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FILED

MAR 18 2011

Clerk's Office  
N.C. Utilities Commission

March 18, 2011

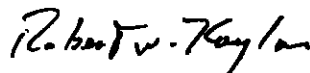
Ms. Renné C. Vance, Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, North Carolina 27699-4325

RE: Docket No. E-7, Sub 831

Dear Ms. Vance:

Enclosed for filing are the original and thirty (30) copies of Duke Energy Carolinas, LLC's Proposed List of Economic Development Activities already in place that the Company believes should be eliminated from found revenue consideration as requested by the Commission's *Order Adopting "Decision Tree" to Determine "Found Revenues" and Required Reporting in DSM/EE Cost Recovery Filings* in the above-referenced docket.

Sincerely,



Robert W. Kaylor

Encls.

cc: Parties of Record

(25)  
A.D.  
7 Cam.  
A. Smith  
W. Smith  
H. Smith  
J. Smith  
K. Smith  
L. Smith  
M. Smith  
N. Smith  
O. Smith  
P. Smith  
Q. Smith  
R. Smith  
S. Smith  
T. Smith  
U. Smith  
V. Smith  
W. Smith  
X. Smith  
Y. Smith  
Z. Smith  
Elect.

**Duke Energy Carolinas' Existing Economic Development  
to be Eliminated from Found Revenue Consideration****MAR 18 2011**Clerk's Office  
N.C. Utilities Commission

- **Rider EC – See Attached**

Due to the fact that tariff allows the rider to be applicable to "expansion of existing establishments," and leaves it to the Company's discretion as to whether the expansion would or would not be separately metered, there is a chance that this economic development activity would not be for a new customer account. Duke believes that these activities falling under Rider EC at existing facilities should still be excluded from Found Revenue consideration, as they essentially remain a "Commission-approved economic development rate," as set forth in Box 4, and this rate has been in effect for several years. Rather than have them be eliminated in Box 6, Duke believes that for simplicity and tracking purposes, it would be more reasonable to exclude all of the activities under Rider EC in Box 4.

- **Rider ER –See Attached**

- **Carolinas Investment Fund (CIF) grants resulting in new customer accounts  
–See Attached Letter**

*In 2001, Duke Energy created an investment fund intended to foster new and expanding business growth within the Carolinas. The criteria for granting incentives is based on guidelines developed by Duke Energy representatives; namely, the project has to be competitive – i.e. it has to be looking at a site other than in Duke Energy territory, and there has to be a matching component from the requesting party and/or other organizations that have an interest in the grant. Support for projects is considered on a case specific basis to meet the overall objectives of recruiting new customers, retaining existing jobs and expanding existing customer operations. Incentives are available to all Duke-served counties. Carolinas Investment Fund monies are used to match or leverage funds or in-kind resources from local or other sources and are based on annual budget restrictions. All applications are considered on a competitive basis across Duke Energy's service area until all funds are expended or committed. The local Economic Development organization applies for grants for a particular project. The grant requests are initiated through the appropriate Duke Energy Economic Development Manager. Final approval of the application rests with Duke Energy management. Early involvement by Duke Energy Economic Development Manager in a potential project is a pre-requisite for consideration of grant applications. Each CIF application passes through a thorough Cost-Benefit Analysis, known as the Pluer Model. A letter explaining the CIF and its objectives was filed with the Commission as an informational filing in Docket No. E-7 on December 10, 2003.*

Based on its discussions with the Public Staff, Duke recognizes that the Public Staff would have significant concerns regarding found revenues, if Duke were to significantly increase the amount of funds available in the CIF as currently in place. However, since the CIF has been in existence since 2001 as a Commission-allowed activity, the Public Staff has indicated to Duke that it is satisfied that the program at its current general funding level should not be treated as producing found revenues. In order to address the Public Staff's concern, Duke will commit to notify the Public Staff of any annual increase in CIF funding greater than 25%. This will allow the Public Staff the ability to monitor the amount of activity being excluded in Box 4, and potentially bring

before the Commission the issue of whether increases in funding should be examined to determine whether they produce found revenues.

- Day to Day Operations of the Duke Energy Economic Development Department resulting in the creation of a new customer account

Duke Energy Carolinas has a full time staff of dedicated economic development professionals. The team covers over 22,000 square miles of Duke Energy service territory. The Economic Development Team is responsible for assisting new and existing industries with expansion opportunities and site selection endeavors for new greenfield sites. Primary economic development activities include: qualified lead generation, business development, business recruitment, territorial strategies, Predictive Model analysis, targeted industry analysis, electricity tutorial for site consultants and communities, New Energy Capital initiatives, Transmission Right-of-Way Pre-Acquisition initiatives, the Piedmont Alliance for Quality Growth initiative, automotive mega-site task force, data center recruitment initiatives, Site Readiness Program, Existing Building Evaluation Program, economic development community outreach, and the industrial sites matching initiative, to name a few. These efforts and endeavors have lead to numerous awards for Duke Energy, in addition to being named one of the top 10 utility economic development providers by *Site Selection Magazine* for the past 12 years.

