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November 16, 2018

VIA UPS OVERNIGHT DELIVERY AND ELECTRONIC MAIL

Mr. Michael S. Regan
Secretary
North Carolina Department of Environmental Quality
217 W Jones St
Raleigh, NC 27603

RE: Application for Grant of Variance to Extend Deadline to Close Sutton Plant CCR Surface Impoundments (N.C.G.S. § 130A-309.215)

Dear Secretary Regan:

North Carolina General Statutes Section 130A-309.215(a) authorizes the Secretary of the North Carolina Department of Environmental Quality (“NCDEQ” or “Department”) to “grant a variance to extend any deadline under [the Coal Ash Management Act (“CAMA”)] on the Secretary’s own motion, or that of an impoundment owner, on the basis that compliance with the deadline cannot be achieved by application of best available technology found to be economically reasonable at the time and would produce serious hardship without equal or greater benefits to the public.” Pursuant to N.C.G.S. § 130A-309.215(a1), where a variance is requested by an impoundment owner, the impoundment owner must within one year prior to the applicable deadline, request a variance including, at a minimum, information regarding (A) the site; (B) applicable requirements; (C) applicable deadlines for which a variance is sought; (D) site-specific circumstances supporting the need for the variance; and (E) detailed information demonstrating that “(i) the owner has substantially complied with all other requirements and deadlines established by [CAMA]; (ii) the owner has made good faith efforts to comply with the applicable deadline for closure of the impoundment; and (iii) that compliance with the deadline cannot be achieved by application of best available technology found to be economically reasonable at the time and would produce serious hardship without equal or greater benefits to the public.”

Consistent with the requirements of subsection (a1) of N.C.G.S. § 130A-309.215, Duke Energy Progress, LLC (“Duke Energy” or “Company”) hereby submits this application for a variance to extend by six months the CAMA closure deadline applicable to the coal combustion residuals (“CCR”) surface impoundments at Duke Energy’s Sutton Plant (“Sutton”) in Wilmington, North Carolina. Section I of this application

addresses elements A, B, and C above; Section II addresses elements D, (E)(ii), and (E)(iii); and Section III addresses element (E)(i). As detailed in Section II below, NCDEQ's grant of the variance is warranted, because despite Duke Energy's application of best available technology found to be economically reasonable, compliance with the applicable CAMA deadline cannot be achieved due to myriad factors, including the impacts of several permitting delays, two major hurricanes, and other unforeseeable challenges and limitations beyond the Company's control.

I. Site; Applicable Requirements and Applicable Deadline

Sections 3.(b)(4) and 3.(c) of CAMA (Sess. L. 2014-122) require that the CCR surface impoundments at Sutton be closed by removal of CCR by no later than August 1, 2019 ("Deadline"). For the reasons discussed in detail below, despite Duke Energy's good faith efforts to apply best available technology found to be economically reasonable, Duke Energy has determined that it may not be able to meet the Deadline without producing serious hardship without equal or greater benefits to the public.

II. Site-specific Circumstances Demonstrating Why Compliance with CAMA's Deadline Cannot be Achieved Despite Duke Energy's Good Faith Efforts and Application of Best Available Technology

Throughout the basin excavation process, Duke Energy has encountered numerous challenges that have cumulatively resulted in the current schedule delay at Sutton and have impacted the Company's ability to close the Sutton CCR surface impoundments by the Deadline. During this period, Duke Energy has consistently exercised best efforts to minimize any delays in meeting the Deadline and has taken important steps to overcome the various challenges and limitations presented in an effort to recover schedule.

Under the standard set out in N.C.G.S. § 130A-309.215, whether application of a given technology would be commercially or economically reasonable requires that the costs of such technology be balanced against its benefits to the public. Following this fundamental principle over the course of the basin closure project, Duke Energy has consistently looked for and evaluated measures to safely and reasonably minimize any delays to the extent possible, considering at all times, the risks and benefits associated with each of the options considered.

