

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF MECKLENBURG

SUPERIOR COURT DIVISION

17-CVS-

DUKE ENERGY CAROLINAS, LLC,)

DUKE ENERGY PROGRESS, LLC,)

Plaintiffs,)

v.)

AG INSURANCE SA/NV (f/k/a/L'Etoile S.A.)
Belge d'Assurances),)

AGEAS INSURANCE LIMITED (f/k/a)
Bishopgate Insurance Company Limited),)

AIG PROPERTY CASUALTY COMPANY)
(f/k/a Birmingham Fire Insurance Company of)
Pennsylvania),)

COMPLAINT

ALLEANZA ASSICURAZIONI S.P.A. (as)
successor to Lloyd Italico Assicurazioni)
S.p.A.),)

JURY TRIAL DEMANDED

ALLIANZ FRANCE S.A. (f/k/a Assurances)
Generales de France),)

ALLIANZ GLOBAL RISKS US)
INSURANCE COMPANY (f/k/a Allianz)
Insurance Company),)

ALLIANZ UNDERWRITERS INSURANCE)
COMPANY (f/k/a Allianz Underwriters, Inc.),)

ALLSTATE INSURANCE COMPANY (as)
successor to Northbrook Insurance Company),)

AMERICAN HOME ASSURANCE)
COMPANY,)

ARWOOD INDEMNITY COMPANY)
(f/k/a Royal Indemnity Company),)

ASEGURADORA INTERACCIONES S.A.)
(f/k/a Seguros La Republica S.A.),)

ASSOCIATED ELECTRIC & GAS)
INSURANCE SERVICES LTD.,)
))
AXA BELGIUM (as successor to Groupe Josi)
Compagnie Centrale d'Assurances),)
))
BERKSHIRE HATHAWAY DIRECT)
INSURANCE COMPANY (f/k/a American)
Centennial Insurance Company),)
))
CENTRE INSURANCE COMPANY (f/k/a)
London Guarantee and Accident Company of)
New York),)
))
CENTURY INDEMNITY COMPANY (as)
successor to California Union Insurance)
Company),)
))
COLUMBIA CASUALTY COMPANY,)
))
EMPLOYERS MUTUAL CASUALTY)
COMPANY,)
))
FEDERAL INSURANCE COMPANY,)
))
FIREMAN'S FUND INSURANCE)
COMPANY,)
))
FIRST STATE INSURANCE COMPANY,)
))
GENERAL REINSURANCE)
CORPORATION (as successor to North Star)
Reinsurance Corporation),)
))
GENERALI IARD S.A. (as successor to Le)
Continent),)
))
LEXINGTON INSURANCE COMPANY,)
))
OLD REPUBLIC INSURANCE COMPANY,)
))
PACIFIC EMPLOYERS INSURANCE)
COMPANY,)
))
SEGUROS DE RIESGOS LABORALES)
SURAMERICANA S.A. (as successor to)
Compania Agricola de Seguros),)

TIG INSURANCE COMPANY (as successor)
to Ranger Insurance Company and)
International Surplus Lines Insurance)
Company),)
))
TWIN CITY FIRE INSURANCE)
COMPANY,)
))
UNITED STATES FIRE INSURANCE)
COMPANY,)
))
Defendants.)

Plaintiffs Duke Energy Carolinas, LLC (“Duke Energy Carolinas”) and Duke Energy Progress, LLC (“Duke Energy Progress”) (collectively referred to herein as “Duke”), by their undersigned counsel, bring this action against the Defendant insurers identified below and, in support thereof, allege as follows:

NATURE OF THE ACTION

1. This is a civil action seeking insurance coverage under certain third-party liability insurance policies (“the Policies”) sold to Duke by the Defendant insurance companies. Each of the Policies provides coverage for liability for property damage caused by an occurrence.

2. In particular, Duke seeks damages for breach of contract and an order declaring the present and future rights, duties, and liabilities of the parties under the Policies and directing the Defendant insurers to indemnify Duke for damages suffered by Duke from certain environmental claims (“the Environmental Claims”) asserted against Duke arising out of coal combustion residuals (“CCRs”) at 14 Duke power plants in North Carolina and one Duke power plant in South Carolina.

THE PARTIES

The Plaintiffs

3. **Duke Energy Carolinas.** Plaintiff Duke Energy Carolinas is a limited liability company organized under the laws of North Carolina and has its principal place of business in North Carolina. Duke Energy Carolinas was previously known as Duke Power Company (“Duke Power”). Duke Energy Carolinas is a legal entity under the law with the capacity to file suit.

4. **Duke Energy Progress.** Plaintiff Duke Energy Progress is a limited liability company organized under the laws of North Carolina and has its principal place of business in North Carolina. Duke Energy Progress was previously known as Carolina Power & Light Company (“Carolina Power & Light”). Duke Energy Progress is a legal entity under the law with the capacity to file suit.

The Defendants

5. **AG Insurance.** Upon information and belief, Defendant AG Insurance SA/NV, formerly known as L’Etoile S.A. Belge d’Assurances, is incorporated in Belgium and has its principal place of business in Belgium.