These operations can be broken down into the following three categories:

- Economic Development - Work to Identify potential customers/targeted businesses/support putting the proposal /quote together for the potential customer
- Business Development - Work to create/generate qualified leads of potential customers
- Territorial Strategies - Work to make sure that site selected can be legally served by Duke Energy by evaluating conditions of territorial assignment, customer choice, premise and corridor rights

Duke recognizes that the Public Staff would have significant concerns, if Duke were to significantly increase the amount of economic development activity performed by Duke. In order to address this concern, Duke will commit to notify the Public Staff of any annual increase in the budget for Duke's economic development department greater than 15%. This will allow the Public Staff the ability to monitor the amount of activity being excluded in Box 4, and potentially bring before the Commission the issue of whether increases in the department's budget should be examined to determine whether they produce found revenues.

- Site Selection – Responding to outside requests for information regarding establishing operations in Duke Service Territory
  - Request for Information (RFI) responsiveness to include: site profiles, electrical infrastructure analysis, electrical rate quotes, sustainability issues, workforce/demographics, logistics, incentives

The Public Staff has reviewed the foregoing list of activities and has indicated to Duke that it is in agreement with the proposed exclusions from found revenues under Box 4, as qualified above. Both Duke Energy and the Public Staff recognize that any determinations with respect to an activity being excluded from found revenue consideration will have no implications for cost recovery as part of any future general rate case.

RIDER EC (NC)  
ECONOMIC DEVELOPMENT

AVAILABILITY (North Carolina Only)

Available, only at the Company's option, to nonresidential establishments receiving service from the Company under Schedule LGS, I, OPT-G, OPT-H, or OPT-I provided that the establishment is not classified as Retail Trade or Public Administration by the Standard Industrial Classification (SIC) Manual published by the United States Government.

This Rider is available for load associated with initial permanent service to new establishments, expansion of existing establishments, or new customers in existing establishments who make application to the Company for service under this Rider, and the Company approves such application after November 1, 1994. The New Load applicable under this Rider must be a minimum of 1,000 KW at one delivery point. To qualify for service under this rider, the customer must meet the qualifications under A. or B. below:

- A. The Customer employ an additional workforce in the Company's service area of a minimum of seventy-five (75) full time equivalent (FTE) employees per 1,000 KW of New Load. Employment additions must occur following the Company's approval for service under this Rider.
- B. The Customer's New Load must result in capital investment of four hundred thousand dollars (\$400,000) per 1,000 KW of New Load. The capital investment must occur following the Company's approval for service under this Rider.

This Rider is not available to a new customer which results from a change in ownership of an existing establishment. However, if a change in ownership occurs after the customer contracts for service under this Rider, the successor customer may be allowed to fulfill the balance of the contract under Rider EC and continue the schedule of credits outlined below. This Rider is also not available for renewal of service following interruptions such as equipment failure, temporary plant shutdown, strike, or economic conditions. This Rider is also not available for load shifted from one establishment or delivery on the Duke system to another on the Duke system.

DEFINITIONS

**New Load:** New Load is that which is added to the Company's system by a new establishment after November 1, 1994. For existing establishments, New Load is the net incremental load above that which existed prior to approval for service under this Rider.

**Delivery Date:** The Delivery Date is the first date service is supplied under the contract.

**Operational Date:** The Operational Date shall be the date the facility is fully operational as declared by the Customer, but shall be no more than eighteen (18) months after the Delivery Date.

**Month:** The term "month" as used in this Rider means the period intervening between readings for the purpose of monthly billings. Readings will be collected each month at intervals of approximately thirty (30) days.