In October 2014, the Company developed the initial Sutton Excavation Plan and held the Phase I excavation bidding event for excavation of the first two million tons of CCR for rail transport, which was determined to be the amount of ash that would need

to be transported by rail to meet the Deadline. The contractor Duke Energy selected under this bidding event (“Contractor A”) was chosen not only because it had bid the lowest price per ton, but also because it had completeness of technical support, engineering competence, and extensive wet ash basin experience. Due to CAMA’s aggressive completion date of August 1, 2019, the complexity of CCR excavation at Sutton, and the expected timeline to construct an on-site landfill, the Brickhaven structural fill in Chatham County, North Carolina was selected as the initial CCR placement site for ash from the Sutton impoundments.

On November 13, 2014, Duke Energy submitted the initial Sutton Excavation Plan to the Department to cover the first 12 to 18 months (Phase I) of ash basin excavation activities. In general, the scope of work included site preparation, initiation of basin dewatering, ash basin preparation, construction of the on-site landfill, and ash removal from the basins. Under the initial Excavation Plan, Duke Energy would begin placing ash in the Brickhaven structural fill—a beneficial use of CCR pursuant to N.C.G.S. § 130A-309.201(1), (11), and (14). Ash would be transported from the site via rail car and also trucked to Brickhaven. Although the quantity trucked was small relative to the quantities transported by rail, this action demonstrated Duke Energy’s commitment to commence ash excavation and placement operations as soon as feasible. Rail operations would consist of 85 car unit trains, with rail cars averaging 90 tons per car. The monthly goal was to deliver 14 loaded trains to Brickhaven per month, working seven days per week, or approximately 107,000 tons per month.

While transporting ash to Brickhaven, Duke Energy developed simultaneously an on-site landfill in order to meet the Deadline. Based on an engineering feasibility study commissioned by Duke Energy, it was determined that an on-site landfill would be the least-cost option to dispose of the ash and would have the least environmental impact. Moreover, it was determined to be the most expedient method of ash removal from the basins, consistent with the requirements of CAMA. North Carolina’s solid waste rules, which prohibit the commencement of construction activities without having first secured the necessary permits, on-site landfill construction could not begin until issuance of the Permit to Construct.

On August 7, 2015, Duke Energy submitted its application for a Permit to Construct the on-site landfill to dispose of five million tons of coal ash from the Sutton impoundments (Phase II). On September 3, 2015, NCDEQ sent a letter to Duke Energy notifying the Company that the landfill application had been deemed “complete.” NCDEQ sent a follow-up letter on October 7, 2015, requesting supplemental information, which Duke Energy provided on December 10, 2015. NCDEQ then initiated a 60-day public comment period, which ran from February 11 to April 15, 2016. The Company reasonably expected that the permit would issue soon after the conclusion

of the comment period because (i) the public meeting was not heavily attended or contentious, (ii) NCDEQ Solid Waste Division staff had been reviewing the application since it was submitted on August 7, 2015, and (iii) it historically took the Department only a few weeks after expiration of the comment period to issue such permits.¹

Duke Energy completed the updated 2015 Sutton Excavation Plan in November 2015 and revised the milestone dates, which reflected a reasonable expectation that it would secure the Permit to Construct in early 2016, thereby supporting a schedule to complete excavation of the ash by March 2019. Duke Energy was planning to move two million tons of ash via rail and, in parallel, dispose of ash in the on-site landfill from late January 2017 to July 2017. The Company estimated that it could excavate and move between approximately 200,000 to 225,000 tons of ash per month, 93,000 to 118,000 tons of which would be via truck to the landfill and approximately 107,000 tons of which would be via rail to Brickhaven.

However, on April 7, 2016, NCDEQ announced a new policy at a town hall meeting sponsored by the North Carolina Advisory Committee (“Advisory Committee”) of the United States Commission on Civil Rights (“USCCR”), followed by a news release announcing a new review and approval process for all CCR landfills. Available at <https://deq.nc.gov/press-release/north-carolina-take-extra-steps-protect-minority-communities>. NCDEQ declared that it would go “beyond state and federal requirements” by conducting an environmental justice review of each Duke Energy coal ash CCR landfill application, including applications for expansions of existing on-site CCR landfills, and ask EPA’s Office of Civil Rights, the USCCR, and the Advisory Committee to review and approve the environmental justice analysis before the permit is issued. NCDEQ reiterated this new policy a week later in a letter to the Advisory Committee. As a result of this new and unexpected process, on September 22, 2016, Duke Energy finally secured the Permit to Construct the Sutton landfill, which was one full year after NCDEQ had deemed the application “complete,” and almost five months later than the latest date on which the permit was reasonably expected.