6. **Ageas Insurance Limited.** Upon information and belief, Defendant Ageas Insurance Limited, formerly known as Bishopsgate Insurance Company Limited, is incorporated in the United Kingdom and has its principal place of business in the United Kingdom.

7. **AIG Property Casualty Company.** Upon information and belief, Defendant AIG Property Casualty Company, formerly known as Birmingham Fire Insurance Company of Pennsylvania, is incorporated in Pennsylvania and has its principal place of business in New York.

8. **Alleanza Assicurazioni.** Upon information and belief, Defendant Alleanza Assicurazioni S.p.A., as successor to Lloyd Italico Assicurazioni S.p.A., is incorporated in Italy and has its principal place of business in Italy.

9. **Allianz France.** Upon information and belief, Defendant Allianz France S.A., formerly known as Assurances Generales de France, is incorporated in France and has its principal place of business in France.

10. **Allianz Global Risks.** Upon information and belief, Defendant Allianz Global Risks US Insurance Company, formerly known as Allianz Insurance Company, is incorporated in Illinois and has its principal place of business in Illinois.

11. **Allianz Underwriters.** Upon information and belief, Defendant Allianz Underwriters Insurance Company, formerly known as Allianz Underwriters, Inc., is incorporated in Illinois and has its principal place of business in Illinois.

12. **Allstate.** Upon information and belief, Defendant Allstate Insurance Company, as successor to Northbrook Insurance Company, is incorporated in Illinois and has its principal place of business in Illinois.

13. **American Home Assurance.** Upon information and belief, Defendant American Home Assurance Company is incorporated in New York and has its principal place of business in New York.

14. **Arrowood.** Upon information and belief, Defendant Arrowood Indemnity Company, formerly known as Royal Indemnity Company, is incorporated in Delaware and has its principal place of business in Charlotte, North Carolina.

15. **Aseguradora Interacciones.** Upon information and belief, Defendant Aseguradora Interacciones S.A., formerly known as Seguros La Republica S.A., is incorporated in Mexico and has its principal place of business in Mexico.

16. **AEGIS.** Upon information and belief, Defendant Associated Electric & Gas Insurance Services, Ltd. is incorporated in Bermuda and has its principal place of business in New Jersey.

17. **AXA Belgium.** Upon information and belief, Defendant AXA Belgium, as successor to Groupe Josi Compagnie Centrale d'Assurances, is incorporated in Belgium and has its principal place of business in Belgium.

18. **Berkshire Hathaway Direct.** Upon information and belief, Defendant Berkshire Hathaway Direct Insurance Company, formerly known as American Centennial Insurance Company, is incorporated in Nebraska and has its principal place of business in Nebraska.

19. **Centre.** Upon information and belief, Defendant Centre Insurance Company, formerly known as London Guarantee and Accident Company of New York, is incorporated in Delaware and has its principal place of business in New York.

20. **Century Indemnity.** Upon information and belief, Defendant Century Indemnity Company, as successor to California Union Insurance Company, is incorporated in Pennsylvania and has its principal place of business in Pennsylvania.

21. **Columbia.** Upon information and belief, Defendant Columbia Casualty Company is incorporated in Illinois and has its principal place of business in Illinois.

22. **Employers Mutual.** Upon information and belief, Defendant Employers Mutual Casualty Company is incorporated in Iowa and has its principal place of business in Iowa.

23. **Federal.** Upon information and belief, Defendant Federal Insurance Company is incorporated in Indiana and has its principal place of business in Pennsylvania.

24. **Fireman's Fund.** Upon information and belief, Defendant Fireman's Fund Insurance Company is incorporated in California and has its principal place of business in Illinois.

25. **First State.** Upon information and belief, Defendant First State Insurance Company is incorporated in Connecticut and has its principal place of business in Massachusetts.

26. **Gen Re.** Upon information and belief, Defendant General Reinsurance Corporation, as successor to North Star Reinsurance Corporation, is incorporated in Delaware and has its principal place of business in Connecticut.

27. **Generali IARD S.A.** Upon information and belief, Defendant Generali IARD S.A., as successor to Le Continent, is incorporated in France and has its principal place of business in France.

28. **Lexington.** Upon information and belief, Defendant Lexington Insurance Company is incorporated in Delaware and has its principal place of business in Massachusetts.

29. **Old Republic.** Upon information and belief, Defendant Old Republic Insurance Company is incorporated in Pennsylvania and has its principal place of business in Pennsylvania.

30. **Pacific Employers.** Upon information and belief, Defendant Pacific Employers Insurance Company is incorporated in Pennsylvania and has its principal place of business in Pennsylvania.

31. **Seguros de Riesgos Laborales Suramericana S.A.** Upon information and belief, Defendant Seguros de Riesgos Laborales Suramericana S.A, as successor to Compania

Agricola de Seguros S.A., is incorporated in Colombia and has its principal place of business in Colombia.

32. **TIG.** Upon information and belief, Defendant TIG Insurance Company, as successor to Ranger Insurance Company and International Surplus Lines Insurance Company, is incorporated in California and has its principal place of business in New Hampshire.

33. **Twin City Fire.** Upon information and belief, Defendant Twin City Fire Insurance Company is incorporated in Indiana and has its principal place of business in Connecticut.

