

SETTLEMENT AND RELEASE AGREEMENT

THIS SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS (the “**Agreement**”) is made as of the _____ day of _____, 2015, by and among DUKE ENERGY PROGRESS, INC., a North Carolina corporation (“**DEP**”), DUKE ENERGY CAROLINAS, LLC, a North Carolina limited liability company, (“**DEC**”) (DEC and DEP collectively referred to as “**Duke**”) and LEE COUNTY (“**Lee County**”), a political subdivision of the State of North Carolina and a body politic and corporate. Lee County and Duke are collectively referred to herein as the “**Parties.**”

RECITALS

A. Within the geographic boundaries of Lee County is an abandoned clay mine (commonly known as the Colon Mine Site) located off Brickyard Road, in Sanford, North Carolina (the “**Site**”).

B. Subject to and in accordance with North Carolina and federal law, Duke Energy Business Services, LLC, as agent for and on behalf of DEP and DEC, has contracted with Charah, Inc. (“**Charah**”) to transport certain Coal Ash (as hereinafter defined) from DEC and DEP facilities for use as structural fill at the Site.

C. Following the public announcement of Duke’s plans to beneficially reuse certain Coal Ash as structural fill at the Site, the Lee County Board of Commissioners engaged counsel to explore claims against Duke in connection with its proposed use of the Site and, on January 5, 2015, the Lee County Board of Commissioners passed a resolution opposing coal ash disposal in Lee County, and objecting to Duke’s plans to place coal ash at the Site. Lee County has threatened litigation, injunctive claims, and other administrative rights and remedies regarding permitting and use of the Site against Duke and Charah, which would have a detrimental impact on Duke’s ability to timely and cost-effectively comply with state and federal law regarding disposition of Coal Ash (as hereinafter defined). The subject of the recitals contained in this paragraph is hereinafter referred to as the “**Dispute.**”

D. In lieu of protracted litigation, and without admission of liability or wrongdoing by any party hereto, the Parties have agreed to fully and finally compromise and resolve the Dispute and any and all matters arising out of or related to the Dispute on the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing premises and recitals, the covenants, representations, and warranties contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and subject to the terms herein, the Parties agree as follows:

1. **Incorporation.** The foregoing recitals are incorporated herein by reference as if fully set forth at this point in the text of the Agreement.

2. **Definitions.**

“**Coal Ash**” means fly ash, bottom ash, boiler slag, or flue gas desulfurization materials or effluents from a Duke coal-fired generating unit in North Carolina.

“**Environmental Laws**” means any and all federal, state and local statutes, rules, regulations, ordinances, and other provisions having the force or effect of law, all judicial and administrative orders and determinations, and all common law concerning human health, safety, worker health and safety, pollution and protection of the environment or natural resources, including without limitation, the North Carolina Coal Ash Management Act of 2014 (“**CAMA**”) and the United States Environmental Protection Agency’s Disposal of Coal Combustion Residuals from Electric Utilities final rule, each as amended and as now or hereafter in effect.

3. **Settlement Payments.** Duke shall pay Lee County the sum of one dollar and fifty cents (\$1.50) per ton for up to eight (8) million tons of Coal Ash that Duke places at the Site. Duke shall pay Lee County the sum of three dollars and fifty cents (\$3.50) per ton for each ton of Coal Ash that Duke places at the Site in excess of eight (8) million tons (if additional capacity exists beyond current expectations). The weight of the Coal Ash shall be determined based upon measurement by DOT-approved scales at the Duke generation sites or the Site as applicable or by such method as is mutually agreed upon between Duke and Charah. Such scale reports shall be reasonably made available to Lee County upon request and by such method as is mutually agreed upon between Duke and Lee County.

a. **Initial Advance.** Duke shall make an initial payment to Lee County of Four Million and No/100 Dollars (\$4,000,000.00) within ten (10) business days of the Site’s Commercial Operation Date. The “**Commercial Operation Date**” shall be the date that all of the following have occurred: (i) all permits and governmental approvals required by applicable laws, including Environmental Laws, have been received by Duke or Charah for reclaiming the Site with coal ash structural fill; and (ii) the Site has been fully constructed, prepared, improved, developed, and tested such that it is fully ready and capable of receiving deliveries of Coal Ash. This initial advance shall cover the first 2,666,666 tons of Coal Ash placed at the Site. Once Duke has placed 2,666,666 tons of Coal Ash to the Site, it shall begin making annual payments to Lee County as described in paragraph 3.b. below.