GENERAL PROVISIONS

1. The Customer must make an application to the Company for service under this Rider and the Company must approve such application before the Customer may receive service hereunder. The application must include a description of the amount of and nature of the new load and the basis on which the Customer requests qualification shown in A. or B. under Availability above. In the application, the Customer must affirm that availability of this Rider was a factor in the Customer's decision to locate the new load on the Duke system. For customers making application under paragraph A. above, the application shall also specify the total number of full time equivalent employees (FTE) employed by the Customer in all establishments receiving electric service from the Company's system, at the time of application for this Rider, and on the Operational Date.
2. The Customer must agree to a minimum contract term of ten (10) years, with the credits being available for a maximum period of four years immediately following the Operational Date.
3. For customers contracting under this Rider due to expansion, the Company may install metering equipment necessary to measure the New Load to be billed under this Rider separate from the existing load billed under the applicable rate schedule. The Company reserves the right to make the determination of whether such installation will be separately metered or submetered. If in the Company's opinion the nature of the expansion is such that either separate metering or submetering is impractical or economically infeasible, the Company will determine, based on historical usage, what portion of the Customer's load, if any, qualifies as new Load eligible for this Rider.
4. To continue service under this Rider the customer must maintain a monthly average of 250 hours use of demand.
5. All terms and conditions of the rate schedule applicable to the individual customer shall apply to the service supplied to the Customer except as modified by this Rider.

RIDER EC (NC)  
ECONOMIC DEVELOPMENTAPPLICATION OF CREDIT:

Beginning with the Operational Date, a credit based on the percentages below will be applied to the total bill for the New Load contracted for under this Rider, calculated on the applicable rate schedule, including the Basic Facilities, Demand Charge, Energy Charge, or Minimum Bill, applicable Riders listed on Leaf No. 99, but excluding other applicable riders, and excluding Extra Facilities Charges.

Months 1 – 12	20%
Months 13 – 24	15%
Months 25 – 36	10%
Months 37 – 48	5%
After Month 48	0%

EXTRA FACILITIES CHARGE

A monthly "Extra Facilities Charge" equal to 1.7% of the installed cost of extra facilities necessary for service for additional metering required under Rider EC, but not less than \$25, shall be billed to the Customer in addition to the bill under the appropriate rate schedule and this Rider, when applicable.

CONTRACT PERIOD

Each customer shall enter into a contract to purchase electricity from the Company for a minimum original term of ten (10) years, and thereafter from year to year upon the condition that either party can terminate the contract at the end of the original term, or at any time thereafter, by giving at least sixty (60) days previous notice of such termination in writing. If the Customer request a change in rate schedule from that which was approved in conjunction with Rider EC, credit under Rider EC will no longer be available. Such a change will be allowed upon thirty (30) days written notice to the Company. An individual establishment will not be allowed to receive credits for more than four years under this Rider, unless the Company, at its option, agrees to accept a new application and contract for qualifying new load, and such application receives special approval by the Company. If at any time during the term of contract under this Rider the customer violates any of the terms and conditions of the Rider or the agreement, the Company may discontinue service under this Rider, and bill the customer under the applicable schedule without further credits. In the event the Customer requests an amendment to or termination of an agreement under this Rider before the expiration of the initial term of the agreement, the Customer will be required to pay the Company as an early termination charge the lower of:

- (a) The net present value of the monthly minimum bills, including, but not limited to, basic facilities, demand, and extra facilities charges, for the remaining term under the agreement less the expected net present value of the monthly minimum bills for the initial term of contract of any successor customer who has applied for service at the premises prior to the effective date of the contract amendment or termination, provided, however, this amount shall not be less than zero.
- or
- (b) The sum of:
  - 1) The loss due to early retirement ("LDER") of all transmission and distribution facilities specifically installed by the Company in order to provide the Customer with electric service under the agreement to the extent that such facilities will not be utilized by the Company to provide service under the initial term of contract of any successor customer who has applied for service at the premises prior to the effective date of the contract amendment or termination. The LDER amount shall be calculated as the installed cost of such facilities less accumulated depreciation, less any salvage value, plus removal cost, provided, however, this amount shall not be less than zero; and
  - 2) The repayment of credits received under this Rider to the extent required based upon the marginal cost to serve the Customer. This repayment obligation shall be calculated as the difference between the net charges to the Customer under the applicable rate schedule after the application of any credits received under this Rider and the Company's marginal cost to serve the Customer; provided, however, that this amount shall not be less than zero and shall not be greater than the total credits received by the Customer under this Rider. The Company's marginal cost shall be calculated under the Company's Schedule HP (NC) Hourly Pricing for Incremental Load.

**RIDER ER (NC)  
ECONOMIC REDEVELOPMENT**

**AVAILABILITY (North Carolina Only)**

Available, only at the Company's option, to nonresidential establishments receiving service from the Company under Schedule LGS, I, OPT-G, OPT-H or OPT-I, provided that the establishment is not classified as Retail Trade or Public Administration by the Standard Industrial Classification (SIC) Manual published by the United States Government.

