have an Effect on DEC's or PEC'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:**

***119** (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 or PEC so as to require approval pursuant to G S 62-111(a). The notification shall contain sufficient information to enable the Commission to make such a determination If the Commission determines that such approval is required, the 180-day advance filing requirement in subsection (a), above, shall not apply.

(b) Any interested party may file comments within 45 days of the filing of the advance notification.

(c) If timely comments are filed, the Public Staff shall place the matter on a Commission Staff Conference agenda as soon as possible, but in no event later than 15 days after the comments are filed, and shall recommend that the Commission issue an order deciding how to proceed. If the Commission determines that the merger, acquisition, or other business combination requires approval pursuant to G S 62-111(a), the Commission shall issue an order requiring the filing of an application, and no closing can occur until and unless the Commission approves the proposed merger, acquisition, or business combination. If the Commission determines that the merger, acquisition, or other business combination does not require approval pursuant to G S 62-111(a), the Commission shall issue an order so ruling. At the end of the notice period, if no order has been issued, Duke Energy, any other Affiliate, or the Nonpublic Utility Operation may proceed with the merger, acquisition, or other business combination but shall be subject to any fully-adjudicated Commission order on the matter.

SECTION X

STRUCTURE/ORGANIZATION

The following Regulatory Conditions are intended to ensure that the Commission receives adequate notice of, and opportunity to review and take such lawful action as is necessary and appropriate with respect to, changes to the structure and organization of Duke Energy, DEC, PEC, and other Affiliates, and Nonpublic Utility operations as they may affect North Carolina retail ratepayers.

10.1 ***Transfer of Services, Functions, Departments, Employees, Rights, Assets, or Liabilities.*** **DEC and PEC shall file notice with the Commission 30 days prior to the initial transfer or any subsequent transfer of any services, functions, departments, employees, rights, obligations, assets; or liabilities from DEC or PEC to DEBS, PESC, Duke Energy, another Affiliate, or a Nonpublic Utility Operation that (a) involves services, functions, departments, employees, rights, obligations, assets; or liabilities other than those of a governance or corporate type nature that traditionally have been provided by a service company or (b) potentially would have a significant effect on DEC's or PEC'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 and PEC shall meet and consult with, and provide requested relevant data to, the Public Staff, regarding plans for significant changes in DEC's, PEC's or Duke Energy's organization, structure (including RTO developments), and activities; the expected or potential impact of such changes on DEC's or PEC's retail rates,**

operations and service; and proposals for assuring that such plans do not adversely affect DEC's or PEC's Retail Native Load 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 or PEC's Customers, then DEC's and PEC's plans and proposals for assuring that those plans do not adversely affect their Customers must be included in these meetings. DEC and PEC shall inform the Public Staff promptly of any such events and changes.

SECTION XI

SERVICE QUALITY

***120** The following Regulatory Conditions are intended to ensure that DEC and PEC 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 and PEC each shall continue their commitment to providing superior public utility service and shall maintain the overall reliability of electric service at levels no less than the overall levels it has achieved in the past decade.**

11.2 ***Best Practices.*** **DEC and PEC shall make every reasonable effort to incorporate each other's best practices into its own practices to the extent practicable.**

11.3 ***Quarterly Reliability Reports.*** **DEC and PEC shall each provide quarterly service reliability reports to the Public Staff on the following measures: System Average Interruption Duration Index (SAIDI) and System Average Interruption Frequency Index (SAIFI). The Public Staff may make such quarterly service reliability reports available to the public upon request.**

11.4 ***Notice of NERC Audit.*** **At such time as either DEC or PEC receive notice that the North American Electric Reliability Corporation and/or the SERC Reliability Corporation will be conducting a non-routine compliance audit with respect to DEC or PEC's compliance with mandatory reliability standards, DEC or PEC shall notify the Public Staff.**

11.5 ***Right-of-Way Maintenance Expenditures.*** **DEC and PEC shall budget and expend sufficient funds to trim and maintain their lower voltage line rights-of-way and their distribution rights-of-way in a manner consistent with their internal right-of-way clearance practices and Commission Rule R8-26. In addition, DEC and PEC 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 Clearance Practices.*** **DEC and PEC shall each provide a copy of their internal right-of-way clearance practices to the Public Staff, and shall promptly notify the Public Staff of any significant changes or modifications to the practices or maintenance schedules.**

11.7 ***Meetings with Public Staff.***

(a) DEC and PEC 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 and PEC shall each meet with the Public Staff at least annually to discuss potential new tariffs, programs, and services that enable its customers to appropriately manage their energy bills based on the varied needs of their customers.

11.8 *Customer Access to Service Representatives and Other Services*. DEC and PEC shall continue to have knowledgeable and experienced customer service representatives available 24 hours a day to respond to power outage calls and during normal business hours to handle all types of customer inquiries. DEC and PEC shall also maintain up-to-date and user-friendly online services and automated telephone service 24 hours a day to perform routine customer interactions and to provide general billing and customer information.

11.9 *Call Center Operations*. DEC and PEC shall each provide quarterly reports to the Public Staff regarding measurements of call center performance, including answer times, and customer satisfaction with call center operations.

11.10 *Customer Surveys*. DEC and PEC 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

*121 The following Regulatory Conditions are intended to ensure that DEC's and PEC's North Carolina retail ratepayers do not bear any additional tax costs as a result of the merger and receive an appropriate share of any tax benefits associated with the service company Affiliates.

12.1 *Costs under Tax Sharing Agreements*. Under any tax sharing agreement, neither DEC nor PEC shall seek to recover from its North Carolina retail ratepayers any tax costs that exceed DEC's or PEC's tax liability calculated as if it were a stand-alone, taxable entity for tax purposes.

12.2 *Tax Benefits Associated with Service Companies*. The appropriate portion of any income tax benefits associated with DEBS and PESC shall accrue to the North Carolina retail operations of DEC and PEC, respectively, for regulatory accounting, reporting, and ratemaking purposes.

SECTION XIII

PROCEDURES

The following Regulatory Conditions are intended to apply to all filings made pursuant to these Regulatory Conditions unless otherwise expressly provided by, Commission order, rule, or statute.

13.1 *Filings that Do Not Involve Advance Notice*. Regulatory Condition filings that are not subject to Condition 13.2 shall be made in sub dockets of Docket Nos. E-7, Sub 986, and E-2, Sub 998, 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 and PEC in Sub 986A and Sub 998A, respectively;

(b) Filings related to financings required by Regulatory Condition 7.6, and the filings required by Regulatory Conditions 8.5, 8.6, 8 9, 8.10 and 8.11 shall be made by DEC and PEC in Sub 986B and Sub 998B, 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(I), III.A.3(e), (f), and (g), III.D.5, and III.D 8 of the Code of Conduct shall be made by DEC and PEC in Sub 986C and Sub 998C;

(d) Filings related to the independent audits required by Regulatory Condition 5.8 shall be made in Sub 986D;