As a result of the permit delay, Duke Energy lost the six plus months of parallel (*i.e.*, on-site and off-site) excavation and placement/disposal for which it had planned. If issuance of the Permit to Construct would not have been delayed, the landfill construction would have been ongoing over this entire period of time, which would have created substantial margin on available space and volume to dispose of ash. The loss of this time and the ability to create margin had a significant negative impact on the ability to complete the project by the Deadline. Compounding this delay, Hurricane Matthew

¹ North Carolina General Statutes Section 130A-309.203 directs NCDEQ to expedite permit reviews for permits necessary to complete basin closure activities under CAMA—60 days after the comment period on the draft permit decision closes.

struck eastern North Carolina on October 8, 2016, further delaying the mobilization of landfill construction, limiting access to the work site, and interrupting rail transport of ash to Brickhaven for 20 days due to railway flooding.

As a result of these unforeseen complications in the landfill permitting process, coupled with historic impacts to the region and Duke Energy's operations from Hurricane Matthew, Duke Energy's excavation schedule was delayed by over six months. However, throughout 2017, Duke Energy continuously evaluated actions and implemented them where the Company determined it was safe and commercially reasonable to do so. Following is a summary of the options the Company evaluated and the economically reasonable measures it undertook to address challenges and limitations and achieve schedule recovery:

- Duke Energy added a third conveyor to increase its margin on rail production. Accelerating the completion of Phase I provided crucial time to transition to Phase II while Duke Energy awaited construction of the on-site landfill to be completed.
- Duke Energy mobilized Contractor B—the contractor performing Phase II of ash excavation—to the site prior to Contractor A completing Phase I to support removal of non-ash material from the 1971 Basin, which accelerated Phase II of basin excavation.
- Due to mild weather and the Company's implementation of parallel activities, construction of Cell 3 of the landfill was completed well in advance of the scheduled September 1, 2017, completion date. As a result of this reduction in the landfill construction schedule, Duke Energy was in a position to start disposing of ash in the landfill upon receipt of the Permit to Operate. NCDEQ issued the permit on July 6, 2017, and the Company promptly started moving ash into the landfill on the following day, representing a 55-day acceleration of the schedule.
- Duke Energy evaluated parallel shipments of ash to Brickhaven and to the on-site landfill but rejected this action primarily based on logistical and contractual constraints. At that time (mid-2017), the Company could only process between approximately 200,000 to 225,000 tons of ash per month irrespective of where it was ultimately placed or disposed of.
- As the project schedule progressed, the landfill continued to be critical path due to the need to get additional cells permitted and operating. Duke Energy took efforts to expedite the landfill construction schedule and was able to complete Cells 5 and 6 a year ahead of schedule, thereby completely removing the landfill

from critical path. In addition, the necessary permits to operate all six cells were secured. Critically, Duke Energy also secured the necessary permits to treat the landfill leachate on-site. This is significant because of the volume of leachate generated by the landfill—as more air space opened up, the volume of precipitation infiltrating into the ash and water draining from the ash itself increased, thus increasing the amount of leachate that needed to be treated.² By constructing Phase 2 of the site's wastewater treatment facility, getting the system installed to transfer the landfill leachate to that facility, and securing the necessary discharge permit, Duke Energy was able to simultaneously operate three cells instead of one, thereby allowing it to increase production substantially.

- The Company evaluated the feasibility of applying additional resources in order to increase the production rate, including expanding to night operations. Leveraging its experience, Duke Energy increased its dredging excavation activities up to 20 hours per day, six days a week using two 10-hour shifts or extended shifts.
- A new large dredge was assembled, commissioned, and placed into service in January 2018. Several measures were put into place to continuously improve performance, as follows: (1) A one-week outage was scheduled in late April 2018 to address design and breakdown issues and warranty work on the new dredge; (2) a second smaller dredge was placed into service in mid-April; (3) a third dredge was made available for use as a backup; (4) operating personnel and supervision were staffed up to support increased production; and (5) additional rigor was added to Job Hazard Analysis and Pre-job Briefs, along with increased supervisory oversight. These measures resulted in improved dredge performance. Duke Energy continues to monitor and review performance for additional improvement opportunities.³

