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FILED
JAN 29 2009
Clerk's Office
N.C. Utilities Commission

January 29, 2009

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N.C. Utilities Commission

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

RE: Docket No. E-7, Sub 856

Dear Ms. Vance:

Enclosed for filing is Duke Energy Carolinas, LLC's Motion for Reconsideration in the above referenced docket. We are filing 17 confidential versions and 14 public versions.

Sincerely,

Robert W. Kaylor

Robert W. Kaylor

RWK

Enclosures

cc: Parties of Record

Clerk
w/conf:
Comm
Bennink
Watson
Kirby
Hoover
Kite
Hilburn
Ericson
Sessoms
Jones
w/out conf:
Econ
Legal
Accts
Elec.
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PUBLIC VERSION

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 856

Application of Duke Energy Carolinas, LLC For Approval of Solar Photovoltaic Distributed Generation Program and for Approval of Proposed Method of Recovery of Associated Costs	)))))	DUKE ENERGY CAROLINAS, LLC'S MOTION FOR RECONSIDERATION

INTRODUCTION

Pursuant to N.C. Gen. Stat. § 62-80, Duke Energy Carolinas, LLC ("Duke Energy Carolinas" or "the Company") hereby moves the North Carolina Utilities Commission ("Commission") for reconsideration of its *Order Granting Certificate of Public Convenience and Necessity with Conditions* issued in this docket on December 31, 2008, ("Order") regarding its Application for Approval of a Solar Photovoltaic ("PV") Distributed Generation Program (the "Program") and for Approval of Proposed Method of Recovery of Associated Costs ("Application"). As demonstrated herein, the condition limiting the amount of Program costs recoverable through the Renewable Energy and Energy Efficiency Portfolio Standard ("REPS") rider places the Company in jeopardy of violating the federal tax normalization requirements, thus subjecting it to the loss of hundreds of millions of dollars in federal tax credits for this Program and future projects that qualify for federal investment tax credits or other federal tax credits subject to the normalization rules.

The Order concludes that to satisfy the solar set-aside requirements of the REPS, there is a need for Duke Energy Carolinas to acquire solar energy, and that the proposed construction of 10 megawatts (direct current) of solar PV facilities under the Program is an appropriate method for meeting a portion of this requirement. *Order* at p. 4, Findings

of Fact No. 4 and p. 6-7. As such, the Order grants a Certificate of Public Convenience and Necessity with Conditions ("CPCN") for the Program, but conditioned upon (1) a reduction in the Program size from 20 MWs (as originally proposed in the Application) to 10 MWs; and (2) a limitation in the amount of Program costs the Company may recover through the REPS rider to the equivalent megawatt hour cost of the third place solar bid in Duke Energy Carolinas' 2007 request for proposal ("RFP"). *Id.* at p. 20. The risk of violation of federal tax law and resulting severe penalties created by the Commission's second condition effectively precludes the Company from moving forward with the Program and also effectively eliminates the opportunity for the large scale and coordinated implementation of distributed generation ("DG") on the Company's system for the foreseeable future and will require a delay in the Company's 2010 solar set aside REPS requirements. The evidence in the record as supplemented by the Confidential Affidavit of Melisa B. Johns filed with this Motion demonstrates that implementing the Program and providing assurance of the full recovery of Program cost is reasonable and prudent.

The Company requests that the Commission consider this Motion on an expedited basis in order to provide sufficient time for the Company to meet the 2010 solar set-aside requirement of over 11,000 MWH and to ensure that the Program can benefit from the North Carolina solar investment tax credit.

ARGUMENT

I. The Order Creates a Significant Risk of Violation of the Federal Tax Normalization Requirements Which Would Result in Severe Penalties if the Company Moves Forward with the Program Pursuant to the Order.

