

**SECOND REVISED
NORTH CAROLINA TRANSMISSION PLANNING COLLABORATIVE
PARTICIPATION AGREEMENT**

This Participation Agreement (“Agreement”) dated this 20th day of May, 2005, as first revised on the 11th day of February, 2008, and as revised this 12th day of January, 2010, is entered into by and among: Duke Energy Carolinas, LLC (“Duke”); Carolina Power & Light Company, d/b/a Progress Energy Carolinas, Inc. (“Progress”); North Carolina Electric Membership Corporation (“NCEMC”); and ElectriCities of North Carolina, Inc. (“ElectriCities”), each of which may hereinafter be referred to singularly as a “Participant” and collectively as “Participants”.

RECITALS

WHEREAS, as a result of a review of issues concerning the adequacy of electric transmission infrastructure facilitated by the North Carolina Utilities Commission (the “NCUC”), Duke, Progress, ElectriCities, acting for and on behalf of its member municipalities serving retail North Carolina customers, and NCEMC, acting for and on behalf of the electric cooperatives serving retail North Carolina customers, all being geographically located in the control areas of Duke and/or Progress, desire by entering into this Agreement to create and implement a collaborative electric transmission planning process for their respective service territories in North Carolina and South Carolina (the “Process”); and

WHEREAS, in order to create and implement the Process each Participant is willing to: (i) share confidential and proprietary transmission, load forecasts and other information with other Participants to the extent required to implement the Process; (ii) protect all such confidential and proprietary information from disclosure to the public (including each Participant’s and their affiliate’s personnel involved in wholesale sales of electricity), while still abiding by Order No. 890 and other policies of the Federal Energy Regulatory Commission (“FERC”); (iii) pay its fair share of the administrative costs to implement the Process; and (iv) cooperate in good faith with all other Participants to accomplish the goals of the Process and reach mutually acceptable resolution of

transmission planning issues so as to minimize the need to initiate regulatory proceedings to resolve transmission adequacy issues; and

WHEREAS, the Participants desire to create an Oversight Steering Committee (“OSC”) and a Planning Working Group (“PWG”), each of which will be organized and operated pursuant to the provisions of this Agreement to perform much of the work to create and implement the Process; and

WHEREAS, the Participants, through the OSC, desire to select an independent third party consultant (“ITP”) to act as a facilitator for the development and conduct of the Process, including the solicitation of input from other stakeholders through the Transmission Advisory Group; and

WHEREAS, the Participants desire that the functions of the OSC and PWG be carried out in an atmosphere of full and complete cooperation and disclosure, but one which also protects the confidential and proprietary nature of the information made available to each Participant, the OSC, the PWG and the ITP, subject to the requirements of Order No. 890, as provided herein;

NOW THEREFORE, in consideration of the foregoing, the undertakings set forth herein and such other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Participants agree as follows:

1. **Intent of the Participants.** The Participants will exert reasonable best efforts to create and implement the Process as described herein. The objectives of the Process are to:
 - a. provide load-serving entities that are served from the Duke or Progress transmission systems an opportunity to fully participate in the electric transmission planning process;
 - b. preserve the integrity of the current reliability and least-cost integrated resource planning process utilized to plan the expansion of the Duke and Progress (sometimes hereinafter collectively referred to as the “investor-

owned utilities”) transmission systems, which process shall be known as the “Reliability Planning Process”;

- c. expand the transmission planning process to include analysis and consideration of: (i) increased transmission import capability to provide greater access to generation resources outside the investor-owned utilities’ control areas; (ii) potential enhancements to the Duke and Progress transmission systems in order to enhance access to generation resources within the existing control areas for which there are no existing contractual arrangements; and (iii) increased transmission capability to provide for transactions that go through or out of the investor-owned utilities’ control areas to an external control area, which together shall be known as the “Enhanced Transmission Access Planning Process”;
- d. integrate the Reliability Planning Process and the Enhanced Transmission Access Planning Process for the areas that are served by the Participants for the purpose of ultimately developing a single coordinated transmission expansion plan that appropriately balances costs, benefits and risks associated with the use of transmission and generation resources;
- e. create the OSC, consisting of representatives from the participating investor-owned utilities, municipalities and electric cooperatives and the ITP, as provided for herein and in the document entitled “Scope – Oversight/Steering Committee (OSC)” (the “OSC Scope Document”);
- f. create the PWG, consisting of representatives from the participating investor-owned utilities, municipalities and electric cooperatives and the ITP, as provided for herein and in the document entitled “Scope – Planning Working Group (PWG)” (the “PWG Scope Document”);
- g. fulfill the direction of FERC Order No. 888-A that “network service is founded on the notion that the transmission provider has a duty to plan and construct the transmission system to meet the present and future needs of its native load and, by comparability, its third-party network customers”;