During Duke Energy's dam decommissioning application discussions with the state, the Company was unexpectedly required by the Department to maintain a 50-foot buffer on the dikes until issuance of a decommissioning permit. The state's decision to limit Duke Energy to a minimum of a 50-foot buffer of ash on the dikes of the 1971 Basin further challenged Duke Energy's ability to meet the Deadline, despite exercising best efforts. The buffer requirement prevented Duke Energy from excavating all of the ash

² Trucking and treating leachate is the alternate method of managing leachate, but the extent to which this can be done is dependent on the capacity of local vendors and municipalities. The limit is approximately 40,000 gallons per day, which would allow for only one landfill cell to be open at a time.

³ Although the operation of three dredges was evaluated, the Company rejected this option due to safety concerns associated with the number of cables, anchors, and pipes that would be introduced.

from the basin dikes until after a dam decommissioning permit could be secured authorizing Duke Energy to remove the dikes. The result was that over 125,000 tons of material remained in the buffer zone of the dikes—material that was originally scheduled to be excavated as Duke Energy cut into the basin. Because Duke Energy was compelled to leave the material in the buffer zone of the dikes, ash was trapped on the dikes, which were surrounded by water. This not only prevented the Company from more efficiently achieving its production goals as planned, but required going back to excavate the material off the dikes from the buffer zone in a less efficient manner, thereby extending schedule.

Although it is not possible to recover the loss of margin occasioned by the delay in securing the necessary permit to decommission the dikes, Duke Energy saved substantial time by plotting the coordinates of the bottom of the 1971 Basin by taking 240 sample borings prior to digging below the groundwater table. Based on those sample borings, the Company determined the lower extent of the ash, thereby allowing it to dredge down directly to those coordinates. Duke Energy then developed as-built drawings certifying that it excavated to those coordinates to establish excavation had been completed. If the Company would not have taken this action, it would have been required to go into the basin on a barge and take 100-foot grid samples, which would have taken significant time. Moreover, if Duke Energy would have found samples that indicated the existence of ash, it would have had to go back to do further excavation. By getting the borings done ahead of time and delineating the GPS coordinates of the contours of the bottom of the basin, the Company saved significant amounts of time.

To further challenge excavation operations, in late June 2018, while continuing to dredge in the 1971 Basin, both dredges encountered trees and stumps (remnants of a Cyprus forest) in three areas estimated to total approximately five acres, which challenged production by requiring an average of 45 non-productive hours per week to clean dredge cutter heads. Neither dredge type could make sufficient progress in those areas due to continuous clogging of the dredge pumps. However, Duke Energy promptly took interim action to redeploy dredge resources to other locations in the basin to maintain production while developing alternatives to effectively remove stumps and debris without compromising production and the dredge schedule. The Company determined to bridge out over two of the three areas to allow for the utilization of mechanical excavation to remove the stumps and CCR material from these areas (approximately 139,000 cubic yards of material). With respect to the third area (approximately 50,000 cubic yards of material), because there was no nearby land access to the area, bridging was rejected as an option. Other options Duke Energy considered included, amphibious excavation, barge excavation, and continued dredging at a reduced rate. To help inform its decision, the Company obtained additional bathymetric and aerial survey data. After evaluating the available options, all of which

would result in schedule delay, Duke Energy determined that dredging through the area would be the most technically feasible option and would result in the least impact on schedule. Although this was the most commercially reasonable option, it, nevertheless, resulted in a schedule loss of three weeks.

In 2018, weather continued to contribute to Duke Energy's inability to meet the Deadline. As in 2017, Sutton experienced above-average levels of precipitation in 2018. Through October 2018, the Wilmington area received historical levels of rainfall. Although average total precipitation in Wilmington in the months of April through September is 35.22 inches, actual rainfall over this six-month period in 2018 was 74.8 inches.⁴ Thus, over this six-month period in 2018, Wilmington received 39.58 inches more rainfall than is normally the case. Under the extremely wet conditions presented, ash could not be dried to the level required for transportation and placement in the landfill.

