

**FILED**

**MAR 18 2009**

Clerk's Office  
N.C. Utilities Commission

March 18, 2009

Ms. Renné Vance, Chief Clerk  
North Carolina Utilities Commission  
Dobbs Building, Fifth Floor  
430 North Salisbury Street  
Raleigh, NC 27602

**OFFICIAL COPY**

VIA HAND DELIVERY

Re: Docket No. E-7, Sub 856;  
Duke Solar Photovoltaic Application

Dear Ms. Vance:

On behalf of Carolina Utility Customers Association, Inc. ("CUCA"), I am filing the original and 48 copies of this letter in lieu of a reply brief in response to the Commission's "Order Granting Motion To Reschedule" as issued on February 13, 2009. Please stamp and return to us, via our courier, the 18 "extra" copies. CUCA's comments focus on the most salient points of Duke's Motion for Reconsideration, filed on January 29, 2009.

As a result of the Commission's "Order Granting Certificate of Public Convenience And Necessity With Conditions" issued on December 31, 2008, Duke filed its Motion for Reconsideration on January 29, 2009. In the Motion, Duke contended, among other things, that the Commission's Order could produce a factual set of circumstances that might endanger Duke's receipt of appropriate tax credits for installation of the solar photovoltaic facilities. Specifically, Duke argued that the cost/price limitation which was linked to the "third lowest" solar bid could result in Duke's under recovery of its actual investments, thus jeopardizing Duke's ability to recovery any of the otherwise usable tax credits.

CUCA agrees that the "cost" to consumers could be, ultimately, much higher and the cost caps for the solar set-aside could be reached much sooner if Duke is not able to achieve 100% of the available tax credits for solar investment. However, at this point, no one really knows how the interplay of investment and cost recovery (through the REPS riders) will play out. Stated another way, Duke is setting up a "hypothetical" scenario that may or may not come to pass. Stated yet a third way, Duke is advising the Commission, in substance, that they "may" have a problem in the future. It is CUCA's position that the Commission should not enter any further Orders based on a hypothetical

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scenario. Instead, the timing would be appropriate for Duke to request additional relief when it has a "real" problem and not simply a hypothetical or "calculated" problem.

For the foregoing reasons, CUCA respectfully requests that the present Duke Motion be denied, with the Commission leaving a door open to revisit this "problem" if it becomes a real threat to Duke's ability to claim the full amount of solar investment tax credits.

Very truly yours,

CRISP, PAGE & CURRIN, L.L.P.

  
Robert F. Page

Attorneys for:  
Carolina Utility Customers Association, Inc.

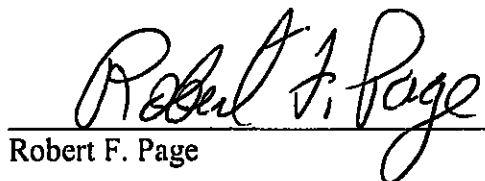
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cc: Ms. Sharon C. Miller  
All Parties

### **CERTIFICATE OF SERVICE**

I, the undersigned counsel for Carolina Utility Customers Association, Inc., do hereby certify that I served a copy of the foregoing letter on all parties of record by depositing a copy of same in the United States Postal Service, first class, postage prepaid, and addressed to them as indicated on the Service List below.

This the 18<sup>th</sup> day of March, 2009.

  
\_\_\_\_\_  
Robert F. Page

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