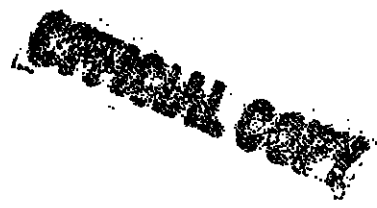
LAW OFFICE OF
ROBERT W. KAYLOR, P.A.
3700 GLENWOOD AVENUE, SUITE 330
RALEIGH, NORTH CAROLINA 27612
(919) 828-5250
FACSIMILE (919) 828-5240



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November 21, 2008

Ms. Renné 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 please find the original and thirty (30) copies of Duke Energy Carolinas, LLC's Post-Hearing Brief in the above referenced docket.

Sincerely,

Robert W. Kaylor by KB

Robert W. Kaylor

Enclosures

cc: Parties of Record

Dock

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

FILED
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N.C. 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 POST-HEARING BRIEF

INTRODUCTION

Duke Energy Carolinas, LLC ("Duke Energy Carolinas" or "the Company") submits this Post-Hearing Brief in support of 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"), filed June 6, 2008. Under the Program, the Company proposes to invest, over a two-year period, approximately $50 million to install new solar PV electricity generation facilities with a total generating capacity of approximately 10 megawatts direct current ("MW (DC)").[1] The facilities will be located within Duke Energy Carolinas' North Carolina service territory and will be installed as roof-mounted and as ground-mounted facilities located on property owned by the Company's customers and on property owned by the Company itself. The Company will own all the facilities under the Program. In response to concerns raised by the Public Staff and other interveners, Duke Energy Carolinas agreed to reduce the size of the proposed Program from its original size of 20 MW (DC) to 10 MW (DC).

[1] Solar PV facilities generate direct current ("DC") power, which is the current and historical industry standard. Such power must be converted to alternating current ("AC") power for use in the Company's distribution or transmission system.

The Company is contemporaneously filing a Proposed Order that addresses all of the issues in this proceeding. The purpose of this brief is to address two key issues: (1) The public convenience and necessity support Duke Energy Carolinas' pursuit of a solar PV distributed generation program of this size; and (2) the incremental costs of the Program over avoided costs are appropriately recovered through the rider established under N.C. Gen. Stat. § 62-133.8.

ARGUMENT

I. The Public Convenience and Necessity Support Duke Energy Carolinas' Pursuit of a 10 MW (DC) Solar PV Distributed Generation Program.

A. The Program Promotes the Public Policy of the State of North Carolina.

The Program is designed to put into practice the public policy of this State. In 2007, the North Carolina General Assembly enacted Session Law 2007-397 ("Senate Bill 3"), comprehensive energy legislation that, among other things, establishes Renewable Energy and Energy Efficiency Portfolio Standard ("REPS") requirements for North Carolina electric utilities. N.C. Gen. Stat. § 62-133.8. As the preamble to Senate Bill 3 states, the REPS requirements are to "promote the development of renewable energy and energy efficiency in the State. . . ." In enacting that law, the General Assembly amended N.C. Gen. Stat. § 62-3 to make clear that it is the declared policy of the State to (1) diversify the resources used to reliably meet the energy needs of consumers, (2) provide greater energy security through the use of indigenous energy resources available within

the State, (3) encourage private investment[2] in renewable energy, and (4) improve air quality and provide other benefits to energy consumers and citizens of the State. N.C. Gen. Stat. § 62-3(a)(10).

First and foremost the Program is necessary to meet the first deadline under the REPS requirements: the 2010 obligation that 0.02% of the Company's North Carolina retail sales be supplied by solar energy. N.C. Gen. Stat. § 62-133.8(d) (the "Solar Carve Out"). Duke Energy Carolinas projects that this 2010 requirement equates to over 11,000 megawatt hours. The Company further projects that as the Solar Carve Out requirements increase over time, this obligation will increase dramatically in 2012 to over 40,000 megawatt hours and more than double again in 2015 to over 80,000 megawatt hours. T. Vol 1 at 4, 117. The Program arises out of the immediate need for solar energy in 2010 and contributes to the increasing Solar Carve Out obligations thereafter; however, the Program is designed to achieve not merely REPS compliance, but an array of benefits that promote the policies of the State as expressed in Senate Bill 3 and Section 62-3(a). These benefits include:

- Promoting the development of solar generation resources in North Carolina and advancing the state of the solar industry in the State.

