

FUNDING AND PARTICIPATION AGREEMENT BETWEEN

THE STATE OF NORTH CAROLINA
THE COMMONWEALTH OF VIRGINIA
THE U.S. DEPARTMENT OF THE INTERIOR
AND
DUKE ENERGY CAROLINAS, LLC

CONCERNING COOPERATIVE NATURAL RESOURCE DAMAGE ASSESSMENT,
RESTORATION PLANNING, AND RESTORATION IMPLEMENTATION ACTIVITIES
FOR THE
DUKE ENERGY DAN RIVER STEAM STATION COAL ASH POND SITE IN
ROCKINGHAM COUNTY, N.C.

I. PARTIES

This Funding and Participation Agreement (Agreement) is between the U.S. Department of the Interior (DOI) through the U.S. Fish & Wildlife Service (FWS); the State of North Carolina through the Department of Environment and Natural Resources; the Commonwealth of Virginia through the Office of the Secretary of Natural Resources and the Virginia Department of Environmental Quality (collectively the "Trustees"); and Duke Energy Carolinas, LLC (Duke Energy). The Trustees and Duke Energy are collectively referred to as "Parties" and individually as a "Party."

II. PURPOSE

The purpose of this Agreement is to provide an expedited, focused framework for cooperative natural resource damage assessment and restoration (NRDAR) to facilitate the resolution of any claims for natural resource damages (NRD) arising from the releases of hazardous substances (Release) from the Dan River Steam Station coal ash pond located in Rockingham County, North Carolina (Facility). This Agreement sets forth procedures for (a) coordinating data collection and assessment activities to determine the extent of natural resource injuries; (b) expediting restoration of any injured natural resource and/or the services provided by those resources; and (c) paying assessment and restoration costs incurred and to be incurred by the Trustees. Through this Agreement, the Parties intend to work efficiently and in a cost-effective manner to advance the NRDAR and resolve NRD claims related to the Release.

The geographic extent of the assessment and restoration process encompasses all areas, including streams, tributaries, reservoirs, and adjacent habit, where hazardous substances from the Release have come to be located, and all injuries, damages or other losses or impacts arising, resulting or otherwise in any way related to said hazardous substances or any response activities therewith.

The Parties agree that a goal of the cooperative assessment process will be settlement of the alleged claims without contested litigation, and that agreement to this process does not constitute any admission of or any evidence of liability, or constitute a waiver of any claims or defenses, by any of the Parties.

III. AUTHORITIES

This Agreement is entered into pursuant to the Comprehensive Environmental, Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9607(f); Executive Order 12580; the National Contingency Plan, Subpart G, 40 C.F.R. §§ 300.600-300-615; the DOI's Natural Resource Damage Assessment Regulations (Regulations), 43 C.F.R. Part 11; and other applicable federal and state law.

IV. DEFINITIONS

Unless otherwise defined, terms in this Agreement shall have the meaning ascribed to them in CERCLA and the Regulations.

- A. "Costs" means the reasonable Trustee costs of determining injury and developing restoration projects, developing and implementing restoration plan(s) including, but not limited to, reasonable administrative and legal costs (including Trustee attorney costs), travel expenses, personnel costs, monitoring and oversight costs, costs associated with public participation, indirect costs and overhead charges. This Agreement includes costs that may be incurred by the North Carolina Wildlife Resources Commission, the Virginia Department of Game and Inland Fisheries, and any other federal or state agency agreed to in writing by the Parties.
- B. "Cooperative Work" means all work performed pursuant to this Agreement as a Cooperative Study under Part VI or Restoration Planning and Implementation under Part X.
- C. "Natural Resource Damage Assessment" or "NRDA" means the process of collecting and analyzing information to evaluate the nature and extent of injuries resulting from the Release of hazardous substances and determining the restoration actions needed to bring injured natural resources and services back to baseline and to make the environment and public whole for interim losses.
- D. "Natural Resource Damage Recovery" means any award, judgment, settlement or other payment to any of the Trustees which is received or controlled by any of the Trustees or to any third party pursuant to a Trustee approved activity as a result of claims for natural resource damages related to the Release, except that such term does not include any award which is a judgment, settlement, or payment in reimbursement of costs of natural resource damage assessment incurred by any of the Trustees.

- E. "Restore" and "Restoration" mean any actions undertaken by the Trustees pursuant to 42 U.S.C. § 9607(f)(1) and other applicable laws or regulations, including planning, implementation, monitoring, administration and oversight, which serve to restore, rehabilitate, replace, or acquire the equivalent of natural resources or natural resource services and compensate for the interim natural resource lost use or lost services, injured, destroyed or lost as a result of the Release.