34. **U.S. Fire.** Upon information and belief, Defendant United States Fire Insurance Company is incorporated in Delaware and has its principal place of business in New Jersey.

JURISDICTION AND VENUE

35. **Personal Jurisdiction.** This Court has personal jurisdiction over Defendants pursuant to applicable North Carolina law, at least because (i) the Defendants have engaged in substantial business activity within North Carolina, (ii) the insurance policies at issue in this action were issued to Plaintiffs in North Carolina, (iii) Plaintiffs were residents of North Carolina when the events out of which the claims in this action arose took place, (iv) the events out of which the claims in this action arose took place in North Carolina, and/or (v) the injurious consequences of Defendants' failure to comply with their contractual obligations to provide coverage have been endured by Plaintiffs in North Carolina. In addition, upon information and belief, Defendant Arrowood Indemnity Company's principal place of business is in North Carolina.

36. **Venue.** Venue in this Court is proper pursuant to N.C. Gen. Stat. § 1-80 and/or N.C. Gen. Stat. § 1-82.

THE LIABILITY INSURANCE POLICIES

37. **Policies Sold to Duke Energy Carolinas.** From 1973 to 1986, Duke Power purchased excess-level third-party liability insurance with standard-form wording. The policy numbers and policy periods of those policies sold by Defendants that presently are known to Duke are set forth in Exhibit A to this Complaint, which is hereby incorporated by reference as if fully set forth herein. The policies are occurrence-based and remain in full force and effect.

38. **Policies Sold to Duke Energy Progress.** From 1971 to 1986, Carolina Power & Light purchased excess-level third-party liability insurance with standard-form wording. The policy numbers and policy periods of those policies sold by Defendants that presently are known to Duke are set forth in Exhibit B to this Complaint, which is hereby incorporated by reference as if fully set forth herein. The policies are occurrence-based and remain in full force and effect. The policies at issue sold by Defendants to Duke Power and Carolina Power & Light are collectively referred to herein as the "Policies."

39. **Duty to Indemnify.** The Policies each promise, with varying wording, to indemnify Duke for all sums Duke is legally obligated to pay on account of property damage caused by an occurrence, subject only to any underlying or upper limits of liability expressly and unambiguously stated in each respective Policy. The Policies also indemnify for fees and expenses incurred by Duke in the investigation and defense of any claim or suit. Duke's damages exceed the self-insured retentions and either reach or are expected to reach the level of attachment of all of the Policies.

THE ENVIRONMENTAL CLAIMS

40. **Background.** Power plants that generate electricity through the combustion of coal create a number of waste byproducts. Among those waste byproducts are CCRs. CCRs

include fly ash, bottom ash, coal slag, and flue gas desulfurized gypsum. Fly ash and bottom ash are both commonly referred to as “coal ash.” Coal ash contains various heavy metals and potentially hazardous constituents, including arsenic, barium, cadmium, chromium, lead, manganese, mercury, nitrates, sulfates, selenium, and thallium. Coal ash has not been defined, itself, as a “hazardous substance” or “hazardous waste” under federal law, although some constituents of coal ash may be hazardous in sufficient quantities or concentrations.

41. Coal ash basins (also known as “coal ash ponds,” “coal ash impoundments,” or “ash dikes”) may be part of the waste treatment system at coal-fired power plants. Historically, Duke’s coal ash basins were unlined earthen impoundments and typically operated as follows: Coal ash was mixed with water to form a slurry. The coal ash slurry was carried through sluice pipe lines to the coal ash basin. Settling occurred in the coal ash basin, in which particulate matter and free chemical components separated from the slurry and settled at the bottom of the basin. Less contaminated water remained at the surface of the basin, from which it eventually could be discharged if authorized under relevant law and permits. In some instances, water at the surface of the primary basin flowed into a secondary basin, where further settling and treatment occurred before its discharge into a water of the United States.

42. Coal ash basins generally continued to store settled ash and particulate material for years or decades. From time to time, Duke dredged settled coal ash from some of the basins, storing the ash in dry stacks on plant property.

43. Until recently, a total of approximately 108 million tons of coal ash was held in coal ash basins owned and operated by Duke in North Carolina. Duke also operates facilities with coal ash basins in South Carolina, where, until recently, there was approximately 6 million tons of coal ash.

44. It is alleged, without regard to historical awareness of harm, that coal ash constituents from coal ash basins and other areas have been infiltrating into groundwater over a long period of time. State environmental regulators have alleged that there have been environmental impacts or potential impacts to groundwater beneath each of Duke's North Carolina and South Carolina coal-fired power plants that are part of this claim.

45. Duke's CCR liability has evolved over time and continues to evolve. In North Carolina, Duke faces liability under the North Carolina Coal Ash Management Act ("CAMA"), which has undergone legal challenge and significant modification since it was first enacted and was significantly amended in July 2016. In both North Carolina and South Carolina, Duke also faces additional CCR liability under a recent United States Environmental Protection Agency ("EPA") rule regulating the disposal of CCRs ("CCR Rule"), as to which the scope of Duke's additional liability is not yet fully determined.

