LAW OFFICE OF
ROBERT W. KAYLOR, P.A.
353 EAST SIX FORKS ROAD, SUITE 260
RALEIGH, NORTH CAROLINA 27609
(919) 828-5250
FACSIMILE (919) 828-5240

April 12, 2021

VIA ELECTRONIC FILING

Ms. Kimberley A. Campbell
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4300

RE: Joint Reply Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC Regarding Optima MH, LLC's Motion
Docket No. E-100, Sub 113

Dear Ms. Campbell:

Enclosed for filing in the above-referenced docket, please find the Joint Reply Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC Regarding Optima MH, LLC's Motion ("Reply Comments").

The Attachments to the Reply Comment contain confidential communications between Duke Energy Carolinas, LLC and Duke Energy Progress, LLC and a developer and therefore are being filed under seal pursuant to N.C. Gen. Stat. § 132-1.2. Parties to the docket may contact counsel for Duke Energy Carolinas, LLC and Duke Energy Progress, LLC regarding obtaining copies pursuant to an appropriate confidentiality agreement.

Sincerely,

/Robert W. Kaylor

Robert W. Kaylor, P.A.

Enclosure

cc: Parties of Record

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Request for Declaratory Ruling by Optima MH, LLC, Regarding Directed Biogas under N.C. Gen. Stat. § 62-133.8	)	JOINT REPLY COMMENTS OF DUKE ENERGY CAROLINAS, LLC AND DUKE ENERGY PROGRESS, LLC REGARDING OPTIMA MH, LLC'S MOTION

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (collectively the "Duke Utilities") respectfully respond to the Comments filed by the Public Staff, wherein the Public Staff appears to adopt Optima MH, LLC's ("Optima MH" or "Optima) position concerning purchased directed biogas that is: (i) a fundamental miscomprehension of the entirely different environmental product controlled by North Carolina General Statute ("G.S.") § 62-133.8(a)(6)) and (ii) will lead to various far-reaching, adverse consequences that will materially harm North Carolina's ratepayers.

In its Comments the Public Staff states at para. 6:

> "Optima MH attached to its Petition the verified affidavit ... to support its position that the ***Optima MH facility can generate methane emission reduction credits before*** the biogas reaches DEC's or DEP's power plants, ***and the use of directed biogas*** in place of conventional natural gas ***can generate additional emission reduction credits that have value, can be detached*** or unbundled from the biogas, and can be sold or used to offset emissions in other locations [and that] ***if developers are able to keep*** the emission reduction credits ... the

> ***developer [can] monetize*** and sell the other reductions and attributes created from swine waste derived biogas ... . ”

Optima's Motion is referring to the Verified Emission Reduction attributes ("VERs") associated with the underlying fuel - the VERs needed to make the directed methane a renewable gas - or, stated differently, the VERs needed to make the directed methane a Renewable Energy Resource pursuant to G.S. § 133.8.(a)(8).

The Public Staff's rationale supporting Optima is based on the emissions reduction attributes that occur on the utility's system due to changes in operations, dispatch, and purchases or generation of inherently zero-emitting or inherently lower-emitting electricity, whether or not such electricity can be claimed as renewable. The Public Staff states that "additional" emission reduction credits, generated **after** the directed biogas reaches Duke Utilities' plants, generated from the ***Duke Utilities' combustion*** of directed biogas "can be detached" and "kept" by the ***developer***. However, Public Staff apparently does not recognize that these "additional" emission reductions on the ***Duke Utilities' systems*** are the property of ratepayers, were never with the developer and, therefore, could never be "kept" by the developer. Consequently, the Public Staff's apparent support of Optima would reach into the systems of the Duke Utilities and gift to developers the emission reduction attributes occurring on the utilities' systems that can only be the rightful property of the Duke Utilities ratepayers. The differences between the environmental attributes of the fuel - the electricity – and a utility's system operations are fully explained in our Joint Initial Comments. Public Staff's gift to developers would also obviate the purpose of the Duke Utilities' purchase of renewable electricity, because it would give to developers the environmental benefits and value that ratepayers are paying, in this case just for providing fuel - fuel that could not even legitimately be

claimed as renewable if Optima's petition is granted, or if so claimed would result in double counting.

