

**OFFICIAL COPY**

**SOUTHERN ENVIRONMENTAL LAW CENTER**

Telephone 919-967-1450

200 WEST FRANKLIN STREET, SUITE 330  
CHAPEL HILL, NC 27516-2559

Facsimile 919-929-9421

April 23, 2010

**VIA HAND DELIVERY**

Ms. Renne Vance  
Chief Clerk  
North Carolina Utilities Commission  
430 North Salisbury Street  
Dobbs Building  
Raleigh, NC 27603-5918

**FILED**

**APR 20 2010**

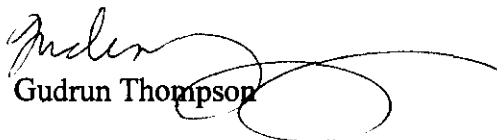
Clerk's Office  
N.C. Utilities Commission

Re: Application of Duke Energy Carolinas, Inc. for Approval of Save-a-Watt  
Approach, Energy Efficiency Rider and Portfolio of Energy Efficiency  
Programs (Docket No. E-7 Sub 831)

Dear Ms. Vance:

Enclosed please find for filing in the above-captioned matter on behalf of Environmental Defense Fund, Natural Resources Defense Council, Southern Alliance for Clean Energy and Southern Environmental Law Center an original and thirty (30) copies of a Response to Duke Energy Carolinas, LLC's Motion for Clarification and Reconsideration. By copy of this letter and enclosures, I am serving all parties of record.

Sincerely,

  
Gudrun Thompson

cc: Parties of Record (via electronic mail or US Mail)

(11)  
AG  
7comm  
Bennink  
Kirby  
Watson  
Hauer  
Sessoms  
Rite  
Hilburn  
Ericsen  
Jones  
Gruber  
Legal 3  
Arch 3  
Econ 2  
Elec. 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, Sub 831

**FILED**  
**APR 20 2010**  
Clerk's Office  
N.C. Utilities Commission

In the Matter of:	)	
Application of Duke Energy	)	ENVIRONMENTAL INTERVENORS'
Carolinas, Inc. for Approval of Save-	)	RESPONSE TO DUKE ENERGY
a-Watt Approach, Energy Efficiency	)	CAROLINAS, LLC'S MOTION
Rider and Portfolio of Energy	)	FOR CLARIFICATION
Efficiency Programs	)	AND RECONSIDERATION

Pursuant to the Commission's April 6, 2010 Order Allowing Comments, Intervenor Environmental Defense Fund, Natural Resources Defense Council, Southern Alliance for Clean Energy, and the Southern Environmental Law Center (collectively, "Environmental Intervenor") submit this response to Duke's Motion for Clarification and Reconsideration ("Motion") filed on March 10, 2010 by Duke Energy Carolinas, LLC ("Duke") in this docket. In its Motion, Duke seeks clarification and reconsideration of certain modifications the Commission made to the Agreement and Joint Stipulation of Settlement ("Agreement") between Duke, the Public Staff, and Environmental Intervenor in its February 9, 2010 Order Approving Agreement and Joint Stipulation of Settlement Subject to Certain Commission-Required Modifications and Decisions on Contested Issues ("Order") in this docket.

In response to Duke's motion, Environmental Intervenor state as follows:

1. Duke first seeks clarification of the meaning of "[p]rograms or measures with the primary purpose of promoting general awareness and education," Order at 21-22, and what, if any, of the Company's programs or measures would qualify as such. Environmental Intervenor agree that clarification from the Commission on this matter would be helpful. Duke also seeks guidance as to whether such "general awareness and education" programs ineligible for recovery

of net lost revenues include those as a result of which it can demonstrate verified kilowatt ("kW") and/or kilowatt-hour ("kWh") reductions, and if so, seeks reconsideration.

Environmental Intervenors support Duke's request for reconsideration on this point. Because Duke may only recover net lost revenues for verified kW and kWh reductions, it should not matter whether those reductions are produced by a "general awareness and education" program or another type of program.