46. **North Carolina -- CAMA.** CAMA was the subject of substantial amendments in July 2016, pursuant to Session Law 2016-95. The amendments, among other things, clarify and cement Duke's remedial obligations and give the North Carolina Department of Environmental Quality ("NCDEQ") flexibility to update Duke's remedial obligations based on new information and changing conditions. The amendments introduced a number of new requirements and deadlines not contemplated in the original statute.

47. CAMA requires Duke to take investigatory and remedial steps in connection with CCRs at its North Carolina coal-fired power plants. CAMA requires an owner of a CCR surface impoundment to, *inter alia*, conduct groundwater monitoring and assessment to identify groundwater contamination, and to implement corrective action to restore groundwater quality in the event of groundwater contamination related to coal ash constituents. The remedial action

required under CAMA on account of groundwater and/or surface water contamination also includes source control, including the removal of CCRs from an impoundment or the construction of an impermeable environmental cap on top of an impoundment.

48. CAMA prescribes that the NCDEQ develop classifications for each North Carolina CCR surface impoundment based on the impoundment's risk to public health, safety, and welfare, the environment, and natural resources. Each impoundment is to be classified as high risk, intermediate risk, or low risk. In assessing a CCR impoundment's risk the NCDEQ considers three primary factors: impact to surface water, impact to groundwater, and structural integrity. CAMA requires that high and intermediate risk impoundments be dewatered and their CCRs be removed. CAMA requires that, at the election of NCDEQ, low risk impoundments be dewatered and covered with an impermeable environmental cap or that the CCRs be removed after dewatering. In May 2016, the NCDEQ released proposed classifications as to Duke's North Carolina power plants and designated all power plants – aside from those power plants specifically identified in CAMA, discussed below – as intermediate risk.

49. The North Carolina General Assembly expressly required by Session Laws 2014-122 and 2016-95 that Duke take certain remedial actions at certain specifically-identified power plants. By direct mandate of the North Carolina General Assembly, Duke must dewater and remove all CCRs from impoundments at the following seven power plants: Dan River Steam Station, Riverbend Steam Station, Asheville Steam Electric Generating Plant, L.V. Sutton Energy Complex, H.F. Lee Steam Electric Generating Plant, Cape Fear Steam Electric Generating Plant, and W.H. Weatherspoon Steam Electric Plant.

50. The July 2016 amendment made substantial changes to CAMA. It required Duke, as an additional remedial measure, to provide permanent water supplies to certain residences

near CCR impoundments that rely upon drinking water supply wells. The amendment provided that the NCDEQ shall classify a CCR impoundment as low risk if the impoundment owner provides a permanent water supply as required by the statute and other conditions are met. The amendment imposed an additional requirement that a certain amount of ash be beneficiated for cementitious purposes. The CCR impoundments at the Buck Steam Station and H.F. Lee Steam Electric Generating Plant are being excavated to comply with this CAMA obligation. In addition, pursuant to the July 2016 amendment, Duke must select a third ash beneficiation site by no later than July 1, 2017. The amendment also reflects the elimination of the Coal Ash Management Commission – the body originally charged with deciding impoundment classifications – after the Supreme Court of North Carolina ruled that the Commission was unconstitutional.

51. **Other North Carolina CCR Liability.** In addition to CAMA, Duke faces additional CCR-related liability at its North Carolina power plants on account of alleged environmental property damage under the federal CCR Rule. The CCR Rule establishes minimum criteria for the management and disposal of CCRs in landfills and impoundments and provides comprehensive guidance regarding risks imposed by, among other things, groundwater contamination. The CCR Rule requires groundwater monitoring and assessment to identify potential groundwater contamination. In the event contamination is identified, the CCR Rule may require remedial action including, but not limited to, corrective action to restore groundwater quality and source control, including the removal of CCRs from an impoundment or the construction of an impermeable environmental cap on top of an impoundment. Duke’s potential liability for remedial action under the CCR Rule remains uncertain at this time, as the

deadline to begin evaluating the groundwater monitoring data for statistically significant increases over background levels for constituents is not until October 2017.

52. **The North Carolina Power Plants.** The North Carolina power plants at which Duke faces liability on account of alleged environmental property damage allegedly caused by CCRs are as follows:

Allen Steam Station

53. The Allen Steam Station, located in Belmont, Gaston County, North Carolina, commenced operation in 1957. The Allen plant is adjacent to the Catawba River. The Allen plant has been owned and operated since its inception by Duke Energy Carolinas.

54. Historically, CCRs generated at the Allen plant were managed primarily in on-site impoundments at the plant. There are two impoundments at the Allen plant: the Active Ash Basin and the Inactive Ash Basin.

55. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the Allen plant for which Duke makes a claim under the Policies issued to Duke Power. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

Asheville Steam Electric Generating Plant

56. The Asheville Steam Electric Generating Plant, located in Arden, Buncombe County, North Carolina, commenced operation in 1964. The Asheville plant is adjacent to the French Broad River and Lake Julian. The Asheville plant has been owned and operated since its inception by Duke Energy Progress.

57. Historically, CCRs generated at the Asheville plant were managed primarily in on-site impoundments at the plant. There are two impoundments at the Asheville plant: the 1964 Ash Basin and the 1982 Ash Basin.

58. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the Asheville plant for which Duke makes a claim under the Policies issued to Carolina Power & Light. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

Belews Creek Steam Station

59. The Belews Creek Steam Station, located in Belews Creek, Stokes County, North Carolina, commenced operation in 1974. The Belews Creek plant is adjacent to West Belews Creek/Belews Lake. The Belews Creek plant has been owned and operated since its inception by Duke Energy Carolinas.

60. Historically, CCRs generated at the Belews Creek plant were managed primarily in an on-site impoundment at the plant. There is one CCR impoundment at the Belews Creek plant: the Active Ash Basin.

61. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the Belews Creek plant for which Duke makes a claim under the Policies issued to Duke Power. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

Buck Steam Station

62. The Buck Steam Station, located in Salisbury, Rowan County, North Carolina, commenced operation in 1926. The Buck plant is adjacent to the Yadkin River. The Buck plant has been owned and operated since its inception by Duke Energy Carolinas.

63. Historically, CCRs generated at the Buck plant were managed primarily in on-site impoundments at the plant. There are three CCR impoundments at the Buck plant: Ash Basin Cell 1, Ash Basin Cell 2, and Ash Basin Cell 3.

64. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the Buck plant for which Duke makes a claim under the Policies issued to Duke Power. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

Cape Fear Steam Electric Generating Plant

65. The Cape Fear Steam Electric Generating Plant, located in Moncure, Chatham County, North Carolina, commenced operation in 1923. The Cape Fear plant is adjacent to the Cape Fear River, Haw River, and Deep River. The Cape Fear plant has been owned and operated since its inception by Duke Energy Progress.

66. Historically, CCRs generated at the Cape Fear plant were managed primarily in on-site impoundments at the plant. There are five CCR impoundments at the Cape Fear plant: the 1956 Ash Pond, the 1963 Ash Pond, the 1970 Ash Pond, the 1978 Ash Pond, and the 1985 Ash Pond.

67. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the

Cape Fear plant for which Duke makes a claim under the Policies issued to Carolina Power & Light. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

Rogers Energy Complex (Cliffside Steam Station)

68. The Rogers Energy Complex (Cliffside Steam Station), located in Mooresboro, Rutherford and Cleveland Counties, North Carolina, commenced operation in 1940. The Cliffside plant is adjacent to the Broad River. The Cliffside plant has been owned and operated since its inception by Duke Energy Carolinas, formerly known as Duke Power.

69. Historically, CCRs generated at the Cliffside plant were managed primarily in on-site impoundments at the plant. There are three CCR impoundments at the Cliffside plant: the Active Ash Basin, Retired Unit 5 Basin, and Retired Unit 1-4 Basin.

70. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the Cliffside plant for which Duke makes a claim under the Policies issued to Duke Power. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

Dan River Steam Station

71. The Dan River Steam Station, located in Eden, Rockingham County, North Carolina, commenced operation in 1949. The Dan River plant is adjacent to the Dan River. The Dan River plant has been owned and operated since its inception by Duke Energy Carolinas.

72. Historically, CCRs generated at the Dan River plant were managed primarily in on-site impoundments at the plant. There are two CCR impoundments at the Dan River plant: the Primary Basin and the Secondary Basin.

73. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the Dan River plant for which Duke makes a claim under the Policies issued to Duke Power. These costs do not include costs relating to the February 2, 2014, spill and cleanup of the Dan River. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

H.F. Lee Steam Electric Generating Plant

74. The H.F. Lee Steam Electric Generating Plant, located in Goldsboro, Wayne County, North Carolina, commenced operation in 1951. The H.F. Lee plant is adjacent to the Neuse River. The H.F. Lee plant has been owned and operated since its inception by Duke Energy Progress.

75. Historically, CCRs generated at the H.F. Lee plant were managed primarily in on-site impoundments at the plant. There are four CCR impoundments at the H.F. Lee plant: the Active Ash Pond, Ash Pond #1, Ash Pond #2, and Ash Pond #3.

76. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the H.F. Lee plant for which Duke makes a claim under the Policies issued to Carolina Power & Light. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

Marshall Steam Station

77. The Marshall Steam Station, located in Terrell, Catawba County, North Carolina, commenced operation in 1965. The Marshall plant is adjacent to Lake Norman. The Marshall plant has been owned and operated since its inception by Duke Energy Carolinas.

78. Historically, CCRs generated at the Marshall plant were managed primarily in an on-site impoundment at the plant. There is one CCR impoundment at the Marshall plant: the Ash Basin.

79. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the Marshall plant for which Duke makes a claim under the Policies issued to Duke Power. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

Mayo Steam Electric Generating Plant

80. The Mayo Steam Electric Generating Plant, located near Roxboro, Person County, North Carolina, commenced operation in 1983. The Mayo plant is adjacent to Mayo Lake and Crutchfield Branch. The Mayo plant has been owned and operated since its inception by Duke Energy Progress.

81. Historically, CCRs generated at the Mayo plant were managed primarily in an on-site impoundment at the plant. There is one CCR impoundment at the Mayo plant: the Ash Pond.

82. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the Mayo plant for which Duke makes a claim under the Policies issued to Carolina Power & Light. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

Riverbend Steam Station

83. The Riverbend Steam Station, located in Mount Holly, Gaston County, North Carolina, commenced operation in 1929. The Riverbend plant is adjacent to the Catawba River (Mountain Island Lake). The Riverbend plant has been owned and operated since its inception by Duke Energy Carolinas.