The Public Staff does not appear to accept that the fuel transaction between the developer and the Duke Utilities does not create any renewable energy certificates ("RECs"). As explained in our Joint Initial Comments, Duke Utilities' combustion of properly purchased directed biogas creates renewable electricity and the associated renewable energy certificate ("REC"). The "REC" creation activity occurs at the gas-fired generating unit, and not at or by the developer's capture of biomethane at its manure processing project. The Commission has recognized the difference between fuel procurement and the creation of renewable electricity or RECs. For example, the Commission has ruled that Duke's *in-state* ***combustion*** of directed biogas from *out-of-state* swine waste capture activity ***is*** *in-state* ***REC creation*** under N.C. Gen. Stat. § 62-133.8. Docket Nos. E-7, Sub 1086 & 1087, pp. 5-6. Moreover, as the Companies explain further below, the emission reduction attributes that occur on the Duke Utilities' system from the utilities' use of a directed biogas in place of undifferentiated (same as fossil) methane are created and exist independent of REC creation, making them properly excluded from the G.S. § 62-133.8(a)(6) definition of a REC.

As noted by the Commission, the "emission reduction attributes are separate and in addition to the 'renewable' attributes that must be represented by a REC" (*See* Docket No. E-7 Sub 1052 p. 14). Of interest is that the Public Staff provides this same quote in their Comments at para. 17, but apparently either ignores or disagrees with the Commission's precedent and other established precedents. For example, as explained with full context in Duke Utilities' Joint Initial Comments, the emission reduction

attributes that occur on the systems of the Duke Utilities through the Duke Utilities' purchase of emission-free electricity "*with RECs*" arise in exactly the same manner and in exactly the same quantity as the emission reduction attributes that would arise through the Duke Utilities' purchase of inherently emission-free electricity "*without RECs*" (such as PURPA solar electricity, undifferentiated wind electricity, or nuclear-generated electricity without zero emission certificates).

In a directed biogas transaction, the developer contracts to sell to the Duke Utilities biomethane at a fixed fractional quantity (≈15%) of emission reductions (VERs) to render ***combustion*** of the methane to "net zero" based on the emission profile of the Duke Utilities generating units. With Duke Utilities' contract in hand, enabled only because of North Carolina ratepayers, the developer can now get financing to build a methane capture project. In that project, the developer captures methane to create biogas through a process that can also create VERs. The developer then: (i) delivers pipeline quality methane to an interconnection with a natural gas pipeline plus (ii) delivers the environmental attributes (swine waste source + VERs) of the methane by paper "attestation" to the Duke Utilities. The developer thereafter has no contact with the directed biogas. The Duke Utilities accept the gas at the interconnection and use the pipeline to then ship the methane to the Duke Utilities natural gas generating units. The Duke Utilities then combine the pipeline delivered methane with the paper attestations to ***reconstitute*** the pipeline undifferentiated methane into the renewable directed biogas, combust the renewable directed biogas in the utility's generating units, and this combustion generates the renewable electricity, which then creates the RECs ***at that generating unit*** (*see e.g.*, Docket Nos. E-7, Sub 1086 & 1087, pp. 5-6).

The emission reduction attributes that occur on the Duke Utilities' systems - **at the end of the process** - relating to the Duke Utilities' use of renewable energy, lower-emission, zero-emission, or inherently emission-free energy, instead of fossil fuel energy, are **not** the emission reductions from capturing methane from swine waste (the VERs) that the developer undertakes **at the beginning of the process**. The environmentally beneficial "reductions" that occur on the Duke Utilities' systems through the Duke Utilities' use of lower-emission (e.g., fossil gas instead of coal generation), inherently emission-free (e.g., without-REC electricity from a wind resource or without-REC PURPA-only electricity from a solar resource), renewable electricity (e.g., with-REC solar energy), or other zero-emission electricity (e.g., nuclear electricity with zero emission certificates) - instead of fossil fuel electricity - are not something that can be "kept" by the developer, as the Public Staff incorrectly posits; they are the property of ratepayers. The only emission reductions related to the developer are those that relate to the developer's activities - the VERs - have nothing to do with a REC and, therefore, nothing to do with G.S. § 62-133.8(a)(6)).