V. COOPERATIVE FRAMEWORK

A. General

The Parties agree that a cooperative effort to determine the injuries to natural resources and/or resource services, to quantify such injuries, and to conduct restoration planning will be cost-effective, avoid duplication and effectively use limited personnel and other resources. To the extent practicable, the Parties agree to use existing data and literature to determine injuries to natural resources and/or their services. The Parties will use good faith efforts to reach consensus on the necessity, selection, design, and protocols for Cooperative Studies and Restoration Projects, as set forth in Sections VI and X of this Agreement, as well as the selection of any consultants or contractors deemed necessary for implementation of the Cooperative Studies and Restoration Projects.

B. Organizational Structure

To advance the purpose of this Agreement, the Parties agree to establish an organizational structure that consists of 1) a Joint Assessment Team, 2) Technical Working Groups, and 3) Outside Resources. The roles and responsibilities of each are described below.

1. Joint Assessment Team

The Joint Assessment Team will be responsible for coordinating activities that will meet the goals of this Agreement.

- a. **Structure:** The Joint Assessment Team shall consist of one representative from each Trustee and one representative from Duke Energy. Each representative may bring such technical staff, legal counsel, or other assisting persons to meetings as each deems appropriate for the subject matter of that meeting. A Trustee representative will chair the Joint Assessment Team. Each Joint Assessment Team representative shall have one vote.
- b. **Functions:** Joint Assessment Team functions shall include, but not necessarily be limited to, responsibility to:
 - develop/approve budgets

- evaluate suitability of existing data to address potential natural resource injury
- identify data gaps
- design plans for obtaining necessary additional information
- oversee implementation of Cooperative Studies
- evaluate restoration opportunities
- approve restoration projects for implementation as set forth in Section X
- resolve disputes related to the implementation of Cooperative Studies consistent with Disputes Resolution as set forth in Section XIII
- establish Technical Working Groups, as appropriate
- consider and approve use of Outside Resources as set forth in Section VIII
- oversee budgets for Cooperative Studies and Restoration Projects

In addition to the responsibilities listed above, the Joint Assessment Team shall develop a statement of work (SOW) describing the tasks to be completed to develop the Assessment Plan and/or the Restoration and Compensation Determination Plan to develop for the NRDAR arising from the Release. Upon completion, the SOW will be attached and incorporated into this Agreement.

In fulfilling its responsibilities, the Joint Assessment Team shall use its best efforts to reach consensus. The Parties agree that all decisions implementing this Agreement will require the consensus of the Parties unless this Agreement specifically provides that such decision is reserved for Trustees. For purposes of this Agreement, consensus means an agreement of all Parties. Parties understand that they can support an idea, proposal, alternative, or recommendation, while recognizing that not every Party supports every idea, proposal, alternative, or recommendation with equal enthusiasm. If the Parties cannot reach consensus within a reasonable amount of time, any Party may undertake the work related to the idea, proposal, alternative, or recommendation as an "Independent Study," as set forth in Section VIII. It is understood that the Trustees retain the right to make all final decisions with regard to the discharge of their duties under CERCLA and other applicable law.

2. Technical Working Groups

The Joint Assessment Team may convene Technical Working Groups as necessary to expedite work and reduce overall costs by targeting specific expertise within the Joint Assessment Team. The Joint Assessment Team will establish the roles and responsibilities of each working group. Each working group will consist of a representative of each Party, unless otherwise agreed. A Technical Working Group will be co-chaired by a representative of a Trustee and Duke Energy unless otherwise agreed.

3. Outside Resources

To fulfill the goals of this Agreement, the Joint Assessment Team may, from time to time, agree to draw upon the services of various resources outside the membership of the Joint

Assessment Team and the Technical Working Groups. Such Outside Resources may be needed to implement specific studies, render advice on technical issues, facilitate the cooperation of the Parties in implementing the terms of this Agreement, or conduct other functions deemed appropriate under this Agreement. Any Party may propose the use of Outside Resources to the Joint Assessment Team.

VI. COOPERATIVE STUDIES

It is anticipated that the Parties will identify data gaps requiring further study. To avoid duplication of effort and to reduce costs, the Parties will attempt to reach consensus on the study design, study protocols, including appropriate quality assurance/quality control standards, and selection of the principal investigator(s).

A. Process for Proposing and Selecting Cooperative Studies

Any Party may propose a study to the Joint Assessment Team for consideration. Any proposed study agreed to by the Joint Assessment Team shall be deemed a "Cooperative Study."