84. Historically, CCRs generated at the Riverbend plant were managed primarily in on-site impoundments at the plant. There are two CCR impoundments at the Riverbend plant: the Primary Basin and the Secondary Basin.

85. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the Riverbend plant for which Duke makes a claim under the Policies issued to Duke Power. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

Roxboro Steam Electric Generating Plant

86. The Roxboro Steam Electric Generating Plant, located near Semora, Person County, North Carolina, commenced operation in 1966. The Roxboro plant is adjacent to Hyco Lake. The Roxboro plant has been owned and operated since its inception by Duke Energy Progress.

87. Historically, CCRs generated at the Roxboro plant were managed primarily in on-site impoundments at the plant. There are two CCR impoundments at the Roxboro plant: the East Ash Pond and the West Ash Pond.

88. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the

Roxboro plant for which Duke makes a claim under the Policies issued to Carolina Power & Light. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

L.V. Sutton Energy Complex

89. The L.V. Sutton Energy Complex, located in Wilmington, New Hanover County, North Carolina, commenced operation in 1954. The Sutton plant is adjacent to the Cape Fear River. The Sutton plant has been owned and operated since its inception by Duke Energy Progress.

90. Historically, CCRs generated at the Sutton plant were managed primarily in on-site impoundments at the plant. There are two CCR impoundments at the Sutton plant: the 1971 Ash Basin and the 1984 Ash Basin.

91. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the Sutton plant for which Duke makes a claim under the Policies issued to Carolina Power & Light. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

W.H. Weatherspoon Steam Electric Plant

92. The W.H. Weatherspoon Steam Electric Plant, located near Lumberton, Robeson County, North Carolina, commenced operation in 1949. The Weatherspoon plant is adjacent to the Lumber River. The Weatherspoon plant has been owned and operated since its inception by Duke Energy Progress.

93. Historically, CCRs generated at the Weatherspoon plant were managed primarily in an on-site impoundment at the plant. There is one CCR impoundment at the Weatherspoon plant: the Ash Pond.

94. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the Weatherspoon plant for which Duke makes a claim under the Policies issued to Carolina Power & Light. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

95. **The South Carolina Power Plant.** The South Carolina power plant at which Duke faces liability on account of alleged environmental property damage allegedly caused by CCRs is as follows:

H.B. Robinson Steam Electric Plant

96. The H.B. Robinson Steam Electric Plant, located near Hartsville, Darlington County, South Carolina, commenced operation in 1960. The Robinson plant is adjacent to Lake Robinson. The Robinson plant has been owned and operated since its inception by Duke Energy Progress.

97. Historically, CCRs generated at the Robinson plant were managed primarily in an on-site impoundment at the plant. There is one CCR impoundment at the Robinson plant.

98. The South Carolina Department of Health and Environmental Control (“SCDHEC”) issued a Notice of Violation to Duke in which it alleged that the CCR impoundment at the Robinson plant caused groundwater contamination, and, as a result, SCDHEC ordered Duke to investigate and remediate groundwater.

99. Duke is obligated to and will conduct groundwater remediation at the Robinson plant. Due to site-specific factors, source control will be accomplished through the excavation of CCRs from the CCR impoundment. CCRs removed from the impoundment will be moved to a lined, permitted landfill that Duke will construct on-site.

100. Duke has incurred substantial costs on account of its liability for alleged CCR-related environmental property damage arising out of impoundments and/or other areas at the Robinson plant for which Duke makes a claim under the Policies issued to Carolina Power & Light. Duke is incurring substantial additional costs on an ongoing basis and will continue to incur substantial additional costs in the future.

101. In addition, Duke may face additional CCR-related liability at the Robinson plant on account of alleged environmental property damage under the federal CCR Rule. As with Duke's North Carolina power plants, Duke's potential liability at the Robinson plant for remedial action under the CCR Rule remains uncertain at this time, as groundwater monitoring is ongoing.

COVERAGE UNDER THE POLICIES

102. **Coverage.** The Policies provide coverage for Duke's CCR liability. Duke satisfies the requirements for coverage in each Policy. Duke faces liability on account of, and is being legally compelled to investigate and remediate, alleged environmental property damage allegedly caused by CCRs at the North and South Carolina power plants identified above. The alleged environmental property damage includes damage to third party property, including groundwater, that is not owned by Duke. Duke's liability for alleged property damage is caused by an occurrence during the policy period of each of the Policies.

103. The costs Duke has incurred and/or will incur on account of alleged environmental property damage at each of the above-referenced power plants will exceed the available per-occurrence limits of each of the Policies.

104. Duke has complied with all conditions and paid all premiums. No Policy exclusions apply. Duke is entitled to the full benefits and protections of the Policies.

105. **The Defendant Insurers' Failure to Provide Coverage.** Duke notified Defendants of its specific CCR liability at each of the North Carolina and South Carolina power plants described in Paragraphs 52 to 101, and asserted a specific claim against each Defendant under the Policies demanding coverage.

106. No Defendant has honored its contractual obligation to provide coverage for the Environmental Claims. Defendants have reserved rights or refused to respond to Duke's request for coverage. The Defendant insurers have breached and/or repudiated their contractual obligations under the Policies.

