THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA, Plaintiff, ENVIRONMENTAL DEFENSE, NORTH CAROLINA SIERRA CLUB, AND NORTH CAROLINA PUBLIC INTEREST RESEARCH GROUP Plaintiff-Intervenors, v. DUKE ENERGY CORPORATION, Defendant.	)	Civil Action No.: 1:00 cv 1262

CONSENT DECREE

TABLE OF CONTENTS

WHEREAS, Plaintiff, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"), filed a complaint on December 22, 2000, for injunctive relief and civil penalties pursuant to Sections 113(b) and 167 of the Clean Air Act, 42 U.S.C. §§ 7413(b) and 7477, alleging that Duke Energy Corporation, a North Carolina corporation, now known as Duke Energy Carolinas, LLC, a North Carolina limited liability company ("Defendant") violated the Prevention of Significant Deterioration ("PSD") provisions of Part C of Subchapter I of the Act, 42 U.S.C. §§ 7470-7492, and the federally enforceable North Carolina State Implementation Plan ("SIP");

WHEREAS, Environmental Defense, the North Carolina Sierra Club, and the North Carolina Public Interest Research Group ("Plaintiff-Intervenors"), after their motion to intervene was granted, filed a complaint on September 6, 2001, pursuant to Section 304 of the Act, 42 U.S.C. § 7604;

WHEREAS, in their Complaints, the United States and the Plaintiff-Intervenors (collectively, "Plaintiffs") allege, *inter alia*, that Defendant made major modifications to major emitting facilities, and failed to obtain the necessary permits and install and operate the controls necessary under the Act to reduce sulfur dioxide ("SO_2") and/or oxides of nitrogen ("NO_x"), and/or particulate matter ("PM"), at certain electricity generating stations located in North Carolina, and that such emissions damage human health and the environment;

WHEREAS, after certain claims alleged in the Complaint were dismissed pursuant to joint stipulations, PSD claims remain at the following thirteen coal-fired electric generating units, all of which were alleged to have been modified pursuant to Duke's Plant Modernization

Program ("PMP"): Allen Units 1 and 2; Buck Units 3, 4, and 5; Cliffside Units 1, 2, 3, and 4; Dan River Unit 3; and Riverbend Units 4, 6, and 7;

WHEREAS, EPA provided Defendant and the State of North Carolina with actual notice pertaining to Defendant's alleged violations, in accordance with Sections 113(a)(1) and (b) of the Act, 42 U.S.C. § 7413(a)(1) and (b);

WHEREAS, in their Complaints, the Plaintiffs allege claims upon which, if proven, relief can be granted against the Defendant under Sections 113, 167, and 304 of the Act, 42 U.S.C. §§ 7413, 7477, and 7604;

WHEREAS, the Defendant denies the violations alleged in the Complaints; maintains that it has been and remains in compliance with the Act and is not liable for civil penalties or injunctive relief; and states that it is agreeing to the obligations imposed by this Consent Decree solely to avoid the costs and uncertainties of litigation; and nothing herein shall constitute an admission of liability;

WHEREAS, the Plaintiffs and Defendant (collectively, the "Parties") have agreed that settlement of this action is in the best interests of the Parties and in the public interest, and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter;

WHEREAS, the Parties anticipate that the operation of pollution control equipment and practices pursuant to this Consent Decree, and the Retirement of certain facilities required by this Consent Decree, will achieve significant reductions of SO_2, NO_x, and PM emissions and improve air quality;

WHEREAS, the Parties have agreed, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith and at arm's length and that this Consent Decree is fair, reasonable, in the public interest, and consistent with the goals of the Act;

NOW, THEREFORE, without any further adjudication or admission of fact or law, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action, the subject matter herein, and the Parties consenting hereto, pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and pursuant to Sections 113, 167, and 304 of the Act, 42 U.S.C. §§ 7413, 7477, and 7604. Venue is proper in the Middle District of North Carolina pursuant to Sections 113(b) and 304(c) of the Act, 42 U.S.C. §§ 7413(b) and 7604(c), and 28 U.S.C. §§ 1391(b) and (c). Solely for the purposes of this Consent Decree and the underlying Complaints, and for no other purpose, the Defendant waives all objections and defenses that it may have to the Court's jurisdiction over this action, to the sufficiency of any pre-suit notices required by Section 113 or 304 of the Act, to the Court's jurisdiction over the Defendant, to venue in this district, and based on standing. The Defendant consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. Except as expressly provided for herein, this Consent Decree shall not create any rights in or obligations of any party other than the Parties to this Consent Decree. Except as provided in Section XXVI (Public Comment) of this Consent Decree, the Parties consent to entry of this Consent Decree without further notice. Notwithstanding the foregoing, should this Consent Decree not be entered by this Court, then the

waivers and consents set forth in this Section I (Jurisdiction and Venue) shall be null and void and of no effect.

II. APPLICABILITY

2. Upon entry, the provisions of this Consent Decree shall apply to and be binding upon the United States, and upon the Plaintiff-Intervenors and the Defendant and their respective successors and assigns or other entities or persons otherwise bound by law.

3. Defendant shall provide a copy of this Consent Decree to all vendors, suppliers, consultants, contractors, agents, and other entities retained to perform any of the work required by this Consent Decree. Notwithstanding any retention of contractors, subcontractors, or agents to perform any work required under this Consent Decree, Defendant shall ensure that all work it is required to undertake is performed in accordance with the requirements of this Consent Decree. In any action to enforce this Consent Decree, except as expressly provided herein (*e.g.*, Section XV Force Majeure), Defendant shall not assert as a defense the failure of its officers, directors, employees, servants, agents, or contractors to take actions necessary to comply with this Consent Decree.

III. DEFINITIONS

4. Every term expressly defined by this Section shall have the meaning given that term herein. Every other term used in this Consent Decree that is also a term used under the Act or in a regulation implementing the Act, including regulations approved as part of the North Carolina SIP, shall mean in this Consent Decree what such term means under the Act or those regulations.

5. A "365-Day Rolling Average NO_x Emission Rate" for a Unit shall be expressed in lb/mmBTU and calculated in accordance with the following procedure: first, sum the pounds of NO_x emitted from the Unit during the most recent Unit Operating Day and the previous 364 Unit Operating Days; second, sum the total heat input to the Unit in mmBTU during the most recent Unit Operating Day and the previous 364 Unit Operating Days; and third, divide the total number of pounds of NO_x emitted during the 365 Unit Operating Days by the total heat input during the 365 Unit Operating Days. A new 365-Day Rolling Average NO_x Emission Rate shall be calculated for each new Unit Operating Day. Each 365-Day Rolling Average NO_x Emission Rate shall include all emissions that occur during all periods of operation, including startup, shutdown, and Malfunction.

6. A "365-Day Rolling Average SO_2 Emission Rate" for a Unit shall be expressed in lb/mmBTU and calculated using emissions reported at the CEMS for the common stack for Allen Units 1, 2 and 5 and from certified FGD inlet duct SO2 monitors installed on each Unit using Part 75 procedures for common stacks to apportion heat input. Accordingly, the 365-Day Rolling Average SO_2 Emission Rate shall be calculated in accordance with the following procedure: The common stack outlet SO_2 emissions rate will be multiplied by the inlet SO_2 rate for each unit divided by the heat input-weighted average inlet SO_2 rate for Allen Units 1, 2 and 5 for each hour when Allen Unit 1 and/or Allen Unit 2 is online. The Unit-specific SO2 emissions rate will be the sum of the valid, online hourly values over the previous 365-day period divided by the number of valid, online hours. Each 365-Day Rolling Average SO_2 Emission Rate shall include all emissions that occur during all periods of operation, including startup, shutdown, and Malfunction

7. "Allen" means solely for purposes of this Consent Decree, the Allen Steam Station consisting of five coal-fired electric generating units designated as Unit 1, Unit 2, Unit 3, Unit 4, and Unit 5, located in Gaston, North Carolina.

8. "Already Shutdown Units" means solely for purposes of this Consent Decree, Buck Unit 3, Buck Unit 4, Buck Unit 5, Cliffside Unit 1, Cliffside Unit 2, Cliffside Unit 3, Cliffside Unit 4, Dan River Unit 3, Riverbend Unit 4, Riverbend Unit 6, and Riverbend Unit 7.

9. An "Annual NO_x Tonnage Limitation" means the limitation, as specified in this Consent Decree, on the number of tons of NO_x that may be emitted from Allen Unit 1 and Allen Unit 2, individually, during the relevant calendar year (*i.e.*, January 1 through December 31), and shall include all emissions of NO_x during all periods of operations, including startup, shutdown, and Malfunction.

10. "Buck" means solely for purposes of this Consent Decree, the Buck Steam Station consisting of four coal-fired electric generating units designated as Unit 3, Unit 4, Unit 5, and Unit 6, located in Rowan, North Carolina. The Buck Steam Station no longer operates and was permanently shut down in 2013.

11. "CEMS" or "Continuous Emission Monitoring System," means, for obligations involving the monitoring of NO_x and SO_2 emissions under this Consent Decree, the devices defined in 40 C.F.R. § 72.2 and installed and maintained as required by 40 C.F.R. Part 60 and 40 C.F.R. Part 75.

12. "Clean Air Act," "CAA," or "Act" means the federal Clean Air Act, 42 U.S.C. §§ 7401-7671q, and its implementing regulations.

13. "Cliffside" means solely for purposes of this Consent Decree, the Cliffside Steam Station consisting of six coal-fired electric generating units designated as Unit 1, Unit 2, Unit 3, Unit 4, Unit 5, and Unit 6, located in Cleveland and Rutherford, North Carolina. Cliffside Units 1, 2, 3, and 4 no longer operate and were permanently shut down in 2011.

14. "Consent Decree" means this Consent Decree and the Appendix hereto, which is incorporated into the Consent Decree.

15. "Continuously Operate" or "Continuous Operation" means that when a pollution control technology or combustion control is required to be continuously used at a Unit pursuant to this Consent Decree (including, but not limited to, FGD and SNCR), it shall be operated at all times such Unit is in operation, consistent with the technological limitations, manufacturers' specifications, good engineering and maintenance practices, and good air pollution control practices for minimizing emissions (as defined in 40 C.F.R. § 60.11(d)) for such equipment and the Unit.

16. "Dan River" means solely for purposes of this Consent Decree, the Dan River Steam Station consisting of three coal-fired electric generating units designated as Unit 1, Unit 2, and Unit 3, located in Rockingham, North Carolina. The Dan River Steam Station no longer operates and was permanently shut down in 2012.

17. "Date of Entry" means the date this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

18. "Date of Lodging" means the date this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Middle District of North Carolina.

19. "Day" means calendar day unless otherwise specified in this Consent Decree.

20. "Defendant" means Duke Energy Carolinas, LLC, as well as its predecessors and successors in interest.

21. "Emission Rate" for a given pollutant means the number of pounds of that pollutant emitted per million British thermal units of heat input (lb/mmBTU), measured in accordance with this Consent Decree.