Sutton, which was directly in the Hurricane Florence's path, experienced the full force of the storm's winds and rainfall. By September 11, 2018, precipitation intensity charts showed 25 to 30 inches of predicted rainfall in a concentrated portion of the coastal area just north of Wilmington. Duke Energy took numerous planning and engineering actions before the hurricane to prepare the site and minimize potential storm impacts, including staffing Sutton during the storm, pre-staging equipment, actively reducing water levels in the ponds before the storm arrived, and placing structural materials on-site to respond quickly if repairs were needed.

Rainfall began at Sutton on September 13, with 5.7 inches falling as measured by gauges at the site. On September 14, Sutton received an additional 11.5 inches of rainfall in three hours, between 6:00 a.m. and 9:00 a.m.⁵ This rainfall significantly exceeded the 25-year, 24-hour storm event design capacity of the run-on/run-off berm for landfill Cells 4 and 5. On September 16, a second peak rain event occurred between the hours of 12:00 a.m. and 6:00 a.m., with the site receiving an additional 4.2 inches of rainfall. Cumulative rainfall received by 8:00 a.m. on September 16 was approximately 30.1 inches.

On September 17, the site response team's priorities were to ensure the site was stable and prepared to handle another rain event by cleaning out ditches, installing

⁴ In fact, new rainfall records were set in each of the months of May and September 2018. See <https://w2.weather.gov/climate/index.php?wfo=ilm>.

⁵ The flooding Cape Fear River triggered the shutdown of the entire plant, including its natural gas-fired operations—and evacuation of plant staff. The storm resulted in 1.8 million Duke Energy customers losing power.

check dams, pumping contact water to the ash basins, restoring power to the site to support wastewater processing equipment operations, and developing a recovery plan to resume ash excavation. On that same day, the construction contractor remobilized and began to manage water in the landfill. The Department performed an inspection on September 28 after repairs had been completed and gave permission for landfill operations and placement of ash in the landfill to resume. Excavation and placement of ash resumed on September 29—only 16 days after the storm began impacting Sutton.

III. Substantial Compliance with all Other CAMA Requirements and Deadlines

In compliance with CAMA, in 2015, Duke Energy embarked on an aggressive plan to close all ash basins across its North Carolina fleet, which is a complex task requiring significant planning, coordination with state regulators, and dedication of resources. In North Carolina, the Company has 31 coal ash basins subject to the requirements of CAMA, which imposes on Duke Energy, among other things, stringent structural stability, closure, post-closure care, groundwater monitoring, and corrective action requirements for CCR surface impoundments, as well as permanent water supply obligations.⁶

In July 2016, the North Carolina legislature amended CAMA to require Duke Energy to rectify any deficiencies identified by, and to comply with the requirements of, any dam safety order issued by the state for CCR surface impoundments. *See* N.C.G.S. § 130A-309-213(d)(1)b. On August 22, 2016, pursuant to N.C.G.S. § 143-215.32, NCDEQ issued Dam Safety Order 16-01 (“DSO”) requiring certain repairs to impoundment dams at nine facility’s subject to CAMA. Consistent with the requirements of the DSO, Duke Energy promptly undertook the required repairs and sent the Department a letter dated June 1, 2018, notifying it that the Company had fully complied with the requirements of the DSO in accordance with N.C.G.S. §§ 130A-309-213(d)(1)b. and 143-215.32. Specifically, Duke Energy completed all of the repair plans specified by, and timely submitted all of the completion reports to, NCDEQ. The Department conducted as-built inspections for each item and issued Certificates of Final Approval indicating that the required work had been completed as designed. In addition, the annual inspection of each dam has been completed, and the Company has received Notice of Inspection Reports documenting that no deficiencies are present.⁷ Finally, on October 10, NCDEQ

⁶ Twenty-six of these basins are also regulated under the federal CCR rule.

⁷ The Sutton surface impoundments were not subject to the DSO. Nevertheless, the October 17, 2017, inspection report from the state indicates “the inspections revealed the dams to be well maintained and in good order.” Similarly, the most recent annual inspection of the Sutton 1971 and 1984 Basin dams

made official notification to the Environmental Management Commission that Duke Energy had complied with all dam safety requirements, as required by N.C.G.S. § 130A-309-213(d)(1)b.