b. **Annual Payments.** The first annual payment described in paragraph 3.a. above shall be made on or about the date that is twelve (12) months after the date that Duke completes placement of the first 2,666,666 tons of Coal Ash to the Site, and shall be based on the quantity of Coal Ash delivered during that period multiplied by the rate of \$1.50 per ton. Duke shall continue to make payments annually thereafter, based on the quantity of Coal Ash placed at the Site during the prior twelve (12) month period multiplied by the rate of \$1.50 per ton, until eight (8) million tons of Coal Ash has been placed at the Site. Payments for Coal Ash delivered to the Site in excess of eight million tons (if such capacity and need exist) shall be made at the rate of

three dollars and fifty cents (\$3.50) per ton. Duke shall provide written notice to Lee County when Duke has placed 2,666,666 tons of Coal Ash at the Site.

c. **Rate Adjustment.** To the extent that DEP or DEC enters into an agreement with any other North Carolina municipality or county for a similar mine reclamation structural fill project, and such agreement provides for a payment rate for the placement of Coal Ash that is more favorable, considering all of the relevant circumstances, than the rate provided for in this Agreement, then Duke agrees to negotiate with Lee County in good faith to amend the terms of this Agreement to provide Lee County equivalent benefits. The rate adjustment provisions of this paragraph 3(c) shall terminate when Coal Ash placement at the Site has been completed by Duke. If negotiations are unsuccessful, the Parties will participate in a mediated settlement conference with a North Carolina certified mediator or a mutually agreeable neutral third party within sixty (60) days of a written mediation request. The costs of the mediated settlement conference will be equally divided between the Parties. Neither Party may file a lawsuit related to the rate adjustment discussed in this paragraph 3.c. unless and until the mediation is declared an impasse. The Parties agree that all statutes of limitation and repose will be tolled upon service of a written mediation request and will remain tolled until sixty (60) days after the mediated settlement conference.

4. **Access to Coal Ash Delivery Records.** Duke will maintain all records related to Coal Ash placed at the Site to the extent required of Duke by federal or state law, including without limitation applicable Environmental Laws. Lee County may, upon reasonable notice and no more than monthly, review at reasonable times business records maintained by Duke sufficient to determine the dates of delivery and quantities of Coal Ash placed at the Site. Any such review will be conducted in a manner designed to minimize any adverse impact on Duke's normal business operations and reviewing personnel of Lee County will comply with any reasonable standard safety and security procedures of Duke in conducting any such review.

5. **Site Restrictions.** Duke agrees that it will not place Coal Ash at the Site that was the by-product of generating electricity at a facility located outside of North Carolina. The Coal Ash placed at the Site by or on behalf of Duke will be of types consistent with "Coal combustion products" as such term is defined under the CAMA. Duke further agrees that the Site will be the only site used by Duke for coal ash storage in Lee County.

6. **Notice of Permit Violations.** If Duke receives any written notice of violation or notice of enforcement action from the North Carolina Department of Environment and Natural Resources or other governmental authority having jurisdiction that Duke or Charah is in violation of any permit issued to Duke or Charah pertaining to placement of Coal Ash at the Site, Duke shall provide written notice to Lee County of such violation or enforcement action within ten (10) business days of Duke's receipt thereof.

7. **Sampling.** Prior to the first placement of Coal Ash at the Site, Duke shall request that Charah notify Lee County of the sampling and testing protocols utilized for the Site for compliance with applicable Environmental Laws. Duke shall provide or cause Charah to provide Lee County with periodic reports, but not more than semi-annually, confirming that such sampling and testing protocols are being followed or amended, as the case may be. Duke, Charah

or their affiliates or assigns shall allow Lee County and its affiliates or assigns, upon reasonable notice to Duke or Charah, to take split samples of Coal Ash at the Site subject to the following: (i) such split samples may be taken only once annually at the same time that Duke, Charah or their affiliates or assigns are sampling Coal Ash as required by applicable permit(s); (ii) the method of sampling shall be consistent with the methods required by applicable permit(s) or by such method as is mutually agreed upon between Duke and Charah; (iii) testing protocols shall be consistent with the protocols required by applicable permit(s) as called for in the agreement between Duke and Charah and (iv) Lee County shall pay its cost for its portion of the split sample. Prior to the first placement of Coal Ash at the Site, Duke will offer to conduct (or cause Charah to offer to conduct) one-time baseline sampling, in accordance with the sampling protocol utilized at the Site, of private and public water supply wells existing as of the date of this Agreement and located within a 1,000-foot radius of the Site. The baseline sampling results for each such well shall also be provided to the respective well owner. Duke and Charah shall have no obligation to conduct baseline sampling with respect to any well for which the well owner (i) does not give Duke or Charah written consent to conduct baseline sampling, or (ii) demands that Duke or Charah make payment or satisfy unreasonable conditions in order to obtain consent for the baseline sampling.