22. "Environmental Mitigation Projects" or "Projects" means the projects set forth in Section IX (Environmental Mitigation Projects) and Appendix A of this Consent Decree, and any other project undertaken for the purpose of fulfilling Defendant's obligations under Section IX and Appendix A and approved for that purpose by EPA pursuant to Section XIII (Review and Approval of Submittals).

23. "EPA" means the United States Environmental Protection Agency.

24. "Fossil Fuel" means any hydrocarbon fuel, including but not limited to coal, metallurgical coke, petroleum coke, petroleum oil, natural gas, or any other fuel made or derived from the foregoing.

25. "Flue Gas Desulfurization System" or "FGD" means a pollution control device that employs flue gas desulfurization technology, including an absorber or absorbers utilizing lime or limestone, or a sodium based material, for the reduction of SO_2 emissions.

26. "lb/mmBTU" means pound per million British thermal units.

27. "Malfunction" means a failure to operate in a normal or usual manner by any air pollution control equipment, process equipment, or a process, which is sudden, infrequent, and not reasonably preventable. Failures that are caused in part by poor maintenance or careless operation are not Malfunctions.

28. "North Carolina SIP" means the North Carolina State Implementation Plan, and any amendments thereto, as approved by EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410.

29. "NO_x" means oxides of nitrogen.

30. "NO_x Allowance" means an authorization to emit a specified amount of NO_x that is allocated or issued under an emissions trading or marketable permit program of any kind established under the Clean Air Act or applicable State Implementation Plan; provided, however, that with respect to any such program that first applies to emissions occurring after December 31, 2011, a "NO_x Allowance" shall include an allowance created and allocated under such program only for control periods starting on or after the fourth anniversary of the Date of Entry of this Consent Decree.

31. "Nonattainment NSR" means the new source review program within the meaning of Part D of Subchapter I of the Act, 42 U.S.C. §§ 7501-7515 and 40 C.F.R. Part 51, and corresponding provisions of the federally enforceable North Carolina SIP.

32. "Operational Interest" means part or all of Defendant's right to be the operator (as that term is used and interpreted under the Act) of any Unit at the Allen Plant.

33. "Ownership Interest" with respect to a Unit means part or all of Defendant's legal or equitable ownership interest in any Unit at the Allen Plant.

34. "Parties" means the United States of America on behalf of EPA; Environmental Defense; North Carolina Sierra Club; North Carolina Public Interest Research Group; and the Defendant. "Party" means one of the named "Parties."

35. "Prevention of Significant Deterioration" or "PSD" means the new source review program within the meaning of Part C of Subchapter I of the Clean Air Act, 42 U.S.C. §§ 7470-7492 and 40 C.F.R. Part 52, and corresponding provisions of the federally enforceable North Carolina SIP.

36. "Project Dollars" means expenditures and payments incurred or made in carrying out the Environmental Mitigation Projects identified in Section IX (Environmental Mitigation Projects) and Appendix A of this Consent Decree to the extent that such expenditures or payments both: (a) comply with the requirements set forth in Section IX and Appendix A of this Consent Decree, and (b) constitute Defendant's direct payments for such projects, or Defendant's external costs for contractors, vendors, and equipment.

37. "Retire" means to permanently shut down a Unit such that the Unit cannot physically or legally burn Fossil Fuel, and to comply with applicable state and federal requirements for permanently ceasing operation of the Unit as a Fossil Fuel-fired electric generating Unit, including removing the Unit from North Carolina's air emissions inventory, and amending all applicable permits so as to reflect the permanent shutdown status of such Unit.

38. "Riverbend" means solely for purposes of this Consent Decree, the Riverbend Steam Station consisting of four coal-fired electric generating units designated as Unit 4, Unit 5, Unit 6, and Unit 7, located in Gaston, North Carolina. The Riverbend Steam Station no longer operates and was permanently shut down in 2013.

39. "SNCR" or "Selective Non-Catalytic Reduction" means a pollution control device for the reduction of NO_x emissions through the use of selective non-catalytic reduction technology that utilizes ammonia or urea injection into the boiler.

40. "SO_2" means sulfur dioxide.

41. "SO_2 Allowance" means an authorization to emit a specified amount of SO_2 that is allocated or issued under an emissions trading or marketable permit program of any kind established under the Clean Air Act or applicable State Implementation Plan; provided, however, that with respect to any such program that first applies to emissions occurring after December 31, 2011, a "SO_2 Allowance" shall include an allowance created and allocated under such program only for control periods starting on or after the fourth anniversary of the Date of Entry of this Consent Decree.

42. "State" means the State of North Carolina.

43. "Surrender" or "Surrender of Allowances" means, for purposes of SO_2 or NO_x Allowances, permanently surrendering allowances from the accounts administered by EPA and the State of North Carolina, if applicable, so that such allowances can never be used thereafter to meet any compliance requirements under the CAA, a state implementation plan, or this Consent Decree.

44. "Title V Permit" means the permit required of major sources pursuant to Subchapter V of the Act, 42 U.S.C. §§ 7661-7661e.

45. "Unit" means collectively, the coal pulverizer, stationary equipment that feeds coal to the boiler, the boiler that produces steam for the steam turbine, the steam turbine, the generator, the equipment necessary to operate the generator, steam turbine, and boiler, and all

ancillary equipment, including pollution control equipment and systems necessary for production of electricity. An electric steam generating station may be comprised of one or more Units.

46. "Unit Operating Day" means any Day on which a Unit fires Fossil Fuel.

47. "Working Day" means a day other than a Saturday, Sunday, or Federal Holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the close of business on the next Working Day.

IV. RETIREMENT OF PLANT MODERNIZATION PROGRAM UNITS

48. Defendant has already ceased operations at and permanently shut down Buck Unit 3, Buck Unit 4, Buck Unit 5, Cliffside Unit 1, Cliffside Unit 2, Cliffside Unit 3, Cliffside Unit 4, Dan River Unit 3, Riverbend Unit 4, Riverbend Unit 6, and Riverbend Unit 7. Upon entry of this Consent Decree, the permanent Retirement of these units shall also become an enforceable obligation under this Consent Decree.

49. By no later than December 31, 2024, Defendant shall permanently Retire Allen Unit 1 and Allen Unit 2.

V. INTERIM NO_x EMISSION REDUCTIONS AND CONTROLS

A. Operation and Performance NO_x Requirements at Allen Units 1 and 2

50. Commencing no later than 120 Days after the Date of Entry, and continuing until the Unit is Retired, Defendant shall Continuously Operate the existing SNCR at Allen Unit 1. Commencing no later than 485 Days after the Date of Entry, and continuing until the Unit is Retired, Defendant shall achieve and maintain a 365-Day Rolling Average NO_x Emission Rate of no greater than 0.250 lb/mmBTU.

51. Commencing no later than 120 Days after the Date of Entry, and continuing until the Unit is Retired, Defendant shall Continuously Operate the existing SNCR at Allen Unit 2. Commencing no later than 485 Days after the Date of Entry, and continuing until the Unit is Retired, Defendant shall achieve and maintain a 365-Day Rolling Average NO_x Emission Rate of no greater than 0.250 lb/mmBTU.

B. Allen Unit 1 and 2 Annual NO_x Tonnage Limitations

52. Beginning in calendar year 2016 and continuing each calendar year thereafter until the Unit is Retired, Defendant shall not exceed an Annual NO_x Tonnage Limitation of 600 tons per year at Allen Unit 1.

53. Beginning in calendar year 2016 and continuing each calendar year thereafter until the Unit is Retired, Defendant shall not exceed an Annual NO_x Tonnage Limitation of 600 tons per year at Allen Unit 2.

C. Monitoring of NO_x Emissions

54. In determining a 365-Day Rolling Average NO_x, Emission Rate Defendant shall use NO_x emission data obtained from a CEMS in accordance with the procedures of 40 C.F.R. Part 75, except that the missing data substitution procedures of 40 C.F.R. Part 75 shall not apply to such determinations. Diluent capping (*i.e.*, 5% CO_2) will be applied to the NO_x emission rate for any hours where the measured CO_2 concentration is less than 5% following the procedures in 40 C.F.R. Part 75, Appendix F, Section 3.3.4.1.

55. For purposes of determining compliance with the Annual NO_x Tonnage Limitation at Allen Unit 1 and Allen Unit 2, Defendant shall use NO_x emission data obtained from a CEMS in accordance with the procedures specified in 40 C.F.R. Part 75.

VI. INTERIM SO_2 EMISSION REDUCTIONS AND CONTROLS

A. Operation and Performance SO_2 Requirements at Allen Units 1 and 2

56. Commencing no later than 120 Days after the Date of Entry, and continuing until the Unit is Retired, Defendant shall Continuously Operate the existing FGD at Allen Unit 1. Commencing no later than 485 Days after the Date of Entry, and continuing until the Unit is Retired, Defendant shall achieve and maintain a 365-Day Rolling Average SO_2 Emission Rate of no greater than 0.120 lb/mmBTU.

57. Commencing no later than 120 Days after the Date of Entry, and continuing until the Unit is Retired, Defendant shall Continuously Operate the existing FGD at Allen Unit 2. Commencing no later than 485 Days after the Date of Entry, and continuing until the Unit is Retired, Defendant shall achieve and maintain a 365-Day Rolling Average SO_2 Emission Rate of no greater than 0.120 lb/mmBTU.

B. Monitoring of SO_2 Emissions

58. In determining a 365-Day Rolling Average SO_2 Emission Rate, Defendant shall use SO_2 emission data obtained from a CEMS and certified FGD inlet duct SO_2 monitors in accordance with the procedures of 40 C.F.R. Part 75, except that the missing data substitution procedures of 40 C.F.R. Part 75 shall not apply to such determinations. Diluent capping (i.e., 5% CO_2) will be applied to the SO_2 Emission Rate for any hours where the measured CO_2 concentration is less than 5% following the procedures in 40 C.F.R. Part 75, Appendix F, Section 3.3.4.1.

VII. ALLOWANCE SURRENDER REQUIREMENTS

A. Use and Surrender of NO_x and SO_2 Allowances

59. Except as may be necessary to comply with Section XIV (Stipulated Penalties), Defendant shall not use NO_x or SO_2 Allowances to comply with any requirement of this Consent Decree, including by claiming compliance with any emission limitation required by this Consent Decree by using, tendering, or otherwise applying NO_x or SO_2 Allowances to offset any excess emissions.

60. Except as provided in this Consent Decree, beginning in calendar year 2016 and continuing each calendar year thereafter, Defendant shall not sell, bank, trade, or transfer its interest in any NO_x or SO_2 Allowances allocated to Allen Unit 1, Allen Unit 2, Buck Unit 3, Buck Unit 4, Buck Unit 5, Cliffside Unit 1, Cliffside Unit 2, Cliffside Unit 3, Cliffside Unit 4, Dan River Unit 3, Riverbend Unit 4, Riverbend Unit 6, and Riverbend Unit 7.

