STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-7, SUB 831

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Duke Energy Carolinas, LLC, for Approval of Save-a-Watt Approach, Energy Efficiency Rider, and Portfolio of Energy Efficiency Programs	))))	ORDER DENYING AIR PRODUCTS' PETITION TO RECONSIDER AND MOTION FOR ORDER REQUESTING COMMENTS AND ORAL ARGUMENT

BEFORE: Chairman Edward S. Finley, Jr., Presiding, and Commissioners Robert V. Owens, Jr., Lorinzo L. Joyner, and William T. Culpepper, III

BY THE COMMISSION: On March 20, 2009, Intervenor Air Products and Chemicals, Inc. (Air Products), petitioned the Commission pursuant to G.S. 62-80 to reconsider its order issued February 26, 2009, in this docket (February 26 Order) to the extent that the Order fails to find and conclude that: (1) Duke Energy Carolinas, LLC (Duke) should be required to open its Interruptible Power Service Rider rate schedule (Rider IS) to additional participation up to and including its approved limit of 1,100 megawatts (MW) (Participation Issue); and (2) Duke should be required to modify the capacity credit offered to Rider IS subscribers consistent with current economic conditions (Credit Issue).

Air Products maintains that, although both the Participation and Credit Issues are material and presented in the record, the February 26 Order does not include adequate findings, conclusions and reasons for the Commission's decisions on either. Rather, the February 26 Order focuses on the issue of whether or not Duke's proposed Power Share program is "new" for purposes of G.S. 62-133.9 and merely finds that current Rider IS customers should be allowed to continue to participate at "current contract levels," thereby implicitly deciding that participation should not be opened and the credit should not be updated without stating the rationale in sufficient detail for the court to review on appeal.

Air Products stated that, throughout the course of this proceeding, both it and Carolina Industrial Group for Fair Utility Rates III (CIGFUR) diligently sought to raise and present these issues for the Commission's consideration. More specifically, Air Products stated that its witness James Butz presented testimony that Duke has recently refused to allow an additional 8 MW of load to be served on Rider IS, despite declining participation in Rider IS, and that CIGFUR witness Nicholas Phillips testified that Duke should allow additional participation on Rider IS to take advantage of over 800 MW in unutilized interruptible capacity. Air Products stated that witness Phillips explained that the capacity credit is based on outdated figures and should be recalculated to reflect current economic conditions. Duke presented evidence in opposition to both proposals regarding the Participation and Credit Issues.

On July 22, 2009, Air Products filed a Motion for Order Requesting Comments and, If Deemed Necessary, Scheduling Oral Argument. In its further Motion, Air Products noted that the Commission had not yet at that time issued an order ruling on its March 20, 2009 Petition to Reconsider. Air Products asserted that the issues raised by its Petition were ripe for determination except for an opportunity for other parties to be heard. Lastly, Air Products stated that Duke, expressly due to the pendency of this petition, has elected not to include demand-side management (DSM) program costs in its Rider EE.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

In its February 26 Order, the Commission found that Duke's proposed PowerShare program is, in fact, a new program under G.S. 62-133.9. Finding of Fact No. 40. Like Duke's other proposed DSM program, Power Manager, PowerShare would derive much of its initial program volumes from the transfer of customers from an existing program into a new program. Duke requested approval to cancel Riders IS and SG and require existing participants to transfer to PowerShare.

Duke witness Schultz testified in this proceeding that the new PowerShare program was designed to address the desire expressed by non-residential customers for a viable voluntary curtailment option, an increase in credits paid for firm curtailment, and some standardization between curtailment programs for standby emergency generators and firm interruptible load. Responding to the testimony of Air Products witness Butz and CIGFUR witness Phillips, Mr. Schultz testified that, rather than reopening outdated, under-utilized programs (participants have been called upon to curtail load only eight times over the past seventeen years),

> [Duke] believes that the best way to achieve increased participation in demand response programs is by changing from the utility-centric model represented by Riders IS and SG to a customer-centric model that reflects the option value of curtailable load to the customer, and more importantly, provides customers with more options so that they can choose the best options given their operational and business constraints.