1. Development of Work Plans

For each Cooperative Study, the Joint Assessment Team will request that a draft work plan be developed by the (a) appropriate Technical Working Group or (b) consultants or contractors for either the Trustees or Duke Energy (as agreed upon by the Joint Assessment Team). The draft work plan for each Cooperative Study will include the following technical information:

- study design/methods
- qualifications of the study team
- analytical work, including the laboratory to be used and quality assurance/quality control plan (QA/QC)
- products/deliverables
- data recording and handling procedures
- standing operating procedures
- duration
- budget

The draft work plan will be provided to the Joint Assessment Team for review and comment. Comments from individual members of the Joint Assessment Team that are approved by the Joint Assessment Team will be incorporated into the final work plan. The Joint Assessment Team must approve, via signature, the final work plan. The final work plan will be included in the administrative record maintained by the Trustees.

2. Modification of Work Plan

If a Party proposes to modify a final work plan, it will notify the Joint Assessment Team and/or the Technical Working Group overseeing the implementation of the study and describe the modification prior to the implementation of the study in a manner that will not delay study implementation if possible. Unless the modification is otherwise authorized in the final work plan, the Technical Working Group may recommend approval, in writing, of any change. Any modifications agreed to by the Joint Assessment Team will be in writing and attached to the final work plan.

B. Retention of Persons to Perform Cooperative Studies

Cooperative Studies may be undertaken by any Party, its contractors or consultants, provided, however, that the Joint Assessment Team must specifically approve the entity that will undertake such activities. As part of the approval process, the Joint Assessment Team will have the opportunity to review the qualifications of any proposed contractor or consultant prior to making a final decision. Any potential contractor or consultant will be required to disclose any potential conflicts of interest as early in the contractual process as possible and, in any event, before the contractor or consultant is retained.

Any Cooperative Studies to be performed by Duke Energy, its consultants or contractors, will be conducted pursuant to oversight by the Trustees.

C. Data Collection, Dissemination, and Retention

1. Data Collection

Consistent with laboratory and field collection protocols and procedures and field safety concerns, any Party may be present during data collection activities for Cooperative Studies. The Parties agree to give each other at least fifteen (15) days advanced written notice of any data collection activity for Cooperative Studies, unless otherwise agreed upon or impracticable. In the latter event, the Parties agree to notify each other of the upcoming data collection activity as soon as reasonably practicable.

2. Data Dissemination

All data collected for Cooperative Studies or otherwise funded by Duke Energy shall be shared among the Parties as soon as is reasonably practicable. Any Party has the right to use any data collected pursuant to a Cooperative Study. Data shall be provided to the Parties in both paper and electronic formats, when practical.

3. Data Retention and the Use of Archived Data

Samples collected in the course of a Cooperative Study shall be retained until the Trustees approve of their disposition. Each Party shall have access to all samples pursuant to procedures determined by the Joint Assessment Team.

D. Modification of Cooperative Studies

Any Party may propose to modify any Cooperative Study based on preliminary results, changed circumstances, or for other reasons. If a Party proposes to modify an on-going study, it will notify the Joint Assessment Team and/or the Technical Working Group overseeing the implementation of the study and describe the modification. Unless the modification is otherwise authorized in the final work plan, the Technical Working Group may recommend approval, in writing, of any change. Proposed modifications to any study being overseen by the Joint Assessment Team will be made to the Joint Assessment Team. Any modifications agreed to by the Joint Assessment Team will be in writing and attached to the Cooperative Study.

E. Data Interpretation

1. Consensus on Interpretation

The Parties will employ good faith efforts to reach consensus on the interpretation of, and conclusions to be drawn from, data collected pursuant to a Cooperative Study.

2. Independent Interpretations

In the event that the Parties fail to reach consensus on the interpretation of, and conclusions to be drawn from, data collected pursuant to a Cooperative Study, the Parties expressly reserve the right to produce and present separate and independent interpretations and conclusions. All separate and independent interpretations and conclusions, produced pursuant to this paragraph, shall be provided to the other Parties. Separate and independent interpretations and conclusions, however, are not part of a Cooperative Study, unless adopted by the Joint Assessment Team.

F. Cooperative Study Reports

Upon completion of a Cooperative Study, the Party, contractor, or consultant who undertook the Cooperative Study shall produce a draft end-of-study report describing the study methods and its results and provide copies of that report to the Joint Assessment Team for review and comment. Comments from individual members of the Joint Assessment Team that are approved by the Joint Assessment Team will be incorporated into the final report. The Joint Assessment Team must approve the final report. The report will be included in the administrative record maintained by the Trustees.

Time lines for providing draft and final reports, submitting comments, and revising the report will be established for each Cooperative Study by the Joint Assessment Team on a study-by-study basis.