- h. fulfill, in conjunction with the procedures set forth in the open access tariffs (“OATTs”) of Duke and Progress, the direction of FERC Order No. 890 that “to represent good utility practice and provide comparable service, the transmission planning process under the pro forma OATT must consider both reliability and economic considerations”;
- i. fulfill, in conjunction with the procedures set forth in the OATTs of Duke and Progress, the direction of FERC Order No. 890 to implement a coordinated and regional planning process that complies with the planning principles set forth by FERC; and
- j. fulfill the direction of N.C. Gen. Stat. §62-110.1(c) and NCUC Rule R8-60, in expanding the integrated resource planning process required of the utilities and electric cooperatives by providing for the results of the Process to be considered in the annual resource plans which are reviewed by the NCUC, and assist the NCUC in fulfilling its responsibilities to develop, publicize and keep current an analysis of the long-range needs for electricity of the citizens of North Carolina.

2. **The Oversight/Steering Committee:** The OSC will consist of eight (8) appointed members plus ex officio members as approved by the OSC. Duke, Progress, ElectriCities and the electric cooperatives shall each appoint two (2) members to the OSC and may each appoint up to two (2) alternate members, all of whose qualifications shall be materially consistent with the guidelines for OSC membership set forth in the OSC Scope Document. The alternates shall act in the absence of the appointed members, including participating in voting. The appointed members of the OSC shall select a chair and vice-chair pursuant to the procedures contained in the OSC Scope Document. Additionally, the appointed members of the OSC shall select the ITP and a representative from the ITP to be an ex officio member of the OSC (the “ITP Member”). The ITP Member shall act as a facilitator for the OSC and shall assist the chair and vice-chair in the performance of their duties as reasonably requested. The members of the OSC shall use reasonable good faith efforts to reach decisions via consensus.

However, in the event that the OSC is unable to reach a decision by consensus then a decision will be reached by majority vote. When voting is conducted, each of the OSC members (or designated alternates) except the ex officio members shall have one vote. In the event of a tie vote, the ITP Member shall be entitled to one vote to break the tie. However, notwithstanding any other provisions herein, the investor-owned utilities shall not be bound by decisions of the OSC to the extent each of the investor-owned utilities reasonably determine such decisions, as related to reliability planning, are inconsistent with good utility practice or SERC and NERC established criteria or least-cost integrated resource planning principles. The investor-owned utilities shall each retain decision making authority for such decisions related to reliability planning consistent with their statutory responsibilities for reliability, subject to normal regulatory oversight.

3. **OSC Duties:** As detailed in the OSC Scope Document, the duties of the OSC shall be to:
 - a. review and approve transmission planning criteria and critical assumptions for the bulk transmission system (i.e., 230 kV facilities and above plus lower voltage facilities that substantively affect the Reliability Planning Process and the Enhanced Transmission Access Planning Process) and, where appropriate, develop and recommend such criteria and assumptions to be used by the PWG; provided that each transmission owner may reject any such criteria, critical assumption or recommendation if (i) it determines, in good faith, that such recommendation is not consistent with SERC and NERC established criteria, including NERC planning standards, or with good utility practice and least-cost integrated resource planning principles; or (ii) if the senior management of such transmission owner rejects such criteria and/or assumptions. In the event of such a rejection, the transmission owner's OSC member shall provide a brief, reasonably descriptive written statement of the reasons for such rejection to the OSC. The OSC shall promote consistency among the planning criteria and critical assumptions used in the Process, provided that in recognition of the differences between transmission systems,

