

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH
Docket No. E-7, Sub 831

FILED

MAY 22 2009

Clerk's Office
N.C. Utilities Commission

In the Matter of

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Application of Duke Energy Carolinas, LLC)
For Approval of Save-a-Watt Approach)
Energy Efficiency Rider and Portfolio of)
Energy Efficiency Programs)

COMMENTS BY PUBLIC
INTEREST INTERVENORS
ON DUKE'S SUPPLEMENTAL
INFORMATION

On February 26, 2009, the Commission entered an *Order Resolving Certain Issues, Requesting Information on Unsettled Matters, and Allowing Proposed Rider to Become Effective Subject to Refund* in this docket. The Order determined various issues regarding Duke Energy Carolinas, LLC's (Duke's or the Company's) application for approval of its Save-A-Watt (SAW) proposal. The Commission's Order also allowed Duke to implement its SAW proposal and begin recovering costs and incentives "at the levels requested by the Company, subject to refund with interest if the Commission, by final order entered in this docket, sets the rider at lower levels." See Order at 65.

The Commission's Order also required Duke to provide supplemental information and calculations regarding the internal rates of return (IRRs) that SAW will produce under eight cost and incentive scenarios. Further, the Commission ordered that other parties be allowed to file comments on Duke's supplemental information by May 1, 2009, and that Duke be allowed to file reply comments by May 18, 2009.

On March 31, 2009, Duke filed supplemental information in response to the Commission's Order. The Commission, by Order dated May 6, 2009, extended the time in which all parties may file comments regarding Duke's supplemental information, to and including May 22, 2009. The North Carolina Justice Center, AARP, North Carolina Council of Churches and Legal Aid of North Carolina ("Public Interest Intervenors") now submit the following comments.

As part of these comments, Public Interest Intervenors adopt the arguments against Duke's SAW proposal from their brief filed October 7, 2008 in this docket.

The Public Interest Intervenors have focused their attention on the Low-Income Energy Efficiency and Weatherization Assistance Program set forth in Duke Power's March 31, 2009 filing. The Public Interest Intervenors urge that Duke should be required to reflect all avoided costs in its financial analysis. In its financial analysis, the Commission should direct that utility-related Non-Energy Benefits (NEBs) generated by low-income efficiency investments be quantified on an annual basis.

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The avoided costs that Public Interest Intervenors have identified are not “social costs” that are outside the realm of the utility ratemaking process. Rather, Public Interest Intervenors have limited their analysis to the specific cost components that would otherwise be reflected in Duke’s revenue requirement collected from ratepayers.

The most recent authoritative assessments have been made of the utility-related non-energy benefits arising from the implementation of energy efficiency improvements in low-income housing units. An assessment of non-energy benefits by Oak Ridge National Laboratory¹ found utility benefit as follows classified as “ratepayer benefits” in 2001 dollars:

- Lower bad debt write-off: \$89
- Reduced carrying costs on arrearages: \$57
- Fewer notices and customer calls: \$6
- Fewer shutoffs and reconnections for delinquencies: \$8
- Insurance savings: \$1
- Transmission and distribution loss reduction: \$48

(Colton Direct, at 91). As can be seen, the total cost reductions accruing to Duke would thus be \$209 per treated customer in 2001 dollars. Bringing these avoided costs forward to 2008 dollars places the value at \$254 (using the U.S. Department of Labor’s Inflation Calculator). (Colton Direct, at 91-92). The dollar value of the non-energy avoided costs would need to be adjusted on an annual basis for inflation.

As Public Interest Intervenors have previously argued, on the revenue side, under Duke’s proposed Rider, the revenue that the Company loses as a result of the usage reduction resulting from these low-income efficiency programs will be imputed to Duke. The Company’s proposed Rider would allow it to recover these lost revenues and charge those revenues to all other customers. (Colton Direct, at 92). Indeed, the Company’s March 31, 2009 filing quantifies “lost margins” (revenue net of fuel costs and free riders) in its schedules. In its Updated Schultz Supplemental Exhibit No. 1, for example, Duke Power reports lost margins for the low-income weatherization program of \$1.939 million in Year 1, with an increasing amount thereafter through Year 5 (\$7.916 million) and decreasing amounts after that.

As Public Interest Intervenors have argued with respect to the low-income weatherization program, to allow the Company to collect this entire lost margin is inappropriate, since on the expense side, there is no corresponding mechanism that the Company has proposed to reflect these decreased costs resulting from the efficiency investments. (Colton Direct, at 92). As a result, these dollars of non-energy avoided costs, in the absence of their identification and capture, would simply flow through as increased earnings to Duke’s shareholders. If Duke shareholders are to be held harmless against a decrease in revenue, they should not also be allowed to benefit from the decrease in expenses. These decreases in expenses should not be pocketed by Duke shareholders as increased profits.²

¹ Martin Schweitzer and Bruce Tonn (April 2002). Non-energy Benefits From the Weatherization Assistance Program: A Summary of Findings from the Recent Literature, Oak Ridge National Laboratory: Oak Ridge (TN).