The condition limiting the amount of Program costs recoverable through the REPS rider to the third-placed solar bid places the Company at risk of not fully recovering its incurred costs. Despite the Company's arguments that the Program costs are indivisible because all of the megawatt hours generated by the Program will go towards Duke Energy Carolinas' REPS compliance and that the Company would not have undertaken this initiative had the REPS legislation not been enacted, the Commission adopted the recommendation of the Public Staff that the Program costs recoverable through the REPS rider be limited to that portion of the costs solely attributable to REPS compliance. *Order* at p. 14. The Commission specifically stated that "other purposes" consists of "the broader program purposes outlined by Duke and compliance with the tax normalization requirements," and that such costs will not be incurred to comply with the requirements of the REPS statute. Consequently, these costs may not be recovered through the REPS rider, except to the extent that they may be shown in a future proceeding to constitute qualifying research and development expenses. *Id.* at p. 5, Finding of Fact 14 and p. 14. The Commission adopted the third-lowest solar bid submitted in the 2007 renewable energy RFP as a proxy for determining the REPS compliance costs associated with the Program in spite of the fact that distributed generation is simply not comparable to the single site solar installations represented by these bids.

By leaving open the opportunity for the Company to recover Program costs in excess of the third-placed solar bid through base rates while at the same time suggesting that incurring the additional costs associated with the federal tax normalization requirements may not be prudent the Order creates ambiguity that undermines the Company's ability to proceed with this solar project. In its testimony, the Company explained that the federal tax normalization requirements prohibit Duke Energy Carolinas from flowing the benefits of tax credits authorized under Energy Investment Tax Credits under Section 48(a) of the Internal Revenue Code on an accelerated basis. T. Vol. 2 at pp. 38-39, 71-75. On numerous instances the Order expressly refers to the fact that the tax normalization requirements contribute to the difference between Duke Energy Carolinas' projected Program costs and the solar bids in justifying its limitation on the recovery of Program costs through the REPS rider. *Order* at pp. 4-5, 8, 11, 13-16. Although the Order approves the Company's $50M estimated program construction cost, it further notes that the Commission's approval of the estimate does not amount to approval of recovery of costs in excess of the proxy amount. *Id.* at p. 5, Finding of Fact No. 17 and p. 16. This Motion provides additional history and details regarding these requirements to demonstrate the substantial risk the Order creates by approving the CPCN and leaving open the opportunity for the Company to recover Program costs in excess of the third-placed bid through base rates while at the same time suggesting that "[i]f the federal tax code treats self-generation of solar energy by a public utility less favorably than the purchase of solar energy from a third party, then prudence points in the direction of <u>not</u> self-generating, but instead purchasing the needed solar energy." *Order* at pp. 15-16.

As background, Congress instituted federal investment tax credits in an effort to stimulate economic growth. Regulated utilities were among many of the companies that took advantage of these favorable tax laws and received tax credits as a result of qualified capital expenditures. State utility commissions were then faced with the question of what form, and over what time period should the cash tax benefits from these credits be included in rates. If the entire cash tax benefits were passed along to customers in a single period (the same period in which the regulated utility received the benefits from the investment tax credit), then the regulated utility would not have the ability to utilize the cash to make additional investments – part of the fundamental rationale behind the investment tax credit programs.

To address this issue, Congress instituted tax normalization requirements requiring regulated utilities to flow through the benefits from the investment tax credits (pre-1991 investment tax credits) ratably – that is, over the investment's regulatory life (typically the book straight-line depreciable life of an asset). These tax normalization requirements were imposed by Sections 168 and 50(d)(2) and former Sections 167 and 46(f) of the Internal Revenue Code of 1986 as amended ("IRC"). The Tax Reform Act of 1986 imposes penalties on regulated utilities if the tax benefits from the pre-1991 investment tax credits are passed on to customers in a method faster than established through the tax normalization requirements. These penalties are quite severe and the Internal Revenue Service strictly enforces these rules. For example, under the Tax Reform Act of 1986, if a regulated utility violates the tax normalization requirements, any remaining unamortized investment tax credits are required to be forfeited and

returned to the government. Additionally, violating utilities risk that incremental investment tax credits will be denied until the tax normalization violation is remediated.