61. Beginning in calendar year 2016, and continuing each calendar year thereafter, Defendant shall Surrender all NO_x and SO_2 Allowances allocated to Allen Unit 1, Allen Unit 2, Buck Unit 3, Buck Unit 4, Buck Unit 5, Cliffside Unit 1, Cliffside Unit 2, Cliffside Unit 3, Cliffside Unit 4, Dan River Unit 3, Riverbend Unit 4, Riverbend Unit 6, and Riverbend Unit 7 for that calendar year that Defendant does not need to meet federal and/or state CAA regulatory requirements for those Units.

62. Nothing in this Consent Decree shall prevent Defendant from purchasing or otherwise obtaining NO_x or SO_2 Allowances from another source for purposes of complying with federal and/or state CAA regulatory requirements to the extent otherwise allowed by law.

63. The requirements of this Consent Decree pertaining to Defendant's use and Surrender of NO_x Allowances are permanent and are not subject to any termination provision of this Consent Decree.

B. Method for Surrender of NO_x and SO_2 Allowances

64. Defendant shall Surrender, or transfer to a non-profit third-party selected by Defendant for Surrender, all NO_x and SO_2 Allowances required to be Surrendered pursuant to Section VII.A by June 30 of the immediately following calendar year.

65. If any Allowances required to be Surrendered under this Consent Decree are transferred directly to a non-profit third-party, Defendant shall include a description of such transfer in the next report submitted to EPA pursuant to Section XII (Periodic Reporting) of this Consent Decree. Such report shall: (a) identify the non-profit third-party recipient(s) of the Allowances and list the serial numbers of the transferred Allowances; and (b) include a certification by the third-party recipient(s) stating that the recipient(s) will not sell, trade, or otherwise exchange any of the Allowances and will not use any of the Allowances to meet any obligation imposed by any environmental law. No later than the third periodic report due after the transfer of any Allowances, Defendant shall include a statement that the third-party recipient(s) Surrendered the Allowances for permanent Surrender to EPA in accordance with the provisions of Paragraph 66 within one year after the Defendant transferred the Allowances to them. The Defendant shall not have complied with the Allowance Surrender requirements of this Paragraph until all third-party recipient(s) have actually Surrendered the transferred Allowances to EPA.

66. For all Allowances required to be Surrendered, Defendant shall, with respect to the Allowances that the Defendant is to Surrender, ensure that an Allowance transfer request form is first submitted to EPA's Office of Air and Radiation's Clean Air Markets Division directing the transfer of such Allowances to the EPA Enforcement Surrender Account or to any other EPA account that EPA may direct in writing. Such Allowance transfer requests may be made in an electronic manner using the EPA's Clean Air Markets Division Business System, or similar system provided by EPA. As part of submitting these transfer requests, Defendant shall ensure that the transfer of its Allowances are irrevocably authorized and that the source and location of the Allowances being Surrendered are identified by name of account and any applicable serial or other identification numbers or station names.

VIII. PROHIBITION ON NETTING CREDITS OR OFFSETS

67. Emission reductions that result from actions to be taken by Defendant after the Date of Entry of this Consent Decree to comply with the requirements of this Consent Decree shall not be considered as a creditable contemporaneous emission decrease for the purpose of obtaining a Netting credit or offset under the CAA's Nonattainment NSR and PSD programs. Notwithstanding the preceding sentence, to the extent otherwise allowed by law, Defendant may use any creditable contemporaneous emission decreases resulting solely from Retiring Allen Unit 3 for the purposes of permitting combined cycle or simple cycle natural gas-fired combustion turbine(s) where the Allen Station is located, subject to the following additional requirements:

a. The emission reductions must be contemporaneous and otherwise creditable within the meaning of the Act and the North Carolina SIP, and Defendant must

comply with, and be subject to, all requirements and criteria for creating contemporaneous creditable decreases as set forth in 40 C.F.R. § 52.21(b) and the North Carolina SIP, subject to the limitations of this Section;

b. Defendant must apply for, and obtain, minor NSR permits for the construction and operation of such new combined cycle natural gas-fired combustion turbine, and must provide notice and a copy of the permit application to Plaintiffs in accordance with Section XIX (Notices), concurrent with its permit application submission to the relevant permitting authority. Defendant's request for such minor NSR permit must include federally-enforceable emission limitations that reflect either Best Available Control Technology ("BACT") or Lowest Achievable Emission Rate ("LAER"), as appropriate, depending upon the attainment classification for the relevant regulated pollutants for which Defendant is utilizing emission reductions as provided in this Paragraph;

c. At a minimum, such new combined and/or simple cycle natural gas-fired combustion turbine(s) must include low NO_x burners and in the case of combined cycle natural gas-fired turbine(s), must also include Selective Catalytic Reduction ("SCR") pollution control(s);

d. The emission reductions that Defendant intends to utilize for Netting shall not be available under this Section if such use would result in an exceedance of a PSD increment, or an interference with "reasonable further progress" toward attainment of a NAAQS in accordance with Part D of Title I of the CAA;

e. Defendant must be and remain in full compliance with the provisions of this Consent Decree establishing performance, operational, and control technology requirements established by this Consent Decree including, but not limited to, (a) the Interim NO_x Emission Reductions and Controls specified in Section V of this Consent Decree, (b) the Interim SO_2 Emission Reductions and Controls specified in Section VI of this Consent Decree, (c) requirements pertaining to the Surrender of SO_2 and NO_x Allowances, and (d) the Retirement of Allen Units 1, 2, and 3 as required under this Consent Decree.

68. Nothing in this Consent Decree is intended to preclude the emission reductions generated under this Consent Decree from being considered by the applicable state regulatory agency or EPA for the purpose of attainment demonstrations submitted pursuant to § 110 of the Act, 42 U.S.C. § 7410, or in determining impacts on National Ambient Air Quality Standards, PSD increment, or air quality related values, including visibility, in a Class I area.

IX. ADDITIONAL INJUNCTIVE RELIEF

69. By no later than December 31, 2024 Defendant shall permanently Retire Allen Unit 3.

70. Defendant shall implement the additional Environmental Mitigation Projects ("Projects") described in Appendix A to this Consent Decree in compliance with the approved plans and schedules for such Projects and other terms of this Consent Decree. In implementing the Projects, Defendant shall spend no less than $4,400,000 in Project Dollars. Defendant shall

not include its own personnel costs in overseeing the implementation of the Projects as Project Dollars.

71. Defendant shall maintain, and present to Plaintiffs upon request, documents to substantiate the Project Dollars expended to implement the Defendant's Projects described in Appendix A, and shall provide these documents to Plaintiffs within 60 Days of a request for the documents.

72. All plans and reports prepared by Defendant pursuant to the requirements of this Section IX of the Consent Decree and required to be submitted to Plaintiffs shall be publicly available from Defendant without charge in paper or electronic form, subject to the limitation in Paragraph 123.

73. Defendant shall certify, as part of each plan submitted to Plaintiffs for any Project, that Defendant is not otherwise required by law to perform the Project described in the plan, that Defendant is unaware of any other person who is required by law to perform the Project, and that Defendant will not use any Project, or portion thereof, to satisfy any obligations that it may have under other applicable requirements of law, including but not limited to any applicable renewable or energy efficiency portfolio standards.

74. Defendant shall use good faith efforts to secure as much environmental benefit as possible for the Project Dollars it expends, consistent with the applicable requirements and limits of this Consent Decree.

75. If Defendant elects (where such an election is allowed) to undertake a Project by contributing funds to another person or entity that will carry out the Project in lieu of Defendant, but not including Defendant's agents or contractors, that person or instrumentality must, in

writing: (a) identify its legal authority for accepting such funding; and (b) identify its legal authority to conduct the Project for which Defendant contributes the funds. Regardless of whether Defendant elects (where such election is allowed) to undertake a Project by itself or to do so by contributing funds to another person or instrumentality that will carry out the Project, Defendant acknowledges that it will receive credit for the expenditure of such funds as Project Dollars only if the Defendant demonstrates that the funds have been actually spent by either the Defendant or by the person or instrumentality receiving them, and that such expenditures met all requirements of this Consent Decree.

76. Defendant shall comply with the reporting requirements described in Appendix A.

77. Within 90 Days following the completion of each Project required under this Consent Decree (including any applicable periods of demonstration or testing), the Defendant shall submit to the Plaintiffs a report that documents the date that the Project was completed, Defendant's results of implementing the Project, including the emission reductions or other environmental benefits achieved, and the Project Dollars expended by the Defendant in implementing the Project.

X. CIVIL PENALTY

78. Within 30 Days after the Date of Entry of this Consent Decree, Defendant shall pay to the United States a civil penalty in the amount of $975,000. The civil penalty shall be paid by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance with current EFT procedures provided to Defendant by the Financial Litigation Unit of the U.S. Attorney's Office for the Middle District of North Carolina. The costs of such EFT shall be Defendant's responsibility. Any funds received after 2:00 p.m. EDT shall be credited on

the next Working Day. At the time of payment, Defendant shall provide notice of payment, referencing DOJ Case Number 90-5-2-1-07155 and the civil action case name and case number assigned to the United States' enforcement action in this case, to the Department of Justice and to EPA in accordance with Section XIX (Notices) of this Consent Decree.

79. Failure to timely pay the civil penalty shall subject Defendant to interest accruing from the date payment is due until the date payment is made at the rate prescribed by 28 U.S.C. § 1961, and shall render Defendant liable for all charges, costs, fees, and penalties established by law for the benefit of a creditor or of the United States in securing payment.

80. Payments made pursuant to this Section are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and are not tax-deductible expenditures for purposes of federal law.

XI. RESOLUTION OF CIVIL CLAIMS

81. Claims Based on Modifications Occurring Before the Date of Lodging of this Consent Decree.

(a) Entry of this Consent Decree shall resolve all civil claims of the United States and Plaintiff-Intervenors against the Defendant that arose from any modifications commenced at Allen Units 1 and 2 and the Already Shutdown Units prior to the Date of Lodging of this Consent Decree, including but not limited to those modifications alleged in the Complaints filed in this civil action, under any or all of: (a) Part C or D of Subchapter I of the CAA, 42 U.S.C. §§ 7470-7492, 7501-7515, and the implementing PSD and Nonattainment NSR provisions of the North Carolina SIP; (b) Section 111 of the CAA, 42 U.S.C. § 7411, and 40 C.F.R. § 60.14; and (c) Title V of

the CAA, 42 U.S.C. §§ 7661-7661f, but only to the extent that such Title V claims are based on Defendant's failure to obtain an operating permit that reflects applicable requirements imposed under Section 111 or Part C or D of Subchapter I of the CAA.