[2] Senate Bill 3 uses the term "investment" in the preamble and the term "private investment" in Section 62-3(a)(10). However, the legislation does not define the term "private investment." North Carolina Sustainable Energy Association ("NCSEA") Witness Rosalie Day argued that the use of the term "private investment" excludes investor-owned utilities; however, Ms. Day could not articulate a rational basis for this opinion. Duke Energy Carolinas Witness Smith explained that because the Company is owned by its investors, its investment in the Program also constitutes private investment in renewable energy. Mr. Smith contrasted private investment with government funding. This understanding is consistent with the definition of private meaning "not established and maintained under public funds". *The Random House Dictionary (1980).* Furthermore, Senate Bill 3 clearly allows for REPS compliance through the generation of energy from utility-owned new renewable energy facilities and reductions in usage through utility sponsored energy efficiency programs. N.C. Gen. Stat. § 62-133.8(b). Given this, it would be incongruous to interpret the policy statements contained in N.C. Gen. Stat. § 62-3(a)(10) to exclude utility investment in renewable energy and energy efficiency.

- Helping to diversify the resources the Company uses to reliably meet the energy needs of its customers.

- Promoting energy security through its distributed nature.

- Leveraging volume purchases and building relationships with PV developers, manufactures, and installers. In fact, over seventy firms submitted notices of intent to submit bids to provide equipment or services to implement the Program.

- Developing and enhancing the Company's competencies as owners and operators of renewable generation facilities.

- Gaining experience with the installation and operation of multiple types of solar distributed generation facilities to thoroughly assess the solar opportunities in North Carolina to determine the most cost effective and best performing options for future deployments.

- Making recommendations seeking to simplify and standardize local permitting and inspection requirements thereby reducing the administrative burden and lowering costs.

- Enabling the Company to gain operational knowledge concerning the effects of solar PV distributed generation. Such knowledge will enhance the Company's power distribution proficiency and fill knowledge gaps as wide-scale deployment of solar PV generation becomes more prevalent in the future so as to maximize its value to customers.

- Enabling customers to directly participate in the development of renewable resources in North Carolina without the requirement of making a significant capital investment. In fact, over 460 customers have expressed interest in the Program, even before the Company has engaged in any promotional efforts.

- Promoting economic development in North Carolina by attracting investment and creating jobs in the growing solar industry. Several solar module manufacturers have already contacted the Company to express interest in siting manufacturing facilities within Duke Energy Carolinas' service territory.

T. Vol. 1 at 17-19, 51-52, 64-65, 164-165, 168-170.

As Witness Smith explained, even at the reduced size, the Program size is significant and will continue to provide these benefits. The Company believes that stakeholders are best served if the Company can build its competencies to own renewable assets so that, going forward, it is not reliant solely on third parties to meet the REPS

compliance requirements (through either purchased power or REC purchases) and to provide these other benefits. T. at Vol. 1 at 64-65.

It is important to note that the Public Staff and the majority of the interveners to this proceeding did not challenge the myriad benefits of the Program cited by Duke Energy Carolinas. Upon cross-examination of Company Witness Ruff, counsel for the Public Staff attempted to show that the Program benefits associated with improving the economics of solar distributed generation were unnecessary if the Company instead entered into a purchased power agreement with another bidder from its 2007 Request for Proposal ("RFP") for renewable resources. Ms. Ruff did not agree, stating "the purpose of this type of program is to simply diversify our approach to solar and meet it in a different way" that provides "more control of the facilities". T. Vol. 1 at 29. In fact, Public Staff Witness McLawhorn testified upon cross examination that "it is not our testimony that Duke should have signed a contract with the second place bidder or the third place bidder;" and "we are not saying that Duke needs to rely solely on third-party bidders. We did not oppose Duke building the facility and owning it itself. . . ." T. Vol. 2 at 245, 248. Furthermore, during cross examination of Company Witness Smith counsel for the Southern Alliance for Clean Energy ("SACE") stated, "we certainly applaud you ... for the fact that you've taken a distributed generation route rather than just one central generating station." T. Vol. 1 at 96.

