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May 9, 2017

**VIA ELECTRONIC FILING**

Ms. M. Lynn Jarvis  
Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, NC 27699-4300

Re: Docket No. E-7, Sub 1140

Dear Ms. Jarvis:

Enclosed for filing in the above-referenced docket please find Duke Energy Carolinas, LLC's Response to Complaint and Motion to Dismiss.

Sincerely,

  
Robert W. Kaylor

Enclosure

cc: Parties of Record

OFFICIAL COPY

May 09 2017

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 1140

	)	
Sit-In Movement, Inc., South Elm	)	
Street, Greensboro, North Carolina	)	
27401,	)	
	)	DUKE ENERGY CAROLINAS,
Complainant	)	LLC'S RESPONSE TO COMPLAINT
	)	AND MOTION TO DISMISS
v.	)	
	)	
Duke Energy Carolinas, LLC,	)	
Respondent	)	
	)	

NOW COMES Duke Energy Carolinas, LLC (“DEC,” “Respondent” or the “Company”), through counsel and pursuant to Commission Rule R1-9, responding to the Complaint filed by Sit-In Movement, Inc. (“Complainant”) on April 24, 2017. Since the allegations contained in the Complaint are not numbered, DEC has provided numbers for ease in replying to the Complaint, as evidenced by DEC Exhibit 1, attached hereto. DEC has reviewed the Complaint and replies to the allegations as set forth below. Any allegation not specifically admitted shall be deemed denied.

**FOR A FIRST DEFENSE**

1. Respondent admits the allegations contained in DEC numbered paragraph 1 of the Complaint.
2. With respect to the allegations contained in DEC numbered paragraph 2 of the Complaint, Respondent admits that it issued a disconnect notice to Complainant for failure to pay its electric bill which was past due, said disconnection scheduled for December 19, 2016, but delayed upon assurance by Complainant’s agent John Swaine

that payment on the past-due account would be made by December 21, 2016. Complainant made a partial payment on December 28, 2016, but the account was still past due. Complainant made additional partial payments on January 27 and February 16, 2017. The electric service was disconnected for non-payment on February 16, 2017 but was restored on February 16, 2017. In compliance with Commission Rule R12-3(a), DEC requires customers who have been disconnected for non-payment to re-establish credit. On February 20, 2017 a Deposit Notification Letter was mailed informing Complainant that the account would be billed a deposit in the amount of \$18,224.00, which is determined by customer billings over the prior twelve months. To the extent Complainant had conversations with representatives of the Public Staff, Company representatives were not party to those conversations and therefore is without sufficient information or belief to admit or deny said allegation. Respondent denies the allegation that Complainant's electric bill was fully current.

3. Respondent is without sufficient information or belief to admit or deny the allegations contained in DEC numbered paragraph 3 of the Complaint.

4. With respect to the allegations contained in DEC numbered paragraph 4, of the Complaint, the Company notes that prior payments from Complainant were for electric service provided and that significant portions of those payments were frequently past due. The total amount paid is not, in itself, an indicator of a good payment history, as Complainant has a very poor payment history.

5. Respondent is without sufficient information or belief to admit or deny the allegations contained in DEC numbered paragraph 5 of the Complaint.

6. Respondent is without sufficient information or belief to admit or deny the allegations contained in DEC numbered paragraph 6 of the Complaint.

7. Respondent has been made aware of Complainant's financial issues and has worked in good faith with Complainant for many years when Complainant has had past-due bills. Respondent denies that employee Davis Montgomery was informed that Complainant would have all past-due bills paid current by the end of February 2017. In fact, Complainant was informed by letter sent on January 25, 2017 that if full payment was not made on the past-due amount by 5:00 p.m. on February 15, 2017, power would be disconnected on February 16, 2017. Except as admitted, the remaining allegations contained in DEC numbered paragraph 7 of the Complaint are denied.

8. With respect to the allegations contained in DEC numbered paragraph 8 of the Complaint, Respondent admits that on January 25, 2017 it provided certified written notice to Complainant that power would be disconnected at 5:00 p.m. on February 16, 2017 if past-due payment was not received on February 15, 2017. Respondent is without information as to when Complainant mailed its check or checks to bring current its past-due account; however, payment was not made as required by 5:00 p.m. on February 15, 2017 and, when received on February 16, 2017, was not payment in full for the past-due account. Respondent admits that employee Davis Montgomery has attempted to work with Complainant with respect to Complainant's past-due account. Except as admitted, the remaining allegations in this paragraph are denied.