(b) Plaintiff-Intervenors further agree not to file a legal challenge, including any lawsuit or any petition for a contested case hearing, or take a litigation position or submit comments in any form to any governmental agency in any public forum or proceeding challenging or criticizing Defendant's request(s) for rate recovery of any kind for any costs incurred in achieving compliance with the Consent Decree (including without limitation any costs associated with retiring any unit(s) under this Decree) and/or the issuance of any permits or other regulatory approvals necessary for the construction of any environmental control equipment or Environmental Mitigation Project(s) required by the Consent Decree. Plaintiff-Intervenors further agree not to provide legal assistance by any staff, contract with any outside counsel to provide legal assistance, or fund any third parties in any legal challenge, including any lawsuit or any petition for a contested case hearing, or in any public forum or proceeding of any kind before any public regulatory entity challenging or criticizing the Defendant's request(s) for rate recovery for any costs incurred in achieving compliance with the Consent Decree (including without limitation any costs associated with retiring any unit(s) under this Decree) and/or the issuance of any permits or other regulatory approvals necessary for purposes of the Consent Decree. If Defendant believes that a Plaintiff-Intervenor has violated this provision, then (i) Defendant shall provide written notice of any alleged breach that describes the

alleged breach with sufficient information to allow the Plaintiff-Intervenor an opportunity to cure; (i) Defendant shall allow the Plaintiff-Intervenor 30 days to cure the alleged breach by withdrawing or disavowing the offending comments or testimony; and (iii) if after 30 days the alleged breach has not been cured to the satisfaction of Defendant, which shall not be unreasonably withheld, Defendant may seek a court order demanding specific performance, but under no circumstances shall Defendant be entitled to monetary damages for an alleged breach of this Agreement.

XII. PERIODIC REPORTING

82. After entry of this Consent Decree, Defendant shall submit to Plaintiffs a periodic report, within 60 Days after the end of each half of the calendar year (January through June and July through December). The report shall include the following information:

a. all information necessary to determine compliance during the reporting period with: all applicable 365-Day Rolling Average Emission Rates and Annual NO_x Tonnage Limitations; the obligation to monitor NO_x and SO_2 emissions; and the obligation to Surrender NO_x Allowances and SO_2 Allowances;

b. an identification of all periods when any pollution control device required by this Consent Decree to Continuously Operate was not operating, the reason(s) for the equipment not operating, and the basis for Defendant's compliance or non-compliance with the Continuous Operation requirements of this Consent Decree; and

c. a summary of Defendant's actions implemented and expenditures (cumulative and in the current reporting period) made pursuant to implementation of the Additional Injunctive Relief required pursuant to Section IX.

If Defendant's initial periodic report covers a period of time of less than 60 Days Defendant shall not be required to submit a periodic report for that period, but shall include all of the above information and data for that period in its next periodic report.

83. In any periodic report submitted pursuant to this Section XII, Defendant may incorporate by reference information previously submitted under its Title V permitting requirements, provided that the Defendant attaches the Title V Permit report (or the pertinent portions of such report) and provides a specific reference to the provisions of the Title V Permit report that are responsive to the information required in the periodic report.

84. In addition to the reports required pursuant to this Section, Defendant shall submit to Plaintiffs a report of any violation or deviation from any provision of this Consent Decree within 15 Working Days after Defendant knew or should have known of the event. In the report, the Defendant shall explain the cause or causes of the violation or deviation and all measures taken or to be taken by the Defendant to cure the reported violation or deviation or to prevent such violations or deviations in the future. If at any time the provisions of this Consent Decree are included in Title V Permits, consistent with the requirements for such inclusion in this Consent Decree, then the deviation reports required under applicable Title V regulations shall be deemed to satisfy all the requirements of this Paragraph.

85. Each report required by this Consent Decree shall be signed by the Responsible Official as defined in Title V of the Clean Air Act for the appropriate Unit, and shall contain the following certification:

> *This information was prepared either by me or under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my evaluation, or the direction and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, I hereby certify under penalty of law that, to the best of my knowledge and belief, this information is true, accurate, and complete. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.*

XIII. REVIEW AND APPROVAL OF SUBMITTALS

86. Defendant shall submit each plan, report, or other submission required by this Consent Decree to Plaintiffs whenever and in the manner such a document is required to be submitted for review or approval pursuant to this Consent Decree. EPA (after consultation with the Plaintiff-Intervenors) may approve the submission or decline to approve it and provide written comments explaining the bases for declining such approval as soon as reasonably practicable. Within 60 Days of receiving written comments from EPA, Defendant shall either: (a) revise the submission consistent with the written comments and provide the revised submission to EPA; or (b) submit the matter for dispute resolution, including the period of informal negotiations, under Section XVI (Dispute Resolution) of this Consent Decree.

87. Upon receipt of EPA's final approval of the submission, or upon completion of the submission pursuant to dispute resolution, Defendant shall implement the approved submission in accordance with the schedule specified therein or another EPA-approved schedule.

XIV. STIPULATED PENALTIES

88. For any failure by Defendant to comply with the terms of this Consent Decree, and subject to the provisions of Sections XV (Force Majeure) and XVI (Dispute Resolution) and the other Paragraphs in this Section of the Consent Decree, Defendant shall pay, within 30 Days after receipt of written demand by the United States, the following stipulated penalties.

Consent Decree Violation	**Stipulated Penalty**
a. Failure to pay the civil penalty as specified in Section X (Civil Penalty) of this Consent Decree	$10,000 per Day
b. Failure to comply with any applicable 365-Day Rolling Average Emission Rate, where the violation is less than 5% in excess of the limits set forth in this Consent Decree	$200 per Day per violation for a 365-Day Rolling Average Emission Rate violation, plus $2,000 for each subsequent 365-Day Rolling Average Emission Rate violation that includes any day in a previously assessed 365-Day Rolling Average Emission Rate violation (e.g., if a violation of the 365-Day Rolling Average Emission Rate for a Unit first occurs on June 1, 2017, occurs again on June 2, 2017, and again on May 31, 2018, the total stipulated penalty assessed for these three violations would equal $77,00)

c. Failure to comply with any applicable 365-Day Rolling Average Emission Rate, where the violation is equal to or greater than 5% but less than 10% in excess of the limits set forth in this Consent Decree	$400 per Day per violation for a 365-Day Rolling Average Emission Rate violation, plus $5,000 for each subsequent 365-Day Rolling Average Emission Rate violation that includes any day in a previously assessed 365-Day Rolling Average Emission Rate violation (e.g., if a violation of the 365-Day Rolling Average Emission Rate for a Unit first occurs on June 1, 2017, occurs again on June 2, 2017, and again on May 31, 2018, the total stipulated penalty assessed for these three violations would equal $156,000)
d. Failure to comply with any applicable 365-Day Rolling Average Emission Rate, where the violation is equal to or greater than 10% in excess of the limits set forth in this Consent Decree	$600 per Day per violation for a 365-Day Rolling Average Emission Rate violation, plus $6,000 for each subsequent 365-Day Rolling Average Emission Rate violation that includes any day in a previously assessed 365-Day Rolling Average Emission Rate violation (e.g., if a violation of the 365-Day Rolling Average Emission Rate for a Unit first occurs on June 1, 2017, occurs again on June 2, 2017, and again on May 31, 2018, the total stipulated penalty assessed for these three violations would equal $231,000)

e. Failure to comply with an applicable Annual NO_x Tonnage Limitation established by this Consent Decree	$5,000 per ton for first 100 tons, $10,000 per ton for each additional ton above 100 tons, plus the Surrender of NO_x Allowances in an amount equal to two times the number of tons of NO_x emitted that exceeded the Annual NO_x Tonnage Limitation
f. Failure to Continuously Operate a NO_x or SO_2 control device as required under this Consent Decree	$10,000 per Day per violation during the first 30 Days; $37,500 per Day per violation thereafter
g. Failure to Retire as required under this Consent Decree	$10,000 per Day per violation during the first 30 Days; $37,500 per Day per violation thereafter
h. Failure to install or operate NO_x and/or SO_2 CEMS as required in this Consent Decree	$1,000 per Day per violation
i. Failure to apply for any permit required by Section XVII (Permits)	$1,000 per Day per violation
j. Failure to timely submit or implement, as approved, the reports, plans, studies, analyses, protocols, or other submittals required by this Consent Decree	$750 per Day per violation during the first 10 Days; $1,000 per Day per violation thereafter
k. Failure to Surrender SO_2 Allowances as required under this Consent Decree	$37,500 per Day. In addition, $1,000 per SO_2 Allowance not Surrendered
l. Failure to Surrender NO_x Allowances as required under this Consent Decree	$37,500 per Day. In addition, $1,000 per NO_x Allowance not Surrendered
m. Using, selling, banking, trading, or transferring NO_x Allowances or SO_2 Allowances except as permitted under this Consent Decree	Surrender of Allowances in an amount equal to four times the number of Allowances used, sold, banked, traded, or transferred in violation of this Consent Decree

n. Failure to undertake and complete as described in Appendix A any of the Environmental Mitigation Projects in compliance with Section IX (Environmental Mitigation Projects) of this Consent Decree	$1,000 per Day per violation during the first 30 Days; $5,000 per Day per violation thereafter
o. Any other violation of this Consent Decree	$1,000 per Day per violation

89. Violations of any limit based on a 365-Day Rolling Average Emission Rate constitute 365 Days of violation but where such a violation (for the same pollutant and from the same Unit) recurs within periods less than 365 Operating Days, Defendant shall not be obligated to pay a daily stipulated penalty for any Day of the recurrence for which a stipulated penalty has already been paid.

90. All stipulated penalties shall begin to accrue on the Day after the performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases, whichever is applicable. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

91. For purposes of the stipulated penalty provisions that require an additional Allowance Surrender, Defendant shall make the Surrender of any such Allowances by June 30 of the immediately following calendar year.

92. All stipulated penalties shall be paid within 30 Days of receipt of written demand to the Defendant from the United States, and Defendant shall continue to make such payments every 30 Days thereafter until the violation(s) no longer continues, unless Defendant elects within 20 Days of receipt of written demand to dispute the imposition or accrual of stipulated

penalties in accordance with the provisions in Section XVI (Dispute Resolution) of this Consent Decree.

93. Stipulated penalties shall continue to accrue as provided in accordance with Paragraph 90 during any dispute, with interest on accrued stipulated penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

a. If the dispute is resolved by agreement, or by a decision of the Plaintiffs pursuant to Section XVI (Dispute Resolution) of this Consent Decree that is not appealed to the Court, accrued stipulated penalties agreed or determined to be owing, together with accrued interest, shall be paid within 30 Days of the effective date of the agreement or of the receipt of the Plaintiffs' decision;

b. If the dispute is appealed to the Court and the Plaintiffs prevail in whole or in part, the Defendant shall, within 30 Days of receipt of the Court's decision or order, pay all accrued stipulated penalties determined by the Court to be owing, together with interest accrued on such penalties determined by the Court to be owing, except as provided in Subparagraph c, below;

c. If the Court's decision is appealed by either Party, the Defendant shall, within 15 Days of receipt of the final appellate court decision, pay all accrued stipulated penalties determined to be owed, together with interest accrued on such stipulated penalties determined to be owed by the appellate court.