- (i) the fact that a criterion or assumption differs between participating transmission systems shall not by itself constitute sufficient reason to change such a criterion or assumption; and (ii) the uniform application of any new criteria and/or assumptions to all participating transmission systems shall be determined on a case-by-case basis by the OSC;
 - b. promote the application of such planning criteria and/or assumptions within the territories served by the Participants;
 - c. review and recommend revisions to transfer capability, transmission reserve margin (“TRM”) and capacity benefit margin (“CBM”) criteria and calculations of the investor-owned utilities for consistency with SERC and NERC established criteria as well as good utility practice; recommend transfer capability, TRM and CBM criteria or methodologies which would be applied consistently in the Process, adjusted as appropriate, to accommodate local conditions that merit special consideration; provided that each transmission owner may reject any such recommendation if (i) it determines, in good faith, that such recommendation is not consistent with SERC and NERC established criteria, including NERC planning standards, or with good utility practice and least-cost integrated resource planning principles; or (ii) if the senior management of such transmission owner rejects such recommendation. In the event of such a rejection, the transmission owner’s OSC member shall provide a brief, reasonably descriptive written statement of the reasons for such rejection to the OSC;
 - d. for the areas served by the Participants, participate in the Reliability Planning Process, and oversee the development of the Enhanced Transmission Access Planning Process consistent with the goals set forth in Paragraph 1 hereof; and
 - e. direct the activities of and provide oversight for the PWG.
4. **The Planning Working Group:** The PWG will consist of up to twelve (12) members. Duke, Progress, ElectricCities and the electric cooperatives shall each nominate at least one and up to three members to the PWG by written notice to

the OSC. The OSC shall approve the nominations of the PWG members so long as they materially meet the guidelines described in the PWG Scope Document. The appointed members of the PWG shall select a chair and a vice-chair pursuant to the procedures contained in the PWG Scope Document. Additionally, the OSC shall appoint a representative from the ITP to the PWG. The PWG shall use reasonable good faith efforts to reach decisions via consensus. However, in the event the PWG is unable to reach a decision by consensus, the decision will be referred to the OSC for resolution.

5. **PWG Duties:** The PWG shall be responsible, under the general direction of the OSC, for evaluation and administration of the criteria and critical assumptions used in problem identification, solution development and plan compilation in the Reliability Planning Process and the Enhanced Transmission Access Planning Process developed in accordance with the provisions of this Participation Agreement, the PWG Scope Document, and the North Carolina Transmission Planning Collaborative Process document. These documents are on the NCTPC Website. Simulations required by the PWG to discharge said responsibility will be performed by the investor-owned utilities with oversight by the PWG.
6. **Reliability Planning and Enhanced Transmission Access Planning.** The Process shall consist of the integrated application of the Reliability Planning Process and the Enhanced Transmission Access Planning Process. The Reliability Planning Process will involve the creation of a transmission expansion plan based upon reliability requirements for firm load and resource projections. The OSC shall have primary responsibility for the Reliability Planning Process. The Enhanced Transmission Access Planning Process will involve the analysis of potential transmission expansion projects that would provide enhanced access to generation resources and markets inside and outside of the Duke and Progress control areas and to transactions that go through or out of the investor-owned utilities' control areas to an external control area, and the development of corresponding transmission expansion options including the costs and schedules associated with such options. The ITP shall have primary responsibility for the

Enhanced Transmission Access Planning Process, subject to oversight by the OSC. The ITP's role in developing the enhanced transmission access options shall include the development of a mechanism to solicit and obtain input through the Transmission Advisory Group ("TAG"). Cost responsibility for transmission projects identified pursuant to the Process is described in the NCTPC Transmission Cost Allocation document that is posted on the NCTPC Website as well as in the OATTs of Duke and Progress.

7. **Decisions of the OSC:** Subject to the provisions of Paragraphs 2 and 3 above, the Participants will abide by the decisions of the OSC. However, any Participant may request that the NCUC Public Staff ("Public Staff") render a non-binding opinion with regard to any disputed decision of the OSC and any decision of the investor-owned utility superseding a decision by the OSC ("Disputed Decision"). Should the parties be unable to resolve the Disputed Decision through such facilitation by the Public Staff, any Participant may seek review of the Disputed Decision by any regulatory or judicial body with jurisdiction over the subject matter of the Disputed Decision.
8. **Definition of Confidential Information:** For purposes of this Participation Agreement, the term "Confidential Information" means any and all information designated by a Participant as proprietary and confidential that is provided to another Participant, the OSC and/or the PWG, and confidential and proprietary information developed by the OSC, the PWG and/or the ITP, whether printed, written, oral, electronic or on software. All transmission information shall be considered "Confidential Information" regardless of whether a Participant has specifically designated it as confidential or proprietary. Notwithstanding the preceding provisions of this paragraph, the term "Confidential Information" shall not include any information that a Participant can demonstrate (a) is or has been independently developed by that Participant, or is lawfully received by that Participant from another source having the right to furnish such information to either; (b) has become generally available to the public without breach of this Participation Agreement by that Participant; or (c) that Participant was rightfully