The Energy Improvement and Extension Act of 2008 extends the 30 percent investment tax credit for investment in solar energy through 2016 and removes the utility exclusion that previously prevented a regulated utility from claiming the 30 percent investment tax credit for solar technology if that property was classified as public utility property. IRC § 48(a)(3). These energy investment tax credits are treated in a manner similar to the pre-1991 investment tax credits with respect to the tax normalization rules. Thus, if a regulated utility claims these tax credits on public utility property, it is required to spread the benefit to the customer ratably over the investment's regulatory life. IRC § 50(d)(2) (incorporating of the former rules of Section 46(f), which required that tax normalization apply to investment tax credits generated by public utility property and claimed by regulated utility companies).

It follows that Duke Energy Carolinas would be required to ratably flow the benefits of energy credits generated from investments in connection with the Program over the book straight-line life of those assets. The Company's internal and external tax professionals have advised that, in light of the language in the Order discussed above, if Duke Energy Carolinas moves forward with the Program and its request for recovery of Program costs in excess of the third-placed solar bid is denied, there is significant risk that the Internal Revenue Service would find a violation of the tax normalization rules. The Order suggests that the additional costs result from the normalization requirements. Thus, if the Commission denies recovery of the additional costs and Duke Energy Carolinas moves forward with the program as presented, customers will effectively

receive the benefits of the tax credits on an accelerated basis, resulting in a violation of the normalization rules. As a result, Duke Energy Corporation (as the consolidated federal taxpayer) would be required to forfeit immediately any unamortized investment tax credit remaining on its books as well as jeopardize investment tax credits in excess of $250 million associated with qualifying projects as well as future federal investment tax credits until such normalization violation is remediated.

Given the consequences associated with violation of the tax normalization requirements, without modification of the Order, Duke Energy Carolinas will be forced either to abandon the Program completely or to scale back the Program drastically to a mere fraction of the proposed investment to fit within the limited research and development component of the REPS rider. Either choice effectively eliminates the opportunity for the installation of significant solar DG facilities on its system and the attendant Program benefits.

The Confidential Affidavit of Melisa B. Johns attached to this Motion further explains that if Duke Energy Carolinas cannot proceed with the Program and must rely exclusively on third party PPAs to comply with its solar set aside requirements the Company must **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** Duke Energy Carolinas has made reasonable efforts to comply with these requirements by pursuing the Program. If the Commission

does not take action to eliminate or alleviate the risk of violation of federal tax law in response to this Motion, it should then find that it is in the public interest to delay the Company's 2010 solar obligation until 2011 pursuant to N.C. Gen. Stat. § 62-133.8(i)(2) and Commission Rule R8-67(c)(5).

II. The Existing Record, as Supplemented by the Affidavit of Ms. Johns, Supports a Conclusion that Implementing the Program and Providing Assurance of the Full Recovery of Program Cost is Reasonable and Prudent.

The Commission presumably did not intend to place the Company at the significant risk described above. The Commission can eliminate this risk by reconsidering and removing the condition that recovery of Program costs through the REPS rider is limited to the third-placed solar bid. In the alternative, the Commission can alleviate the level of risk by providing the Company with assurance that (1) proceeding with implementation of the Program is reasonable and prudent, and (2) that the Company may recover costs incurred in executing the Program through a combination of the REPS rider and base rates, subject only to the Commission's review of the reasonableness or prudence of the Program execution.

A. The Comparison of the Program to the Solar Bids in the Renewable RFP is Inappropriate, and Ignores the Benefits of Distributed Generation and Utility Ownership of Solar Generation.

In the Order, the Commission recognizes that the Program seeks to provide benefits in addition to simply providing solar energy to meet the REPS requirements, including enabling the Company to:

- Develop competency as an owner of solar renewable assets;
- Leverage volume purchases;
- Build relationships with solar PV developers, manufacturers and installers;
- Gain experience with the installation and operation of various types of solar DG facilities;

- Analyze the impact of DG facilities on its electric system;
- Understand the types of DG facilities desired by 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.