Notwithstanding any other provision of this Consent Decree, the accrued stipulated penalties agreed to by the United States and Defendant, or determined by the United States through

Dispute Resolution to be owed, may be less than the stipulated penalty amounts set forth in Paragraph 88.

94. All monetary stipulated penalties shall be paid in the manner set forth in Section X (Civil Penalty) of this Consent Decree and all Allowance Surrender stipulated penalties shall comply with the Allowance Surrender procedures of Section VII (Allowance Surrender Requirements).

95. Should Defendant fail to pay stipulated penalties in compliance with the terms of this Consent Decree, the United States shall be entitled to collect interest on such penalties, as provided for in 28 U.S.C. § 1961.

96. The stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the Plaintiffs by reason of Defendant's failure to comply with any requirement of this Consent Decree or applicable law, except that for any violation of the Act for which this Consent Decree provides for payment of a stipulated penalty, Defendant shall be allowed a credit for stipulated penalties paid against any statutory penalties also imposed for such violation.

XV. FORCE MAJEURE

97. For purposes of this Consent Decree, a "Force Majeure Event" shall mean an event that has been or will be caused by circumstances beyond the control of Defendant, its contractors, or any entity controlled by Defendant that delays or prevents the performance of any obligation under this Consent Decree or otherwise causes a violation of any provision of this Consent Decree despite the Defendant's best efforts to fulfill the obligation. "Best efforts to fulfill the obligation" include using best efforts to anticipate any potential Force Majeure Event

and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, such that the delay and/or violation are minimized to the greatest extent possible and the emissions during such event are minimized to the greatest extent possible. Specific references to Force Majeure in other parts of this Consent Decree do not restrict the ability of the Defendant to assert Force Majeure pursuant to the process described in this Section.

98. Notice of Force Majeure Events. If any event occurs or has occurred that may delay or prevent compliance with or otherwise cause a violation of any obligation under this Consent Decree, as to which Defendant intends to assert a claim of Force Majeure, then the Defendant shall notify Plaintiffs in writing as soon as practicable, but in no event later than 15 Working Days following the date the Defendant first knew, or by the exercise of due diligence should have known, that the event caused or may cause such delay or violation. In this notice, the Defendant shall reference this Paragraph of this Consent Decree and describe the anticipated length of time that the delay or violation may persist, the cause or causes of the Force Majeure Event, all measures taken or to be taken by the Defendant to prevent or minimize the delay or violation, the schedule by which the Defendant proposes to implement those measures, and the Defendant's rationale for attributing the failure, delay, or violation to a Force Majeure Event. A copy of this Notice shall be sent electronically, as soon as practicable, to Plaintiffs. The Defendant shall adopt all reasonable measures to avoid or minimize such failures, delays, or violations. The Defendant shall be deemed to know of any circumstance which it, its contractors, or any entity controlled by it, knew or should have known.

99. Failure to Give Notice. If the Defendant fails to comply with the notice requirements of this Section, the United States (after consultation with the other Plaintiffs) may

void Defendant's claim for Force Majeure as to the specific event for which the Defendant has failed to comply with such notice requirement.

100. Plaintiffs' Response. The United States shall notify the Defendant in writing regarding Defendant's claim of Force Majeure as soon as reasonably practicable. If the United States (after consultation with the other Plaintiffs) agrees that a delay in performance has been or will be caused by a Force Majeure Event, the Plaintiffs and the Defendant shall stipulate to an extension of deadline(s) for performance of the affected compliance requirement(s) by a period equal to the delay actually caused by the event, or as otherwise agreed to by the United States (after consultation with the other Plaintiffs) and the Defendant, in which case the delay at issue shall be deemed not to be a violation of the affected requirement(s) of this Consent Decree. In such circumstances, an appropriate modification shall be made pursuant to Section XXIII (Modification) of this Consent Decree.

101. Disagreement. If the United States (after consultation with the other Plaintiffs) does not agree with the Defendant's claim of Force Majeure, or if the United States and the Defendant cannot agree on the length of the delay actually caused by the Force Majeure Event, the matter shall be resolved in accordance with Section XVI (Dispute Resolution) of this Consent Decree.

102. Burden of Proof. In any dispute regarding Force Majeure, the Defendant shall bear the burden of proving that any delay in performance, or any other violation of any requirement of this Consent Decree, was caused by or will be caused by a Force Majeure Event. The Defendant shall also bear the burden of proving that the Defendant gave the notice required by this Section and the anticipated duration and extent of any failure, delay, or violation(s)

attributable to a Force Majeure Event. An extension of one compliance date may, but will not necessarily, result in an extension of a subsequent compliance date.

103. Events Excluded. Unanticipated or increased costs or expenses associated with the performance of the Defendant's obligations under this Consent Decree shall not constitute a Force Majeure Event.

104. Potential Force Majeure Events. The Parties agree that, depending upon the circumstances related to an event and the Defendant's response to such circumstances, the kinds of events listed below are among those that could qualify as Force Majeure Events within the meaning of this Section: construction, labor, or equipment delays; Malfunction of a Unit or emission control device; unanticipated coal supply or pollution control reagent delivery interruptions; acts of God; acts of war or terrorism; and orders by a government official, government agency, other regulatory authority, or a regional transmission organization (e.g., the Midcontinent Independent System Operator, Inc.), acting under and authorized by applicable law or tariff as accepted by the Federal Energy Regulatory Commission, that directs the Defendant to supply electricity so long as such order is a response to a system-wide (state-wide or regional) emergency which could include unanticipated required operation to avoid loss of load or unserved load or is necessary to preserve the reliability of the bulk power system. Depending upon the circumstances and the Defendant's response to such circumstances, failure of a permitting authority to issue a necessary permit with sufficient time for the Defendant to achieve compliance with this Consent Decree may constitute a Force Majeure Event where the failure of the authority to act is beyond the control of the Defendant and the Defendant has taken all steps available to it to obtain the necessary permit or order, including, but not limited to: submitting a

complete permit application or request; responding to requests for additional information by the authority in a timely fashion; and accepting lawful permit terms and conditions after expeditiously exhausting any legal rights to appeal terms and conditions imposed by the authority.

105. Extended Schedule. As part of the resolution of any matter submitted to this Court under Section XVI (Dispute Resolution) of this Consent Decree regarding a claim of Force Majeure, the United States and Defendant by agreement, or this Court by order, may in appropriate circumstances extend or modify the schedule for completion of work and/or obligations under this Consent Decree to account for the delay in the work and/or obligations that occurred as a result of any delay agreed to by the United States or approved by the Court. The Defendant shall be liable for stipulated penalties pursuant to Section XIV (Stipulated Penalties) for its failure thereafter to complete the work and/or obligations in accordance with the extended or modified schedule (provided that the Defendant shall not be precluded from asserting that a further Force Majeure Event has caused or may cause a delay in complying with the extended or modified schedule).

XVI. DISPUTE RESOLUTION

106. The dispute resolution procedure provided by this Section shall be available to resolve all disputes arising under this Consent Decree, provided that the Party invoking such procedure has first made a good faith attempt to resolve the matter with the other Party. The provisions of this Section XVI shall be the sole and exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

107. The dispute resolution procedure required herein shall be invoked by one Party giving written notice to the other Party advising of a dispute pursuant to this Section. The notice shall describe the nature of the dispute and shall state the noticing Party's position with regard to such dispute. The Party receiving such a notice shall acknowledge receipt of the notice, and the Parties in dispute shall expeditiously schedule a meeting to discuss the dispute informally not later than 14 Days following receipt of such notice.

108. Disputes submitted to dispute resolution under this Section shall, in the first instance, be the subject of informal negotiations between the Parties. Such period of informal negotiations shall not extend beyond 30 Days from the date of the first meeting between the Parties' representatives unless they agree in writing to shorten or extend this period.

109. If the Parties are unable to reach agreement during the informal negotiation period, the United States (after consultation with the Plaintiffs) shall provide Defendant with a written summary of their position regarding the dispute. The written position provided by the Plaintiffs shall be considered binding unless, within 45 Days thereafter, the Defendant seeks judicial resolution of the dispute by filing a petition with this Court. Any Party opposing such petition may submit a response to the petition within 45 Days of filing.

110. The time periods set out in this Section may be shortened or lengthened upon motion to the Court of one of the Parties to the dispute, explaining the Party's basis for seeking such a scheduling modification.

111. This Court shall not draw any inferences nor establish any presumptions adverse to either Party as a result of invocation of this Section or the Parties' inability to reach agreement.

112. As part of the resolution of any dispute under this Section, in appropriate circumstances the Parties may agree, or this Court may order, an extension or modification of the schedule for the completion of the activities required under this Consent Decree to account for the delay that occurred as a result of dispute resolution. The Defendant shall be liable for stipulated penalties pursuant to Section XIV (Stipulated Penalties) for its failure thereafter to complete the work in accordance with the extended or modified schedule, provided that Defendant shall not be precluded from asserting that a Force Majeure Event has caused or may cause a delay in complying with the extended or modified schedule.

113. The Court shall decide all disputes pursuant to applicable principles of law for resolving such disputes. In their filings with the Court under Paragraph 109, the Parties shall state their respective positions as to the applicable standard of law for resolving the particular dispute.

XVII. PERMITS

114. Unless expressly stated otherwise in this Consent Decree, in any instance where otherwise applicable law or this Consent Decree requires Defendant to secure a permit to authorize construction or operation of any device, including all preconstruction, construction, and operating permits required under State law, the Defendant shall make such application in a timely manner. EPA will use best efforts to review expeditiously, to the extent applicable, all permit applications submitted by Defendant to meet the requirements of this Consent Decree.

115. Notwithstanding the previous Paragraphs, nothing in this Consent Decree shall be construed to require Defendant to apply for, amend, or obtain a PSD or Nonattainment NSR permit or permit modification for any physical change in, or any change in the method of

operation of, any Unit that would give rise to claims resolved by Section XI (Resolution of Claims) of this Consent Decree.

116. When permits are required, the Defendant shall complete and submit applications for such permits to the applicable State or local agency to allow sufficient time for all legally required processing and review of the permit request, including requests for additional information by the applicable State or local agency. Any failure by Defendant to submit a timely permit application for a Unit, as required by permitting requirements under state, local, and/or federal regulations, shall bar any use of Section XV (Force Majeure) of this Consent Decree where a Force Majeure claim is based on permitting delays.

117. Notwithstanding the reference to the Title V Permits in this Consent Decree, the enforcement of such permits shall be in accordance with their own terms and the CAA and its implementing regulations. Such Title V Permits shall not be enforceable under this Consent Decree, although any term or limit established by or under this Consent Decree shall be enforceable under this Consent Decree regardless of whether such term has or will become part of a Title V Permit, subject to the terms of Section XXVII (Termination) of this Consent Decree.