The Public Staff apparently does not agree that the reductions that result from the creation of biomethane (the VERs) are not the reductions that take place on the Duke Utilities' systems. The Public Staff would have a developer capturing methane from swine waste be entitled to the environmental value of North Carolina utilities' system benefits, just because the fuel combusted to generate electricity happens to be directed biogas and use of that fuel avoided emissions from fossil fuel generation on the utilities' systems. If, as the Public Staff posits, the environmental benefits of the utilities' system are to be transferred to the biogas developer, then North Carolina ratepayers should have

no interest in: (a) paying a significant premium (700% - 1000%) for the directed biogas and (b) being harmed by using that biogas to generate electricity.

The Public Staff seems to agree with Optima that the emission "reduction" attributes that occur on the Duke Utilities' systems at the end of a process somehow become the developer's "reductions" from the capture of methane from swine waste at the beginning of a process. In doing so, the Public Staff also either ignores or disagrees with Commission precedent:

> On March 21, 2012, ... the Commission issued a declaratory ruling that such 'directed biogas' qualifies as a renewable energy resource where, on a case-by-case basis, a proper showing can be made that the ***biogas*** is displacing natural gas and ***retains*** all required environmental attributes that make the gas renewable." E-7, Sub 1086 & Sub 1087, p. 5, quoting SP-100, Sub. 29.

If the ***developer keeps all*** of the environmental attributes of the biogas, the purchased gas would ***not be a renewable gas***. If the biogas is not renewable, the fuel is not a Renewable Energy Resource. If the fuel is not a Renewable Energy Resource, the electricity is not renewable. If the electricity is not renewable, then there are no RECs created, nor are there "emission reduction attributes" occurring on the Duke Utilities' system. As the Commission has noted, it is the ***biogas*** that requires environmental attributes for it to be renewable gas to create renewable electricity and the RECs. Accordingly, the Duke Utilities' purchase of the methane includes a fixed fractional quantity (≈15%) of VERs[1] to ensure that the methane qualifies as renewable gas.[2]

[1] Without the clear division of VERs remaining with the methane (≈15%) for purchase by the Duke Utilities and the VERs remaining with the developer (≈85%), the Duke Utilities' claims of ownership over the swine waste methane would extend to 100% of the VERs, causing a double use or double claim violation and imparting the developer's sale of its retained portion.

[2] If the Duke Utilities did not acquire the fixed fractional quantity (≈15%) of VERs, the Duke Utilities would not be acquiring a renewable biogas. In such instance, the price paid by the Duke Utilities for the fuel would be reduced to the same price as undifferentiated pipeline methane.

The Public Staff also asks for a Commission determination that "to the extent that the RECs have been contracted or purchased that include environmental attributes in excess of those required for Renewable Energy and Energy Efficiency Portfolio Standard ("REPS") compliance, and those attributes are later separated and used for other non-REPS purposes, customers should receive credit for any resulting proceeds through the REPS rider." The Duke Utilities are not buying RECs from the developer, as demonstrated above. There are no RECs that have been contracted or purchased from biomethane developers, including Optima.