in possession of for some other lawful purpose and without restrictions on its use prior to the time the Participant became involved in the Process.

9. **Obligation of Confidentiality:** The Participants shall not discuss among themselves specific products and/or services made available to them or offered by them, or prices or terms of such products and/or services. If the identity of or other information about specific generation resources is required in order to conduct reliability or enhanced transmission access studies, such information may be disclosed among the Participants, but shall be masked to the extent reasonably possible. Each Participant shall ensure that all Confidential Information to which it has access shall be kept confidential by the Participant and by its employees, attorneys, accountants, financial advisors, consultants, and in the case of the municipalities and electric co-ops, representatives or members (collectively, "Representatives"), to the extent permitted by law. Among other things, each Participant shall ensure that the Confidential Information shall not: (a) be used for any purpose or proceeding whatsoever other than performing duties and/or actions directly related to the Process; (b) be distributed or disclosed in any manner whatsoever except as required by law or as permitted by this Participation Agreement; or (c) be distributed to any Representatives of a Participant who are not, consistent with this Participation Agreement, normally involved with the Process (except to the extent said Representatives require access to the Confidential Information to perform duties or obligations directly related to the Process); or (d) be distributed to any third party except as required by law, or as provided in accordance with the procedures for obtaining Confidential Information described in the OATTs of Duke and Progress and/or the NCTPC procedures for obtaining Confidential Information. However, the receiving Participant may transmit Confidential Information to such Representatives who need to know the Confidential Information for the purposes of the receiving Participant performing its duties and obligations associated with the Process, provided that the Participant and said Representatives comply with the provisions of Paragraph 10 below.

10. **Obligations of Participants and Representatives:** To meet its confidentiality obligations under this Participation Agreement, particularly those set out in Paragraph 9, above, each Participant shall maintain a list of each of its Representatives who have access to Confidential Information. Each such Representative on the list shall be informed of and instructed in the terms of this Participation Agreement by the Participant, instructed by the Participant that they are to comply with those terms and shall acknowledge in writing that they have read this Participation Agreement and understand its terms prior to receiving access to any Confidential Information. If a Representative of a Participant acts in a manner that results in the Representative breaching the confidentiality terms of this Participation Agreement, the Participant will (a) immediately upon learning of such breach notify the OSC; (b) review its internal policies and procedures to determine the cause of such breach; (c) implement actions reasonably designed to prevent a recurrence of such breach; and (d) promptly notify the OSC as to the cause of such breach and actions taken pursuant to (c).
11. **Ownership of Confidential Information:** All Confidential Information developed or furnished by a Participant shall be and will remain the property of such Participant. All Confidential Information developed or produced by the OSC and/or the PWG shall be and will remain the property of all Participants. Nothing contained in this Participation Agreement shall be construed as granting or conferring upon any Participant any rights by license or otherwise, express or implied, to the Confidential Information.
12. **Disclosures Required by Court Order or Law:** In the event that any Participant receives a request to disclose any or all of the Confidential Information under the terms of (a) a state freedom of information act, public records act or similar statute, (b) the Federal Freedom of Information Act, (c) a valid and effective subpoena or order issued by a court or governmental body or agency having jurisdiction over a Participant, or (d) pursuant to an appropriate request for production of documents in any proceeding before an administrative agency or court having jurisdiction over a Participant, such Participant shall notify

all other Participants and the OSC immediately of the existence, terms and circumstances surrounding such a request so that one or more of the Participants may seek an appropriate protective order or take such other action as it deems appropriate to protect against the release of Confidential Information. If the Participant is compelled to disclose any of the Confidential Information, only that portion thereof compelled to be disclosed will be disclosed, and the Participant shall use reasonable best efforts to obtain an order or other reliable assurance that confidential treatment shall be accorded to the Confidential Information so disclosed.