G. Withdrawal from Cooperative Studies

Provided that a study is being conducted consistently with the approved work plan and any agreed modifications thereto, Duke Energy shall perform or fund all Cooperative Studies through to completion, unless the Parties agree to the contrary or the study plan calls for discontinuation upon the occurrence of a specified event. Events that will trigger discontinuation of a study will be further defined in a specific study work plan. The obligation of Duke Energy to perform Cooperative Studies shall end when and if Duke Energy terminates its participation in accordance with Section XIV, paragraph C requirements.

With respect to Cooperative Studies being performed by the Trustees or their contractors, the obligation of Duke Energy to fund Cooperative Studies shall end if Duke Energy terminates its participation in accordance Section XIV, paragraph C requirements; provided, however, that if a study or studies has been undertaken in phases and Duke Energy terminates its participation before the completion of a phase, Duke Energy shall fund that phase until it is completed.

H. Challenges to Studies

The Parties agree that any data collected pursuant to a Cooperative Study, including the associated study design, data collection methodologies, and quality assurance procedures, as well as conclusions or interpretations, that are not challenged by a Party in writing with an explanation of the basis for such challenge within ninety (90) days of receipt of the final report, shall be binding upon such Party in any civil judicial or administrative proceeding between or among the Parties relating to natural resource damages arising from the Release. In any such proceeding, a Party only has the right to challenge those results, conclusions or interpretations that have been timely challenged pursuant to this paragraph. The Parties may agree in writing not to challenge a Cooperative Study prior to the ninety days on a study-by-study basis. Nothing in this Agreement will be construed as an agreement by any Party that any Cooperative Work is admissible or binding in any judicial or administrative proceeding relating to natural resource damages involving any party not a signatory to this Agreement, other than the United States acting on behalf of the signatory federal Trustee, or North Carolina or Virginia officials acting on behalf of their respective signatory state Trustees.

I. Adopted Studies

The Joint Assessment Team may adopt all or portions of studies undertaken, or data collected by other entities, where such studies or data are deemed relevant to the Release (Adopted Studies). Adopted Studies shall be binding upon such Parties in any civil judicial or administrative proceeding in the same way as Cooperative Studies as provided in this section. Studies may be

adopted or data considered in whole or in part or for limited purposes by agreement of the Joint Assessment Team.

VII. STIPULATIONS

The Parties shall endeavor to enter into stipulations whenever appropriate during the course of the cooperative NRDAR process. Any Party may propose a stipulation at any time. A stipulation may address issues of fact or law or both. A stipulation, agreed to by all the Parties, the United States Department of Justice, the North Carolina Department of Justice, and the Virginia Office of the Attorney General shall be attached to this Agreement and shall survive the termination of this Agreement. Any matter covered by a stipulation or other form of agreement under this Agreement shall not be subject to objection or challenge by any Party in any NRDAR proceeding. Stipulations shall not prohibit any Party from challenging the stipulation in any other proceeding involving an entity who is not a Party to this Agreement.

VIII. INDEPENDENT STUDIES

Notwithstanding any other provision of this Agreement, the Parties expressly reserve the right to perform independent NRDAR studies (Independent Studies) in connection with the Release. Independent Studies include only those studies or work whose primary purpose is NRDAR. Each Party agrees not to undertake any Independent Study unless such study has first been proposed as a Cooperative Study to all the Parties. If the proposed study is not approved as a Cooperative Study, or the Parties are otherwise unable to reach consensus on the proposed study, a Party may conduct the proposed study as an Independent Study at its own expense. The Trustees, however, reserve their right to seek reimbursement of costs arising from or related to Independent Studies. Duke Energy reserves any rights it has or may have to defend against and otherwise contest any such reimbursement request.

If a Party conducts an Independent Study, the data dissemination requirements applicable to Cooperative Studies, as set forth in Section VI, shall apply to any data collected pursuant to the Independent Study.

IX. PUBLIC PARTICIPATION & OUTREACH

The Parties recognize and agree that the opportunity for public participation during the injury assessment and the restoration planning processes, consistent with applicable law, is both desirable and necessary. The Parties will work together to develop and implement a plan to communicate with the public.

At a minimum, the Trustees shall ensure that public participation in the processes shall meet all legal requirements. The Trustees will undertake public outreach consistent with CERCLA and its Regulations. Accordingly, the Trustees will provide public notice and solicit public review and

comment of documents the Trustees deem appropriate. The Trustees reserve the right to provide information about the Release and the NRDA process to the public.

X. RESTORATION PLANNING AND IMPLEMENTATION

The Trustees will ensure that all cooperative efforts related to restoration planning and implementation of restoration projects comply with the National Environmental Policy Act (NEPA) and any North Carolina or Virginia state law equivalent.

A. Identification of Restoration Criteria

The Parties shall propose restoration criteria that will be used when considering the appropriateness of restoration project proposals. These criteria will be based, in part, on factors identified in 40 C.F.R. §11.82(d) and, once adopted by the Parties, shall be attached to and incorporated by reference into this Agreement.