CAUSES OF ACTION

Count I – Breach of Contract

107. **Incorporation by Reference.** Duke repeats and incorporates by reference the allegations in the preceding paragraphs as if fully set forth herein.

108. **Entitlement to Benefits of the Policies.** The Policies are valid and enforceable contracts under which Defendants agreed to provide insurance coverage pursuant to the Policies' terms. Pursuant to the Policies' terms, Defendants are required to provide coverage in connection with Duke's CCR liability at the North Carolina and South Carolina power plants identified above.

109. **Assertion of Claim.** Duke asserted that Defendants are responsible to indemnify it for damages arising out of the Environmental Claims.

110. **Breach.** Defendants breached their contractual obligations under the Policies by repudiating their coverage obligations and/or otherwise failing to provide coverage or respond to Duke's request for coverage.

111. As a direct and proximate result of the Defendants' respective breaches of the Policies, Duke has incurred damages currently recoverable under the Policies and will continue to incur substantial additional sums, damages, and expenses. Defendants' breaches have caused Duke actual damages, including the payment of millions of dollars for environmental response costs in connection with CCR claims against it. Defendants have deprived Duke of the benefit of the insurance coverage each Defendant agreed to provide and for which each Defendant has been paid premiums.

Count II – Declaratory Judgment

112. **Incorporation by Reference.** Duke repeats and incorporates by reference the allegations in the preceding paragraphs as if fully set forth herein.

113. **Entitlement to Benefits of the Policies.** The Policies are valid and enforceable contracts under which Defendants agreed to provide insurance coverage pursuant to the Policies' terms. Pursuant to the Policies' terms, Defendants are required to provide coverage in connection with Duke's CCR liability at the North Carolina and South Carolina power plants identified above.

114. **Disputed Coverage.** Upon receipt of notice of the Environmental Claims, Defendants have failed to honor their contractual obligations under the Policies and Duke is

informed and believes that Defendants dispute their obligation to indemnify Duke under the Policies in connection with the Environmental Claims.

115. **Actual Controversy.** An actual and justiciable controversy presently exists between Duke and Defendants with respect to Defendants' duties and obligations under the Policies in connection with Duke's CCR liability described herein. The controversy is of sufficient immediacy to justify the issuance of a declaratory judgment. The issuance of declaratory relief by this Court will terminate some or all of the existing controversy between the parties. Duke is entitled to a declaration that Defendants are required under the terms of their Policies to provide coverage to Duke for damages and costs Duke will incur on account of its CCR liability described herein.

116. **Necessity of Declaratory Relief.** The rights, status, and other legal relations between Duke and Defendants are uncertain and insecure. Continuing uncertainty regarding the extent of available insurance will perpetuate and augment the injury Duke already is suffering, including: (i) an increased financial burden on itself and its ratepayers, which Defendants promised to bear, and (ii) the burden of interfacing with enforcement agencies in the face of continuing uncertainty as to the total financial exposure and sources of funding to meet current CCR liabilities. The entry of a declaratory judgment by this Court is necessary to terminate the uncertainty and controversy giving rise to this proceeding.

PRAYER FOR RELIEF

117. WHEREFORE, Duke respectfully requests that this Court enter a judgment as follows:

- a. On Count I, order that Defendants pay compensatory and consequential damages in an amount to be determined at trial for Duke's damages, sums,

costs, expenses, “loss,” and “ultimate net loss” incurred on account of its CCR liability at the North Carolina and South Carolina power plants described herein;

- b. On Count II, issue a declaration that Duke is entitled to coverage under the Policies with respect to its CCR liability described herein, and that Defendants are obligated to provide coverage under the terms of their Policies for Duke’s future damages, sums, costs, expenses, “loss,” and “ultimate net loss” incurred on account of its CCR liability;
- c. Order that Defendants pay prejudgment and post-judgment interest and Duke’s costs, expenses, and attorneys’ fees incurred in connection with this action;
- d. An award of such other and further relief as the Court deems just and proper.

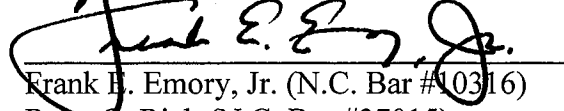
DEMAND FOR JURY TRIAL

Plaintiffs Duke Energy Carolinas and Duke Energy Progress demand a trial by jury on all issues so triable.

This the 29th day of March, 2017.

