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Clerk's Office
N.C. Utilities Commission

North Carolina Sustainable Energy Association

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**NC SUSTAINABLE
ENERGY ASSOCIATION**

June 17, 2011

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

Re: Docket No. E-100, Sub 128

Dear Ms. Vance:

Enclosed please find the original and thirty (30) copies of the reply to Duke Energy, LLC's Objection to the North Carolina Sustainable Energy Association's Comment Filing. All parties of record have been served.

Thank you for your attention to his matter.

Very truly yours,

Kurt Olson, Esq.
Counsel for NCSEA
State Bar # 22657
P.O. Box 6465
Raleigh, NC 27628

Full Disclosure

**BEFORE THE STATE OF NORTH CAROLINA UTILITIES COMMISSION
RALEIGH, NORTH CAROLINA
DOCKET NO. E-100, SUB 128**

In the Matter of)	<u>REPLY TO DUKE ENERGY, LLC'S</u>
Integrated Resource Planning In)	<u>OBJECTION TO NCSEA'S COMMENT</u>
North Carolina – 2010)	<u>FILING</u>

On June 6, 2011, the North Carolina Sustainable Energy Association filed a document in this proceeding entitled "Comments." In doing so, NCSEA stated that its filing was being made pursuant to the May 5, 2011 Order of the North Carolina Utilities Commission ("Commission") in which the Commission "found good cause to allow the parties to this proceeding to file proposed orders and/or briefs not later than Monday, June 6, 2011." NCSEA is a party to the proceeding and filed its Comments on Monday, June 6, 2011.

On June 14, 2011, Duke Energy Carolinas, LLC ("Duke") filed an objection to NCSEA's comments. Noting that NCSEA's filing was denominated "Comments," Duke argued that the May 5, 2011 Order allowed only the filing of "proposed orders" and "briefs." *See* Duke Energy Carolinas, LLC's Objection to NCSEA's Comments at 1 (hereinafter "Duke's Objection at ____"). According to Duke, NCSEA's filing was a comment, not a brief or proposed order and therefore, inappropriate. *Id.* Moreover, citing Commission Rule R8-60(j), Duke argued that the time for filing comments was roughly 270 days prior to June 6, 2011 and thus, NCSEA's filing was "grossly out of time." Duke's Objection at 2. Although not expressly stated, Duke seems to suggest that by filing "out of time", NCSEA prejudiced Duke and the other parties to the proceeding.

Duke's objection and the arguments proffered in support should be rejected. The argument elevates form, over substance. Every point raised in NCSEA's comments is based on materials in the record and like a brief, NCSEA's comments merely present contentions based on the record evidence.

In addition, Duke fails to explain how it or any other party to this proceeding sustained any prejudice or harm by reason of NCSEA's filing. In substance, NCSEA's filing is the same as a brief. The comments do not present new material not previously in the record but rather base arguments upon what was in the record at the time the comments were filed. Duke clearly had notice of each point NCSEA raises in its comments, clearly could anticipate that the arguments would be raised based on the dialogue in the record and had the same opportunity to respond as NCSEA has to respond to the proposed findings of fact and conclusions of law presented in Duke's Proposed Order. Neither Duke nor any other party has suffered any prejudice from the filing of NCSEA's comments in this proceeding.

DISCUSSION.

In evaluating Duke's complaint, it is important to recognize that all of the points addressed in NCSEA's filing are firmly grounded in the record. NCSEA comments did not add new evidence or raise issues previously not taken up in the record. Rather like a brief, NCSEA's comments present contentions and arguments based on the record evidence.

For example, NCSEA's comments address the importance of renewable energy and energy efficiency in long range planning. NCSEA asserts that these alternative forms of meeting energy demands need to be given a higher profile in the utilities' IRPs and not just relegated to the utilities' efforts to meet the requirements of North Carolina's Renewable Energy and Energy

Efficiency Portfolio Standard (“REPS”). These very same points were initially addressed in NCSEA’s Motion to Intervene (filed September 21, 2010) where, in paragraph three, NCSEA states that the IRP process “involves a forecast of load requirements for the next fifteen years and a comprehensive analysis of resource options for meeting those requirements. Renewable energy and energy efficiency...are at the heart of the planning process.” The North Carolina Waste Awareness and Reduction Network, Inc. (“NC WARN”) also raised this issue in its Motion to Intervene where it states “the Commission [needs to] investigate...the ability of energy efficiency and renewable energy to meet [the need for new power plants] at a reasonable cost to the consumers.” The Southern Alliance for Clean Energy also raised these points in its Initial Comments, stating in its Findings “Duke and PEC have not evaluated renewable resources beyond minimum REPS compliance....” Finally, the role of available alternative supply-side energy resource options in long range planning is a topic the Commission requires the utilities to evaluate in resource planning. *See* Commission Rule R8-60. And as required, the IRPs and REPS Compliance Plans address the topic. Thus clearly, NCSEA’s position on the importance of renewable energy and energy efficiency in long range planning is solidly based in the record and presented in NCSEA’s comments in the same manner as it would be in a brief. The issues were not raised for the first time in NCSEA’s June 6, 2011 Comments and neither Duke nor any other party could not have been caught by surprise.

In similar fashion, each one of NCSEA’s comments flows from the record. NCSEA argues co-generation should have a place in IRP planning. Among other places, this issue was raised in NC WARN’s Initial Comments where it states that “[t]he issue directly before the Commission in the present IRP docket is whether to accept multibillion dollar new plant construction or proceed with energy efficiency, renewable energy and related technologies.”

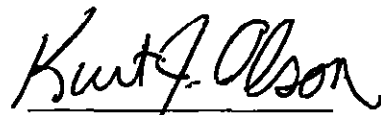
Similarly, NCSEA describes in its comments the various REPS compliance approaches taken by Progress, Duke and Dominion North Carolina Power (“Dominion”) and asserts that the distinct difference in these approaches should provide the Commission a backdrop to ascertain benefits or shortcomings inherent in each, including whether the approach results in least cost mix of generation. These contentions flow directly from the record. Indeed, the approaches are described and discussed in the IRPs and compliance reports, the very documents that form the foundation of the record. Duke is aware of the issue as it painstakingly describes its approach a “balanced and varied” throughout. Thus, the issue was joined before any comments, briefs or proposed orders were filed. NCSEA’s comments, like a brief, merely presented contentions based on the record.

CONCLUSION.

For reasons stated above, Duke’s Objection to NCSEA’s Comments should be denied. The objection elevates form over substance as NCSEA’s comments are firmly grounded in the record and like a brief, consist of contentions based on the record evidence. Moreover, because NCSEA’s comments arise from the record, and were vetted throughout the process, Duke could not have been surprised by the contentions made and could easily have anticipated them addressing them in its proposed order. Duke did not sustain any harm or prejudice arising from NCSEA’s comments.

Respectfully submitted, this the 17th day of June 2011.

Very truly yours,

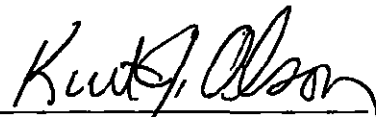
A handwritten signature in black ink that reads "Kurt J. Olson". The signature is written in a cursive style with a horizontal line underneath the name.

Kurt Olson, Esq.
Counsel for NCSEA
State Bar # 22657
P.O. Box 6465
Raleigh, NC 27628

CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing pleading or document and any attached exhibits by hand delivery, first class mail deposited in the U.S. mail, postage pre-paid, or by email transmission with the party's consent.

This the 17th day of June, 2011.

A handwritten signature in black ink, reading "Kurt Olson", written over a horizontal line.

Kurt Olson, Esq.
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