B. Identification and Selection of Restoration Projects

Given the Parties' goal of expedited restoration delivery, any Party may propose a restoration project to the Joint Assessment Team for consideration at any time in the NRDAR process. The Joint Assessment Team will evaluate each proposal based on the restoration criteria developed pursuant to this section. If after evaluation of the proposed restoration project, the Joint Assessment Team agrees that the proposed restoration project meets the restoration objectives of the NRDA, and the Joint Assessment Team approves of such project, it will be deemed an early restoration project. The Parties also agree to work with affected localities and other stakeholder groups to identify early restoration projects.

The Trustees will provide a draft restoration plan, proposing the early restoration project(s) as the preferred alternative, for public review and comment. Upon completion of the public notice and comment process and consideration of any public comments, the Joint Assessment Team will determine whether to recommend that the Trustees adopt an early restoration project(s) for implementation. If the Trustees, in their discretion, adopt an early restoration project(s)/preferred alternative(s) for implementation, they will release to the public a final restoration plan documenting that decision. The draft and final restoration plans will be included in the administrative record maintained by the Trustees.

For each restoration project adopted by the process described in this section, the Joint Assessment Team will request that a draft work plan be developed by the (a) appropriate Technical Working Group or (b) consultants or contractors for any Party. The draft work plan will be provided to the Joint Assessment Team for review and comment. Comments from members of the Joint Assessment Team that are agreed to by the Joint Assessment Team will be incorporated into the final work plan. The Joint Assessment Team must approve the final work plan. The work plan will be included in the administrative record maintained by the Trustees.

C. Implementation of Restoration Projects

Upon finalization of a work plan for an early restoration project, the Joint Assessment Team will authorize a Party, its consultants, or contractors, to implement the restoration project. Each restoration project shall be conducted pursuant to the final work plan and the provisions of this Agreement. Upon completion of an early restoration project, a report on the restoration project will be prepared by the (a) appropriate Technical Working Group or (b) consultants or contractors for any Party and will be provided to the Parties. The report will be included in the administrative record maintained by the Trustees.

The Trustees shall oversee implementation of early restoration project(s) for which Duke Energy, its consultants, or contractors have been selected to implement pursuant to this subsection. Duke Energy will provide the Trustees with advance funding prior to implementation of any early restoration project to be implemented by the Trustees, its consultants, or contractors pursuant to this subsection. The Joint Assessment Team shall quantify restoration benefits accruing from each implemented early restoration project. After it has quantified the benefits, the Joint Assessment Team will recommend to the Trustees the adoption of the quantification of the benefits.

D. Restoration Credits

Upon adoption by the Trustees of the quantification of the restoration benefits accruing from the early restoration projects that have been implemented, the Trustees shall credit those benefits toward the amount of restoration ultimately determined to be owed by Duke Energy and such credit shall be documented in any settlement agreement resolving the Trustees' NRD claims against Duke Energy resulting from the Release from the Facility.

XI. FINANCIAL RESPONSIBILITY

A. Cooperative Studies and Restoration Plans

Duke Energy or its consultants or contractors shall either (1) implement any Cooperative Study or restoration project under Trustee oversight and according to the terms of this Agreement, or (2) provide funding to the Trustees to develop and/or implement a Cooperative Study or develop or implement a restoration project, in accordance with the terms of this Agreement. Duke Energy's implementation or funding of the activities to be performed under this Agreement is not an admission of liability or responsibility.

B. Assessment and Restoration Costs

Duke Energy agrees to fund all reasonable costs, as defined in Section IV, "Definitions," incurred and to be incurred by the Trustees. Payment instructions are outlined in Attachment A, "Payment of Funds and Notice."

1. Payment of Incurred Costs

As soon as practicable, but within sixty (60) days of final signature of this Agreement, each Trustee shall provide Duke Energy with a statement of costs previously incurred together with supporting documentation as specified below. Duke Energy recognizes that the time period for the previously incurred costs may be different for each Trustee.

2. Payment of Future Costs

Upon final signature of this Agreement, the Trustees will submit a statement of NRD past cost claims within sixty (60) days. Thereafter the Trustees will submit their cost claims semi-annually on July 15 and January 15 until final settlement of all of the Trustees' NRD claims arising from the Release. Each Trustee shall submit to Duke Energy a request for reimbursement of costs including all costs incurred through and including June 15 (for the July 15 bill) and all costs incurred through and including December 15 (for the January 15 bill). Cost claims will include supporting documentation for costs including those associated with assessment planning and implementation, restoration planning and implementation, and oversight, incurred since the last payment to that Trustee. Subject to its reservation of rights below, Duke Energy agrees to pay all undisputed Trustee costs within forty five (45) days of receipt of a claim.