Moreover, as explained in our Joint Initial Comments, in purchasing biomethane, the Duke Utilities purchase a fixed fractional quantity (≈15%) of emission reductions (VERs) to render the gas renewable. These environmental attributes (VERs) would not be "later separated and used for other non-REPS purposes," because it would destroy the net zero offset by the VERs "to make the gas renewable" - entirely defeating the original purpose of their very acquisition. There have not been, nor will there be, sales of VERs from the methane capture, because to the extent the Duke Utilities receive any such instruments, they will be retired. Indeed, consistent with anti-fraud laws and regulations, they are automatically deemed retired as soon as the Duke Utilities make claims about generating renewable electricity using the renewable gas. Were these environmental attributes (VERs) to have any other disposition, whether by the Duke Utilities or the developer, the fuel would not be renewable.

Claiming that something is renewable when it is not in fact renewable is subject to law beyond the NC-RETS, including the Federal Trade Commission's ("FTC") Green

Guides regulations[3] that were promulgated by the FTC pursuant to its authority under Federal Trade Commission Act §5, to prohibit "deceptive acts or practices" and to prosecute public environmental claims that are "deceptive" under the Green Guides and North Carolina's anti-deceptive trade practice law, G.S. § 75-1.1. Notably, the FTC will disregard defenses relating to compliance with state utility programs. As an example, the FTC's Division of Enforcement Staff Letter referenced in the Duke Utilities' Initial Comments (*see* Initial Comments p.21, fn. 24) explicitly advised the target utility that its compliance with a state regulatory program did not provide the utility with a defense to enforcement against the utility for violations of anti-fraud laws and regulations, for making claims that the electricity was renewable when it was not, because the utility did not own the required environmental attributes.

For the reasons set forth in the Duke Utilities' Initial Comments, granting Optima's Motion would clearly result in the Duke Utilities engaging in greenwashing and deceptive environmental claims, because neither the fuel nor the resulting electricity would be renewable. FTC Commissioner Rohit Chopra's statement of December 22, 2020, states: "In the case of energy consumption, consumers must often take the information sellers provide at face value, as they lack the resources to verify the accuracy of their statements independently."[4] The FTC's position is that the common sense understanding of everyday consumers will control, and "technical compliance" with other regulations will not provide a defense to greenwashing and deceptive environmental

[3] FTC, *Final Rule, Guides for the Use of Environmental Marketing Claims*, 77 Fed. Reg. 62122 (Oct. 11, 2012); 16 C.F.R. §260.15.

[4] Statement of Commissioner Rohit Chopra, Dec. 22, 2020, available at: https://www.ftc.gov/system/files/documents/public_statements/1585238/20201222_final_chopra_statement_on_energyguide_rule.pdflink, at p. 4.

claims. FTC Commissioner Rohit Chopra noted that the "FTC has clear authority to take enforcement actions against entities that make misleading . . . environmental claims."[5] And in instances "when companies have knowledge about a past FTC order that declared an environmental marketing practice to be unfair or deceptive,"[6] as in the case of the FTC Staff letter referenced above, Commissioner Chopra noted: "The agency can also trigger greater sanctions using the FTC's Penalty Offense Authority ... ."[7]

Finally, with respect to the Public Staff seeking a Commission determination in its Comments at para. 23(1) that "a REC derived from the combustion of directed biogas for REPS compliance purposes in North Carolina does not include the related emission reductions," we note that, as explained in our Joint Initial Comments, pursuant to the Clean Air Act, the emission reductions excluded in G.S. § 62-133.8(a)(6), "including, but not limited to, reductions of sulfur dioxide, oxides of nitrogen, mercury, or carbon dioxide" already belong to the utility avoiding combustion from fossil fuel resources.

Nothing in NC REPS gives to providers of PURPA electricity, nuclear electricity, zero emission electricity, solar electricity, wind electricity, or any other type of electricity the emissions reduction attributes that take place on the Duke Utilities' systems by use of that electricity. Further, with respect to the fuel or resource that is used to generate electricity, nothing in the NC REPS gives to providers of fuel the emissions reduction attributes that take place on the Duke Utilities' systems by use of that fuel or resource. Yet the Public Staff would give these to a developer capturing methane from swine waste.

[5] Id. at p. 5.
[6] Id.
[7] Id.