The evidence is clear that a solar DG program proposed here simply cannot be compared to the large scale ground-mounted solar facilities bid in the Company's 2007 RFP. Contrary to the statement that the Company has described the additional benefits of the Program "only in vague conceptual terms" and "has not explained why it could not obtain a greater understanding of the effects of DG on its system in other ways at much lower costs or why the same benefits are not available through power purchases," *Order* at p. 15, the record is replete with evidence regarding the benefits of a DG program. Witnesses Ruff and Smith testified to the myriad benefits designed to affect positively the economics and complexity of solar generation in the State. T. Vol. 1 at pp. 17-18, 51-52, 64-67. Further, the evidence demonstrates in detail that (1) the time is now to gain operational knowledge concerning the effects of solar PV DG on the Company's system; and (2) the Company cannot rely on investments of third parties to gain such knowledge and experience. Company Witness Smith testified that:

> The Company believes that solar PV distributed generation will become much more prevalent in the future, and this Program will enable the Company to better understand any concerns and opportunities that arise with the introduction of distributed generation.
>
> ******
>
> The Company will seek to locate the solar PV facilities under this Program in a manner that will facilitate learning with respect to distributed generation impacts. ... [T]he Program provides the Company with the scale and siting control to do so.

******

The benefit of pursuing the small and medium-size installations is to ... maximize what can be learned with respect to distributed generation on our system. If we only pursued utility-scale installations under this program, I believe it would be a missed opportunity to...understand what else may occur in terms of operational issues or opportunities that are out there with smaller scale systems.

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What we expect is that the form of distributed generation that's most likely to take hold...now going forward is solar PV distributed generation.... We see the costs of distributed generation – the economics of distributed generation improving as they compare to the cost of traditional generation and retail electricity rates. And as those economics improve, we foresee that more customers will make those investments themselves. ... So we'd see a much higher adoption rate going forward.

Q. And why not just wait until that happens to determine the impact on the system?

A. Because then we are left dealing with a situation where we no longer have the opportunity to understand what the impacts or opportunities are. With this program, we can be ahead of the trend we believe is coming. We can ... exercise some siting control to understand what the saturation limits are of distributed generation on our system so we can be aware of where operational issues arise or, on the other hand, opportunities to interact with customers in new and innovative ways. So it's important to start now in a proactive way rather than to just wait until distributed generation takes hold on its own.

T. Vol. 1 at pp. 57, 64, 74, 168-170.

Witness Smith further explained that the Company cannot rely on third party investment to gain this operational understanding and expertise because third party investments "cannot be counted on to occur at any given level of frequency because they are beyond the control of the Company." T. Vol. 1 at pp. 69-70. The testimony of Witness Smith and the Vote Solar Initiative Witness Starrs further shows the Company would have to offer to purchase RECs at a cost higher than the Program costs in order to attempt to spur the level of third party investment in solar DG comparable to that under

the Program. Witness Smith explained that "it is clear that the REC purchase model recommended by the Solar Interveners would exceed the cost of the Program proposed by Duke Energy Carolinas. Furthermore, the REC purchase model offers no certainty with regards to how many customers would choose to install PV systems at any given REC price." T. Vol. 1 at pp. 69, 79-81. The Vote Solar Initiative Witness Starrs admitted on cross-examination that the REC price needed to make solar PV DG economical for customer-generators could very well exceed the Program costs. T. Vol. 2 at pp. 130-131. Thus, although it is difficult to quantify the value of all the broader benefits of the Program, the evidence is clear that the Program is designed to realize significant benefits in addition to REPS compliance and that the Program costs are the least cost for achieving solar PV distributed generation.

Witness Smith testified that the Program constitutes a part of a prudent portfolio approach to provide a diversity of resources to meet Duke Energy Carolinas' REPS solar set-aside requirements consistent with the compliance methods set forth in N.C. Gen. Stat. § 62-133.8(b)(2). Utility-owned generation, purchased power agreements and the purchase of RECs from customer-owed resources are all components of the portfolio. T, Vol. 1 at pp. 60-61. In the Order, the Commission suggests that because solar generation technology is not as complex as nuclear generation technology, utility ownership of solar generation would not provide any greater reliability of REPS compliance. *Order* at p. 15. To the contrary, as explained by Ms. Johns in her affidavit, the renewable industry in the United States is in a rapidly evolving environment that complicates the negotiation, project development, and project financing processes. The challenges of working with entities in a less mature and evolving industry without the benefit of time-tested and oft-

repeated protocol of negotiation, project development, and financing (especially given current economic conditions), cannot be overstated.