118. Within 180 Days after the Date of Entry of this Consent Decree, the Defendant shall amend any applicable Title V Permit application(s), or apply for amendments of its Title V Permits, to include a schedule for all performance, operational, and control technology requirements established by this Consent Decree including, but not limited to, (a) the Interim NO_x Emission Reductions and Controls specified in Section V of this Consent Decree, (b) the Interim SO_2 Emission Reductions and Controls specified in Section VI of this Consent Decree,

(c) requirements pertaining to the Surrender of SO_2 and NO_x Allowances, and (d) the Retirement of Allen Units 1, 2, and 3 as required under this Consent Decree.

119. Within one year from the Date of Entry of this Consent Decree, the Defendant shall apply to permanently include the requirements and limitations enumerated in this Consent Decree into a federally enforceable permit or request a site-specific amendment to the North Carolina SIP, such that the requirements and limitations enumerated in this Consent Decree become and remain 'applicable requirements' as that term is defined in 40 C.F.R. Part 70.2. The permit shall require compliance with the following: (a) the Interim NO_x Emission Reductions and Controls specified in Section V of this Consent Decree, (b) the Interim SO_2 Emission Reductions and Controls specified in Section VI of this Consent Decree, (c) requirements pertaining to the Surrender of SO_2 and NO_x Allowances, and (d) the Retirement of Allen Units 1, 2, and 3 as required under this Consent Decree.

120. Defendant shall provide the Plaintiffs with a copy of each application for a federally enforceable permit or SIP amendment, as well as a copy of any permit or amendment proposed as a result of such application, to allow for timely participation in any public comment opportunity.

XVIII. INFORMATION COLLECTION AND RETENTION

121. Any authorized representative of the United States, including attorneys, contractors, and consultants, upon presentation of credentials, shall have a right of entry upon the premises of the Allen Plant at any reasonable time for the purpose of:

a. monitoring the progress of activities required under this Consent Decree;

b. verifying any data or information submitted to the Plaintiffs in accordance with the terms of this Consent Decree;

c. obtaining samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants; and

d. assessing Defendant's compliance with this Consent Decree.

122. Where applicable, Defendant shall retain, and instruct its contractors and agents to preserve, all non-identical copies of all records and documents (including records and documents in electronic form) in its or its contractors' or agents' possession or control, and that directly relate to Defendant's performance of its obligations under this Consent Decree, as follows:

a. For Already Shutdown Units, until December 31, 2016;

b. For Allen Units 1 and 2, until December 31, 2026;

c. For Allen Unit 3, until December 31, 2026.

This record retention requirement shall apply regardless of any corporate document retention policy to the contrary.

123. All information and documents submitted by Defendant pursuant to this Consent Decree shall be subject to any requests under applicable law providing public disclosure of documents unless (a) the information and documents are subject to legal privileges or protection or (b) Defendant claims and substantiates in accordance with 40 C.F.R. Part 2 and any applicable State law that the information and documents contain confidential business information.

124. Nothing in this Consent Decree shall limit the authority of EPA to conduct tests and inspections at Defendant's facilities under Section 114 of the Act, 42 U.S.C. § 7414, or any other applicable federal laws, regulations, or permits.

XIX. NOTICES

125. Unless otherwise provided herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States of America:

(if by mail service)
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611
DJ# 90-5-2-1-07155

(if by commercial delivery service)
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
ENRD Mailroom, Room 2121
601 D Street, NW
Washington, DC 20004
DJ# 90-5-2-1-07155

and

(if by mail service)
Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Mail Code 2242A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

(if by commercial delivery service)
Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Ariel Rios South Building, Room 1119
1200 Pennsylvania Avenue, NW
Washington, DC 20004

and

Regional Administrator
U.S. EPA Region IV
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

As to Environmental Defense

Environmental Defense Fund
Attention: Michael Regan
4000 Westchase Blvd, Ste 510
Raleigh, NC 27607

Environmental Defense Fund
Attention: Vickie Patton
2060 Broadway, Suite 300
Boulder, CO 80302

As to North Carolina Sierra Club:

Sierra Club
Attention: Bridget Lee
50 F Street, NW, Eighth Floor
Washington, DC 20001

As to North Carolina Public Interest Research Group:

Environment North Carolina (formerly NC PIRG)
Attention: Dave Rogers
112 S. Blount St. -- Suite 102
Raleigh, NC 27601

As to Defendant:

Jason M. Allen
Vice President, Carolinas West
Duke Energy Carolinas, LLC
526 South Church Street (EC11J)
Charlotte, NC 28202

Garry S. Rice, Esq.
Deputy General Counsel
Office of the General Counsel
Duke Energy Corporation
550 South Tryon Street
Mail Code DEC45A
Charlotte, NC 28202

126. All notifications, communications, or submissions made pursuant to this Section shall be sent either by: (a) overnight mail or overnight delivery service with signature required for delivery, or (b) certified or registered mail, return receipt requested. All notifications, communications, and transmissions (a) sent by overnight, certified, or registered mail shall be deemed submitted on the date they are postmarked, or (b) sent by overnight delivery service shall be deemed submitted on the date they are delivered to the delivery service.

127. Any Party may change either the notice recipient or the address for providing notices to it by serving the other Parties with a notice setting forth such new notice recipient or address.

XX. SALES OR TRANSFERS OF OPERATIONAL OR OWNERSHIP INTERESTS

128. If Defendant proposes to sell or transfer an Operational Interest or Ownership Interest to an entity unrelated to Defendant (a "Third Party Purchaser"), Defendant shall advise the Third Party Purchaser in writing of the existence of this Consent Decree prior to such sale or transfer, and shall send a copy of such written notification proposing the transfer of an Operation or Ownership Interest to the Plaintiffs pursuant to Section XIX (Notices) of this Consent Decree at least 60 Days before such proposed sale or transfer. Recipients of this notice shall treat it as confidential for the 60 days if requested by the Defendant; provided that nothing in this

Paragraph prevents Defendant from claiming additional confidentiality protections in accordance with 40 C.F.R. Part 2 and any applicable State law.

129. No earlier than 30 days after providing the notice in Paragraph 128, the Defendant may file a motion with the Court to modify this Consent Decree to make the terms and conditions of this Consent Decree applicable to the Third Party Purchaser. No sale or transfer to a Third Party Purchaser of an Operational Interest or Ownership Interest shall take place before the Third Party Purchaser has executed, and the Court has approved, a modification pursuant to Section XXIII (Modification) of this Consent Decree making the Third Party Purchaser a party to this Consent Decree and liable for the Defendant's applicable requirements of this Consent Decree.

130. This Consent Decree shall not be construed to impede the transfer of any Operational Interests or Ownership Interests between Defendant and any Third Party Purchaser so long as the requirements of this Consent Decree are met. This Consent Decree shall not be construed to prohibit a contractual allocation – as between Defendant and any Third Party Purchaser of Operational Interests or Ownership Interests – of the burdens of compliance with this Consent Decree.

131. No sale or transfer of an Operational or Ownership Interest, whether in compliance with the procedures of this Section or otherwise, shall relieve Defendant of its obligation to ensure that the terms of this Consent Decree are implemented, unless (1) the transferee agrees to undertake all of the obligations required by this Consent Decree that may be applicable to the transferred or purchased Operational or Ownership Interests, and to be substituted for the Defendant as a Party under the Decree pursuant to Section XXIII

(Modification) and thus be bound by the terms thereof, and (2) the United States (after consultation with the other Plaintiffs) consents to relieve the Defendant of its obligations. The United States (after consultation with the other Plaintiffs) may refuse to approve the substitution of the transferee for the Defendant if it determines that the proposed transferee does not possess the requisite technical abilities or financial means to comply with the Consent Decree. Notwithstanding the foregoing, however, Defendant may not assign, and may not be released from, any obligation under this Consent Decree that is not specific to the purchased or transferred Operational Interest or Ownership Interests, including the obligations set forth in Sections IX (Environmental Mitigation Projects) and X (Civil Penalty).

132. Paragraphs 129-131 of this Consent Decree do not apply if an Ownership Interest is sold or transferred solely as collateral security in order to consummate a financing arrangement (not including a sale-leaseback), so long as the Defendant: (a) remains the Owner or Operator (as those terms are used and interpreted under the Clean Air Act) of the subject Unit(s); (b) remains subject to and liable for all obligations and liabilities of this Consent Decree; and (c) supplies Plaintiffs with the following certification within 30 Days of the sale or transfer:

> "Certification of Change in Ownership Interest Solely for Purpose of Consummating Financing. We, the Chief Executive Officer and General Counsel of Duke Energy Carolinas, LLC ("Duke"), hereby jointly certify under Title 18 U.S.C. Section 1001, on our own behalf and on behalf of Duke, that any change in Duke's Ownership Interest in any Unit that is caused by the sale or transfer as collateral security of such Ownership Interest in such Unit(s) pursuant to the financing agreement consummated on [insert applicable date] between Duke and [insert applicable entity]: a) is made solely for the purpose of providing collateral security in order to consummate a financing arrangement; b) does not impair Duke's ability, legally or otherwise, to comply timely with all terms and provisions of the Consent Decree entered in *United States et al. v. Duke Energy Corporation*, Civil Action No. 00-1262 (M.D.N.C.); c) does not affect Duke's ownership or operational control of any Unit covered by that Consent Decree in a manner that is inconsistent with Duke's performance of its obligations under the Consent Decree; and d)

in no way affects the status of Duke's obligations or liabilities under that Consent Decree."

XXI. EFFECTIVE DATE

133. The effective date of this Consent Decree shall be the Date of Entry.

XXII. RETENTION OF JURISDICTION

134. The Court shall retain jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for the interpretation, construction, execution, or modification of the Consent Decree, or for adjudication of disputes. During the term of this Consent Decree, any Party to this Consent Decree may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.

XXIII. MODIFICATION

135. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by Plaintiffs and the Defendant. Where the modification constitutes a material change to any term of this Consent Decree, it shall be effective only upon approval by the Court.

XXIV. GENERAL PROVISIONS

136. When this Consent Decree specifies that Defendant shall achieve and maintain a 365-Day Rolling Average Emission Rate, the Parties expressly recognize that compliance with such 365-Day Rolling Average Emission Rate shall commence immediately upon the date specified and that compliance as of such specified date (*e.g.*, 485 Days after the Date of Entry) shall be determined based on data from the specified compliance date and the 364 prior Unit Operating Days.

137. This Consent Decree is not a permit. Compliance with the terms of this Consent Decree does not guarantee compliance with all applicable federal, state, or local laws or regulations. The limitations and requirements set forth herein do not relieve Defendant from any obligation to comply with other state and federal requirements under any applicable laws.

