



North Carolina Sustainable Energy Association
Education - Public Policy - Economic Development

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FILED
MAR 18 2009
Clerk's Office
N.C. Utilities Commission

March 18, 2009

Ms. Renee Vance
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699

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RE: Docket No. E-7, Sub 856

In accordance with the North Carolina Utility Commission's February 26, 2009 Order in the above captioned docket, enclosed please find the original and thirty (30) copies of the North Carolina Sustainable Energy Association's Reply Brief. All parties of record have been served.

Thank you for your attention to this matter.

Very truly yours,

Kurt J. Olson

Kurt J. Olson
Staff Counsel

Attachment

cc: Service List

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**STATE OF NORTH CAROLINA
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-7, SUB 856**

FILED

MAR 18 2009

**Clerk's Office
N.C. Utilities Commission**

In the Matter of)
Application of Duke Energy Carolinas,)
LLC for Approval of Solar Photovoltaic)
Distributed Generation Program and for)
Approval of Proposed Method of Recovery)
of Associated Costs)

**REPLY BRIEF OF THE NORTH
CAROLINA SUSTAINABLE ENERGY
ASSOCIATION**

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Pursuant to the North Carolina Utilities Commission's ("the Commission") February 13, 2009 request for reply briefs, the North Carolina Sustainable Energy Association ("NCSEA") submits the following arguments and points of authority.

SUMMARY OF POSITION

After reviewing all of the intervenors' positions in the initial briefs, NCSEA concurs that the uncertainty surrounding the regulatory treatment of the costs associated with Duke Energy Carolinas, L.L.C.'s ("Duke") tax normalization requirements should be resolved by the Commission in a definitive manner. Of the various resolutions put forth, NCSEA is persuaded that the Public Staff's approach – to remove overly broad language regarding the treatment of the costs of tax normalization from the Commission's original certificate of public convenience and necessity order ("CPCN Order") and to reaffirm that order – strikes the appropriate balance between reducing investment uncertainty for Duke and preserving the renewable energy goals that the legislature adopted to advance the public interest.

NCSEA also confirms its initial position that it would be premature at this point to grant Duke's requested relief to delay its solar set-aside compliance date from 2010 to 2011. Over the course of this proceeding, Duke has yet to demonstrate that delaying its compliance date, thus invoking the off-ramp provision of the Renewable Energy and Energy Portfolio Standard

("REPS"), would be in the public interest. Certainly, on the existing record, Duke's one attempt at complying with the solar carve-out requirements cannot be viewed as "a reasonable effort to meet the requirements" of the law. Time still exists for Duke to adopt other approaches and to truly make that reasonable effort, such as purchasing renewable energy certificates ("RECs"). Duke should not be allowed to say that they tried one plan, a plan that gives them absolute control, and if that plan fails, say they tried but cannot comply with the law. The public deserves more and will demand more. Duke's Initial Brief in Support of its Motion for Reconsideration ("Duke's Brief") provides no additional evidence to alter this conclusion.

ARGUMENT

1. The tax normalization issue appears to be most effectively resolved using the Public Staff's approach.

Based on NCSEA's understanding of the arguments in Duke's Brief, the real issue of concern with the Commission's CPCN Order is that the cap imposed on Duke's recoverable costs may appear to be primarily the result of Duke's additional costs associated with its tax normalization requirements. Duke's Brief at 8. While Duke's tax normalization requirements are certainly part of the higher per megawatt-hour ("MWh") costs of Duke's Program compared to the per MWh costs of the responders to Duke's request for proposals ("RFP"), as other parties have noted, the differentials in these costs likely also result from a number of other factors including the facts that Duke's Program is distributed rather than centralized and Duke has less experience building solar systems than the responders to the RFP.

For these reasons, NCSEA is persuaded that the Public Staff's proposed resolution to remove unnecessarily broad language regarding the treatment of the tax normalization costs from the Commission's CPCN Order would satisfy Duke's concerns about the regulatory intent of the Commission-imposed cap. NCSEA agrees with the Public Staff's arguments that a guarantee of

cost-recovery may not be necessary to receive the investment tax credits and incorporates those arguments by reference herein. Consequently, NCSEA supports the Commission's adoption of the Public Staff's Proposed Revised Order.

2. Duke has not provided enough evidence to justify invoking the off-ramp provision at this time.

In its initial brief in this proceeding, NCSEA discussed at length the issue of when a utility can invoke the "off-ramp provision" of the REPS and incorporates that discussion by reference herein. Duke's Brief provided no additional evidence to show that delaying its solar set-aside compliance date from 2010 to 2011, thus invoking the off-ramp provision, would be in the public interest. Further, Duke's Brief did not prove that Duke has pursued reasonable efforts to meet the 2010 compliance requirements; it simply reiterated the arguments Duke has made throughout this proceeding, arguments which the Commission considered when issuing its original order. For these reasons, NCSEA again argues that it is simply too early to allow Duke to delay its first obligation under the REPS. If the record does not change, that is, if Duke does not make other realistic attempts to comply (*e.g.*, purchase RECs), Duke should not be allowed to invoke the "off-ramp provision."

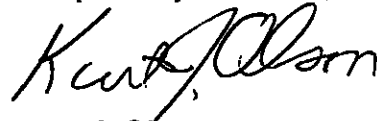
CONCLUSION

NCSEA supports the Commission's adoption of the Public Staff's Proposed Order as it strikes the appropriate balance between reducing investment uncertainty for Duke and preserving the renewable energy goals that the legislature put forth in the public interest.

NCSEA also reaffirms its initial position that it would be premature at this point to grant Duke's requested relief to delay its solar set-aside compliance date from 2010 to 2011. Throughout the course of this proceeding, Duke has yet to prove that the delay of its solar set-aside requirements to 2011 is in the public interest, nor has it proven that it has made reasonable

efforts to meet the current 2010 requirements. For these reasons, NCSEA recommends that the Commission deny Duke's request to delay its solar set-aside requirements to 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kurt J. Olson". The signature is fluid and cursive, with the first and last names being more prominent.

Kurt J. Olson, Esq.
Staff Counsel NCSEA

CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing pleading or document and any attached exhibits by hand delivery, first class mail deposited in the U.S. mail, postage pre-paid, or by email transmission with the party's consent.

This the 16th day of March, 2009

A handwritten signature in black ink, appearing to read "Kurt J. Olson", is written over a horizontal line.

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