[BEGIN CONFIDENTIAL] [redacted]

[redacted]

[redacted] **[END CONFIDENTIAL]** The record also makes clear that there is strong support for the Program among Duke Energy Carolinas' customers. Witness Smith noted that at the time of the hearing over 470 customers have contacted the Company expressing interest in the Program even though the Company has not taken any steps to market the Program. T. Vol. 1 at p. 94. If the Commission is serious about REPS compliance and ensuring that some level of solar generation is developed in North Carolina then utility ownership and operation of a portion of solar generation is essential.

B. The Use of the Third Place Bid as a Proxy for the REPS Compliance Value of the Program is Arbitrary and Without Sufficient Basis.

The selection of the third-lowest solar bid as a proxy for the REPS compliance value of the Program is arbitrary because it ignores the evidence in the record regarding the series of unreasonable assumptions upon which this proxy is based. In response to cross examination questions by counsel for the Public Staff attempting to quantify this so called "true solar cost", Witness Smith responded:

> Your question requires one to assume that the second-place bidder in the RFP was a price and a developer ... that had no risk of changing, that the price as originally proposed would not change if we had undertaken extensive negotiation with that bidder to finalize terms and conditions, and would also require us to have full confidence that the project as proposed would come to fruition as proposed. Those are assumptions that, I think, stretch beyond what I would be comfortable making.

T. Vol. 1 at 147-48. Further, Witness McManeus testified (to the apparent surprise of Public Staff counsel) that "it is not rare to receive a bid and then end up negotiating the details of the contract and end up with a different" and potentially higher price. T. Vol. 2 at 85-86.

In addition to the evidence in the record, Ms. Johns' affidavit demonstrates that a solar bid price cannot be considered a firm price and is not a reliable indicator of the actual price Duke Energy Carolinas will have to pay when solar energy is actually delivered years after the bid is submitted. Ms. Johns explains that many things related to a supplier's product and pricing can change as a renewable project proceeds from an initial bid to a finalized, executed contract, and finally to actual construction of a generating facility and the delivery of energy.

Virtually all renewable energy bidders are project-financed. Therefore, the seller must have a long-term power sales agreement executed before the seller is able to proceed to obtain financing and construct the facility. The seller's bid price to Duke Energy Carolinas is based on its assumptions regarding all its project costs. Accordingly, the seller's bid price generally is contingent on critical matters such as: the seller finding an acceptable site; performing due diligence on that site to confirm the suitability of that site; obtaining an interconnection to the buyer's system at an acceptable cost; obtaining the projected tax credits for the project; not having to incur unexpected state or local taxes on the project, obtaining financing at projected rates; and meeting the energy buyer's credit or performance requirements within projected costs. In addition, some bids contain cost pass-through provisions under which specific types of costs (such as tax increases) are passed through to the buyer directly instead of being included in the energy price.

The solar bids received in response to the 2007 RFP, including the third-placed solar bid, incorporate these types of contingencies. Even after the energy contract is signed, the price is still not truly firm because the seller and the seller's lender will have required that the contract contain condition precedents which generally will allow the seller to terminate the project if certain of the contingencies Ms. Johns outlines are not satisfied. Thus, although bid prices are informative in comparing relative cost estimates, they are simply not definitive enough for establishing an inflexible maximum recovery amount as the Commission has suggested here.

C. The Commission's Precedent and the Record in this Proceeding Support the Alternative Request for Assurance that Proceeding with the Program is Reasonable and Prudent.

The Commission's *Order Issuing Declaratory Ruling* in Docket No. E-7, Sub 819 supports the Company's alternative request in this case. In that order, the Commission declared that (1) proceeding with development work necessary to ensure that nuclear generation remains an available resource option is appropriate and consistent with the promotion of adequate, reliable and economical utility service and the policies expressed in N.C. Gen. Stat. § 62-2; and (2) to the extent the Commission finds in a future general rate case that the specific activities involved in and the costs of pursuing such development work to be prudent and reasonable that such costs will be recoverable in rates. *Order Issuing Declaratory Ruling,* Docket No. E-7, Sub 819 (March 20, 2007) at 22-23.