138. This Consent Decree does not apply to any claim(s) of alleged criminal liability.

139. In any subsequent administrative or judicial action initiated by the United States or the Plaintiff-Intervenors for injunctive relief or civil penalties relating to the facilities covered by this Consent Decree, Defendant shall not assert any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, or claim splitting, or any other defense based upon the contention that the claims raised by the United States or the Plaintiff-Intervenors in the subsequent proceeding were brought, or should have been brought, in the instant case; provided, however, that nothing in this Paragraph is intended to affect the validity of Section XI (Resolution of Claims), or in any way compromise or diminish the waivers, releases, and covenants provided by Plaintiffs in Section XI (Resolution of Claims).

140. Nothing in this Consent Decree shall relieve Defendant from its obligation to comply with all applicable federal, state, and local laws and regulations, including, but not limited to, the Clean Water Act and the National Pollutant Discharge Elimination System (NPDES) implementing regulations, National Ambient Air Quality Standards, the National Emission Standards for Hazardous Air Pollutants From Coal and Oil-Fired Electric Utility Steam Generating Units (Utility MACT or MATS), Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial Commercial-Institutional Steam Generating Units (Utility NSPS). Nothing in this Consent Decree should be

construed to provide any relief from the emission limits or deadlines specified in such regulations, including, but not limited to, deadlines for the installation of pollution controls required by any such regulations, nor shall this Consent Decree be construed as a pre-determination of eligibility for the one year extension that may be provided under 42 U.S.C. § 7412(i)(3)(B).

141. Subject to the provisions in Section XI (Resolution of Claims), Section XVI (Dispute Resolution), and XIV (Stipulated Penalties) nothing contained in this Consent Decree shall be construed to prevent or limit the rights of the Plaintiffs to obtain penalties or injunctive relief under the Act or other federal, state, or local statutes, regulations, or permits.

142. Nothing in this Consent Decree is intended to, or shall, alter or waive any applicable law (including but not limited to any defenses, entitlements, challenges, or clarifications related to the Credible Evidence Rule, 62 Fed. Reg. 8314 (Feb. 24, 1997)) concerning the use of data for any purpose under the Act.

143. Each limit and/or other requirement established by or under this Consent Decree is a separate, independent requirement.

144. Performance standards, emissions limits, and other quantitative standards set by or under this Consent Decree must be met to the number of significant digits in which the standard or limit is expressed. For example, an Emission Rate of 0.100 is not met if the actual Emission Rate is 0.101. Defendant shall round the fourth significant digit to the nearest third significant digit, or the third significant digit to the nearest second significant digit, depending upon whether the limit is expressed to three or two significant digits. For example, if an actual Emission Rate is 0.1004, that shall be reported as 0.100, and shall be in compliance with an

Emission Rate of 0.100, and if an actual Emission Rate is 0.1005, that shall be reported as 0.101, and shall not be in compliance with an Emission Rate of 0.100. Defendant shall report data to the number of significant digits in which the standard or limit is expressed.

145. This Consent Decree does not limit, enlarge, or affect the rights of any Party to this Consent Decree as against any third parties.

146. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree, and supersedes all prior agreements and understandings among the Parties related to the subject matter herein. No document, representation, inducement, agreement, understanding, or promise constitutes any part of this Consent Decree or the settlement it represents, nor shall they be used in construing the terms of this Consent Decree.

147. Except as provided in this Paragraph, each Party to this action shall bear its own costs and attorneys' fees. Defendant shall reimburse the Plaintiff Intervenors' attorneys' fees and costs in the amount of $100,000 within thirty (30) Days of the Date of Entry of this Consent Decree. Payment instructions shall be provided to Defendant by the Plaintiff Intervenors within ten (10) days after the Date of Lodging.

XXV. SIGNATORIES AND SERVICE

148. Each undersigned representative of Defendant and the Co-Plaintiffs, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind to this document the Party he or she represents.

149. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

XXVI. PUBLIC COMMENT

150. The Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the procedures of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and the right of the United States to withdraw or withhold consent if the comments disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Defendant shall not oppose entry of this Consent Decree by this Court or challenge any provision of this Consent Decree unless the United States has notified the Defendant, in writing, that the United States no longer supports entry of this Consent Decree.

XXVII. TERMINATION

151. Once Defendant has:

a. completed the requirements of Section IV (Retirement of Units Allegedly Modified Pursuant to the Plant Modernization Program), Section IX (Additional Injunctive Relief), and Section XVII (Permits);

b. maintained continuous compliance with this Consent Decree, including the interim requirements of Section V (Interim NOx Emission Reductions and Controls) and Section VI (Interim SO2 Emission Reductions and Controls), and Section VII (Allowance Surrender Requirements); and

c. paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree; and

d. certified that the date is later than December 31, 2025,

Defendant may serve upon the Plaintiffs a Request for Termination of this Consent Decree as a whole, stating that Defendant has satisfied all the requirements of this Paragraph, together with all necessary supporting documentation.

152. Notwithstanding the provisions of Paragraph 151, Defendant may serve upon Plaintiffs a Request for Termination as to Completed Tasks. As soon as Defendant completes a Retirement or any other requirement of this Consent Decree that is not ongoing or recurring, Defendant may serve upon Plaintiffs a Request for Termination of the provision or provisions of this Consent Decree that imposed the requirement.

153. Following receipt by the Plaintiffs of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether the Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with the other Plaintiffs, agrees that the Decree may be termination, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

154. If the United States, after consultation with the other Plaintiffs, does not agree that the Decree may be termination, Defendant may invoke Dispute Resolution under Section XVI of this Decree. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 107 of Section XVI, until 60 days after service of its Request for Termination or receipt of an adverse decision from the Plaintiffs, whichever is earlier.

XXVIII. FINAL JUDGMENT

155. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the Plaintiffs and the Defendant.

_____
William L. Osteen, Jr.
UNITED STATES DISTRICT JUDGE

Signature Page for *United States of America et al. v. Duke Energy Corporation* Consent Decree

FOR THE UNITED STATES DEPARTMENT OF JUSTICE

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Signature Page for *United States of America et al. v. Duke Energy Corporation* Consent Decree

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Signature Page for *United States of America et al. v. Duke Energy Corporation* Consent Decree

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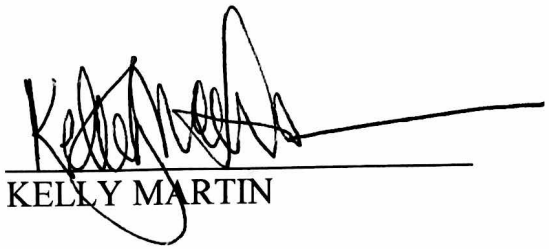
Signature Page for *United States of America et al. v. Duke Energy Corporation* Consent Decree

FOR ENVIRONMENTAL DEFENSE

VICKIE PATTON
General Counsel

Signature Page for *United States of America et al. v. Duke Energy Corporation* Consent Decree

FOR NORTH CAROLINA SIERRA CLUB



KELLY MARTIN

Signature Page for *United States of America et al. v. Duke Energy Corporation* Consent Decree

FOR ENVIRONMENT NORTH CAROLINA (FORMERLY NORTH CAROLINA PUBLIC INTEREST RESEARCH GROUP)

ELIZABETH OUZTS

Signature Page for *United States of America et al. v. Duke Energy Corporation* Consent Decree

FOR DUKE ENERGY CAROLINAS, LLC

JULIA S. JANSON
Executive Vice-President
Chief Legal Officer and Corporate Secretary
DUKE ENERGY CAROLINAS, LLC and
Authorized Designated Official for
DUKE ENERGY CAROLINAS, LLC

APPENDIX A

ENVIRONMENTAL MITIGATION PROJECTS

Defendant shall spend at least $4,400,000 in Project Dollars to implement approved Environmental Mitigation Projects ("Project" or "Projects") as described below and shall comply with the requirements of this Appendix and with Section IX (Additional Injunctive Relief) of the Consent Decree. Nothing in the Consent Decree or this Appendix shall require Defendant to spend any more than a total of $4,400,000 on Environmental Mitigation Projects.

I. Forest Service/Park Service Mitigation

A. Within forty-five (45) days from the Date of Entry, Defendant shall pay to the United States Forest Service the sum of $175,000 to be used in accordance with 16 U.S.C. § 579c, to restore soil calcium to support healthy forests on lands under the administration of the Forest Service. The Project(s) shall focus on the Cherokee, Nantahala, and/or Pisgah National Forests.

B. Within forty-five (45) days from the Date of Entry, Defendant shall pay to the National Park Service the sum of $175,000 to be used in accordance with the Park System Resource Protection Act, 16 U.S.C. § 19jj, for the restoration of native brook trout and/or the revegetation of Red Spruce trees in Great Smoky Mountain National Park.

C. Payment of the amounts specified in the preceding paragraphs shall be made to the Forest Service and Park Service pursuant to payment instructions provided to Defendant before or after the Date of Lodging. Notwithstanding Section I.A of this Appendix, payment of funds by Defendant is not due until ten (10) days after receipt of payment instructions, or forty-five (45) days after the Date of Entry, whichever is later.

D. Upon payment of the amount specified in Section I.A of this Appendix, Defendant shall have no further responsibilities regarding the implementation of any Projects selected by the Forest Service or Park Service in connection with this provision of the Consent Decree; provided, however, that the Defendant may, with prior approval by EPA, make an additional payment of up to $175,000 to the United States Forest Service and/or the National Park Service to fund the items identified in Sections I.A and I.B of this Appendix if necessary to comply with the requirements of Paragraph 70 of this Decree.

II. Additional Environmental Mitigation Projects – General Provisions

A. Within 120 Days from the Date of Entry of this Decree, Defendant shall submit proposed project plan(s) ("Project Plan" or "Project Plans") to EPA for review and approval (in consultation with the Plaintiff Intervenors) pursuant to Section XIII of the Consent Decree (Review and Approval of Submittals) for spending a total of $4,050,000 in Project Dollars as further specified in Sections III, IV, V, and VI of this Appendix over a period of not more than five (5) years from the Date of Entry.

B. The Parties agree, subject to the requirements of this Appendix, that Defendant shall submit plans for the Projects specified in Sections V and VI and may in its discretion decide to submit plans for the Projects specified in Sections III and/or IV. EPA reserves the right to disapprove any proposed Project should EPA determine, after an analysis of Defendant's Project Plan that the Project does not conform to the requirements of the Consent Decree.

C. Defendant may complete, in whole or in part, the Project through a third-party non-profit organization or through a foundation to which Defendant would provide the funds required for the implementation or funding of the Project(s), provided that Defendant limits the use of Project Dollars for any third-party administrative expenses associated with implementation of the Project to no greater than 10% of the Project Dollars that Defendant provides to the third-party; provided further, that upon a showing that additional funding for administrative expenses is necessary to adequately implement the Project described in Section V of this Appendix (Residential Wood-Burning Appliance Change-out Program), then, upon approval by EPA, the Plan for such Project may allow administrative expenses up to 15%.