Respectfully submitted,

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EXHIBIT A

**Policies Issued to Duke Power
(By Original Insurer Name)**

Insurer	Policy Number	Policy Period	
		Start	End
Allianz Insurance Company	XL559537	10/31/1982	10/31/1983
Allianz Underwriters, Inc.	AUX 5200514	10/31/1981	10/31/1982
American Centennial Insurance Company	CC 002611	10/31/1981	10/31/1983
Associated Electric and Gas Insurance Services Ltd.	172	12/31/1979	12/31/1980
Associated Electric and Gas Insurance Services Ltd.	209CNJ	10/31/1985	10/31/1986
California Union Insurance Company	UT 3569	12/31/1979	12/31/1980
California Union Insurance Company	ZCX 006009	10/31/1981	10/31/1982
California Union Insurance Company	ZCX 007450	10/31/1984	10/31/1985
Certain London Market and Other Companies*	K25801	10/23/1973	12/31/1975
Certain London Market and Other Companies*	UGL 1330	12/31/1975	12/31/1976
Certain London Market and Other Companies*	UGL 1331	12/31/1975	12/31/1978
Certain London Market and Other Companies*	UGL 1332	12/31/1975	12/31/1978
Certain London Market and Other Companies*	UGL 1333	12/31/1975	12/31/1978
Certain London Market and Other Companies*	UHL 1370	12/31/1976	12/31/1977
Certain London Market and Other Companies*	UJL 1680	12/31/1977	12/31/1978
Columbia Casualty Company	UT 3569	12/31/1979	12/31/1980
Employers Mutual Casualty Company	20021	12/31/1978	12/31/1979
Federal Insurance Company	(85) 7929-31-72	10/31/1984	10/31/1985
Fireman's Fund Insurance Company	XLX 1531024	10/31/1983	10/31/1984
Fireman's Fund Insurance Company	XLX 1687008	10/31/1984	10/31/1985
Fireman's Fund Insurance Company	XLX 1687003	11/9/1984	10/31/1985
First State Insurance Company	127720	10/23/1973	1/31/1976
First State Insurance Company	130224	2/1/1978	12/31/1978
First State Insurance Company	UT 3569	12/31/1979	12/31/1980
First State Insurance Company	929871	10/31/1981	10/31/1982
First State Insurance Company	917316	10/31/1982	10/31/1983
International Surplus Lines Insurance Company	UT 3569	12/31/1979	12/31/1980
London Guarantee and Accident Company	LX3278836	10/31/1981	10/31/1982

of New York			
London Guarantee and Accident Company of New York	LX1898119	10/31/1982	10/31/1983
North Star Reinsurance Corporation	NSX-11822	10/23/1973	12/31/1976
Northbrook Insurance Company	127719/63 000 264	10/23/1973	12/31/1975
Old Republic Insurance Company	OZX-11486	10/31/1981	10/31/1982
Pacific Employers Insurance Company	XCC 002383	10/31/1982	10/31/1983
Ranger Insurance Company	BSP 122047	10/31/1981	10/31/1983
Ranger Insurance Company	EUL 300658	10/31/1983	10/31/1984
Ranger Insurance Company	EUL 300579	10/31/1984	10/31/1985
Royal Indemnity Company	EC103320	10/31/1984	10/31/1985
Twin City Fire Insurance Company	TXS101193	10/31/1982	10/31/1983

*The following insurers subscribed to one or more of the above-referenced policies issued in the London insurance market to Duke Power Company: American Centennial Insurance Company; Assurances Generales de France; Bishopsgate Insurance Company Limited; Compania Agricola de Seguros S.A.; Groupe Josi Compagnie Centrale d'Assurances; Le Continent; Seguros La Republica S.A.

EXHIBIT B

**Policies Issued to Carolina Power & Light
(By Original Insurer Name)**

Insurer	Policy Number	Policy Period	
		Start	End
American Centennial Insurance Company	CC 002613	10/31/1981	10/31/1983
Associated Electric and Gas Insurance Services Ltd.	211CNJ	10/31/1985	10/31/1986
Certain London Market and Other Companies [^]	K24880	12/31/1971	12/31/1972
Certain London Market and Other Companies [^]	K25800	12/31/1972	12/31/1975
Certain London Market and Other Companies [^]	K25801	8/9/1973	12/31/1975
Certain London Market and Other Companies [^]	UGL 1330	12/31/1975	12/31/1976
Certain London Market and Other Companies [^]	UGL 1331	12/31/1975	12/31/1978
Certain London Market and Other Companies [^]	UGL 1332	12/31/1975	12/31/1978
Certain London Market and Other Companies [^]	UGL 1333	12/31/1975	12/31/1978
Certain London Market and Other Companies [^]	UHL 1370	12/31/1976	12/31/1977
Certain London Market and Other Companies [^]	UJL 1680	12/31/1977	12/31/1978
Federal Insurance Company	(85) 7929-31-63	10/31/1984	10/31/1985
Fireman's Fund Insurance Company	XLX 1530917	10/31/1983	10/31/1984
Pacific Employers Insurance Company	XCC 002380	10/31/1982	10/31/1983
Pacific Employers Insurance Company	XCC 012437	10/31/1983	10/31/1984
Ranger Insurance Company	BSP 122048	10/31/1981	10/31/1983
Ranger Insurance Company	EUL 300659	10/31/1983	10/31/1984
Ranger Insurance Company	EUL 300578	10/31/1984	10/31/1985
United States Fire Insurance Company	522 020271 6	10/31/1984	10/31/1985

[^]The following insurers subscribed to one or more of the above-referenced policies issued in the London insurance market to Carolina Power & Light Company: American Home Assurance Company; Birmingham Fire Insurance Company of Pennsylvania; Compania Agricola de Seguros S.A.; L'Etoile S.A. Belge d'Assurances; Le Continent; Lexington Insurance Company; Lloyd Italico Assicurazioni S.p.A.; Seguros La Republica S.A.