This Rider is available for load associated with a new customer in an existing establishment served, or previously served, by the Company, provided the establishment has been unoccupied and/or has remained dormant for a minimum period of six months, as determined by the Company. In order to qualify for service under the Rider, the New Load must be a minimum of 500 KW at one delivery point at one voltage. In addition, the requested service necessary to serve the New Load must not result in additional investment in distribution facilities by the Company, however, minor alterations in the service supplied which can be accomplished feasibly and economically may be allowed. To qualify for service under this Rider, the Customer must meet the qualifications under A. or B. below

- A. The Customer employ an additional workforce in the Company's service area of a minimum of thirty-five (35) full time equivalent (FTE) employees per 500 KW of New Load. Employment additions must occur following the Company's approval for service under this Rider.
- B. The Customer's New Load must result in capital investment of two hundred thousand dollars (\$200,000) per 500 KW of New Load. The capital investment must occur following the Company's approval for service under this Rider.

This Rider is not available for renewal of service following interruptions such as equipment failure, temporary plant shutdown, strike, or economic conditions. This Rider is also not available for load shifted from one establishment or delivery on the Duke system to another on the Duke system. However, if a change of ownership occurs after the customer contracts for service under this Rider, the successor customer may be allowed to fulfill the balance of the contract under Rider ER and continue the credits outlined below.

**DEFINITIONS**

**New Load:** New Load is that which is added to the Company's system as a result of the new customer taking service at an existing establishment and shall not be less than the Contract Demand.

**Delivery Date:** the Delivery Date is the first date service is supplied under the contract.

**Operational Date:** The Operational Date shall be the date the facility is fully operational as declared by the Customer, but shall be no more than twelve (12) months after the Delivery Date.

**Month:** The term "month" as used in this Rider means the period intervening between readings for the purpose of monthly billings. Readings will be collected each month at intervals of approximately thirty (30) days.

**GENERAL PROVISIONS**

1. The Customer must make an application to the Company for service under this Rider and the Company must approve such application before the Customer may receive service hereunder. The application must include a description of the amount of and nature of the new load and the basis on which the Customer requests qualification shown in A. or B. under Availability above. In the application, the Customer must affirm that availability of this Rider was a factor in the Customer's decision to locate the new load on the Duke system. For customers making application under paragraph A. above, the application shall also specify the total number of full time equivalent employees (FTE) employed by the Customer in all establishments receiving electric service from the Company's system, at the time of application for this Rider, and on the Operational Date.
2. The Customer must agree to a minimum contract term of five (5) years, with the credits being available for a maximum period of one (1) year following the Operational Date.
3. To continue service under this Rider, the Customer must maintain a monthly average of 300 hours use of demand.
4. All terms and conditions of the rate schedule applicable to the individual customer shall apply to service supplied to the Customer except as modified by this Rider.

RIDER ER (NC)  
ECONOMIC REDEVELOPMENT

APPLICATION OF CREDIT:

Beginning with the Operational Date, a credit of 50% will be applied to the total bill in Months 1 through 12 for the New Load contracted for under this Rider, calculated on the applicable rate schedule, including the Basic Facilities, Demand Charge, Energy Charge, or Minimum Bill, applicable Riders listed on Leaf No. 99, but excluding other applicable riders, and excluding Extra Facilities Charges.

CONTRACT PERIOD

Each customer shall enter into a contract to purchase electricity from the Company for a minimum original term of five (5) years, and thereafter from year to year upon the condition that either party can terminate the contract at the end of the original term, or at any time thereafter, by giving at least sixty (60) days' previous notice of such termination in writing. If the Customer requests a change in rate schedule from that which was approved in conjunction with Rider ER, credit under Rider ER will no longer be available. Such a change will be allowed upon thirty (30) days' written notice to the Company. If at any time during the term of contract under this Rider, the Customer violates any of the terms and conditions of the Rider or the agreement, the Company may discontinue service under this Rider, and bill the customer under the applicable schedule without further credits. In the event the Customer requests an amendment to or termination of an agreement under this Rider before the expiration of the initial term of the agreement, the Customer will be required to pay the Company as an early termination charge the lower of:

- (a) The net present value of the monthly minimum bills, including, but not limited to, basic facilities, demand, and extra facilities charges, for the remaining term under the agreement less the expected net present value of the monthly minimum bills for the initial term of contract of any successor customer who has applied for service at the premises prior to the effective date of the contract amendment or termination, provided, however, this amount shall not be less than zero.
- or
- (b) The sum of:
  - 1) The loss due to early retirement ("LDER") of all transmission and distribution facilities specifically installed by the Company in order to provide the Customer with electric service under the agreement to the extent that such facilities will not be utilized by the Company to provide service under the initial term of contract of any successor customer who has applied for service at the premises prior to the effective date of the contract amendment or termination. The LDER amount shall be calculated as the installed cost of such facilities less accumulated depreciation, less any salvage value, plus removal cost, provided, however, this amount shall not be less than zero;
  - and
  - 2) The repayment of credits received under this Rider to the extent required based upon the marginal cost to serve the Customer. This repayment obligation shall be calculated as the difference between the net charges to the Customer under the applicable rate schedule after the application of any credits received under this Rider and the Company's marginal cost to serve the Customer; provided, however, that this amount shall not be less than zero and shall not be greater than the total credits received by the Customer under this Rider. The Company's marginal cost shall be calculated under the Company's Schedule HP (NC) Hourly Pricing for Incremental Load.