NCSEA, The Solar Alliance and The Vote Solar Initiative ("Vote Solar") expressed concerns that at the 20 MW (DC) size originally proposed the Program would impede the development of non-utility owned solar generation in the Company's service territory. These parties agree, however, that Duke Energy Carolinas' Program serves to

promote the advancement of solar distributed generation to the benefit of the State and the Company's North Carolina customers, provided that utility-owned solar generation is not the sole model operating in the market.

NCSEA Witness Day agrees with the Company's goal to "acquire experience operating reliably using solar DG of all sizes" and stated that "[w]e would be artificially limiting the NC solar market . . . if Duke is not allowed to pursue some of the small projects it is proposing." Ms. Day further stated that utility-scale solar along with third-party and customer generators "is essential to providing a vibrant solar market." T. Vol. 2 at 166-67, 177.

Vote Solar Witness Starrs stated: "Vote Solar is supportive of many elements of Duke's Proposal to expand into solar photovoltaic (PV) generation." Vote Solar applauds and commends Duke Energy Carolinas for support of the development of solar PV and its recognition of the benefits of distributed generation. T. Vol. 2 at 106-107.

Solar Alliance Witness Hitt agrees that the Program will enable the Company to develop important competencies in the operation of solar PV generation. She supports Duke Energy Carolinas' efforts to learn more about the economic and physical impacts of solar PV facilities and to simplify and standardize local permitting and inspection requirements thereby reducing the administrative burden and lowering costs. T. Vol. 2 at 137, 140. Despite her opinion that the Program may limit the interest of some potential solar suppliers, Ms. Hitt acknowledged on cross examination that at least five of the Solar Alliance members have submitted notices of intent to bid in the Company's RFP for solar equipment, installation and maintenance services vendors. T. Vol. 2 at 141-42, 153.

Thus, the evidence in this proceeding overwhelmingly supports a finding that Duke Energy Carolinas' implementation of the Program at the modified size is prudent and consistent with the policies expressed in N.C. Gen. Stat. § 62-2 and the public convenience and necessity. The growing interest of customers and solar suppliers in the Program demonstrates its high potential for success in meeting these policy goals. Furthermore, successful implementation of the Program positions Duke Energy Carolinas to not merely to be compliant with its REPS Solar Carve Out requirements, but also to (1) develop critical knowledge, data and competencies regarding development, operation and ownership of solar distributed generation that will allow the Company to enhance management of its power delivery system and maximize resource opportunities in the future; and (2) positively influence commercial deployment of solar distributed generation in the State.

B. The Commission Expects Utility Management to Evaluate and Select Resources to Meet their REPS Obligations.

The Commission has plenary jurisdiction over the retail rates and services of a North Carolina investor-owned utility, the management and board of directors of the utility have a fiduciary duty to their shareholders to manage the business in a prudent and profitable manner. As with other resource planning determinations, the decision as to which resources to acquire in order to comply with the REPS obligations rests with the utility management. Senate Bill 3 sets forth several means by which electric power suppliers may fulfill the REPS (including generating renewable energy, purchasing renewable energy and purchasing RECs) and places the responsibility for achieving REPS compliance among these options with the suppliers. The management is best able

to evaluate the optimal means to incorporate increased renewable resources into the utility's current and future resource mix.

The Commission recently articulated the necessity of balancing its regulatory authority with the proper rule and prerogatives of utility management in connection with REPS compliance. In its rulemaking proceeding to implement Senate Bill 3, this Commission addressed a recommendation that it approve purchased power agreements with renewable energy suppliers. The Commission concluded that:

> The obligation to comply with Senate Bill 3 lies with utility management, as a general proposition. The Commission's role is to approve integrated resource plans, to adjudge compliance with REPS and to allow recovery of reasonable and prudently incurred costs pursuant to Senate Bill 3 through annual riders. A decision to approve specific contracts in addition to the utilities' compliance plans would place the Commission in the position of making managerial decisions. The Commission, therefore, concludes that Rule R8-67 should not be revised to require approval of individual power purchase agreements with renewable energy suppliers as requested by the electric public utilities.