3. Cost Documentation

When presenting a statement of costs for payment, the Trustees shall include the following types of information, as applicable:

- labor and overhead rates of each employee or contractor including the employee's or contractor's role or job title, hourly rate, and total hours per billing period;
- travel and transportation costs, including travel orders, vouchers, and receipts;
- building or equipment rental costs; printing and reproduction costs;
- contract costs including billing period, amount of invoice, and report of activities;
- supplies and materials costs, including copies of bills for purchase and supporting receipts; and
- costs for equipment acquired in direct support of the case, including copies of bills for purchase and supporting receipts.

C. Disputed Costs

Duke Energy reserves the right to dispute any costs that it believes are insufficiently or inaccurately documented, are unreasonable, or which it does not believe are eligible for

reimbursement. In the event that Duke Energy objects to any costs, Duke Energy shall provide a written statement identifying the contested costs and the basis of its objection within forty-five (45) days of receipt of the Trustee's cost documentation package. Failure to contest timely any costs shall be deemed a waiver of any objections by Duke Energy. The Parties agree to use the dispute resolution procedures specified in Section XIII to resolve any contested issues related to such costs.

XII. RESERVATION OF RIGHTS AND CLAIMS

This Agreement does not release Duke Energy from any potential liability except for the liability for costs reimbursed by Duke Energy pursuant to Section XI, "Financial Responsibility," restoration projects implemented by Duke Energy pursuant to Section X, "Restoration Planning and Implementation," and any restoration credits accruing from early restoration. The Trustees reserve all claims against Duke Energy related to natural resource liability arising from the release of hazardous substances from the Facility, including, but not limited to, claims for restoration, replacement, acquisition of the equivalent, or loss of use of, natural resources; or any other causes of action or requests for relief either administratively or judicially, as well as any penalties or criminal liability, arising from the release of hazardous substances from the Facility.

Except as specifically provided in this Agreement, or in any attachments or stipulation incorporated into this Agreement, the Parties agree that none of them is making any admission of fact or law by entering into this Agreement. This Agreement shall not be admissible as evidence or proof of liability or non-liability for the underlying claim for Natural Resource Damages but may be used by Trustees to collect assessment and restoration costs covered by this Agreement. Except as provided in this Agreement or in any attachments or stipulations entered into pursuant to this Agreement, nothing in this Agreement is intended nor shall be construed as a waiver by any Party of any rights, defenses, privileges or affirmative claims in any proceeding related to natural resource liability arising from the release of hazardous substances from the Facility. This Agreement does not waive the privileged status of any attorney-client privileged communication. This Agreement or any Cooperative Work performed by the Parties does not create any rights, admit any liability or non-liability, establish any fact, or waive any defense or claim as to any party not a signatory to this Agreement, other than the United States acting on behalf of the signatory federal Trustee or North Carolina and Virginia acting on behalf of their respective state Trustees.

Nothing in this Agreement is intended, nor shall be interpreted, to limit the scope of the natural resource injury assessment or restoration appropriate for this site or to otherwise restrict or abrogate the authority or discretion of the Trustees to determine the scope of that assessment, recognizing that during the duration of this Agreement, the Trustees will follow the procedures outlined in this Agreement.

Data and factual information collected pursuant to the Cooperative Studies provisions of this Agreement shall not be considered privileged unless protected under applicable laws and

regulations. To the extent allowed by law, non-privileged data collected pursuant to this Agreement shall be released only after they have been compiled, verified, and validated as part of the joint assessment activities.

Duke Energy or any Trustee who receives a request for documents pursuant to the federal Freedom of Information Act or applicable state freedom of information acts, or who is served with a subpoena or discovery request for any document which the Parties have agreed should be treated as confidential, shall provide notice to the other Trustees and Duke Energy at the earliest opportunity so as to allow them, if they so choose, to assert a privilege or statutory exception seeking to prevent the release of such documents.

It is agreed that oral communications between the Trustees and Duke Energy, prior to and in the course of working under the terms of this Agreement, are in furtherance of settlement pursuant to Federal Rule of Evidence 408. Written communications that are marked "settlement negotiations" or that in some way indicate they are confidential settlement communications, shall be treated by the Parties as confidential and shall be deemed in furtherance of settlement pursuant to Federal Rule of Evidence 408.

This Agreement does not affect any Duke Energy obligations under other statutes, regulations, agreements, consent orders, permits, etc., issued by any agency of the Federal government or any state government.