With respect to the proposed Lee Nuclear Station, the Commission concluded that it was appropriate to provide Duke Energy Carolinas with assurance that at the appropriate time for the development costs to be considered for inclusion in rates that such costs would not be rejected out of hand because the activity of incurring them was not prudent. *Id.* at 23. In this case, Commission assurance that proceeding with the Program is reasonable and prudent will alleviate the risk of violation of the federal tax normalization rules by demonstrating that the Commission does not intend to prohibit the Company from recovering the Program costs in excess of the third place solar bid due to the fact that certain of these costs exist as a result of the normalization requirements. Rather, any disallowance of costs would be the result of specific findings as to the manner in which the Company executed the Program. As discussed in Section II.A.

above, the evidence in the record as well as the additional affidavit submitted herein support similar action by the Commission in this case. This evidence demonstrates the importance of pursuing utility-owned solar generation generally and utility-owned solar DG in particular. Similarly, in Docket No. E-7, Sub 819 the Company demonstrated the importance of taking action to ensure that nuclear generation remains a resource option for Duke Energy Carolinas' customers. The Commission granted assurance in the Lee Nuclear development cost proceeding in recognition of the risks inherent in the development of nuclear generation. Likewise, in this case, the Company needs assurance in light of the significant federal tax risk.

CONCLUSION

The relief requested in this Motion is necessary for the coordinated implementation of solar PV DG on a large scale on the Company's system and to enable utility-ownership of solar generation needed to reliably meet the REPS solar set aside requirements. For the reasons set forth above, the Company requests that:

(1) The Commission eliminate the condition limiting recovery of Program costs through the REPS rider to the third-placed solar bid; or, in the alternative provide the Company with assurance that (a) proceeding with implementation of the Program is reasonable and prudent, and (b) the Company may recover all costs incurred in executing the Program through a combination of the REPS rider and base rates, subject only to the Commission's review of the reasonableness or prudence associated with Duke Energy Carolinas' execution of the Program. Given the risks associated with violation of the tax normalization requirements, without such assurance Duke Energy Carolinas will be forced to either completely abandon or drastically scale back the Program, effectively

eliminating the opportunity for the installation of significant solar DG facilities on its system.

(2) If the Commission denies the relief requested in paragraph (1) above, that it delay the Company's 2010 solar set-aside requirements until 2011.

(3) If the Commission retains the condition limiting the amount of Program costs recoverable through the REPS rider, that it clarify that the recovery of Program costs incurred above this limit through base rates will not violate the REPS cost caps contained N.C. Gen. Stat. § 62-133.8(h).

(4) The Commission considers this Motion on an expedited basis in order to provide sufficient time for the Company to meet the 2010 solar set-aside requirement of over 11,000 MWH and to ensure that the Program can benefit from the North Carolina solar investment tax credit.

Respectfully submitted this 29th day of January, 2009.

Robert W. Kaylor by BE

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ATTORNEYS FOR DUKE ENERGY CAROLINAS, LLC

PUBLIC VERSION

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 856

Application of Duke Energy Carolinas, LLC For Approval of Solar Photovoltaic Distributed Generation Program And for Approval of Proposed Method of Recovery of Associated Costs	)))))	AFFIDAVIT OF MELISA B. JOHNS IN SUPPORT OF DUKE ENERGY CAROLINAS, LLC'S MOTION FOR RECONSIDERATION

MELISA B. JOHNS, being duly sworn, deposes and says:

1. I am the Director of Origination for Duke Energy Business Services, LLC ("DEBS") and provide support to Duke Energy Corporation's utility operating companies, including Duke Energy Carolinas, LLC ("Duke Energy Carolinas" or the "Company," f/k/a Duke Power, a division of Duke Energy Corporation), am over the age of 21, and make this affidavit upon my own personal knowledge.

