

APPENDIX E – DUKE ENERGY CAROLINA AND DUKE ENERGY PROGRESS

The following provisions apply to Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”):

- a.** DEC’s or DEP’s participation in this Agreement is voluntary, DEC or DEP is not obligated to take or provide services or make any purchases or sales pursuant to this Agreement except as expressly provided, and DEC or DEP may elect to discontinue its participation in this Agreement at its election after giving any required notice;
- b.** DEC or DEP may not make or incur a charge under this Agreement except in accordance with North Carolina law and the rules, regulations and orders of the North Carolina Utilities Commission promulgated thereunder;
- c.** DEC or DEP may not seek to reflect in rates any (i) costs incurred under this Agreement exceeding the amount allowed by the Commission or (ii) revenue level earned under this Agreement less than the amount imputed by the Commission; and
- d.** Neither DEC nor DEP shall assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of another entity’s assertions, that the Commission’s authority to assign, allocate, impute, make pro forma adjustments to, or disallow revenues and costs for retail ratemaking and regulatory accounting and reporting purposes is, in whole or in part, (i) preempted by Federal Law or (ii) not within the Commission’s power, authority or jurisdiction; DEC and DEP will bear the full risk of any preemptive effects of Federal Law with respect to this Agreement.