13. **Disclosures Required by Order No. 890.** In the event that the ITP or any Participant receives a request to disclose any or all of the Confidential Information under the terms under Section 9 (or any successor provision) of the OATT "Transmission Planning Process" of Duke and/or Progress, the ITP will be responsible for informing all Participants and abiding by the provisions of Section 9 and the NCTPC with regard to the disclosure of Confidential Information.
14. **Remedies.** Each Participant agrees that any threatened or existing violation of the confidentiality provisions of this Participation Agreement would cause the other Participants irreparable harm for which they would not have an adequate remedy at law, and that the other Participants shall be entitled to seek immediate injunctive relief prohibiting such violation. In the event that Confidential Information is disclosed in violation of this Participation Agreement, nothing contained herein shall preclude any Participant from pursuing an action for damages or for enforcement of any other rights or remedies available to them at law or in equity.
15. **Return of Confidential Information:** Upon the written or electronically transmitted request of the Participant from whom the Confidential Information was obtained, all documents, records, materials and similar repositories of Confidential Information, including any and all copies thereof in possession of another Participant obtained by such Participant in the course of performing

duties and/or obligations associated with the Process, or obtained by the OSC or PWG, shall be promptly surrendered and delivered to the Participant from whom the Confidential Information was obtained. Confidential Information developed or produced by the OSC and/or the PWG shall be promptly returned to all Participants at such time that the OSC and/or PWG deem it to be appropriate.

16. **Prohibition on Sharing with Competitive Duty Personnel:** Each Participant shall prohibit the sharing of any Confidential Information with any employee, Representative, and/or organization, including affiliates, directly involved in the sale and/or resale of electricity in the wholesale electricity market (“Competitive Duty Personnel”); prohibit its Competitive Duty Personnel from having access to any Confidential Information; and ensure its Competitive Duty Personnel do not receive preferential treatment nor a competitive advantage through access to Confidential Information. If any Participant acts in a manner contrary to such rules, inadvertently or otherwise, the Participant will (a) immediately upon learning of such incident notify the OSC; (b) review its internal policies and procedures to determine the cause of such incident; (c) implement actions reasonably designed to prevent a recurrence of such incident; and (d) promptly notify the OSC as to the cause of such incident and actions taken pursuant to (c). A breach of this Paragraph 16 may, subject to a majority vote of the OSC, result in the breaching Participant and its employees and Representatives being prohibited from participating in the Process. A Participant’s agreement to the provisions of this section is only applicable to its activities conducted in conjunction with the Process, and a Participant not otherwise subject to the Standards of Conduct promulgated by FERC does not, by virtue of this Agreement, voluntarily assent to application of such Standards in all other aspects of its business operations.
17. **Cost Responsibility:** Each Participant shall bear its individual expenses of participation such as travel expenses. The costs associated with the creation and implementation of the Process, including, but not limited to, the costs associated

with the OSC, the PWG, and the ITP, shall be the responsibility of all Participants as outlined below:

- a. Costs associated with base reliability studies as defined by the OSC shall be the responsibility of the investor-owned utilities.
- b. Costs associated with proposed incremental reliability studies which are approved by the OSC will be allocated among the Participants. Duke and Progress will each be responsible for one-third of such costs, and NCEMC and ElectriCities will each be responsible for one-sixth of such costs. If the OSC does not so approve a proposed incremental reliability study, the requesting party may request that the OSC authorize that the study be performed at the cost of the requesting party or parties, and the OSC shall consider such a request.
- c. Costs associated with the ITP will be allocated among the Participants. Duke and Progress will each be responsible for one-third of such costs, and NCEMC and ElectriCities will each be responsible for one-sixth of such costs.
- d. Costs associated with enhanced transmission access planning, including a maximum number of enhanced transmission access studies that are selected during each planning cycle by the TAG participants, will be allocated among the Participants. Duke and Progress will each be responsible for one-third of such costs, and NCEMC and ElectriCities will each be responsible for one-sixth of such costs. If a particular proposed enhanced transmission access study is not selected to be studied by the TAG participants, the requesting TAG participants(s) may request that the study be performed at the cost of the requesting TAG participant(s). The OSC shall consider such a request and grant the request if this additional study can reasonably be accommodated.
- e. The results of studies performed pursuant to this Participation Agreement shall be available to all Participants and to the TAG.