2. Duke also seeks clarification on the Commission's insertion of the following language in Section G of the Agreement:

Utility activities shall be closely monitored by the Company to determine if they are causing a customer to increase demand or consumption, and the Company shall identify and keep track of all of its activities that cause customers to increase demand or consumption, whether or not those activities are associated with demand-side management or energy efficiency programs, as provided in the Settlement Agreement, so that they may be evaluated by the parties and the Commission for possible confirmation as "found revenues."

Order at 22. Duke requests clarification regarding the meaning of a utility activity that causes a customer to increase demand or consumption. Environmental Intervenors do not oppose Duke's request for clarification, but suggest that Duke, rather than the Commission, is in the best position to identify which of its activities cause customers to increase demand or consumption.

3. Duke requests reconsideration of the monitoring requirement added to Section G of the Agreement to the extent that the Commission defines "utility activities [that] shall be closely monitored by the Company to determine if they are causing a customer to increase demand or consumption" to include those activities that are independent of Duke's energy efficiency and demand-side management ("EE/DSM") programs. Duke also seeks reconsideration of the Commission's requirement that it identify and track all changes in revenues that occur as a result of customer actions that are independent of its EE/DSM programs.

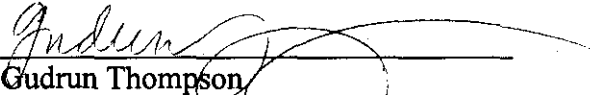
4. The monitoring, identification and tracking requirements added by the Commission follow logically from a provision in Section G the original Agreement, however, which was omitted from Duke's quotation from the Order: "Net lost revenues shall also be net of any increases in revenues resulting from any activity by the Company's public utility operations that cause a customer to increase demand or energy consumption, whether or not that activity has been approved pursuant to R8-68." The language added by the Commission merely sets forth a mechanism to implement this provision in the Agreement. If net lost revenues are to be net of revenue increases from the Company's non-EE/DSM activities that cause customers to increase demand or consumption, it necessarily follows that Duke would need to keep track of whether any of its non-EE/DSM activities are causing increased demand or consumption, so that the net lost revenues may be offset by any "found revenues" from those activities.

5. Duke argues that it would create a tremendous administrative burden to count revenue changes from "customer-driven" increases. Environmental Intervenors agree that only revenue increases that result from Duke's public utility operations should be monitored and evaluated as possible "found revenues." Environmental Intervenors disagree, however, with Duke's position that only revenue changes that result from actions taken by customers in response to Duke's EE/DSM programs should be counted as "found" revenues. This position directly conflicts with the provision that "Net lost revenues shall also be net of any increases in revenues resulting from any activity by the Company's public utility operations that cause a customer to increase demand or energy consumption, *whether or not that activity has been approved pursuant to R8-68,*" language that was agreed to by Duke and memorialized in the Agreement. (Emphasis added.)

6. To the extent that Duke is concerned about the administrative burden associated with the requirement that it identify and track its non-EE/DSM activities that cause customers to increase demand or consumption, Environmental Intervenors are sensitive to that concern and suggest that a process could be established to lessen that burden. For example, as part of the annual rider proceeding, the Commission could require Duke to identify the activities that it intends to track, and interested parties could be given an opportunity to comment on that list, with the Commission rendering a final decision on the list of activities. This would limit the scope of activities that Duke is required to monitor, lessening the administrative burden on Duke while still facilitating compliance with the Agreement as modified by the Commission.

For the reasons set forth above, Environmental Intervenors request that the Commission grant the Motion with respect to paragraphs (1) and (2) on page 6 of the Motion, and deny Duke's Motion with respect to paragraphs (4) and (5) on page 6 of the Motion.

Respectfully submitted this 23rd day of April, 2010.