North Carolina law prohibits double counting - in any form, manner, or market. G.S. §62.133.8(i)(3) requires that "the Commission shall ... ***Ensure*** that energy credited toward compliance with the provisions of this section ***not be credited toward any other purpose,*** including another renewable energy portfolio standard or voluntary renewable energy purchase program ***in this State or any other state***."

The Commission's Orders implement this requirement consistently. For example, the Commission stated at p. 5 of Docket Nos. E-7, Sub 1086 & 1087 (emphasis supplied):

> Further, in Docket No. SP-100, Sub 29, the Commission concluded that such biogas, produced outside of North Carolina, injected into the natural gas pipeline, and nominated for use by a natural gas-fueled electric generating facility is a renewable energy resource pursuant to G.S. 62-133.8(a)(5). On March 21, 2012, at the request of Bloom Energy Corporation, the Commission issued a declaratory ruling that such "directed biogas" qualifies as a renewable energy resource where, ***on a case-by-case basis***, a ***proper showing*** can be made that the biogas ***is displacing natural gas*** and ***retains all required environmental attributes*** that ***make the gas renewable***. Order on Request for Declaratory Ruling, In re Request of Bloom Energy Corporation, Docket No. SP-100, Sub 29 (March 21, 2012) (Bloom Order). The Commission stated:
>
> [B]y purchasing the Directed ***Biogas*** and nominating it for delivery to the Facility, an Owner is displacing, or offsetting, conventional natural gas that would have otherwise been injected into the pipeline. The Commission, therefore, concludes that, as long as appropriate attestations are made and records kept regarding the source and amounts of ***biogas*** injected into the pipeline and used by the Facility ***to ensure that no biogas is double-counted,*** the Directed Biogas ***would be a renewable energy resource*** and the ***resulting electric generation*** would be ***eligible*** to earn RECs that may be used ***for REPS compliance***.

Similarly, the Commission noted on p. 1 of Docket No. SP-1642, Sub 1, *Order Accepting Registration of New Renewable Energy Facility,* in the instance of landfill methane as a Renewable Energy Resource (emphasis supplied):

> The ***biogas*** procured by the [renewable fuel supplier (RFS)] will be produced ***from landfill methane***. The RFS will attest to the source of the biogas, that the biogas is injected into a pipeline and nominated for the

> Facility, and ***that the RFS has <u>not</u> sold, traded, given away, claimed, or otherwise disposed of the environmental attributes of the biogas separate from the fuel***. The registration statement further states that ***<u>all fuel producers supplying biogas</u>*** to the RFS will attest to the fuel production facility owner and location, to the source of the fuel, and that *the fuel producers have <u>not</u> sold, traded, given away, claimed, or otherwise disposed of the environmental attributes of the biogas* separate from the fuel.

<u>North Carolina law does not wall itself off from other jurisdictions.</u> Commission Rule R8- 66(f)(2) provides that "Any of the following actions may result in revocation of registration by the Commission: ... (2) Failure to remain in substantial compliance ***with all federal and state laws, regulations, and rules for the protection of the environment*** and conservation of natural resources ... ." The Commission requires that registrations of renewable electricity facilities, such as the Duke Utilities' registrations, are subject to revocation should the registrant fail to comply with federal environmental laws and regulations — ***among which are the federal regulations, called "Guides for the Use of Environmental Marketing Claims,"*** that protect the environment by prohibiting environmental greenwashing, deceptive claims, and double counting of renewable electricity and claims relating to the environment generally, as more fully discussed previously and in our Initial Comments.