Order Adopting Final Rules, Docket No. E-100, Sub 113 (February 29, 2008) at 57-58. The Commission's view expressed above echoes that expressed by the courts. *State ex rel. Utilities Comm'n v. General Telephone Co.*, 281 N.C. 318, 337, 189 S.E.2d 705, 717 (1972)(concluding that except as otherwise provided for in Chapter 62, the utility is free to manage its property and business as it sees fit); *Southwest Bell Telephone Co. v. Public Service Comm'n of Missouri*, 262 U.S. 276, 289, 43 S.Ct. 544, 547 (1923)(ruling that the Commission is not empowered to substitute its judgment for that of the directors of the corporation).

The Program constitutes a part of a prudent portfolio approach to provide a diversity of resources to meet Duke Energy Carolinas' REPS Solar Carve Out 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. As explained by Witness Smith, the Company has demonstrated its commitment to pursue each of these types of resources. In 2007, the Company issued an RFP for renewable energy resources and has entered into a purchased power agreement with SunE DEC1, LLC ("Sun Edison") to purchase electricity and RECs generated from a solar power farm to be operational in 2011. Duke Energy Carolinas offers a variety of net metering offerings under which customers can sell their RECs to NC GreenPower for $0.15/kwh. Further, the Company is developing a standard REC offer which it would make available to customer-generators for RECs for general and carve-out compliance based upon current market prices. By agreeing to size the Program more modestly, Duke Energy Carolinas' management has made it clear that it is executing its responsibility to make resource selection decisions in a manner that supports a market for a variety of solar technologies and ownership structures. T. Vol. 1 at 60-62, 70; 75-80; T. Vol. 2 at 44-45.

Duke Energy Carolinas currently has no Company-owned solar PV generation facilities among its generation resources. Under the Program the installed capacity would consist of between 80-90% large scale installations ranging from 500kW to 3MW; up to 10% medium scale rooftop facilities ranging in size from 15kW to 500 kW; and up to 10% small scale facilities on residential rooftops ranging from 1.5 to 5 kW. T. Vol. 1 at 63, 65-66; T. Vol. 2 at 13. The decision to pursue multiple types of installations in multiple locations in order to thoroughly assess the solar opportunities in North Carolina is likewise an appropriate management determination.

As noted above, the Public Staff, SACE, NCSEA, Solar Alliance and Vote Solar all support utility-owned solar generation as a component of REPS compliance. The Public Staff acknowledged that when a utility contracts with a third party to supply energy or RECs to meet its Solar Carve Out requirements, and the third party fails to perform, the utility would still be responsible for meeting its REPS obligations in some other manner. T. Vol. 2 at 246-47. The Commission recognized the importance of qualifications and experience when the Company is evaluating suppliers and resource options:

> Q. Is it fair to say from the Company's standpoint of view that when evaluating whether or not the Company would wish to get into an agreement with a third party, a solar provider, that the Company considers the qualifications and experience of that third-party provider to be of fairly strong importance as to whether or not the Company would want to get into an arrangement. Is that a fair statement?
>
> [COMPANY WITNESS SMITH]: Yes, that's a fair statement.

T. Vol. 1 at 180-81. In response to additional questions from the Commission, Witness Smith responded that only two of the solar bidders received the highest ratings for qualifications and experience. One of these bidders was Sun Edison, with which the Company has executed a purchased power agreement, and the other submitted a bid price that was substantially higher than the estimated Program costs on a megawatt hour basis. T. Vol. 1 at 189-90.

To implement the Program the Company plans to contract with experienced and proven solar PV equipment, installation, and maintenance services suppliers selected through a competitive solicitation process. T. Vol. 1 at 47-48, 67. Coupling Duke Energy Carolinas' extensive experience managing construction projects of various types

and sizes with leading solar PV manufacturers, integrators, and installers evidences sound managerial decision-making while also creating market opportunities for solar suppliers.

