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Clerk's Office
N.C. Utilities Commission

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

Re: Docket No. E-7, Sub 831

Dear Ms. Vance:

Please find for filing the original and 30 copies of the NC WARN'S COMMENTS in this docket. I am including an additional copy to be stamped "filed" and returned to me in the enclosed envelope.

Thank you for your attention to this matter.

Sincerely,

John D. Runkle
Counsel for NCWARN

cc. Service List

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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,	)	NC WARN'S COMMENTS
Energy Efficiency Rider and Portfolio of	)	
Energy Efficiency Programs	)	

PURSUANT TO the Commission's Order Resolving Certain Issues, Requesting Information on Unsettled Matters, and Allowing Proposed Rider to Become Effective Subject to Refund, issued on February 26, 2009, now comes the North Carolina Waste Awareness and Reduction Network, Inc. ("NC WARN"), through the undersigned attorney, with additional comments in this docket.

As part of these comments, NC WARN adopts the arguments against Duke Energy's Save-a-Watt ("SAW") proposal from its brief filed October 7, 2008, in this docket.

COMMENTS

1. Energy efficiency ("EE") measures and demand side management ("DSM") can and should be promoted, but the Commission should carefully scrutinize Duke Energy's SAW proposal to ensure that it provides cost-effective services to the ratepayers. The supplemental information solicited by the Commission in its Order of February 26, 2009, and filed by Duke Energy in its response, March 31, 2009, has not

in any way rectified the two principal deficiencies in SAW; it costs too much and does too little. Measurable reductions in demand, if any, are put off for another eight to ten years.

2. Utilities are permitted to recover costs for new DSM and EE measures pursuant to the provisions of Session Law 2007-397 (Senate Bill 3) and the resulting Commission rules. The first prong of the standard for review of the SAW proposal is whether it complies with the provisions in G.S. 62-133.9(b)[1] for cost recovery, i.e., that the DSM and EE programs first yield the "**least cost** mix of demand reduction and generation measures that meet the electricity needs of its customers." (emphasis added). This is directly in line with the explicit goals of Senate Bill 3, Section 1:

> To promote the development of renewable energy and energy efficiency through the implementation of a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) that will do all of the following:
>
> a. Diversify the resources used to reliably meet the energy needs of consumers in the State.
> b. Provide greater energy security through the use of indigenous energy resources available within the State.
> c. Encourage private investment in renewable energy and energy efficiency.
> d. Provide improved air quality and other benefits to energy consumers and citizens of the State.

G.S. 62-2(a)(10). Any approval of a cost recovery rider needs to look at whether the programs it is promoting our State's goals of achieving the least cost mix and maximizing the benefits to the consumers.

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[1] Note that when Session Law 2007-397 (Senate Bill 3) was codified, the numbers of the subsections were changed.

3. Secondly, the proposal needs to meet the specific requirements in subsection G.S. 62-133.9(d), that

> The Commission shall, upon petition of an electric public utility, approve an annual rider to the electric public utility's rates to recover all **reasonable and prudent costs** incurred for adoption and implementation of new demand-side management and new energy efficiency measures. Recoverable costs include, but are not limited to, all capital costs, including cost of capital and depreciation expenses, administrative costs, implementation costs, incentive payments to program participants, and operating costs. In determining the amount of any rider, the Commission:
>
> (1) Shall allow electric public utilities to capitalize all or a portion of those costs to the extent that those costs are intended to produce future benefits.
>
> (2) May approve other incentives to electric public utilities for adopting and implementing new demand-side management and energy efficiency measures. Allowable incentives may include:
>
> a. Appropriate rewards based on the sharing of savings achieved by the demand-side management and energy efficiency measures.
>
> b. Appropriate rewards based on capitalization of a percentage of avoided costs achieved by demand-side management and energy efficiency measures.
>
> c. Any other incentives that the Commission determines to be appropriate.

(emphasis added). In its Rule R8-69, the Commission establishes a procedure for the annual review of the costs sought to be recovered through utility EE and DSM programs. The rule does not change the need for the "reasonable and prudent cost analysis," nor does it shift the burden away from the utility. The Commission is therefore required to determine if the incentives are appropriate and lead to cost-effect programs that benefit the consumers; if not, the recovery mechanism is simply designed to maximize utility profit or minimally comply with Senate Bill 3 requirements.

4. The Commission recognized in its February 26, 2009, Order that Duke Energy had not met its burden of proving that the SAW cost recovery mechanism met these standards. The record before the Commission simply did not contain an adequate justification for the SAW proposal and before it could make any final determination, the Commission required Duke Energy to file extensive supplemental information.