2. I received both a Bachelor of Science and Master's degree in Electrical Engineering from Clemson University. I have over a decade of experience in the wholesale purchased power business for Duke Energy Carolinas, beginning with the bulk power marketing department ("BPM") in 1998. I became Director of BPM for Duke Energy Carolinas in 2001, and Director of Origination for Duke Energy Corporation in 2004. Origination is the term used to describe long-term wholesale contracts over one year in duration.

3. One of my responsibilities is to assist Duke Energy Carolinas in executing its strategy for complying with the Renewable Energy and Energy Efficiency Portfolio Standard ("REPS"), adopted as part of North Carolina Session Law 2007-397 ("Senate Bill 3"), including the requirement that Duke Energy Carolinas use solar-based

generation to meet 0.02% of its North Carolina retail sales by 2010, 0.07% by 2012, 0.14% by 2015, and 0.20% by 2018 ("Solar Set Aside"). My group assists in the due diligence process of qualifying renewable energy suppliers and their proposals, and is responsible for negotiating purchased power agreements ("PPAs") with such suppliers.

4. My experience in the new renewable energy purchasing arena has taught me that many things related to a supplier's product and pricing can change as a renewable project proceeds from an initial bid pursuant to a Request For Proposal ("RFP"), to a finalized, executed contract, and finally to actual construction of a generating facility and the delivery of energy. Virtually all renewable energy bidders are project-financed. Therefore, the seller has to have a long-term power sales agreement executed before the seller is able to proceed to obtain financing and construct the facility.

5. The seller's bid price to Duke Energy Carolinas is based on its assumptions regarding all its project costs. Accordingly, the seller's bid price generally is contingent on critical matters such as the following: the seller finding an acceptable site; performing due diligence on that site to confirm the suitability of that site; obtaining an interconnection to the buyer's system at an acceptable cost; obtaining the projected tax credits for the project; not having to incur unexpected state or local taxes on the project; obtaining financing at projected rates; and meeting the energy buyer's credit and/or performance requirements within projected costs. In addition, some bids contain cost pass-through provisions under which specific types of costs (such as tax increases) are passed through to the buyer directly instead of being included in the energy price.

6. In sum, the bid price cannot be considered a firm price. Even after the energy contract is signed, the price is still not truly firm because the seller and the seller's

lender will have required that the contract contain condition precedents which generally will allow the seller to terminate the project if certain of the aforementioned contingencies are not satisfied. For these reasons, bid prices are not a reliable indicator of the actual price Duke Energy Carolinas will have to pay when energy is actually delivered years after the bid is submitted.

7. On April 20, 2007, Duke Energy Carolinas issued an RFP for renewable energy. **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

[redacted] The renewable industry in the United States is in a rapidly evolving environment that complicates the negotiation, project development, and project financing processes. The challenges of working with entities in a less mature and evolving industry without the benefit of time-tested and oft-repeated protocol of negotiation, project development, and financing (especially given current economic conditions), cannot be overstated. **[BEGIN CONFIDENTIAL]** [redacted]

[redacted]

9. [redacted]

[redacted] **[END CONFIDENTIAL]**

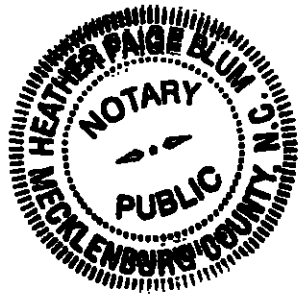
10. If the Company determines that it cannot proceed with the Program, it then must exclusively rely on third party PPAs to comply with its Solar Set Aside REPS requirements and, accordingly, **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

Melisa B. Johns
MELISA B. JOHNS

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 29th DAY OF JANUARY, 2009

Heather Paige Blum
Notary Public

My Commission Expires: 1/9/2013



CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Carolinas, LLC's Motion for Reconsideration in Docket No. E-7, Sub 856, has been served by electronic mail (e-mail), hand delivery or by depositing a copy in the United States Mail, first class postage prepaid, properly addressed to parties of record.

This the 29th day of January, 2009.

Robert W. Kaylor
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