Likewise, Duke Energy Carolinas' determination that it cannot rely solely on the purchase of RECs from customer-generators to meet its REPS requirements demonstrates prudent compliance planning. Company Witness Smith made very clear that the magnitude and timing of customer investments in solar projects is outside the control of the utility and, as such, Duke Energy Carolinas cannot be dependent upon them to meet a certain percentage of its compliance requirements. The amount of customer-owned solar generation that exists in the Company's North Carolina territory today – 360.1 kw – is evidence that this model of paying for RECs cannot be counted on to drive the level of investment that would be required to meet the objectives of the State with respect to solar energy production, and could not be relied upon by Duke Energy Carolinas to assure that the Company could meet its REPS obligations. T. Vol. 1 at 76-78, 81-82, 97-99; Duke Energy Carolinas' Late Filed Exhibit No.1.

Vote Solar Witness Starrs argued that the current NC GreenPower program is not a sufficient incentive for customers to invest in solar PV facilities because the contract terms are not long enough and the funding is based upon contributions. T. Vol. 2 at 117-119. However, Witness Starr's proposal for a mandatory standard REC purchase offer at prices up to as much as $0.32/kwh is seriously flawed. T. Vol. 1 at 77-81; T. Vol. 2 at 129-131. First and foremost, Witness Starr proposes a mandatory REC purchase program under which Duke Energy Carolinas would have no discretion as to whether to transact with each solar customer generator seeking to sell RECs. The Commission has already ruled that "the electric power suppliers are not . . . obligated to purchase all RECs offered

for purchase. The Commission is not persuaded that it is appropriate to impose such an obligation." *Order Adopting Final Rules,* Docket No. E-100, Sub 113 (February 29, 2008) at 59.[3] Even is the Commission were willing to entertain a mandatory REC purchase obligation, as demonstrated by Witness Smith, the costs of this proposal would likely exceed the costs of the Program. Lastly, the proposal offers no certainty as to how many customers would choose to accept the offer thereby potentially leading to under-compliance or exceeding the customer cost caps. T. Vol. 1 at 80-82.

Solar Alliance Witness Hitt acknowledged that the commercial customer solar installation programs cited in her testimony are all located in California and Hawaii, states with significantly higher retail rates than North Carolina, and, in the case of California, a regulatory structure that allows third party solar suppliers to sell energy directly to retail customers. T. Vol. 2 at 153-54. Company Witness Smith noted that the residential programs cited by Ms. Hitt are also all located in California. T. Vol. 1 at 71-72. Given these differences, it is unlikely that similar significant third party programs would develop in North Carolina.

Therefore, the evidence demonstrates that the Company is pursuing a prudent compliance approach and that the Program is the best option, in addition to the Sun Edison agreement, to meet Duke Energy Carolinas REPS Solar Carve Out obligation during the period 2010 through 2014.

[3] Solar Alliance and Vote Solar both advocate for a mandatory standard REC purchase offer. T. Vol. 2 at 128, 151. NCSEA advocates that "a certain amount" of solar market share should be reserved for customer-generators, T. Vol. 2 at 166, which essentially would mandate utilities to purchase RECs from such customers. The Company notes that both Solar Alliance and NCSEA were parties to the Commission's rule-making proceeding to implement Senate Bill 3 that resulted in the Commission rejecting a mandatory REC purchase obligation.

B. The Reduction in the Size of the Program from 20 MW (DC) to 10 MW (DC) Addresses the Concerns of the Interveners.

As noted above, the Public Staff expressed concern regarding the size of the Program as originally proposed as compared to Duke Energy Carolinas' projected obligations under the Solar Carve Out. The Public Staff recommended that the size of the program be reduced to 10 MW (DC) and the Company agreed to this recommendation. The Program at its modified size and the Sun Edison agreement together are projected to meet the Company's Solar Carve Out obligations from 2010 through 2014. T. Vol. 1 at 62.