Hence, when it comes to ensuring that "biogas" is indeed being purchased, the case-by-case basis showing of ***"all required environmental attributes that make the gas renewable"*** requires that Duke Utilities exercise vigilance to (a) purchase biogas (not undifferentiated conventional natural gas) and (b) comply with the Commission's requirement that Duke Utilities ***"ensure that no biogas is double-counted."***

Notwithstanding these requirements and protections in North Carolina law and regulations, Optima "seeks a ruling that ... although the production and use of the directed

biogas may, for example, result in a reduction in methane or carbon emissions and thereby earn emission reduction credits, those attributes and credits are not necessary for the directed biogas to be a renewable energy resource as defined in the REPS ... ."[8] Optima admits it wants to keep for its own resale all of what it calls "emission reduction attributes" and "emission reduction credits" of swine-derived biogas to use in programs of "other jurisdictions," including California.[9]

However, without the necessary environmental attributes and rights to claim the source of the gas and associated environmental attributes, the gas is ***not*** a biogas - ***it is undifferentiated from conventional natural gas***.

And, although Optima would not include any environmental attributes with the underlying fuel that actually make the gas a renewable gas from swine waste, Optima then admits that it would allow the Duke Utilities to claim that the Duke Utilities is purchasing biogas from swine waste - a double claim.

Optima is asking the Commission to permit the double counting of the environmental attributes of the fuel, just so Optima can profit from both the Duke Utilities and the purchaser of the environmental attributes - leaving the Duke Utilities and the third-party purchaser of the attributes to face the consequences that will follow.

The double counting of environmental attributes associated with biogas is prevented by ensuring a proper division of the environmental attributes associated with the biogas - wherein the amount needed to ensure net-zero combustion is retained with

[8] Optima Petition at 1-2.

[9] "There are various thriving and lucrative markets for emission reduction credits throughout the United States particularly on the west coast. For example, California has a very vibrant market for carbon emission reductions credits with transactions currently happening as high as $12 a carbon credit. Other jurisdictions have similar markets. These markets create demand and value for emission reduction attributes like those generated from swine waste derived biogas." Affidavit of Mark Maloney at para. 7.

the biogas (≈15%) and the remainder (≈85%) is available to the gas project developer for sale to third parties - sales that occur if - and only if - the project meets separate "additionality" standards of a legitimate VER marketplace.

If the biogas project meets stringent "additionality" standards, for example through methane capture that is not otherwise required by law, then the developer could receive VERs that are "***tradable***." Therefore, it is only:

(i) when a project has "additionality" that the

(ii) the project developer could claim "tradable" attributes, and

(iii) ***if*** all the tradable attributes are sold to third parties by the developer, that would

(iv) ***then*** result in the prohibited double counting of the biogas, ***if*** the purchaser of the underlying gas also claims the gas to be renewable.

Hence, for example, the California definition of "Green Attributes" cited by the Duke Utilities[10] provides (emphasis supplied):

> ***If*** the Project is a biomass or biogas facility ***and Seller receives*** any ***tradable*** Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ***ensure that there are zero net emissions*** associated with the production of electricity from the Project.

The New York definition of Tier-1 Renewable Energy Certificate cited by the Duke Utilities[11] similarly provides (emphasis supplied):

> ***If*** the Bid Facility is a biomass or landfill gas facility ***and the Seller receives*** any ***tradable*** credits, benefits, emissions reductions, offsets, and allowances based on the greenhouse gas reduction benefits attributed not to the production of electricity but rather to its fuel production, collection, conversion or usage, ***it shall [then] provide*** NYSERDA or its designee

[10] CPUC, *Decision on Definition and Attributes of Renewable Energy Credits for Compliance with the California Renewables Portfolio Standard*, D. 08-08-028, App. B (Aug. 21, 2008); Cal. Pub. Util. Code 399.12.6(c) (emphasis supplied).

[11] Renewable Energy Standard Agreement for the New York State Energy Research and Development Authority; pp. 9-10 (Definition of Tier-1 Renewable Energy Certificate).

> with sufficient credits, benefits, emissions reductions, offsets, and allowances to ensure that there are ***zero net GHGs*** associated with the production of electricity from such Bid Facility.