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**DEC 10 2003**

Clerk's Office  
N.C. Utilities Commission

Duke Energy Corporation  
422 South Church Street  
P.O. Box 1244  
Charlotte, NC 28201-1244

November 3, 2003

**OFFICIAL COPY**

Mr. Robert H. Bennink, Jr.  
Director and General Counsel  
North Carolina Utilities Commission  
Dobbs Building, 430 N. Salisbury St.  
P. O. Box 29510  
Raleigh, NC 27626-0510

*E-1  
C. Murphy for file*

RE: Duke Power's Carolinas Investment Fund

Dear Bob:

In 2001, Duke Power, a division of Duke Energy Corporation ("Duke"), established an economic development fund called the Carolinas Investment Fund (the "Fund") to promote commercial and industrial development within its service area. Due to its structure, purpose, and manner in which it is used, Duke does not believe that its establishment and use of the Fund implicates N.C. Gen. Stat. § 62-140(c) and related NCUC Rule R1-38.

The Program.

The Fund makes grants of money, typically less than \$100,000 each, in support of development or redevelopment projects. These grants are made pursuant to contracts between Duke and the recipient. There are several different forms of contract, each related to a particular type of project, but all of them have essentially the same terms and conditions except for those tailored to the project. A sample contract is attached as Appendix A to this letter. The contracts require that the proposed project (called the "Purpose" and described in an attachment to the contract) be successfully completed for the grant to be earned, although the Fund may make advances, subject to reimbursement if the project is not completed.

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No dot.  
Per Bennink*

The grants are typically made to local government agencies, including economic development corporations affiliated with towns, cities and counties, or private industrial development organizations such as chambers of commerce. Although grant requests are screened with a view towards future load growth, the grants are not conditioned upon a new customer coming online or on any increase in Duke's Kwh sales, and there is no provision for refund or any other remedy if the project, having once been completed, is later abandoned or if the occupant switches from electricity to another fuel.

Projects vary. They may consist of efforts to attract new industry to a community within Duke's service area, the acquisition of land for an industrial park, enlarging or rehabilitating an existing commercial structure, or a locality's development of master plans for industrial parks, including topographic mapping.

The Statute and the Rule.

The core provision of N.C. Gen. Stat. § 62-140, which has been in the statute from the beginning, is that

(a) No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage. . . .

In 1963 subsection (c) was added to the section, probably as an outgrowth of the controversy that had developed around promotional programs offered by electric utilities to induce developers, builders and homeowners to install electric heating and to build so-called "gold medallion" all-electric homes. Subsection (c) reads in relevant part as follows:

(c) No public utility shall offer or pay any compensation or consideration or furnish any equipment to secure the installation or adoption of the use of such utility service except upon filing of a schedule of such compensation or consideration or equipment to be furnished and approved [sic] thereof by the Commission, and offering such compensation, consideration or equipment to all persons within the same classification using or applying for such public utility service. . . .

NCUC Rule R1-38 was promulgated by the Commission "to establish guidelines for the application of N.C.G.S. §62-140(c) to electric and gas utilities. . . ." It provides that

(c)(1) *Application of Rule.* Prior to any Public Utility implementing any Program, the purpose or effect of which is to directly or indirectly alter or influence any decision to use the Public Utility's service for a particular end use or to directly or indirectly encourage the installation of equipment that uses the Public Utility's service, the Public Utility shall file for and obtain Commission approval.

In the definition subsection (b), a "Program" is defined as "any Public Utility action or planned action that involves offering "Consideration," and "Consideration" is defined as

. . .anything of economic value given or offered to any person by a Public Utility . . . including, but not limited to: payments to manufacturers, builders, equipment dealers, contractors including HVAC contractors, electricians, plumbers, engineers, architects, and/or homeowners or owners of multiple housing units or commercial establishments; cash rebates or discounts on equipment/appliance sales, leases or service installation; equipment or appliances sold for below fair market value or below their cost to the public utility; low interest loans . . .; studies on energy usage; and payment of trade shows and advertising costs. . . .