Mr. Schultz further testified that the credit amount should not be increased because it would be unfair for existing Rider IS customers

> to participate in this updated and modified demand response program while opting out of paying Rider EE. Thus, such customers would receive the benefit of the demand response credits while avoiding paying for the benefits of the energy efficiency portfolio as a whole. In other words, all customers pay for CIGFUR members' participation in demand response programs; however, CIGFUR members can opt-out of paying their fair

> share for new energy efficiency programs while receiving the benefits of these programs.

Lastly, Mr. Schultz testified that, “given the purported unmet demand for Rider IS at its current incentive value, it does not appear necessary to increase participant incentives to attract more participation.”

In the case of Power Manager, the Commission allowed Duke to cancel its similar existing program, but only after allowing customers on the existing program the opportunity to discontinue participation before being transferred automatically into Power Manager. In the case of PowerShare, the Commission went even further. Although deciding that PowerShare was indeed a new program, it refused to allow the full cancellation and dismantling of the existing Rider IS and SG programs, as it did with Rider LC in the transition to Power Manager. Specifically, in Finding of Fact No. 42, the Commission found as follows:

> It is not appropriate for Duke to cancel its existing Riders IS and SG. Because the current customers on Riders IS and SG have the right to opt out of Duke’s rider for new EE and DSM programs, they should be allowed to continue to participate in these existing DSM programs at their current contract levels.

In order to allow current large volume customers a way to continue to participate in a Duke interruptible service program, while exercising a meaningful way to opt out of Duke’s cost recovery rider for its new DSM and energy efficiency (EE) programs, the Commission, in its February 26 Order, required Duke to allow current existing customers on Riders IS and SG to retain their existing place in those programs without having to participate in Duke’s new program offerings.

> The Commission is of the opinion that the proposed PowerShare program is a new DSM program under G.S. 62-133.9 and that its approval is in the public interest. Nevertheless, current customers on Riders IS and SG will be allowed the opportunity to continue to participate in those programs at their current contract levels. As noted by CUCA and the CIGFUR Intervenors, to do otherwise would require current customers under Riders IS and SG to terminate their participation in Duke’s [demand response] programs altogether in order to exercise their right under G.S. 62-133.9(f) to opt out of Duke’s cost recovery rider for new DSM and EE programs. The result of this all-or-nothing choice would likely be less DSM participation, not more – counter to the intent of SB 3. New customers, however, as well as additional contract volumes from current Rider IS and Rider SG customers, will only be eligible to participate in PowerShare. In preserving this option for existing customers, the Commission will not require Duke to reopen current Rider IS to additional MW of participation.

In reaching its conclusions, the Commission agreed with Duke that new interruptible load should participate only in the new PowerShare program. Thus, the Commission did not require Duke to reopen the existing Rider IS to new capacity. Moreover, since Rider IS was not being reopened to new capacity, there was no need to increase the capacity credit being paid to current participants. Such an increase would only be necessary to incent additional participation, but no additional capacity was being made available.

Therefore, in denying Duke's request to cancel Rider IS, the Commission, in its February 26 Order, concluded that existing customers should be provided an opportunity to continue to participate in Rider IS at current capacity levels and at the current capacity credit. The Commission further concluded that the PowerShare program should be approved as a new option for customers seeking to increase the amount of their interruptible load, to earn increased incentive payments, or to take advantage of other modified terms. In taking advantage of the new program, however, the customer gives up the right to opt out of Rider EE.

After careful consideration, therefore, the Commission finds good cause to deny Air Products' Petition to Reconsider. To the extent that the Commission did not make explicit findings or conclusions in its February 26 Order with regard to the Participation and Credit Issues raised by Air Products, it has made such conclusions explicit herein together with a fuller explanation of the rationale for its decision. Moreover, as Air Products notes, all parties have had, and have taken advantage of, ample opportunities to present evidence on these issues. The Commission, therefore, further finds that an opportunity for additional comments or oral argument by the parties is unnecessary and that Air Products' July 22, 2009 Motion should also be denied.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of August, 2009.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

Kc081709.02