Each of these definitions establishes the "if-then" analysis, to prevent double counting. If it is a biomass facility ***and*** there are tradable credits (i.e. VERs), then some of those tradable credits (VER) — a sufficient amount to achieve net zero emission combustion — must be retained with the biogas to (i) ensure that the gas is a renewable biogas and (ii) prevent the double counting of attributes.

Commission policy correctly sets forth the need for a case-by-case review. In all cases, double counting must be prevented.

When could there be double counting? When a developer could be issued tradable VERs that it could sell in full (100%) to others.

If a project has additionality, it is theoretically capable of having issued to it VERs by a program or registry. If the developer is issued VERs, there is the risk that the developer could sell ***all*** those VERs to third parties (as Optima wants to do), or use those VERs for its own compliance. This would result in double counting.

There is another way for double counting to occur — if the net-zero division is not implemented, and the gas is claimed as renewable, then ***all*** of the environmental attributes of the gas will be automatically retired when the gas is claimed as renewable as part of the renewable electricity generation process — leaving zero environmental attributes to be traded by the project developer — and from the perspective of the third-party purchaser of the VERs, the tradable VERs it purchased will then have been double counted and previously retired.

As the Duke Utilities have explained, the "net zero" separation protects all parties

in the marketplace. There are many good reasons for the net-zero approach set forth in the California and New York definitions, and its adherence in legitimate markets. How many of these VERs must be retained with the biogas to make the gas renewable? Not all of them — just the right amount — approximately 15% — to get to net zero emissions at electricity generation — calculated carefully and documented in the purchase contract as a fixed fractional quantity, as fully explained in the Duke Utilities' Initial Comments.

Optima attempts to create confusion, but the basics are straightforward. Not satisfied with retaining for resale to third parties the majority of the tradable credits (i.e. approximately 85% of the VERs) — and not satisfied with receiving market value for biogas (i.e. gas from swine waste with approximately 15% of the VERs) priced at approximately 700% - 1000% more than conventional natural gas — for the sole purpose of retaining 100% of the tradable credits (the VERs), Optima is seeking the Commission's approval to double count the environmental attributes of the underlying fuel and sell to the Duke Utilities gas that cannot be differentiated from conventional natural gas. See Confidential Attachments: Confidential Attachment 1 (a 14-page email chain from Optima to Duke Energy on October 24, 2020 at 1:57 pm); Confidential Attachment 2 (email chain dated October 24, 2020 at 9:12 am from Optima to Duke Energy); and Confidential Attachment 3 (email chain from Optima to Duke Energy dated November 18, 2020 at 1:07 pm referenced as "Brown Gas Purchase').

For all of the reasons set forth in our Joint Initial Comments and as set forth above in these Joint Reply Comments, the Duke Utilities renew their request that the Commission dismiss Optima's Motion with prejudice.

Respectfully submitted, this the 12th day of April, 2021.

/Robert W. Kaylor

Robert W. Kaylor
Law Office of Robert W. Kaylor, P.A.
353 E. Six Forks Road, Suite 260
Raleigh, NC 27609
Phone: 919.828.5250
bkaylor@rwkaylorlaw.com

Kendrick C. Fentress
Associate General Counsel
Duke Energy Corporation
NCRH 20/P.O. Box 1551
Raleigh, NC 27602
Phone: 919.546.6733
Kendrick.Fentress@duke-energy.com

DOCKET NO. E-100, SUB 113

CONFIDENTIAL ATTACHMENTS 1-3

FILED UNDER SEAL

CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Joint Reply Comments Regarding Optima MH, LLC's Motion, in Docket No. E-100, Sub 113, has been served by electronic mail, hand delivery, or by depositing a copy in the United States Mail, 1st Class Postage Prepaid, properly addressed to parties of record.

This the 12th day of April, 2021.

/Robert W. Kaylor

Robert W. Kaylor
Law Office of Robert W. Kaylor, P.A.
353 E. Six Forks Road, Suite 260
Raleigh, NC 27609
Tel: 919.828.5250
bkaylor@rwkaylorlaw.com
North Carolina State Bar No. 6237