² While Public Interest Intervenors recommended that these avoided costs be used to fund additional low-income weatherization, given that the Commission did not adopt that recommendation, they should at least be used to reduce the claimed “lost margins.”

This process of capturing the non-energy avoided costs will have no negative consequences under the terms of the Duke Save-A-Watt program. Public Interest Intervenor do not agree with Duke's views on Save-A-Watt and do not expect to see rates lower than they would have been without the efficiency investments, as the Company claims. However, if the Commission allows the Company to capture 90% or some lesser percentage of its energy avoided costs, it stands to follow that the non-energy avoided costs should be treated the same way. Simply because one set of avoided costs is energy-related, while the other set of avoided costs is non-energy-related does not change the fact that they are both sets of avoided costs.

As can be seen, the avoided costs identified by Public Interest Intervenor are not social benefits. They are concrete, quantifiable, expense reductions that, in the absence of the treatment argued for by Public Interest Intervenor, would flow through to investors as additional, unwarranted, increases in equity returns.

Based on this information and analysis, the utility-related avoided costs generated by the Low-Income Energy Efficiency and Weatherization Assistance Program implemented by Duke should be quantified and used as an offset to the lost margins included in Duke's filing. The calculation of these offsets to lost margins should be as follows:

- The offset per unit should be set at \$254 in 2008 dollars, escalated to current dollars for the year in which the unit is treated by the Duke program.
- The offset should be applied to each unit treated by the Duke Low-Income Energy Efficiency and Weatherization Assistance Program.³
- The offset should be amortized in a straight-line fashion, over the first five years immediately subsequent to the treatment of the low-income unit.⁴
- The offset should be applied against the "lost margins" otherwise claimed by the Company.

In the absence of this treatment, Public Interest Intervenor recommend that the offsets calculated in this fashion should be provided as a supplement to the Weatherization Assistance Program (WAP) to fund additional weatherization activities in low-income and elderly poor housing units.

In addition, Duke's submission of additional information and various new scenarios to support its position, poses an evidentiary problem in that they do not meet the fundamentals of substantial evidence in the record. Nowhere in Commission Rule R1-24 (describing the form and substance for the admission of evidence) does the rule envision such a broad revision or amplification of evidence without hearing before the Commission. There have been no stipulations by the parties that this evidence can be introduced outside the hearing without being sponsored by a witness subject to cross-examination.

³ Each group of low-income units treated in a particular year, in other words, would generate its own set of non-energy avoided costs.

⁴ Each group of low-income units treated in a particular year, in other words, would begin its own 5-year amortization period.

G.S. 62-65 and Commission Rule R1-24(a) hold that the Commission generally adopts the North Carolina Rules of Evidence, and those rules also do not envision documents to come into evidence without being tested for relevance and admissibility. The preliminary questions of weight and credibility of the sponsoring witness in G.S. 8C-1, Rule 104, cannot be answered. Rule 901 requires that as a condition precedent for the submission of evidence, such evidence must be authenticated or otherwise identified to support a finding that the matter in question is what the proponent claims.

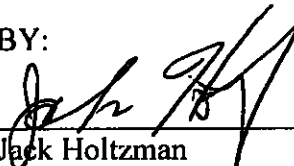
Once an evidentiary proceeding is closed, additional evidence, such as Duke seeks to submit now, cannot be submitted over the objection of an opposing party unless the evidentiary proceeding is reopened. *State ex rel. Utilities Comm'n v. Carolina Water Service*, 328 N.C. 299, 401 S.E.2d 353 (1991); *State ex rel. Utilities Comm'n v. Carolina Telephone & Telegraph*, 267 N.C. 257, 148 S.E.2d 110 (1966). As a result, the justification for the SAW cost recovery mechanism remains largely unsupported by competent evidence in the record.

In sum, before the Commission can consider Duke's new scenarios and new funding mechanisms, it should hold an additional hearing on the proposals and allow the parties the opportunity to address whatever Duke puts forward as a justification for a modified SAW proposal.

This the 22nd day of May, 2009.

NC JUSTICE CENTER
Counsel for Public Interest Intervenors

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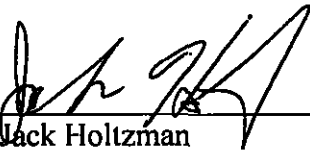


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CERTIFICATE OF SERVICE

The undersigned certifies that he has served a copy of the foregoing COMMENTS BY PUBLIC INTEREST INTERVENORS ON DUKE'S SUPPLEMENTAL INFORMATION upon the parties of record in this proceeding or their attorneys by electronic means or depositing a copy of the same in the United States Mail.

This the 22nd day of May, 2009.



Jack Holtzman
Staff Attorney