With respect to the permanent water supply requirements imposed under CAMA, Duke Energy provided each eligible and consenting resident with an alternative drinking water supply (*i.e.*, connection to a public water system or a filtration system) by the deadline set out in N.C.G.S. § 130A-309-211(c1). On October 12, 2018, NCDEQ issued a press release announcing that “permanent replacement water supplies have been provided to all eligible households near Duke Energy coal ash facilities in North Carolina . . . by the deadline of October 15, 2018 set forth in the Coal Ash Management Act.” Available at <https://deq.nc.gov/news/press-releases/2018/10/12/release-deq-completes-permanent-replacement-water-supplies-coal-ash>.

Consistent with the requirements of N.C.G.S. § 130A-309-211, Duke Energy submitted the groundwater assessments to NCDEQ by the applicable CAMA deadline. In addition, the Company has submitted for six sites and continues to prepare for other sites updated comprehensive site assessments. Updated groundwater corrective action plans are also being submitted. These documents will be submitted to NCDEQ in accordance with the schedule provided to Duke Energy by the Department.⁸ The Company is also preparing site-specific coal ash impoundment closure plans in accordance with the requirements of N.C.G.S. § 130A-309-214(a)(4). These closure plans will be submitted to the Department no later than the applicable deadline set out in CAMA.

Finally, Duke Energy has substantially complied with all other requirements and deadlines established under CAMA, including its annual inspection, annual reporting, and ash beneficiation requirements.

Conclusion

The latest bathymetric survey data show that Duke Energy has dredged approximately 760,000 cubic yards from the 1971 Basin and that there are approximately 240,000 cubic yards of dredge material remaining. In addition, there are

occurred on August 29, 2018; no concerns or issues were reported by NCDEQ that would necessitate issuance of a Notice of Deficiency or Notice of Violation.

⁸ Although not required under CAMA, Duke Energy completed installation of the accelerated remediation system required under Paragraph II.A. of that certain Agreement to Settle and for Release of Claims entered into among NCDEQ and Duke Energy on September 29, 2015.

987,500 cubic yards remaining in the 1984 Basin. By August 1, 2019, Duke Energy estimates it will have excavated and moved for placement or disposal approximately 94 percent of the total ash to be excavated and moved from the Sutton impoundments.

As detailed above, the Company's commitment to the application of best available technology found to be economically reasonable to meet the Deadline has resulted in significant schedule recovery, despite the many challenges and limitations with which Duke Energy was presented throughout the excavation process. Despite these good faith efforts to meet the Deadline, Duke Energy estimates that it requires an additional six months. Accordingly, the Company respectfully requests that the Department grant Duke Energy a variance to extend the Deadline to **February 1, 2020**, to close the Sutton surface impoundments. Although this application requests a six-month variance, Duke Energy is committed to continuing to undertake best efforts to evaluate opportunities and implement commercially reasonable measures to meet the Deadline.

If you have any questions, please do not hesitate to contact Randy Hart at randy.hart@duke-energy.com or (980) 373-5630. We appreciate your time and consideration.

Respectfully submitted,



George T. Hamrick
Senior Vice President, Coal Combustion Products

NCDEQ cc: Sheila C. Holman (sheila.holman@ncdenr.gov)
William F. Lane (bill.lane@ncdenr.gov)

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December 14, 2018

VIA ELECTRONIC MAIL

Ms. Sheila Holman
Assistant Secretary for Environment
North Carolina Department of Environmental Quality
217 W Jones St
Raleigh, NC 27603

RE: Sutton Variance Application: Response to Request for Supplemental Information

Dear Ms. Holman:

Thank you for your letter dated December 12, 2018, requesting supplemental information regarding Duke Energy's Application for Variance to Extend Closure Date for Sutton Plant CCR Surface Impoundments dated November 16, 2018 ("Variance Application"). Specifically, you requested additional information regarding the current and projected process rates for ash excavation, assumptions made in calculating these rates, and technologies evaluated, and why they were ultimately selected or rejected. You also asked Duke Energy to discuss whether the Sutton Plant has met the requirements and deadlines set out in the Coal Ash Management Act, as amended ("CAMA"). This letter responds to the North Carolina Department of Environmental Quality's ("NCDEQ") request for supplemental information. In addition, Duke Energy provides information regarding the status of Duke Energy's compliance with N.C.G.S. § 130A-309.216 regarding the installation of ash beneficiation projects at three Duke Energy sites in North Carolina. Although this information was not requested by NCDEQ or applicable to the Sutton Plant, we thought it might be helpful as you evaluate the Variance Application.