18. **Administration of Receipts and Disbursements:**

- a. At its first meeting the OSC shall appoint a Participant or a third-party to act as treasurer (provided that such Participant or third-party agrees to serve as treasurer), the appointment of which may be changed by the OSC at any time upon reasonable notice to the Participants. The treasurer may resign upon 90 days written notice to the OSC, and upon such notice the OSC will designate a new treasurer upon reasonable notice to the Participants (provided that such Participant or third-party agrees to serve as treasurer). The treasurer shall receive and disburse funds and carry out such other reasonable responsibilities as the OSC shall establish, including, but not limited to, providing periodic (as defined by the OSC) reports to each of the Participants of all receipts and disbursements.
- b. Any Participant may, in good faith, challenge before the OSC the correctness or appropriateness of any costs to be allocated among the Participants or any allocations thereof. Any Participant or third party submitting a bill for which costs are to be allocated shall provide reasonable and customary documentation with the bill. Any revisions or adjustments may be in the form of an adjustment of subsequent bills or refund requests.

19. **Term and Withdrawal from Process.** This Participation Agreement shall become effective on the date first above written and shall continue in effect unless terminated upon mutual agreement of the Participants. The Participants shall periodically review the terms of the Participation Agreement, and shall agree on changes, as appropriate. Additionally, any Participant shall be free to withdraw from the Process and this Participation Agreement at any time for any reason upon 180 days' prior written notice to the other Participants, provided, however, that any Participant withdrawing from the Process shall continue to be responsible for the payment of all costs of the Process properly allocable to such Participant pursuant to Paragraph 17 that were incurred prior to the effective date of withdrawal, and shall complete all actions and tasks which the Participant is either performing or has agreed to perform as a result of the Process as of the date of

such Participant's notice of withdrawal. Additionally, any Participant shall be free to withdraw from the Process and this Participation Agreement at any time upon written notice to the other Participants, if the withdrawing Participant's continued participation is rendered illegal, impossible or inappropriate by action of any regulator of said Participant.

20. **Entire Agreement.** The following documents set forth the entire agreement: the Participation Agreement; the scope documents for the OSC, PWG and TAG; the NC Transmission Planning Collaborative Process document; and the NCTPC Transmission Cost Allocation document. These documents set forth the entire agreement and understanding of the Participants concerning the subject matter hereof, and no representation, promise, inducement or statement of intention not set forth in these documents has been made by or on behalf of any Participant hereto. In the event that the provisions of this Participation Agreement conflict with any of the other listed documents, this Participation Agreement shall control unless otherwise unanimously agreed upon by the OSC.
21. **Severability.** Subject to the provisions of Paragraph 19 hereof, if any provision of this Participation Agreement is held to be illegal, invalid or unenforceable, such provisions shall be fully severable and this Participation Agreement shall be construed as if the illegal, invalid and unenforceable provision had never been a part of this Participation Agreement and the remaining provisions of this Participation Agreement shall be given full force and effect.
22. **Survival.** The restrictions and obligations of this Participation Agreement shall survive any expiration, termination or cancellation of this Participation Agreement and shall continue to bind the Participants and their successors and permitted assigns.
23. **Assignment.** No Participant shall assign any of its rights or delegate any of its duties hereunder to a third party without the prior written consent of all other Participants, such consent not to be unreasonably withheld.

24. **Governing Law.** This Participation Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, each of the Participants, intending to be legally bound by the provisions of this Participation Agreement, has caused its duly authorized representatives to execute this Participation Agreement as of the date set forth above.

PROGRESS ENERGY CAROLINAS, INC.

By: 

Title: VP - TOLD

**NORTH CAROLINA ELECTRIC
MEMBERSHIP CORPORATION**

By: 



Title: SR. VP. Corporate Strategy

**DUKE ENERGY CAROLINAS,
LLC**

By: 

Title: Vice President
Asset Management

**ELECTRICITIES OF NORTH
CAROLINA, INC.**

By:  

Title: SVP-Planting & Marketing