XIII. DISPUTE RESOLUTION

A. Written Notice

A dispute shall be considered to have arisen when one Party provides the Joint Assessment Team with a written Notice of Dispute. The notice shall describe the dispute with enough specificity to allow the other Parties to identify the issues involved and to respond effectively. To the extent practicable, such notice shall be provided at least fifteen (15) calendar days prior to the initiation of any field, analytical, or other assessment activity which is the subject of the disagreement, or which may be affected thereby.

B. Informal Resolution

The Joint Assessment Team will immediately forward the Notice of Dispute to each Trustee and Duke Energy. The Parties shall attempt to resolve any disputes concerning the implementation of this Agreement through good faith, informal negotiations. The period of informal negotiations shall not exceed thirty (30) days from the time the dispute arises unless otherwise agreed in writing by all Parties involved. Continued mutual negotiations by email or letter by the Parties in an effort to resolve the dispute will serve as written agreement to extend the thirty (day) period.

C. Effect of Dispute

An unresolved dispute regarding an on-going Cooperative Study or portion thereof, or over the implementation of an early restoration project or portion thereof, has the effect of removing that study or portion thereof from the Cooperative Study category or removing the restoration project or portion thereof, from further implementation requirements. An unresolved dispute regarding a Cooperative Study, or an aspect thereof, does not result in termination of this Agreement or modify any funding obligations hereunder. If the Trustees decide to perform an Independent Study which was removed as a Cooperative Study or to perform an early restoration project because of an unresolved dispute, the Trustees reserve the right to seek reimbursement from Duke Energy for the cost of that study or project. If the dispute relates only to costs, the Parties agree that the study results will not be invalidated and will have the same value as any undisputed Cooperative Study.

XIV. MODIFICATION, DURATION AND TERMINATION

A. Modification

Any modifications to this Agreement and any attachments must be in writing and executed by all of the Trustees and Duke Energy.

B. Duration of this Agreement

This Agreement is intended to continue in full force and effect until either (1) the completion of the purposes of the Agreement or (2) termination of this Agreement pursuant to subsection C below.

C. Termination of this Agreement

The Parties shall use good faith efforts to resolve disputes and follow the dispute resolution procedures in Section XIII, "Dispute Resolution". Any Party may, at its sole discretion, terminate its participation in this Agreement by giving thirty (30) days written notice, stating the reason for termination, to all other Parties involved. A Party's termination of its participation in the Agreement shall become effective thirty (30) days from the date of receipt of the Party's written notice of termination by all the other Parties involved. Termination by one or more of the Trustees shall not terminate this Agreement as to remaining Parties, unless otherwise agreed by the remaining Parties. Termination of this Agreement is prospective only. As such, this Agreement, including all attachments, stipulations and modifications incorporated prior to the effective date of termination shall remain in full effect.

In the event of termination of this Agreement, each Party shall either (1) provide to the other Parties, upon their request, all samples, records or data from Cooperative Studies or restoration projects in its possession or control or (2) continue to comply with the data and record retention procedures specified in any work plan pertaining to such samples, data or records.

XV. GENERAL PROVISIONS

A. Parties Bound

This Agreement shall be binding on the Trustees and on Duke Energy and its officers, directors, agents, successors in interest, representatives and assigns.

B. Third Party Rights

This Agreement is not intended to create any rights or causes of action enforceable by third persons not a party to this Agreement. Nothing in this Agreement may be the basis of any third party challenges or appeals.

C. Severability

The terms of this Agreement are severable. If any term of this Agreement is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms. However, within thirty (30) calendar days after the court's determination that this agreement, or a portion thereof, is invalid, any Party hereto may withdraw from this Agreement, pursuant to termination provision in Section XIV.C.

D. Limitation

Nothing in this Agreement shall be construed as obligating the United States, the State of North Carolina, or any other public agency, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

E. Effective Date

This Agreement may be executed in one or more counterparts, all of which shall be considered an original. This Agreement shall be effective when signed by Duke Energy and one Trustee. The Effective Date for any Trustee signing after Duke Energy shall be the date of that Trustee's signature. Trustees that have not executed the Agreement may participate in matters covered, but Duke Energy has no obligation under this Agreement to reimburse costs for such Trustee until that Trustee has signed the Agreement. The Effective Date of any attachment or stipulation hereafter developed and incorporated into this Agreement shall be the date set forth in such attachment or stipulation.


XVI. SIGNATURES

Signature on the lines provided below shall constitute acceptance of the terms and of this Agreement. The undersigned representative of each Party certifies that he or she is authorized to enter into this Agreement and to bind that Party to it.

Funding and Participation Agreement between the State of North Carolina, Commonwealth of Virginia, U.S. Department of the Interior, and Duke Energy Company concerning cooperative natural resource damage assessment, restoration planning, and restoration implementation activities for the Duke Energy Dan River Steam Station coal ash pond Site in Rockingham, County, N.C.