Rates of Excavation, Assumptions, and Technologies Evaluated

Sutton is forecasted to have excavated 4,900,000 tons of ash by the end of 2018. Based on the estimated volume of material in each of the 1971 and 1984 Basins, there will be approximately 1,400,000 tons remaining to be excavated in 2019 to meet final compliance criteria. Over the past three years, the excavation rate for the project has averaged approximately 130,000 tons per month. Since the on-site landfill was put into operation, the excavation rate has averaged approximately 150,000 tons per month. The current excavation plan assumes that Duke Energy will continue to excavate at a rate of 150,000 tons per month. At the end of July 2019, Duke Energy is forecasting to have approximately 350,000 tons remaining to be excavated. Using the original

amount of 6,655,200 tons in the basins, this equates to approximately 94 percent complete. After closure by removal has been completed, post-excavation validation sampling is further required. The sampling is scheduled to take about one month to complete the field and lab work. As detailed in Section II of Duke Energy's November 16 Variance Application, throughout its history, the project has been challenged with regulatory, weather, operational, and other unforeseen challenges, which have significantly impacted the monthly production rate despite Duke Energy's application of best efforts.

Although the excavation rate of 150,000 tons that is currently assumed will not be sufficient to achieve closure by the August 1, 2019 deadline established under CAMA, this number reflects the actions Duke Energy undertook to gain schedule, as set forth in the Variance Application. The technologies/actions Duke Energy considered and either adopted or rejected are summarized in the chart below.

Technologies Evaluated	Status
Send parallel shipments of ash to Brickhaven and on-site landfill after securing delayed permit	<i>Rejected – Logistical and contractual constraints</i>
Add third conveyor	Adopted – Allowed Duke Energy to increase its margin on rail production
Early mobilization of Phase II contractor prior to Phase I contractor's completion of work	Adopted – Supported early mobilization and removal of non-ash material from 1971 Basin, thereby accelerating Phase II of basin excavation
Accelerate construction of Cell 3 of on-site landfill	Adopted – Allowed landfill to be filled earlier than scheduled at 150,000 tons per month and eliminated project down time with rail operations being complete
Expedite construction of Cells 5, 6, and 7 of on-site landfill	Adopted – Removed landfill from critical path
Simultaneous operation of multiple landfill cells	Adopted – Substantially increased production
Increase dredging excavation activities up to 20 hours per day, six days per week	Adopted – Substantially increased production
Place additional dredge into service	Adopted – Substantially increased production
Simultaneous operation of three dredges	<i>Rejected – Safety concerns associated with number of cables, anchors, and pipes</i>
Plot GPS coordinates of bottom of 1971 Basin	Adopted – Saved significant time by confirming lower extent of ash and avoiding need to go back and do additional excavation and post-excavation sampling time estimates
Redeploy dredge resources to other basin locations while developing alternatives to remove stumps and debris	Adopted – Avoided loss of production and dredge schedule
Take measures in advance of Hurricane Florence reaching landfall to prepare site	Adopted – Minimized potential storm impacts, thus allowing for prompt return to ash excavation and disposal operations

The Sutton site received 5.67 inches of rainfall in November 2018, which impacted eight working days of production, or 64,000 to 80,000 tons of CCR material. Through the first nine days of December 2018, the site has received an additional 3.08 inches of precipitation. In total, as of December 9, a total of 97.67 inches of rain has fallen on the site. This has caused 93 lost working days in 2018, equivalent to 697,500 tons of production.

In addition to delays associated with poor weather, recent dredging production from the 1971 Basin deep ash borrow area has been impaired by the lodging of rocks in the cutter head and dredge pump. A bottom sonar survey identified three rock outcroppings varying from 50 to 250 feet in length. An engineering evaluation will consider this data to determine how Duke Energy should modify the final dredging depths to account for the rock formations/outcroppings. To minimize any schedule delays, the large dredge has been moved to another area in the basin.