#### Discussion.

We have found no North Carolina court or NCUC decisions that address whether activities such as the Fund grants require NCUC approval under N.C. Gen. Stat. § 62-140(c). We believe, however, that Fund grants do not require NCUC approval, so long as the contract or arrangement with the recipient does not condition the grant on a particular increase in Duke's electric load or the use of particular electricity-consuming equipment. This conclusion is based on the following analysis of the statute and the rule:

The operative phrase in subsection (c) is "to secure the installation or the adoption of the use of such utility service." (Emphasis supplied) The word "secure" is not defined in the statute or anywhere else in Chapter 62; so the ordinary meaning of the word is likely to be applied by the courts in construing the statute. Perkins v. Arkansas Trucking Services, Inc., 351 N.C. 634, 528 S.E. 2d 902 (2000). Webster's New Collegiate Dictionary "secure," in relevant part, as "put beyond the hazard of losing or of not receiving."

This was the intent and effect of the promotional payment schemes in the late fifties and early sixties that preceded the enactment of subsection (c). They were direct payments (sometimes couched in terms of cost reimbursements) to the decision-maker on the choice of fuel (developer, homeowner, etc.) to induce her or him to choose the utility's fuel. Those payments "secured" the establishment's use of the utility's service in the literal sense of the word. This is not true of the grants made by the Fund. There is no certainty that the industrial establishments that are attracted, or the buildings that are rehabilitated or enlarged, will be users of more than a minimal amount electricity. The postulated growth in load is an expectation, not a requirement of the grant. The hazard of not obtaining the expected additional load is not eliminated.

A careful reading of Rule R1-38 also leads to the conclusion that grants by the Fund are not covered by the statute or the rule. The definition of "Consideration," while including the

Robert H. Bennink, Jr., Esq.  
November 3, 2003  
Page 4

usual language "but not limited to", lists a series of inducements that are not at all like the grants by the Fund; and the specific exceptions from the definition refer to activities that are "not directed at influencing decisions for specific applications or locations." Since the grants do not conform to this definition of "Consideration," the grants are not Programs" as defined in the rule.

Even if the Fund grants constituted a "Program", the rule applies to Programs "the purpose or effect of which is to directly or indirectly **alter or influence the decision to use the Public Utility's service for a particular end use or directly or indirectly encourage the installation of equipment that uses the Public Utility's service. . . .**" (Emphasis supplied). The Fund grants do not do this. There are no "strings" attached to the grants that deal with the recipient's or anyone else's choice of fuels or equipment.

In summary, the Fund grants do not resemble the types of activities that the statute and the rule appear to be addressing, and in our opinion they do not require NCUC approval under the rule. Please let me know if you disagree with our assessment of whether the Fund implicates N.C. Gen. Stat. § 62-140(c) and related NCUC Rule R1-38.

Please do not hesitate to contact me if you have any questions concerning this matter.

Sincerely,

  
Kodwo Ghartey-Tagoe

**SITE DEVELOPMENT GRANT AGREEMENT**

THIS GRANT AGREEMENT (the "Agreement") is made and entered into effective as of \_\_\_\_\_, 200\_, by and between DUKE ENERGY CORPORATION ("Duke"), and \_\_\_\_\_ ("Recipient"). Duke and Recipient may be collectively referred to as the "Parties" and either may be referred to as a "Party."

**WITNESSETH:**

WHEREAS, Duke has created and set aside the Duke Power Carolinas Investment Fund for the purpose of funding economic development activities within South and North Carolina (the "Fund");

WHEREAS, Recipient has requested that Duke grant \$\_\_\_\_\_ to Recipient for the purpose of funding the economic development activity set forth in Exhibit A attached hereto (the "Purpose"); and

WHEREAS, Duke has made, and Recipient has accepted, an offer to grant up to \$\_\_\_\_\_ to be used by Recipient to carry out the Purpose in accordance with the terms and conditions set forth herein (the "Grant Amount").

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

**ARTICLE 1: SCOPE; PAYMENT**

1.1 Recipient shall use its best efforts to ensure that, throughout the term of this Agreement, the Purpose satisfies Duke's requirements for a grant of the Grant Amount from the Fund, which requirements include without limitation that the Grant Amount is used solely for the payment of costs associated with site qualification/certification such as environmental testing. Recipient shall use funds received hereunder solely for the completion of the Purpose.