  
Gudrun Thompson  
Southern Environmental Law Center  
200 W. Franklin Street, Suite 330  
Chapel Hill, NC 27516  
Telephone: (919) 967-1450  
Fax: (919) 929-9421

*Attorney for Environmental Defense Fund, Natural  
Resources Defense Council, Southern Alliance for Clean  
Energy and the Southern Environmental Law Center*

## CERTIFICATE OF SERVICE

I hereby certify that the following persons have been served with a copy of the Environmental Intervenors' Response to Duke Energy Carolinas, LLC's Motion for Clarification and Reconsideration by U.S. Mail or electronic mail:

Len S. Anthony  
Deputy General Counsel  
Progress Energy Service Company  
P.O. Box 1551/PEB 17A4  
Raleigh, NC 27602  
[len.s.anthony@pgnmail.com](mailto:len.s.anthony@pgnmail.com)

Sheri Zann Rosenthal  
Assistant City Attorney  
City of Durham  
101 City Hall Plaza  
Durham, NC 27701  
[sherrizann.rosenthal@durhamnc.gov](mailto:sherrizann.rosenthal@durhamnc.gov)

Robert Kaylor  
Law Office of Robert W. Kaylor  
225 Hillsborough Street, Suite 480  
Raleigh, NC 27603  
[bkaylor@rwkaylorlaw.com](mailto:bkaylor@rwkaylorlaw.com)

Bernard L. McNamee II  
McGuire Woods, LLP  
One James Center  
901 E. Cary Street  
Richmond, VA 23219  
[bmcnamee@mcguirewoods.com](mailto:bmcnamee@mcguirewoods.com)

Leonard G. Green  
Assistant Attorney General  
Attorney General's Office  
Utilities Section  
Post Office Box 629  
Raleigh, NC 27602-0629  
[lgreen@ncdoj.gov](mailto:lgreen@ncdoj.gov)

Mary Lynn Grigg  
Womble, Carlyle, Sandbridge & Rice  
PO Box 831  
Raleigh, NC 27602  
[mgrigg@wcar.com](mailto:mgrigg@wcar.com)

Lisa S. Booth  
Dominion Resources Services, Inc.  
Law Department – RS – 2  
PO Box 26532  
Richmond, VA 23219  
[lisa.s.booth@dom.com](mailto:lisa.s.booth@dom.com)

James H. Jeffries, IV  
Moore & Van Allen, PLLC  
Suite 4700  
100 North Tryon Street  
Charlotte, NC 28202-4003  
[jimjeffries@mvalaw.com](mailto:jimjeffries@mvalaw.com)

Jane Lewis-Raymond  
Vice President and General Counsel  
Piedmont Natural Gas Co., Inc.  
PO Box 33068  
Charlotte, NC 28233  
[Jane.lewis-raymond@piedmontng.com](mailto:Jane.lewis-raymond@piedmontng.com)

Ralph McDonald  
Bailey Dixon, LLP  
PO Box 1351  
Raleigh, NC 27602-1351  
[rmcdonald@bdixon.com](mailto:rmcdonald@bdixon.com)

Robert Page  
Crisp, Page & Currin, LLP  
Suite 205  
4010 Barrett Drive  
Raleigh, NC 27609-6622  
[rpage@cpclaw.com](mailto:rpage@cpclaw.com)

Lara Simmons Nichols  
Associate General Counsel  
Duke Energy Corporation  
PO Box 1006 (EC03T)  
Charlotte, NC 28201  
[lsnichols@duke-energy.com](mailto:lsnichols@duke-energy.com)

B. Craig Collins  
Assistant General Counsel  
SCANA Corporation NC-130  
1426 Main Street  
Columbia, SC 29201  
[ccollins@scana.com](mailto:ccollins@scana.com)

Robert Jackson  
AARP North Carolina  
Suite 312  
1511 Sunday Drive  
Raleigh, NC 27607-5257  
[rjackson@aarp.org](mailto:rjackson@aarp.org)