These problems demonstrate that despite Duke Energy's continuous application of best efforts, production delays occur because of factors entirely out of Duke Energy's control. They further highlight the fact that estimated excavation rates are influenced by many external factors. Therefore, it would not be prudent to conclude that the project will recover 350,000 tons of shortfall in the first seven months of 2019. In light of the extended variance application process set out in CAMA, which essentially provides a single opportunity to apply for a variance¹, it is critical that the variance request include adequate margin to accommodate additional schedule delays despite Duke Energy's application of best available technology found to be economically reasonable.

Substantial Compliance with Other CAMA Requirements and Deadlines Applicable to the Sutton Plant

- N.C.G.S. § 130A-309-213(d)(1)b. (dam stability) – Although the CCR surface impoundments at the Sutton Plant were not subject to Dam Safety Order 16-01, the October 17, 2017 inspection report from NCDEQ indicates “the inspections revealed the dams to be well maintained and in good order.” Similarly, the most recent annual inspection of the Sutton 1971 and 1984 Basin dams occurred on August 29, 2018; no concerns or issues were reported by NCDEQ that would necessitate issuance of a Notice of Deficiency or Notice of Violation.
- N.C.G.S. § 130A-309-211(c1) (provision of permanent water supply) – Although subject to the statutory requirement to establish permanent replacement water supplies for eligible households, it was determined that no connection was needed at the Sutton Plant. NCDEQ sent its concurrence with this determination to Duke Energy on August 10, 2018.

¹ North Carolina General Statutes Section 130A-309.215(a1) provides that Duke Energy may not apply for a variance “earlier than one year prior to the applicable deadline.”

- N.C.G.S. § 130A-309-211(a) (comprehensive site assessment) – The comprehensive site assessment for the Sutton Plant was submitted to NCDEQ via cover letter dated August 4, 2015.
- N.C.G.S. § 130A-309-211(b) (corrective action plan) – The corrective action plan was submitted in two parts. Part 1 was dated November 2, 2015, and Part 2 was dated February 1, 2016.²

Compliance with N.C.G.S. § 130A-309.216 (ash beneficiation projects)

North Carolina General Statutes Section 130A-309.216 requires Duke Energy to install and operate three large-scale coal ash beneficiation projects to produce reprocessed ash for use in the concrete industry. Duke Energy selected the Buck and H.F. Lee Plants prior to the January 1, 2017 deadline set out in subsection (a) of Section 130A-309.216, and selected the Cape Fear Plant prior to the deadline established under subsection (b) of Section 130A-309.216. Construction of the beneficiation unit at the Buck Plant began in November 2018 and will require 18 to 24 months to complete. Construction of the beneficiation unit at the H.F. Lee Plant is targeted to begin in February 2019, pending receipt of all required permits. Construction is expected to take approximately 18 to 24 months. Finally, construction of the beneficiation unit at Cape Fear is targeted to begin in May 2019, pending receipt of all required permits. Construction is expected to take approximately 18 to 24 months.

Conclusion

As explained in the Variance Application, Duke Energy is committed to continuing to undertake best efforts to evaluate opportunities and implement commercially reasonable measures to meet the August 1, 2019 closure deadline established by CAMA, including taking advantage of good weather days and continuing to move material into the landfill 60 hours or more per week, as weather allows. Nevertheless, Duke Energy respectfully requests that NCDEQ grant it a variance to extend until February 1, 2020, the deadline to close the CCR surface impoundments at the Sutton Plant.

² Outside of CAMA, Duke Energy submitted a Sutton comprehensive site assessment supplement dated August 31, 2016, and an updated comprehensive site assessment dated January 30, 2018.

If you have any questions, please do not hesitate to contact Randy Hart at randy.hart@duke-energy.com or (980) 373-5630. We appreciate your time and consideration.

Respectfully submitted,

A handwritten signature in black ink that reads "George T. Hamrick". The signature is written in a cursive style and is positioned above a horizontal line.

George T. Hamrick
Senior Vice President, Coal Combustion Products

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