FOR THE TRUSTEES:

U.S. DEPARTMENT OF THE INTERIOR
BY AND THROUGH THE U.S. FISH & WILDLIFE SERVICE



Cynthia K. Dohner
Southeast Regional Director
U.S. Fish and Wildlife Service

5/21/2014

Date

Funding and Participation Agreement between the State of North Carolina, Commonwealth of Virginia, U.S. Department of the Interior, and Duke Energy Company concerning cooperative natural resource damage assessment, restoration planning, and restoration implementation activities for the Duke Energy Dan River Steam Station coal ash pond Site in Rockingham, County, N.C.

FOR THE TRUSTEES:

STATE OF NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES



5-19-14

Dexter R. Matthews
Director
North Carolina Division of Waste Management, as designee for

Date

John Skvarla Secretary
North Carolina Department of Environment and Natural Resources

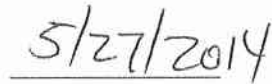
Funding and Participation Agreement between the State of North Carolina, Commonwealth of Virginia, U.S. Department of the Interior, and Duke Energy Company concerning cooperative natural resource damage assessment, restoration planning, and restoration implementation activities for the Duke Energy Dan River Steam Station coal ash pond Site in Rockingham, County, N.C.

FOR THE TRUSTEES:

COMMONWEALTH OF VIRGINIA

A handwritten signature in cursive script, appearing to read "David K. Paylor", is written over a horizontal line.


David K. Paylor
Director
Virginia Department of Environmental Quality

A handwritten date "5/27/2014" is written over a horizontal line.

Date

**Funding and Participation Agreement between the State of North Carolina,
Commonwealth of Virginia, U.S. Department of the Interior, and Duke Energy
Company concerning cooperative natural resource damage assessment,
restoration planning, and restoration implementation activities for the Duke
Energy Dan River Steam Station coal ash pond Site in Rockingham, County, N.C.**

FOR DUKE ENERGY:



Jason M. Allen
Senior Vice President
Environmental, Health and Safety

JUNE 09, 2014
Date

ATTACHMENT A

PAYMENT OF FUNDS AND NOTICE

A. Payment of funds to the Trustees shall be made as follows:

For Department of the Interior: Payment shall be made electronically according to instructions, which will be provided to Duke Energy. If electronic fund transfers are not possible, checks shall be made payable to the "Department of the Interior." Checks shall reference NRDAR Account No. FVHC98120508360 and "Duke Energy Dan River Steam Station Coal Pond, Rockingham County, N.C., and Duke Energy Company PRP." Checks shall be mailed to:

Bruce Nessler, Restoration Fund Manager
U.S. Department of Interior
Natural Resource Damage Assessment and Restoration Program
1849 C Street, NW MS 4449
Washington, D.C. 20240; and,

1. For the State of North Carolina: Payment shall be made electronically according to instructions, which will be provided to Duke Energy. If electronic fund transfers are not possible, checks shall be made payable to "NC Department of Environment and Natural Resources" and shall reference "Duke Energy NRDA Reimbursement." Checks shall be mailed to:

Doug Lewis
NC Department of Environment and Natural Resources Budget, Planning and Analysis
1602 Mail Service Center
Raleigh, NC 27699-1602

Notification of payment and a copy of the check shall be mailed to:

Jessica Marlies
NC Department of Environment and Natural Resources
Office of General Counsel 1601 Mail Service Center Raleigh, NC 27699-160

2. For the Commonwealth of Virginia: Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The check, certified check, money order or cashier's check shall reference "Duke Energy: Funding and Participation Agreement."

B. All correspondence relative to this Agreement shall be directed to the following persons on behalf of the Parties:

For the Trustees:

Legal

Clark Miller, Attorney-Advisor
U.S. Department of the Interior
Office of the Solicitor, Division of Parks and Wildlife
1849 C Street, NW MS 5311
Washington, DC 20240
Phone: 202-208-5811, Fax: 202-208-3877
Email: clark.miller@sol.doi.gov

Technical

Sara E. Ward
U.S. Fish and Wildlife Service
Raleigh Ecological Services Field Office
P.O. Box 33726
Raleigh, NC 27636-3726
Phone: 919-856-4520 Ext. 30, Fax: 919-856-4556
Email: Sara_Ward@fws.gov

For Duke Energy:

Legal

Garry S. Rice Esq.
Deputy General Counsel
Office of the General Counsel
Duke Energy Corporation
550 South Tryon Street
Mail Code DEC45A
Charlotte, NC 28202
704-382-8111 - office
980-373-8534 - fax

Technical

Linda Drisko Hickok, Manager
Water & Natural Resources
Phone: 919-546-7095
Cell phone: 919-397-7601
Linda.Hickok@duke-energy.com