On cross-examination Company Witness Smith explained that the Company's Solar Carve Out requirements are projected to more than double from approximately 40,000 megawatt hours in 2014 to over 80,000 megawatt hours in 2015. Given this dramatic increase to the Company's obligation and the ability to bank RECs for seven years, Duke Energy Carolinas plans to pursue "a steady progression of resource additions over time" with a variety of different types of solar suppliers leading up to 2015. T. Vol. 1 114-15. Contrary to assertions by counsel for NCSEA, the Company reasonably cannot wait until 2014 to entertain REC purchase opportunities from customer-generators. Mr. Smith stated:

> So to sit on the sidelines until 2014 when you know your requirement doubles and you also know that you have banking provisions that allow you to take action early, that would not be wise business, I would say, and we would fully intend to continue making . . . business arrangements to procure more solar energy to comply with the 2015 requirement well in advance of 2015.

T. Vol. 1 at 117. Thus the reduction in the size of the Program responds to the concerns raised by NCSEA, Solar Alliance and Vote Solar as well by creating the opportunities for customer-generators to sell solar RECs to the Company.

II. The Incremental Costs of the Program Over Avoided Costs Are Appropriately Recovered Through the Rider Established Under N.C. Gen. Stat. § 62-133.8.

The Public Staff recommends that the Commission grant a blanket CPCN for up to 10 MW (DC) of solar PV distributed generation under the Program; however, the Public Staff would arbitrarily limit the amount of Program costs the Company may recover under the REPS rider to no more that the bid price of the third place solar bidder in the 2007 RFP for renewable energy resources (less avoided cost). T. Vol. 2 at 226, 241-42. The Public Staff takes this position despite the fact that (1) they are not prepared to demonstrate that the remainder of the costs are imprudent, and (2) they expect the Commission to hold Duke Energy Carolinas to an exceptionally high standard for excusing non-compliance with the REPS requirements in the event that a third party solar supplier defaults. T. Vol. 2 at 248-49.

The Public Staff argues that it is attempting to arrive at the value of the "solar only" cost of the Program. T. Vol. 2 at 235, 245-46. Such an exercise is arbitrary and unwarranted. By attempting to limit the amount Duke Energy Carolinas may recover through the REPS rider, the Public Staff both ignores the impact of the Federal tax normalization rules on utility-owned solar generation and seeks to impose its view as to Program design on the Company.

The Public Staff's comparison of bids for purchased power agreements to the Program is equally misguided. The Program is designed to accomplish a broader set of

objectives than those of the solar project bids submitted in response to the Company's 2007 RFP. T. Vol. 1 at 74. For example, Company Witness Smith explained that including small and medium size installations under the Program allows the Company to maximize what can be learned with respect to the impact of distributed generation on its system; however, the costs of these installations is not a material driver of the overall Program costs. T. Vol. 1 at 140-41; 168.

Further, as Company Witness McManeus explained, as a public utility the Company is required to follow certain tax normalization requirements with respect to the treatment of the federal energy investment tax credit. The impact of these requirements is the most significant driver affecting the cost of the Program as compared to the solar bids. Absent these requirements, the Program cost would be in line with the lower cost solar bids in the 2007 RFP for renewable energy resources. T. Vol. 2 at 38; Public Staff Smith Confidential Cross Examination Exhibit 1.

The only means to avoid the impact of the tax normalization requirements would be for the Company to rely one hundred percent on third parties to meet its Solar Carve Out obligations. As discussed above, Duke Energy Carolinas believes that its portfolio approach of using utility-owned solar generation, purchased power agreements and RECs purchases to meet its Solar Carve Out obligation is a prudent strategy. Stakeholders are best served if the Company can build its competencies to own renewable assets and not be left to rely solely on third parties. Indeed, in the Commission's rulemaking proceeding to implement Senate Bill 3 the Public Staff argued:

> In the Public Staff's view, a contractual default by a solar or solar thermal operator (or, for that matter, any other provider of renewable energy or energy efficiency) should not ordinarily relieve an electric power supplier from its obligations under the REPS requirements. This is especially true

> with respect to the State's electric public utilities, which are large corporations with extensive experience in procurement and contingency planning. . . . The Public Staff's proposed Rule R8-67(d)(2) authorizes an electric power supplier to petition for full or partial relief from its obligations under G.S. 62-133.7(d) in the event of default by a new solar or solar thermal facility, but it also provides that **such relief will not be granted to an electric public utility except under extraordinary circumstances.**

Public Staff Comments and Proposed Rules Implementing Session Law 2007-397, Docket No. E-100, Sub 113 (November 14, 2007) at 12 (emphasis added). *See also* T. Vol. 2 at 247-48. Given the difference between the mature national wholesale power market and the nascent North Carolina solar energy market[4], which the Public Staff fails to recognize or acknowledge, these comments highlight the need for utility-owned solar generation.