1.2 Recipient shall not be entitled to any portion of the Grant Amount unless all of the Conditions occur on or before the Deadline. The "Deadline" shall mean the earlier of (a) \_\_\_\_\_, 200\_ or (b) the date of termination of this Agreement. "Conditions" shall mean (x) completion of the Purpose, (y) Recipient's notification to Duke of such completion and of the amount of Recipient's actual and final expenditures and obligations directly related to such completion and not reimbursed or reimbursable to Recipient from any other source (the "Expenditures") (the "Notification"), and (z) Duke's determination that the Purpose has been completed and that the Expenditures are correct and reasonable and Duke's written notification to Recipient of such determination. Duke may require that the Notification be in writing or that Recipient submit additional documentation in connection with, and as part of, the Notification. The first date on or before the Deadline by which all of the Conditions have occurred shall be the "Completion Date."

1.3 Duke may advance to Recipient all or a portion of the Grant Amount (the total of any such payments from Duke to Recipient being the "Payments"), provided, however, that within 30 days following the Completion Date, Duke shall pay Recipient the lesser of (a) the Grant Amount minus the Payments or (b) the Expenditures minus the Payments, provided, further, that if the Payments exceed the Expenditures as of the Completion Date, then no payment shall be due Recipient from Duke and Duke may demand within 30 days following the Completion Date that Recipient repay all or a portion of such excess and Recipient shall repay such demanded amount within 60 days following the Completion Date. If by the Deadline all of the Conditions have not occurred, then Duke may demand within 30 days

following the Deadline that Recipient repay all or a portion of the Payments and Recipient shall repay such demanded amount within 60 days following the Deadline.

## **ARTICLE 2: TERM AND TERMINATION**

2.1 This Agreement shall terminate upon the earlier of (a) the date two years from the date hereof, (b) the date that Duke terminates this Agreement pursuant to Section 2.2 or (c) the Completion Date. The termination of this Agreement shall not relieve either Party of its obligation to pay the other Party in accordance with Article 1 of this Agreement.

2.2 Duke may terminate this Agreement upon the occurrence of any of the following, which termination shall be effective 10 days following Duke's notification to Recipient of such termination or such later date as Duke may specify therein:

- (i) **Material Breach.** Recipient breaches any of its material obligations set forth herein, including without limitation Recipient's obligations set forth in Section 1.1.
- (ii) **Insolvency.** Recipient becomes insolvent, fails generally to pay its debts as they become due, admits in writing its inability to pay its debts as they become due, makes a general assignment for the benefit of creditors, commences any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of itself or its debts or assets, or adopts an arrangement with creditors, under any bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar law of the United States or any state thereof for the relief of creditors or affecting the rights or remedies of creditors generally.
- (iii) **Assignment.** Recipient assigns, transfers, or attempts to assign or transfer, this Agreement or any right or interest herein without the express written consent of Duke.
- (iv) **Abandonment.** Recipient abandons its efforts to complete the Purpose and fails to recommence its efforts within 5 business days after written notice from Duke.
- (v) **Repudiation.** Recipient repudiates this Agreement.

## **ARTICLE 3: REPRESENTATIONS AND COVENANTS**

Recipient represents and warrants that:

3.1 Recipient is, and for the term of this Agreement shall at all times be, in good standing and qualified to do business in South Carolina or North Carolina or both, as the case may be;

3.2 Recipient has, and for the term of this Agreement shall at all times have, all licenses, permits and other authorizations required to perform the Purpose;

3.3 Recipient shall perform the Purpose in accordance with all applicable laws, rules, regulations, orders and ordinances; and

3.4 Execution of this Agreement and performance of the Purpose hereunder does not require any third party consent and does not and will not violate the terms of any agreement to which Recipient may be bound.

#### **ARTICLE 4: NO PUBLICATION**

Recipient shall not use Duke's name or the fact that Recipient has entered into this Agreement with Duke or received any funds hereunder from Duke in any press releases, media statements or public communications or otherwise publicize the existence or content of this Agreement without Duke's prior written consent. Recipient shall not use Duke's (including its subsidiaries and affiliates) name, logos, copyrights, trademarks, service marks, trade names or trade secrets in any way without Duke's prior written consent, and Duke shall not be deemed to have granted Recipient a license of, or granted Recipient any rights in, any of the foregoing by entering into this Agreement.

#### **ARTICLE 5: RECORDS; INSPECTION AND AUDIT; COOPERATION**

For a period of 3 years after the termination of this Agreement, (a) Recipient shall maintain and retain records relating to the Purpose and Recipient's receipt of funds hereunder, and (b) Duke and its auditors and other representatives shall have the right and free access during normal business hours to examine, audit and copy any and all records or other documents relating to the Purpose or Recipient's receipt of funds hereunder. Upon Duke's reasonable request, Recipient shall cooperate fully with Duke with respect to any discussions, negotiations, agreements, arrangements or disputes with any city, county, state or federal governmental body relating in any way to this Agreement, the Grant Amount, the Purpose or Recipient's receipt of funds hereunder.

