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**VIA FEDERAL EXPRESS**

October 7, 2008

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

**RE:** Docket No. E-7, Sub 856

Dear Ms. Vance:

Enclosed for filing in the above-referenced dockets are the original and thirty-one (31) copies of the following pleading:

1. Responsive Testimony of Ken Baker on behalf of Wal-Mart Stores East, LP, and Sam's Est.

Please file these pleadings and return file-stamped copies to me in the enclosed envelope. 

Sincerely,



RICK D. CHAMBERLAIN

Enclosures

cc: Parties of Record

*Full Dist*

**FILED**

**OCT 10 2008**

Clerk's Office  
N.C. Utilities Commission

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**

**DOCKET NO. E-7, SUB 856**

**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 )**

**FILED**

**OCT 10 2008**

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

**Responsive Testimony**

**Of**

**Ken Baker**

**On behalf of**

**Wal-Mart Stores East, LP,**

**And**

**Sam's East, Inc.**

**October 8, 2008**

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 856

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                    )

**Responsive Testimony of Ken Baker**

**Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

A. My name is Ken Baker. My business address is 2001 SE 10th St.,  
Bentonville, AR, 72716-0550.

**Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS DOCKET?**

A. I am testifying on behalf of Wal-Mart Stores East, LP, and Sam's East,  
Inc., (collectively, "Wal-Mart").

**Q. PLEASE DESCRIBE YOUR EDUCATION AND EXPERIENCE.**

A. In 1992, I completed my Juris Doctor degree from the University of  
Arkansas at Little Rock School of Law. I practiced general law in Little  
Rock from 1992 -1999 before joining Wal-Mart in October of 1999. After  
joining Wal-Mart, I worked primarily in the real estate department where I  
located and negotiated sites to build distribution centers. In September of  
2006, I transferred to Wal-Mart's Energy Department where I am currently  
the Sr. Manager of Sustainable Regulation.

My duties include managing the intervention and participation in  
non-rate regulatory proceedings across the country. I also work with our  
internal government relations department on sustainable legislation. I have  
given several presentations on Wal-Mart's energy conservation measures.

I have also assisted in the negotiation and drafting of Wal-Mart's renewable energy agreements. I have given testimony before the regulatory commissions in both New Hampshire and South Carolina.

**Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THE NORTH CAROLINA UTILITIES COMMISSION?**

A. No, this is the first time I have submitted testimony before the North Carolina Utilities Commission (the "Commission").

**Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE OTHER STATE REGULATORY COMMISSIONS?**

A. Yes, I have submitted testimony before the New Hampshire Public Utilities Commission and the South Carolina Public Service Commission.

**Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

A. The purpose of my testimony is to set out Wal-Mart's perspective on the issues being addressed in this docket. As a large customer of Duke Energy Carolinas, LLC, ("Duke") Wal-Mart is obviously sensitive to the costs of the proposal in this case. Wal-Mart is also interested in its own renewable energy systems and how they will be impacted by this Application should Wal-Mart expand its renewable program into North Carolina.

**Q. IS WAL-MART CURRENTLY USING RENEWABLE ENERGY AT ANY OF ITS LOCATIONS?**

A. Yes. Wal-Mart currently has, either in operation or undergoing installation, photovoltaic systems at 22 locations in California and Hawaii.

**Q. HAVE YOU REVIEWED DUKE'S APPLICATION IN THIS CAUSE?**

A. Yes.

**Q. DOES WAL-MART HAVE CONCERNS REGARDING DUKE'S APPLICATION?**

A. Yes. Wal-Mart's primary concern is that the proposed program appears to mandate that Duke receive ownership of the renewable energy certificates ("RECs") produced by photovoltaic facilities in its service territory. Wal-Mart requests that there be further discussions of this and surrounding issues concerning the filing.

**Q. BRIEFLY DESCRIBE WAL-MART'S CONCERNS FOR THE COMMISSION.**

A. Wal-Mart's concerns can be summarized as follows:

- 1) The filing does not allow for the host of a photovoltaic system to receive the RECs generated by the system;
- 2) The filing lacks information on the form of lease contract to be used by Duke;
- 3) The filing contains no provision for the host to take any of the renewable power at their facility; and
- 4) The filing does not provide enough information to explain how Duke proposes to acquire solar panels at \$5,000.00 per KW.

**Q. DO YOU HAVE RECOMMENDATIONS FOR THE COMMISSION REGARDING WAL-MART'S CONCERNS WITH THE APPLICATION?**

A. Yes.

**Q. BRIEFLY DESCRIBE YOUR RECOMMENDATIONS TO THE  
COMMISSION.**

A. My recommendations to the Commission are as follows:

- 1) In order to help customers achieve their own renewable energy goals, Wal-Mart requests that the Commission allow facility site hosts to retain a certain percentage of all RECs generated by the system as part of the compensation in the lease contract. In order to make certain that a customer desiring REC ownership is in fact given that opportunity, Duke should not be allowed to deny or decline a contract based solely on the fact that the customer chooses to own a portion of the RECs generated by the particular system.
- 2) As part of Duke's application Wal-Mart requests that the form of lease contract to be used for the distributed generation program be included in the filing. Failure to have the contract as a part of this filing leaves far too many open questions, such as:
  - a) What lease rate does Duke plan to pay to the host of the facility?
  - b) What indemnities will Duke provide?
  - c) What access to the host facility will be required?
  - d) What type of warranty will Duke give with regards to the host roof?