The Public Staff admits that its position is "subjective." T. Vol. 2 at 224. In fact, it is based upon a series of assumptions that the Commission should flatly reject. 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 147-148. Witness McManeus expressed similar concerns regarding the Public Staff's assumptions. T. Vol. 2 at 85-86. Thus, the Public Staff's recommendation is not supported by the evidence in this case. Nor, as discussed below, is it consistent with Senate Bill 3.

[4] Duke Energy Carolinas has requested clarification in Docket Nos. E-100, Sub 113 and Sub 118 as to whether any amount of unbundled out of state RECs may be used to comply with the Solar Carve Out requirements under N.C. Gen. Stat. § 62-133.8(d).

It is laudable for the Company, when faced with its REPS compliance obligation, to take the opportunity to achieve more than mere compliance; however, the primary purpose of the Program is to produce megawatt hours that fulfill the Solar Carve Out obligation. Simply stated, the Company would not have undertaken this initiative had the REPS legislation not been enacted.

Company Witness McManeus explained that all of the kilowatt hours generated by the Program will go towards Duke Energy Carolinas' REPS compliance. Section 62-133.8(h) places cost caps on the amount of compliance costs to be recovered from customers through the annual REPS rider and offers no apparent mechanism for recovery of compliance costs that exceed the cap. If the Commission approves the Company's Program Application but a limitation is placed on the amount of incremental REPS compliance costs recoverable through the REPS rider for the approved Program, the Company has concerns that recovery of REPS compliance costs above the imposed limit through its base rates will not honor the intent of the cost cap. T. Vol. 2 at 39-40; T. Vol. 1 at 74-75.

If the Commission grants the Company's Application in this proceeding and thereby determines that undertaking this Program is prudent, then it follows that the costs of the Program should be recoverable through the REPS recovery mechanism provided for in N.C. Gen. Stat. § 62-133.8(h) and Commission Rule R8-67. In its subsequent REPS rider proceedings it will be incumbent upon Duke Energy Carolinas to demonstrate that it has executed the approved Program prudently.

CONCLUSION

For the reasons set forth above and in Duke Energy Carolinas' Proposed Order, the Company respectfully submits that it has met all of the criteria for the granting of a blanket CPCN for the Program, demonstrated that the REPS rider is the appropriate recovery mechanism for Program costs, and demonstrated that implementation of the Program is prudent and consistent with the State policies expressed in N.C. Gen. Stat. § 62-2. Timely approval of the Program is critical to meeting the 2010 Solar Carve Out requirement in 2010 of over 11,000 MWH and to ensure that Program can benefit from the North Carolina solar investment tax credit.

Respectfully submitted this 21st day of November, 2008.

Robert W. Kaylor for KR

Lara S. Nichols, Associate General Counsel
Brian L. Franklin, Senior Counsel
Duke Energy Corporation
Post Office Box 1006
Charlotte, North Carolina 28201-1006
Telephone: (704) 382-9960 or (980) 373-4465
lsnichols@dukeenergy.com
blfranklin@dukeenergy.com

Robert W. Kaylor
Law Offices of Robert W. Kaylor, P.A.
3700 Glenwood Avenue, Suite 330
Raleigh, North Carolina 27612
rwkaylor@dukeenergy.com

ATTORNEYS FOR DUKE ENERGY CAROLINAS, LLC

CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Carolinas, LLC's Post-Hearing Brief 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 21st day of November, 2008.

Robert W. Kaylor BJB

Robert W. Kaylor
Law Office of Robert W. Kaylor, P.A.
3700 Glenwood Avenue, Suite 330
Raleigh NC 27612
(919) 828-5250
NC State Bar No. 6237