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NCSEA

VIA HAND DELIVERY

January 7, 2009

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

Re: Letter of Clarification
Docket No. E-7, Sub 856

Dear Ms. Vance:

Clerk
AG
Ntcomm
Benning
Watson
Wirby
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Hilborn
Ericson
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Jones
Gruber
2 PSeco
3 PSlegal
3 PSACOS
1 PSelec

We are writing to clarify a point made in the North Carolina Utility Commission's December 31, 2008 Order in the above referenced docket which inadvertently attributes to the North Carolina Sustainable Energy Association a mistaken legal interpretation of Senate Bill 3 (the "REPS Law") in the context of Duke Energy Carolina's Solar Photovoltaic Program. While we understand that the Order has been issued and substantively this clarification has little bearing on the Commission's Order, we believe the clarification is necessary so the statements mistakenly attributed to NCSEA will not be used as precedent in the future.

On page seventeen (17) of the Commission's Order it says that "NCSEA witness Rosalie Day testified that the term 'private' investment in the preamble of Senate Bill 3 and G.S. 62-3(a)(10) is meant to encourage non-utility investment in renewable generation and to *exclude investment by investor-owned utilities*" (emphasis added). The Commission then debunks this argument, in part, by noting that Senate Bill 3 specifically contemplates "REPS compliance through the generation of energy from utility-owned renewable energy facilities" and as such, it "would be incongruous for this Commission to interpret the policy statements in G.S. 62-3(a)(10) to [prohibit] utility investment in renewable energy."

NCSEA in no way believes that the REPS Law was intended to exclude an investor-owned utility from owning and operating renewable energy facilities. As stated in NCSEA's brief:

> To be clear, no one is saying that an IOU cannot achieve compliance with the REPS Law, in part, by "generat[ing] electric power at a new renewable energy facility" or by "us[ing] a renewable energy resource to generate electric power at a generating facility." NC Gen. Stat. § 62-133.8(b)(2). These options are clearly outlined in the law. NCSEA Brief at 6.

But it is beyond debate that the General Assembly intended more from the REPS Law *than just investment by investor-owned utilities. Id. The law also is intended to encourage* "private" investment in renewable energy facilities by non-utility entities and it contemplates clearly that compliance with some portion of the REPS obligations imposed on utilities come from the "private [non-utility] investors" that the General Assembly foresaw as bringing "diversity" and "security" to North Carolina's energy market. Based on this interpretation of the statute, it was NCSEA's position that Duke should not be allowed to occupy the entire market and that some portion of the market should be reserved for private investors particularly in the case of small scale facilities producing below 1 MW.

If NCSEA's testimony and brief came across as suggesting that the REPS Law excludes utilities from owning renewable energy facilities, it was an error. Indeed, as the Commission correctly notes, an interpretation of the law restricting utilities from owning renewable energy facilities in some instances would be completely at odds with other sections of the law that unconditionally contemplate ownership of renewable energy facilities by investor-owned utilities. Rather, the point NCSEA intended to make was that in addition to contemplating ownership of renewable energy facilities by investor-owned utilities, the REPS Law *also is designed to encourage investment in renewable energy facilities by non-utilities and to be consistent with that legislative intent, the Commission needs to advance rulings that create an environment promoting this private investment goal.* Duke's program had the potential of retarding private investment in renewable energy because Duke could satisfy all of its REPS requirements through its facilities. If this were allowed, the program would eliminate the need for private investment in renewable energy in Duke's service territory, contrary to one important goal of the REPS Law.

Although the Commission's Order is not specifically cast as such, we believe the Commission agrees with NCSEA's analysis of the law. The Commission found the "total capacity of [Duke's] program [should] be limited to 10 MW," thus seemingly leaving market share for other entities. The Commission characterizes this finding as "appropriate" and NCSEA submits that it is a good faith effort at a balanced approach vindicating the multiple interests, goals and objectives embodied in the REPS Law.

All parties to Docket E-7, Sub 856 have been served copies of this letter.

Thank you for your attention to this matter.

Very truly yours,

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