- e) What type of structural studies does Duke intend to perform before installation?

The terms and conditions for these items should be specified in a form lease contract. The provisions of the form contract should be thoroughly evaluated and discussed during this proceeding and should be made exhibits to the initial filing of Duke.

- 3) Wal-Mart recommends that the host customer be allowed to use a portion of the renewable energy generated by the system installed on their facility. Moving energy from rooftops to Duke's transmission and distribution system – and then back to the customer – simply adds unnecessary cost. Allowing a customer to take a portion of the power generated would not only help the host become more energy efficient, it would also be more cost effective than Duke's current plan.

**Q. DOES SENATE BILL 3 (“S.B. 3”) IMPOSE RENEWABLE ENERGY AND ENERGY EFFICIENCY STANDARDS FOR ELECTRIC UTILITIES IN NORTH CAROLINA?**

- A. Yes. S.B. 3 imposes renewable energy and energy efficiency standards (“REPS”) for electric utilities in North Carolina (§ 62-133.7(b)(1)). The bill also requires that a certain percentage of REPS must be met through the use of solar energy resources (§ 62-133.7(d)).

**Q. DOES S.B. 3 PROVIDE A VARIETY OF WAYS IN WHICH ELECTRIC UTILITIES MAY MEET RENEWABLE ENERGY REQUIREMENTS?**

A. Yes. The bill provides a variety of ways in which electric utilities may meet those requirements. These include:

- 1) Generating electricity at a utility-owned renewable energy facility (§§ 62-133.7(b)(2)(a) & (b));
- 2) Purchasing electricity from a renewable energy facility owned and operated by third-party (§ 62-133.7(b)(2)(d)); and
- 3) Purchasing REC derived from a non-utility renewable energy facility (§ 62-133.7(b)(2)(e)).

**Q. IS IT INSTRUCTIVE THAT THE GENERAL ASSEMBLY ALLOWED OPTIONS OTHER THAN UTILITY-OWNED RENEWABLE ENERGY FACILITIES?**

A. Yes, I believe it is. S.B. 3 clearly envisions both utility-owned and non-utility-owned renewable energy facilities. Duke's proposal in this docket appears to focus exclusively on the first option, with no provision for any of the other options. More importantly, as proposed, the scope of Duke's proposal would place the second and third options at a significant disadvantage to the first, and may well eliminate those options altogether. In effect, Duke's proposal would completely preempt the field of solar generation in its service territory and extend Duke's exclusive monopoly to include that industry. Non-utility competitors will be hard pressed to compete with Duke's access to ratepayer funding for constructing solar generation facilities. Further, given Duke's proposal in this docket



and the current uncertainty surrounding net metering in North Carolina, there is no assurance that Duke customers wishing to construct and operate their own solar generation facilities will be able to receive the benefits of those facilities or the RECs they generate.

**Q. WHAT IS YOUR FINAL RECOMMENDATION?**

A. Wal-Mart recommends that the Commission:

- 1) Require Duke to submit for review, comment and approval a standardized lease contract that includes terms such as the lease rate Duke plans to pay to the host of the facility, what indemnities will Duke provide to the owner of the host facilities, what access to the host facility will be required, what type of warranty will Duke give with regards to the host roof and what type of structural studies Duke intends to perform before installation. The terms and conditions for these items should be specified in a form contract and the provisions should be thoroughly evaluated and discussed during this proceeding.
- 2) As part of the standardized lease contract, Duke should be required to allow the host of a photovoltaic facility to retain a portion of RECs generated by the facility as compensation.
- 3) Also as part of the standardized lease contract, Duke should be required to allow the host of a photovoltaic facility the option to take some portion of the renewable electricity generated by the facility,

rather than all of it going to Duke's system only to be repurchased by the facility host.

- 4) Require Duke to give further detailed explanation of how it intends to purchase solar panels at \$5,000.00 per KW. It would be very useful if the Commission would require Duke to produce evidence of firm offers for the panels before approval of their application is considered.

Wal-Mart also recommends that the Commission require Duke to give an estimate of the point in time that the price of solar panels will be reduced due to the achievement of economies of scale. Additionally, given Duke assertion that it will be able to purchase panels at \$5,000.000 per KW, Wal-Mart asks the Commission to consider capping the cost of panels supplied by Duke at \$5,000.00. If economies of scale allow Duke to acquire panels at a lesser price, that savings should be passed on to customers. In order to assure that these panels are acquired in the most cost effective manner possible, Duke should also be required to request bids for their solar installation in a very transparent manner that assures they are acquiring the best deal possible for ratepayers.

**Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

**A. Yes.**