8. **Support for Lee County Economic Development.** Duke and Lee County acknowledge that they both have a mutual interest in the economic development of Lee County. Duke will make its Site Readiness program available to Lee County for a site identified by Lee County. Duke will meet with Lee County, at reasonable times to be agreed upon by the Parties, to discuss other potential opportunities for Duke's Economic Development Staff to assist Lee County and its partners with their economic development initiatives. Duke will consider in good faith applications by Lee County for additional or increased assistance from funds and programs available through or supported by Duke, including, without limitation, the Carolinas Investment Fund, Lee County's economic development 501(c)(3), and community college grants for Central Carolina Community College. Such economic development assistance, as contemplated in this paragraph, shall exist for the duration of the Site operations. Priority for projects under this paragraph shall be given to the Colon / Osgood community and those areas surrounding the Site.

9. **Release of All Claims as to Duke.** Lee County hereby irrevocably releases, acquits, and forever discharges Duke, Duke Energy Business Services, LLC and their respective predecessors, successors, parent companies, affiliates, subsidiaries and assigns, and any person or entity acting for or on their behalf, including, in their capacities as such, without limitation, their respective past, present and future officers, directors, employees, attorneys, agents, insurers and reinsurers, heirs, executors, administrators, representatives, successors and assigns, and their respective heirs, executors, administrators, representatives, successors and assigns (collectively, the "**Duke Released Parties**"), except for Charah and Green Meadows, LLC ("Green Meadows"), which entities are expressly not included in this Release, from any and all past, present or future actions, causes of action, claims, demands, obligations, rights, costs, damages, and expenses (including attorney's fees) of any kind whatsoever, whether based on a trespass, tort, contract, or other theory of recovery, and including challenge to any permit needed for the Site, however denominated, asserted or unasserted, known or unknown, absolute or contingent, whether at law or in equity, arising out of or relating to, directly or indirectly, the Dispute or the subject of the Dispute (the "**Duke Released Claims**"). Notwithstanding the foregoing, nothing

herein shall be deemed to release, and Lee County expressly reserves, claims for enforcement of this Agreement. Further, nothing herein is intended or shall be deemed to constitute a release or waiver of any claim, defense, right or remedy of any party based on the failure or alleged failure of the Duke Released Parties after the date of this Agreement to comply with all Environmental Laws as related to coal ash at the Site. The release set forth herein shall become effective upon execution of this Agreement by the Parties.

10. Release of All Claims as to Lee County. Duke and Duke Energy Business Services, LLC, hereby irrevocably release, acquit, and forever discharge Lee County and its predecessors, successors, affiliates, subsidiaries and assigns, and any person or entity acting for or on its behalf, including, in their capacities as such, without limitation, their respective past, present and future commissioners, officers, directors, employees, attorneys, agents, insurers and reinsurers, and their respective heirs, executors, administrators, representatives, successors and assigns (collectively, the “Lee County **Released Parties**”), from any and all past, present or future actions, causes of action, claims, demands, obligations, rights, costs, damages, and expenses (including attorney’s fees) of any kind whatsoever, whether based on a trespass, tort, contract, or other theory of recovery, however denominated, asserted or unasserted, known or unknown, absolute or contingent, whether at law or in equity, arising out of or relating to, directly or indirectly, the Dispute or the subject of the Dispute (the “Lee County **Released Claims**”). Notwithstanding the foregoing, nothing herein shall be deemed to release, and Duke expressly reserves, claims for enforcement of this Agreement. The release set forth herein shall become effective upon execution of this Agreement by the Parties.

11. Covenant Not to Sue. Except as otherwise expressly provided herein, Lee County agrees that it will not initiate or pursue, and will not encourage or assist any other person or entity to initiate or pursue, in any judicial or other forum or proceeding, including, without limitation, any administrative or regulatory proceeding, or in any other manner, any of the Duke Released Claims. Further, so long as there is material compliance with all Environmental Laws as related to coal ash at the Site, or Duke, Charah, Green Meadows or their affiliates or assigns has acted in a commercially reasonable manner to cure or to initiate cure of any non-compliance after written notice from Lee County, Lee County will not provide comment or opposition to any requested permits for the Site, whether requested by Duke, Charah, Green Meadows or their affiliates or assigns, and will not seek to enact any local law, rule, regulation or ordinance, or take any other action, whether against Duke, or any other party, that would limit or interfere with Duke’s ability to deliver Coal Ash to the Site, or that would otherwise be inconsistent with this Agreement, including the Release provided for herein. In the event Lee County commences an action in violation of this covenant not to sue, then this Agreement, including the Release provided for herein, may be pleaded in bar of such action, and the party against whom the action is commenced shall be entitled to injunctive relief against Lee County.