#### **ARTICLE 6: INDEMNIFICATION; NO CONSEQUENTIAL DAMAGES**

6.1 Recipient shall defend, indemnify and hold harmless Duke and its directors, officers, employees, agents, representatives, and subsidiary and affiliated companies and their directors, officers, employees, agents and representatives, from and against all claims, demands, losses, damages, penalties, fines, liabilities, obligations, and attorneys' and other professionals' fees and expenses arising out of or relating to any negligent or wrongful act or omission of Recipient or its employees, contractors and agents in connection with the Purpose or Recipient's receipt of funds hereunder, including without limitation any claim arising out of Recipient's failure to comply with applicable laws, rules, regulations, orders or ordinances.

6.2 In no event shall either Party be liable hereunder for any consequential, special, incidental or indirect damages, except to the extent the indemnifications in this Agreement may be construed to constitute those damages. In no event shall either Party's liability hereunder exceed the Grant Amount.

#### **ARTICLE 7: GENERAL**

7.1 This Agreement and all of its provisions shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

7.2 This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws principles.

7.3 Those provisions that would require survival in order to give them full force and effect shall survive the termination or expiration of this Agreement, regardless of the date, cause or manner of such termination, and shall remain in full force and effect.

7.4 This Agreement, including the Exhibits attached hereto, is intended by Duke and Recipient to constitute the final and complete statement of their agreement and all prior proposals,

communications, negotiations, understandings and representations relating to the subject matter of this Agreement, whether verbal or written, are hereby superseded. No modification or amendment of this Agreement shall be effective unless the same is in writing and signed by both Parties.

7.5 Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall be as to such jurisdiction ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

7.6 Any notice required or permitted to be given by either Party hereto to the other Party shall be deemed to have been duly given when delivered personally or otherwise actually received after mailing by certified mail, return receipt requested, or by reputable overnight courier, addressed to the Contact Person for such Party set forth on the signature page of this Agreement at the address provided below such person's name or addressed to any such Party at such other address as such Party shall hereafter furnish to the other Party in writing in accordance with this Section 7.6, provided that a copy of any notice to Duke shall also be sent to:

Duke Energy Corporation  
Legal Department, PB05E  
422 South Church Street  
Charlotte, North Carolina 28242-0001.

7.7 No course of dealing or failure of either Duke or Recipient to enforce strictly any term, right or condition of this Agreement shall be construed as a waiver of that term, right or condition. The failure of either Party to exercise any right hereunder or to take any action permitted on a breach by the other Party shall not be deemed a waiver of such right or of any other rights in the event of a subsequent breach of a like or different nature. No express waiver of any term, right or condition of this Agreement shall operate as a waiver of any other term, right or condition or a waiver of that term, right or condition in any other instance.

7.8 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature Page Follows]

APPENDIX A

IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

\_\_\_\_\_

DUKE ENERGY CORPORATION

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Recipient Contact Person

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

Duke Contact Person

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

**EXHIBIT A**

**PURPOSE**

**FILED**

**DEC 10 2003**

**CHIEF CLERK  
MS. UTILITIES COMMISSION**

**Bob Bennink**

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**From:** Kodwo Gharley-Tagoe [kgarley-tagoe@duke-energy.com]  
**Sent:** Thursday, November 06, 2003 4:11 PM  
**To:** Robert Bennink  
**Cc:** kirby@ncuc.net; antoinette.wike@ncmail.net; Antonio J Almeida; Paul R Newton  
**Subject:** Re: Carolinas Investment Fund

As I described in our conversation earlier today, grant requests under our Carolinas Investment Fund are reviewed by a Duke Power team using the following criteria: (1) Type of industry in which prospect is involved; (2) whether prospect would be located in urban or rural county (we tend to be more generous with rural areas); (3) potential multiplier effect of prospect on region's economy; (4) whether request has broad-based support among other community stakeholders; (5) economic impact of project based on a Duke Power financial model that is run on each grant request; and (6) whether customer has choice of electric suppliers.

Please let me know if you have any additional questions.

CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Carolinas, LLC's Duke Energy Carolinas, LLC's Proposed List of Economic Development Activities in Docket No. E-7, Sub 831 has been served by electronic mail (e-mail), hand delivery or by depositing a copy in the United States Mail, first class postage prepaid, properly addressed to parties of record.

This the 18<sup>th</sup> day of March, 2011.

A handwritten signature in black ink, appearing to read "Robert W. Kaylor", is written over a horizontal line.

Robert W. Kaylor  
Law Office of Robert W. Kaylor, P.A.  
3700 Glenwood Avenue, Suite 330  
Raleigh NC 27612  
(919) 828-5250  
NC State Bar No. 6237