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ATTORNEY AT LAW

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Clerk's Office
N.C. Utilities Commission

March 3, 2009

Ms. Renee Vance
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4925

Re: DOCKET NUMBER E-7, SUB 856: In the Matter of Application of Duke Energy Carolinas, L.L.C. for Approval of a Solar Photovoltaic Distributed Generation Program and for Approval of Proposed Method of Recovery of Associated Costs

Dear Ms. Vance:

Please find enclosed the original and thirty one (31) copies of the Initial Brief on Duke Energy Carolinas, LLC's Motion for Reconsideration from Southern Alliance for Clean Energy in the above referenced docket. A diskette is also enclosed. All parties of record have been served via US Mail.

Thank you for your assistance.

Sincerely,


George Cavros

Rick
Clerk
Full Commissioner

BEFORE THE NORTH CAROLINA PUBLIC UTILITIES COMMISSION

DOCKET NUMBER E-7, SUB 856

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N.C. Utilities Commission

In the Matter of)	
)	
Application of Duke Energy Carolinas,)	Brief of Southern Alliance for
L.L.C. for Approval of a Solar)	Clean Energy on Duke Energy
Photovoltaic Distributed Generation)	Carolinas, LLC's Motion for
Program and for Approval of)	Reconsideration
Proposed Method of Recovery of)	
Associated Costs)	

Introduction

Pursuant to the North Carolina Public Utilities Commission ("Commission") Order Allowing Briefs on Duke Energy's Carolina's, LLC ("Duke") Motion for Reconsideration ("Motion"), Southern Alliance for Clean Energy ("SACE") files this brief in the above captioned docket. The Commission issued an *Order Granting Certificate of Public Convenience and Necessity with Conditions* ("Order") on December 31, 2008 for Duke's Solar Photovoltaic ("PV") Distributed Generation Program ("Program"). In granting the Order, the Commission placed a condition on the Program that limits the amount of program cost that Duke can recover through the Renewable Energy and Energy Efficiency Portfolio Standard ("REPS") rider to the equivalent megawatt hour cost of the third place solar bid in Duke's 2007 Request for Proposal ("RFP"). *Order* at p. 20.

Argument

Distributed solar PV generation should be encouraged by the Commission. The distributed solar PV market will continue to grow in North Carolina and utility-owned solar PV generation can complement customer-owned solar PV generation. Witness Smith, T. Vol. 1 at pp. 60-61, 168-170. The Commission's Order concludes that to satisfy

the solar set-aside requirements of the REPS, there is a need for Duke to acquire solar energy and that the proposed construction of 10 megawatts of solar PV facilities under the program is an appropriate method of meeting a portion of that requirement. *Order* at p. 4, Findings of Fact No. 4 p. 6-7. Yet, the Commission places an artificial cap on the amount that Duke can recover through the REPS rider, which may force Duke to completely abandon the program. *Motion* at p. 17. The use of a third place RFP bid as a proxy for the REPS compliance value of the Program is arbitrary and endangers the Program and should be stricken. Lastly, the Commission's Order inappropriately suggests that utility-owned conventional generation should be held to a higher compliance standard than the pursuit of renewable energy generation in the REPS.

During the above proceeding, the parties agreed about the broader qualitative benefits of Duke's pursuit of distributed solar energy resources. Finding of Fact No. 10 p. 9-10. The qualitative benefits are clearly identified in the record and agreed to among the parties. The benefits include allowing Duke to develop competency as an owner of solar renewable assets; to leverage volume purchases; to help Duke understand the type of distributed generation desired by its customers; promote the commercialization of solar facilities in North Carolina; and fill knowledge gaps so as to enable successful, widespread deployment of solar PV technologies. *Order* at p. 4, Finding of Fact No. 10 pp. 9-10. SACE concurs with and adopts by reference the argument in Duke's Motion on the importance of future distributed solar PV generation in Duke's service territory. *Motion* page 9.

The use of a third place bid as a proxy for the REPS compliance value of the Program is arbitrary. Duke intends to include the Program in its REPS compliance plan

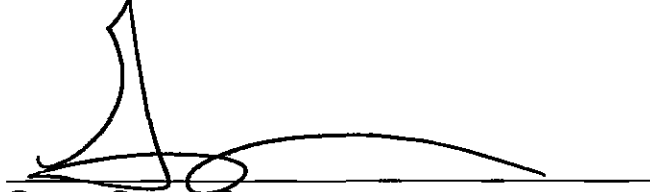
with the Commission annually pursuant to Commission Rule R8-67. Witness Ruff, T. Vol. 1 at p. 7. Rule 8-67(e) requires the Commission to schedule annual hearings to review costs incurred by utilities to comply with the REPS. The rule allows for recovery of incremental, reasonably and prudently incurred costs and makes no mention of a pre-imposed artificial REPS compliance value for specific programs. An artificial cap ignores the evidence in the record highlighting that RFP bids are often not the true price that the utility pays for the actual purchased power. A third place bid in a Request for Proposal is not a reliable indicator of the actual price Duke will have to pay when the electricity is delivered years after the bid. SACE concurs and adopts by reference Duke's argument on the arbitrary nature of the artificial cap. *Motion* pp. 14-15.

Lastly, SACE does not agree with the Commission's statement that attempts to assuage Duke's concerns about potential non-compliance if an arbitrary cap is placed on the Program. *Order* at 16. The Commission statement that Duke could modify or delay its REPS requirement if it has made substantial, good faith effort to comply with the set-aside requirement suggests that REPS compliance is a lower priority than other statutory requirements for a utility integrated resource planning process. In other words, if the artificial limitation imposed by the Commission creates a problem, then Duke's compliance would be excused. An order following this pattern would never be imposed by the Commission to provide a contingency for failure to provide, for example, adequate system reliability. North Carolina Gen. Stat. Section 62-133.8 did not contemplate such treatment of renewable resources. Duke's obligation to provide renewable energy resources should have the Commission's full support.

Conclusion

For the reasons set out above, SACE requests that the Commission eliminate the condition limiting recovery of Program costs through the REPS rider to the third place solar bid, and provide Duke with assurances that (a) proceeding with implementation of the Program is reasonable and prudent, and (b) Duke may recover all costs incurred in executing the Program through a combination of the REPS rider and base rates subject to the Commission's review of the reasonableness and prudence associated with Duke's execution of the Program.

Respectfully submitted, this 3rd day of March, 2009

A handwritten signature in black ink, appearing to read 'George Cavros', is written over a horizontal line.

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