12. No Admission. This Agreement constitutes a full and complete settlement (according to the terms stated herein) of disputed claims and liabilities claimed and denied. This Agreement is entered into for purposes of settlement and compromise only. Neither this Agreement nor anything contained in it, nor any act or thing done in connection herewith, is intended to be, or shall be construed or deemed to be an admission of any party of liability, fault, or wrongdoing, or any admission by any party of any fact, allegation, or claim whatsoever.

13. **Costs.** Each party will bear its own costs, expenses, and attorneys' fees incurred as a result of the Dispute and the facts and circumstances set forth above.

14. **Governing Law, Forum Selection, Venue.** This Agreement shall be construed and interpreted in accordance with the laws of the State of North Carolina. Each Party to this Agreement (a) agrees that any action or proceeding brought in connection with or relating to this Agreement shall be brought, heard and determined exclusively in any state or federal court of competent jurisdiction located in Wake County, North Carolina, (b) agrees not to bring any proceeding or action arising out of or relating to this Agreement in any other court, (c) consents and irrevocably submits itself to personal jurisdiction in connection with any such proceeding or action, and (d) expressly waives to the fullest extent permitted by law any objections that it may now or hereafter have to the venue of any such proceeding or action, or that any such proceeding or action was brought in an inconvenient forum.

15. **Entire Agreement and Successors in Interest.** This Agreement contains the entire agreement between the Parties with regard to the matters set forth herein and shall be binding upon and inure to the benefit of the affiliates, personal representatives, heirs, successors, and assigns of each.

16. **Interpretation.** Each Party agrees that in any dispute regarding the interpretation or construction of this Agreement, no presumption shall operate in favor of or against any Party to this Agreement by virtue of its role in drafting or not drafting the terms and conditions set forth in the Agreement. The Parties acknowledge that they have each been represented by counsel in the negotiation of this Agreement, and that they have read and understand it.

17. **Authority.** Each of the signatories to this Agreement represents that they have full authority and representative capacity to execute this Agreement in the capacities indicated below, and that this Agreement constitutes a valid and binding obligation on the terms set forth herein of the respective party for which they have signed. The Lee County Board of Commissioners has fully approved and ratified this Agreement, as evidenced by the Resolution Approving Settlement Agreement attached hereto.

18. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which as so executed shall be deemed to be an original, but all such counterparts together shall constitute but one and the same instrument.

19. **Severability.** If any provision or clause of this Agreement shall be or becomes invalid or unenforceable under applicable law, such provision or clause only shall be deemed ineffective, as though not herein contained, and the remainder of this Agreement shall remain operative and in full force and effect.

20. **Notices.** All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be delivered by hand or sent by facsimile or electronic transmission (including email) or sent, postage prepaid, by registered, certified or express mail or overnight courier and shall be deemed to be given when received, as follows:

i. If to Duke:

NC State President
Duke Energy
410 S. Wilmington St., NCRH 12
Raleigh, NC 27601
Fax: (919) 546-2169
Email: paul.newton@duke-energy.com

With a copy to:

Duke Energy Legal Department
Attn: Lawrence B. Somers
410 S. Wilmington St., NCRH 20
Raleigh, NC 27601
Fax: (919) 546-2169
Email: bo.somers@duke-energy.com

ii. If to Lee County:

County Manager
P.O. Box 1968
Sanford, NC 27331-1968
Fax: (919) 718-4623
Email: jcrumpton@leecountync.gov

With a copy to:

County Attorney
P.O. Box 1968
Sanford, NC 27331-1968
Fax: (919) 718-4623
Email: kschmid@leecountync.gov

21. **Amendment.** This Agreement may not be altered, amended, modified, or rescinded in any way except by written instrument duly executed by all of the Parties hereto.

22. **Integration.** This Agreement (and any documents expressly referred to herein) contains the entire agreement between the Parties hereto and the terms hereof are all contractual and not a mere recital. All previous discussions or negotiations have been merged into this Agreement. No party to this Agreement has relied upon any oral or written representations, express or implied warranties, or agreements that are not expressly contained in the body of this Agreement.

23. **Effectiveness.** This Agreement shall become effective immediately following execution by the Parties.

24. **Captions.** The captions and subsections hereof are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

[Two Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

County of Lee, North Carolina

Chairman
Lee County Board of Commissioners

Date: _____

ATTEST

County Clerk
[SEAL]

[Duke signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

Duke:

Duke Energy Progress, Inc.

Duke Energy Carolinas, LLC

By: _____

Name: Paul Newton

Title: State President, North Carolina

Date: _____