Rick D. Chamberlain  
Attorney-at-Law  
Behrens, Taylor, Wheeler, and  
Chamberlain  
6 NE 63<sup>rd</sup> Street, Suite 400  
Oklahoma City, OK 73102  
[Rdc\\_law@scbell.net](mailto:Rdc_law@scbell.net)

Michael W. Washburn  
Attorney at Law  
Brown, Crump, Vanore & Tierney  
Suite 1601  
421 Fayetteville Street Mall  
Raleigh, NC 27601  
[mwashburn@bcvtlaw.com](mailto:mwashburn@bcvtlaw.com)

Sharon Miller  
Carolina Utility Customer Association, Inc.  
Trawick Professional Center, Suite 210  
1708 Trawick Road  
Raleigh, NC 27604  
[smiller@cucainc.org](mailto:smiller@cucainc.org)

Horace P. Payne  
Senior Counsel  
Dominion Resources Services, Inc.  
Law Department  
120 Tredgar Street  
Richmond, VA 23219  
[Horace.P.Payne@dom.com](mailto:Horace.P.Payne@dom.com)

Janice Carney  
Electricities of North Carolina, Inc.  
1427 Meadow Wood Boulevard  
Raleigh, NC 27604  
[jcarney@electricities.com](mailto:jcarney@electricities.com)

Michael S. Colo  
Poyner and Spruill  
PO Box 353  
Rocky Mount, NC 27802-0353  
[mscolo@poynerspruill.com](mailto:mscolo@poynerspruill.com)

John D. Runkle  
Attorney  
PO Box 3793  
Chapel Hill, NC 27515  
[jrunkle@pricercreek.com](mailto:jrunkle@pricercreek.com)

George Hausen  
Legal Aid of North Carolina  
224 South Dawson Street  
Raleigh, NC 27611  
[GeorgeH@legalaidnc.org](mailto:GeorgeH@legalaidnc.org)

Antoinette Wike  
Public Staff  
4326 Mail Service Center  
Raleigh, NC 27699-4326  
[Antoinette.wike@ncmail.net](mailto:Antoinette.wike@ncmail.net)

Richard Harkrader  
Policy Chair  
NC Sustainable Energy Association  
PO Box 6465  
Raleigh, NC 27629  
[Richard@energync.org](mailto:Richard@energync.org)

Jack Holtzman  
Attorney  
NC Justice Center  
PO Box 28068  
Raleigh, NC 27611  
[jack@ncjustice.org](mailto:jack@ncjustice.org)

Kurt Olson  
Staff Counsel  
NC Sustainable Energy Corporation  
PO Box 6465  
Raleigh, NC 27628  
[kurt@energync.org](mailto:kurt@energync.org)

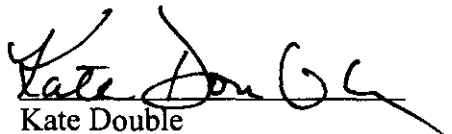
Carlene McNulty  
NC Justice Center  
PO Box 28068  
Raleigh, NC 27611-8068  
[carlene@ncjustice.org](mailto:carlene@ncjustice.org)

Rev. J. George Reed  
NC Council of Churches  
1307 Glenwood Avenue, Suite 156  
Raleigh, NC 27605  
[greed@nccouncilofchurches.org](mailto:greed@nccouncilofchurches.org)

Candy Paton  
Rates and Regulatory Manager  
Public Service Company of NC, Inc  
800 Gaston Road  
PO Box 1398  
Gastonia, NC 28053-1398  
[cpaton@scana.com](mailto:cpaton@scana.com)

William Pittman  
The Pittman Law Firm, Suite 200  
1312 Annapolis Drive  
Raleigh, NC 27608  
[wpittman@scana.com](mailto:wpittman@scana.com)

This 23rd day of April, 2010.

  
Kate Double