5. Duke Energy duly filed the supplemental information in response to the Order. The supplement information contained a series of scenarios with varying funding mechanisms for the proposed EE and DSM programs. In paragraphs 4 and 5 of its March 31, 2009, response, Duke Energy presented Scenarios F and G, variations on the methodology similar to the stipulation it had previously made in Indiana. In other scenarios, Duke Energy presented its analysis of the cost recovery mechanisms proposed by the Public Staff, including one similar to the Stipulation Agreement between Progress Energy, the Public Staff and others in E-2, Sub 931.

6. However, the most noticeable modification to Duke Energy's initial SAW proposal was included as an unsolicited exhibit, Scenario I, using as its base the avoided cost rates of 55% of EE programs and 75% for DSM programs, rather than the existing SAW proposal of 90%. In its filing, Duke Energy did not provide any justification for the lower rates, nor did it present any discussion of the legal standards that funding for the EE and DSM programs are required to meet. Duke Energy does not contend that this proposal yields the least cost mix or that the costs are reasonable and prudent. It appears to be presented solely as a less expensive alternative. The proposal does not address the outstanding question whether the incentives proposed

by Duke Energy as a whole lead to a disconnect between program costs and their benefits to the ratepayers.

7. It is further unclear from filing of March 31, 2009, whether Duke Energy would find the lower avoided cost rates in Scenario I (or for that matter, any of the other scenarios) acceptable to it as a company, and to its shareholders. Much of the justification for the SAW cost recovery mechanism presented by Duke Energy's witnesses at the initial hearings was centered on the compensation demanded by shareholders at least equal to the return on new plant construction. Does Duke Energy still contend that its shareholders will be assured dividends if SAW is adopted using the Scenario I funding mechanism?[2]

8. In his testimony in the record, Duke Energy CEO, Jim Rogers, touted Duke Energy's agreement with the national associations to start an EE program in 2015 that will increase 1 percent a year for ten years. See also Hager Supplemental Exhibit No. 2. Without approval of SAW, Duke Energy simply does not appear to have made any commitment to EE and DSM; Duke witness Schultz, and others, made it clear that this commitment was contingent "upon approval of its save-a-watt initiative." Tr. Vol. 3, p. 21. What will be the impact of Scenario I (or any of the other scenarios) on Duke Energy's so-called "national commitment"?

9. At this point, the Scenario I proposal, and all of the other scenarios, are sets

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[2] As noted in NC WARN's brief, the primary purpose of the Public Utilities Act "is not to guarantee to stockholders of public utility constant growth in value of and in dividend yield from the investment, but is to assure public of adequate service at a reasonable cost." *State ex rel. Utilities Commission v. General Telephone Co.*, 285 N.C. 671, 680, 208 S.E.2d 681 (1974).

of figures without substance, they certainly do not meet the fundamentals of substantial evidence in the record. Commission Rule R1-24 describes the form and substance for the admission of evidence and no where 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. 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 emission of evidence, such evidence must be authenticated or otherwise identified to support a finding that the matter in question is what the proponent claims.

10. Case law governing the Commission's considerations is clear; once an evidentiary proceeding is closed, additional evidence 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.

11. In addition to determining whether the funding mechanism for SAW is reasonable and prudent, and is the least cost mix, the Commission needs to determine whether the SAW proposal meets the requirements in Cliffside Order as "just and

reasonable." Duke Energy has requirements under its certificate of convenience and necessity for Cliffside Unit 6,[3]

> to invest, on an annual basis, 1% of its annual retail revenues from the sale of electricity in energy efficiency, and demand side programs, subject to the results of the ongoing collaborative workshops and subject to such *appropriate regulatory treatments as the Commission may determine to* be just and reasonable . . .

Given the new scenarios for funding, will the SAW proposal meet this requirement?

12. Under the proposal in the record and in the various scenarios (and particularly in Scenario I) outlined in the filing of March 31, 2009, Duke Energy has not met its burden. The current funding mechanism in the SAW proposal would lead to excessive profits far beyond what would be an appropriate reward or "reasonable or prudent" under G.S. 62-133.9(d) or lead to a "least cost mix" under G.S. 62-133.9(b) and 62-2(a)(10). There has been no showing in the record that a reduction of the avoided cost rate, i.e., Scenario I, and the other proposals, would meet these standards or is justified in any other manner.

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

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[3] Condition 3 on page 34 in Order Granting Certificate of Public Convenience and Necessity with Conditions, Docket No. E-7, Sub 791 (March 21, 2007).

Respectfully submitted, this the 22nd day of May 2009.

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CERTIFICATE OF SERVICE

I hereby certify that the following persons have been served this NC WARN'S COMMENTS (E-7, Sub 831) by deposit in the U.S. Mail, postage prepaid, hand delivery, or by email transmission to:

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This the 22nd day of May 2009.

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