D. Defendant may spread its payments for the Project(s) over the five year period from the Date of Entry. Defendant may also choose to accelerate its payments to better effectuate a Project Plan, but Defendant shall not be entitled to any reduction in the nominal amount of the required payments by virtue of the early expenditures

E. All proposed Project Plans shall include the following:

1. A plan for implementing the Project.

2. A summary-level budget for the Project.

3. A time line for implementation of the Project.

4. A description of the anticipated environmental benefits of the Project including an estimate of any emission reductions or mitigation expected to be realized, and the methodology and any calculations used in the derivation of such expected benefits, reductions, or mitigation.

5. For each Project undertaken, a certification, as part of each plan submitted to EPA for the Project, that Defendant had not otherwise committed to perform the Project generally described in the plan, that Defendant is unaware of any other person who is committed to perform the Project, and that Defendant will not use any portion of the Project to satisfy any obligations that it may have under other applicable requirements of law, including but not limited to any applicable renewable or energy efficiency portfolio standards.

F. Upon approval by EPA of the Project Plan(s) required by this Appendix, Defendant shall complete the approved Projects according to the approved Project Plan(s). Nothing in this Consent Decree shall be interpreted to prohibit Defendant from completing the Projects ahead of schedule.

G. Commencing with the first periodic report due pursuant to Section XII (Periodic Reporting) of the Consent Decree, and continuing biannually thereafter until completion of the Project(s), Defendant shall include in the periodic report information describing the progress of the Project and the Project Dollars expended on the Project.

H. Within 90 Days following completion of a Project, Defendant shall submit to the Plaintiffs a report documenting completion of the Project in accordance with Paragraph 77 of the Decree.

I. If Defendant opts not to perform a Project for which it has submitted a plan that has been approved by EPA, then it shall indicate withdrawal from the Project in its next progress report due pursuant to Section XII (Periodic Reporting) of the Consent Decree. Defendant will not have any obligation for such Project pursuant to the Consent Decree, provided that Defendant is otherwise in compliance with the Environmental Mitigation Project requirements of the Consent Decree, which may include performing one or more Projects approved by EPA pursuant to this Appendix.

III. Installation of Electric Vehicle Charging Infrastructure

A. In accordance with and subject to the requirements of Section II of this Appendix, Defendant may submit a Project Plan for enhancements to the electric vehicle charging infrastructure in North Carolina. Battery powered and some hybrid vehicles need plug-in infrastructure to recharge the batteries. Lack of a charging infrastructure is a major barrier to adoption of electric vehicles. Establishment of electric vehicle charging stations could expand the useful driving range of electric vehicles as well as encourage drivers to purchase electric vehicles for local and commuting use.

B. In the event Defendant elects to implement this Project, the proposed plan shall

satisfy the following criteria:

1. The proposed plan shall meet the requirements of Section II.E above.

2. Identify process and timeline for identifying locations. Locations for charging stations would be targeted for areas where vehicles could be left for several hours to charge the electric vehicle's battery system. Defendant would work with local governments to select sites. Defendant may also partner with third party organizations to handle selection of locations. Locations would be sought to maximize the number of vehicles that could utilize the chargers while striving to expand the network of electric vehicle charging stations currently in North Carolina. Potential sites could consist of locations that provide public access, including parking lots at mass transit facilities, large industrial facilities or similar employers, or other locations where charging will encourage electric vehicle usage.

3. Provide for the construction of electric vehicle charging infrastructure with established technologies.

4. Outline process for identifying third party to partner with to administer and takeover maintenance of infrastructure after installation.

5. Account for hardware procurement and installation costs at the recipient locations.

IV. Advanced Truck Stop Electrification Project

A. In accordance with and subject to the requirements of Section II of this Appendix, Defendant may submit a Project Plan for the completion of the installation of Advanced Truck Stop Electrification in North Carolina. Long-haul truck drivers often idle their engines during rest stops to power vehicle systems, such as to supply heat or cooling in their sleeper cab compartments, and to maintain vehicle battery charge while electrical appliances such as TVs, computers and microwaves are in use. Modifications to rest areas to provide access to electrical power will allow truck drivers to turn their engines off. Truck driver utilization of the Advanced Truck Stop Electrification will result in reduced idling time and therefore reduced fuel usage, reduced emissions of PM, NOx, VOCs and toxics, and reduced noise, as idling trucks typically use about 1 gallon of diesel fuel/hour, creating emissions and noise pollution.

B. In the event Defendant elects to implement this Project, the proposed plan shall satisfy the following criteria:

1. The proposed plan shall meet the requirements of Section II.E above.

2. Identify process and timeline to work with North Carolina state transportation authorities to select sites.

3. Outline process for identifying third party (e.g., state transportation authority, truck stop owner/operator) to partner with to administer and takeover maintenance of infrastructure after installation.

4. Provide for the construction of Advanced Truck Stop Electrification stations with established technologies and equipment designed to reduce emissions.

5. Account for hardware procurement and installation costs at the recipient truck stops.

V. Residential Wood-burning Appliance Change-Out Program (Minimum of $500,000)

A. In accordance with and subject to the requirements of Section II of this Appendix, Defendant shall propose a plan to sponsor a wood burning appliance (*e.g.*, stoves, boilers and fireplaces) replacement and retrofit program that would be implemented by one or more third-parties (the "Program"). Defendant shall spend a minimum of $500,000 in Project Dollars on the word burning applicable replacement and retrofit program.

B. Defendant shall sponsor the implementation of the Program in North Carolina. The Project shall give priority to areas located within a geography and topography that make them susceptible to high levels of particle pollution and that have a significant potential for replacement of older and/or higher-polluting wood or coal-burning appliances, such as the Eastern Band of Cherokee Indians (ECBI) community in North Carolina including the counties of Jackson, Cherokee, Graham, Haywood, and Swain, as well as Mecklenburg county.

C. The air pollutant reductions shall be obtained by replacing, retrofitting, or upgrading inefficient, higher polluting wood burning appliances, including fireplaces, with cleaner burning appliances and technologies, such as: (1) retrofitting older hydronic heaters (aka outdoor wood boilers) to meet EPA Phase II hydronic heater standards; (2) replacing older hydronic heaters with EPA Phase II hydronic heaters, EPA-certified woodstoves, other cleaner burning, more energy efficient hearth appliances (*e.g.*, wood pellet, gas or propane appliances), or EPA Energy Star qualified heating appliances; (3) replacing non EPA-certified woodstoves with EPA-certified woodstoves or cleaner burning, more energy-efficient hearth appliances; (4) replacing spent catalysts in EPA-certified woodstoves; and (5) replacing/retrofitting wood

burning fireplaces with EPA Phase 2 Qualified Retrofit devices or cleaner burning natural gas fireplaces. To qualify for replacement, retrofitting, or upgrading, the wood burning appliance/fireplace must be in regular use in a primary residence during the home-heating season, and preference shall be given to replacement, retrofitting, or upgrading wood burning appliances/fireplaces that are a primary or significant source of residential heat. The appliances that are replaced under the Program shall be permanently removed from use and appropriately disposed.

D. Defendant and the third party(ies) that will implement the Program shall consult with EPA's Residential Wood Smoke Reduction Team and shall implement the Program consistent with the materials available on EPA's Burn Wise website at http://www.epa.gov/burnwise.

E. The Program shall provide incentives for the wood burning appliance and fireplace replacements, retrofits, and upgrades described above in this Section through rebates, vouchers, and/or discounts. A wood moisture meter shall be provided to every Program participant that receives a new wood-burning appliance or retrofits an existing wood-burning appliance.

F. The Program shall provide educational information and outreach regarding the energy efficiency, health, and safety benefits of cleaner wood burning appliances and the proper operation of appliances including, if applicable, information related to the importance of burning dry seasoned wood. The costs associated with this element of the Program shall count towards Project Dollars and will not be considered part of the administrative costs described in Section II.C of this Appendix; however, the costs associated with this element of the Program shall be marginal as compared to the total Project Dollars attributed to the Program.

G. In addition to the requirements of Section II.E of this Appendix, the Program plan proposed by Defendant shall:

1. Describe how the plan is consistent with the requirements of this Section and the Consent Decree, and how the project will result in the emission reductions projected to be reduced pursuant to this Section.

2. Identify the third party(ies) that have agreed to implement the proposed Program.

3. Describe the schedule and the budgetary increments in which Defendant shall provide the necessary funding to implement the proposed Program.

4. Describe all of the elements of the proposed Program, including measures, to ensure that it is implemented in accordance with the requirements of this Appendix, and that the Program Dollars will be used to support the actual

replacement, retrofitting, and/or upgrading of wood burning appliances and fireplaces currently in regular use in a primary residence during the home-heating season.

5. An estimate of the number and type of appliances the Defendant intends to subsidize or make available through the project, the cost per unit, and the value of the rebate or incentive per unit. In addition, if the plan proposes to provide rebates or vouchers for the full cost of replacing older hydronic heaters or non EPA-certified woodstoves for income-qualified residential homeowners, describe the criteria that will be used to determine which residential homeowners should be eligible for such full cost replacement.

6. If applicable, identify any organizations or entities with which the third party(ies) will partner to implement the proposed Program, including wood burning appliance trade associations, national or local health organizations, facilities that will dispose of old stoves so that they cannot be resold or reused, individual woodstove/fireplace retailers, propane dealers, housing assistance agencies, local fire departments, and local green energy organizations.

7. Describe how the program will ensure the inefficient, higher polluting wood burning stoves and fireplaces that are replaced under the proposed Program will be properly recycled or disposed.

8. Describe how the third party(ies) will conduct outreach within the geographic area of the proposed Program.

VI. Clean Energy/Energy Efficiency (up to $600,000)

A. In accordance with and subject to the requirements of Section II of this Appendix, Defendant shall propose a plan not to exceed $600,000 for Clean Energy/Energy Efficiency Projects. For purposes of this Section VI, "Clean Energy/Energy Efficiency Projects" shall include the purchase and installation of clean air energy generation resources and/or environmentally beneficial energy efficiency measures in economically distressed counties within Defendant's service territory. Notwithstanding Section II.E.5 of this Appendix, for purposes of this Section VI, Clean Energy/Energy Efficiency Projects may also include efforts to enhance community awareness of Defendant's already existing energy efficiency programs in Defendant's service territory through increased advertising, presentations at community meetings, outreach to non-governmental organizations (NGOs) and local government agencies that work with lower income residents, and preparation of collateral materials for NGOs and government agencies to promote Clean Energy/Energy Efficiency Projects; however, the costs associated with such efforts to

enhance community awareness shall not be a majority of the total Project Dollars attributed to the Clean Energy/Energy Efficiency Projects.

B. In addition to the requirements of Section II.E of this Appendix, the Clean Energy/Energy Efficiency Projects plan proposed by Defendant shall:

1. Describe how the proposed projects in the plan are consistent with the requirements of this Section and the Consent Decree, and how the projects will seek to achieve the emission reductions projected pursuant to this Section.

2. Include a budget and schedule for completing the project on a phased schedule, and the supporting methodologies and calculations for the budget.