9. With respect to the allegations contained in DEC numbered paragraph 9 of the Complaint, Respondent admits that employee Davis Montgomery made no further contact with Complainant prior to disconnection of power on February 16, 2017.



Respondent denies that Complainant made full payment on the account and that the account was current by 5:00 p.m. on February 15, 2017.

10. With respect to the allegations contained in DEC numbered paragraph 10 of the Complaint, Respondent admits that upon receipt of Complainant's checks on February 16, 2017 power was reconnected at 11:45 a.m. Respondent denies that it was in any way in error with respect to the disconnection on February 16, 2017, as Complainant had not made payment on its past-due account as required by 5:00 p.m. on February 15, 2017.

11. With respect to the allegations contained in DEC numbered paragraph 11 of the Complaint, Respondent is without sufficient information or belief to admit or deny any impact to Complainant as a result of the power being disconnected due to its failure to pay its past-due bill on time, and Respondent denies that it had any obligation to make a phone call to Complainant's Director prior to the disconnection.

12. With respect to the allegations contained in DEC numbered paragraph 12 of the Complaint, Respondent denies that it acted contrary to Commission rules in disconnecting Complainant's electric service on February 16, 2017 as the direct result of Complainant's failure to bring current its past-due account. The checks received by Respondent on February 16, 2017 did not satisfy the outstanding balance, and the disconnection was directly attributable to Complainant's history of past-due bills, insufficient payments and three prior deferred payment plans, in which the past-due amounts were spread over a period of months to reduce the impact on Complainant's cash flow and avoid the need for disconnection. Complainant had on previous occasions used electronic means to transfer funds to avoid imminent disconnect, but on this

occasion used the postal mail which did not arrive in time to avoid the disconnection. As previously stated herein, Complainant was notified via certified mail that if payment on the past-due account was not received by 5:00 p.m. on February 15, 2017, the power would be disconnected. The Company requires customers who have been disconnected for non-payment to reestablish credit. On February 20, 2017 the Company mailed a Deposit Notification Letter to Complainant informing Complainant that their account would be billed a deposit in the amount of \$18,224.00. The Company provided Complainant several options to pay the deposit, including a payment arrangement. On March 20, 2017 Complainant's agent, John Swaine, agreed to the terms of the payment arrangement that included the deposit, the account balance and future payments.

13. The allegations contained in DEC numbered paragraph 13 of the Complaint are denied.

14. The allegations contained in DEC numbered paragraph 14 of the Complaint are denied.

15. The allegations contained in DEC numbered paragraph 15 of the Complaint are denied.

16. The allegations contained in DEC numbered paragraph 16 of the Complaint are denied.

17. The allegations contained in DEC numbered paragraph 17 of the Complaint are denied. To the extent Respondent's representatives met with officials of the City of Greensboro, the sole purpose was to reinforce the importance of Complainant paying its electric bill on time. The mayor and city manager of Greensboro serve on the board of directors for Sit-In Movement, Inc.

18. The allegations contained in DEC numbered paragraph 18 of the Complaint are denied.

19. With respect to the allegations contained in DEC numbered paragraph 19 of the Complaint, Respondent is without sufficient information or belief to respond to what Complainant Director John Swaine believed might happen regarding disconnection of Complainant's power. The remaining allegations of this paragraph are denied.

20. With respect to the allegations contained in DEC numbered paragraph 20 of the Complaint, Respondent denies that it made a mistake with regard to the power disconnection on February 16, 2017 and further denies that it abused its discretion or violated any Commission rules with respect to said disconnection for failure of Complainant to fully pay its past-due bill.

21. With respect to the allegations contained in DEC numbered paragraph 21 of the Complaint, Respondent denies that it has abused its discretion or violated any Commission rules or that Complainant, with a poor payment history, should not be required to pay a deposit to reconnect after its power has been disconnected for failure to fully pay its past-due account.

#### **FOR A SECOND DEFENSE**

1. Complainant has had an account with Respondent since 1995. A review of the history of Complainant's account demonstrates that Complainant has been delinquent in paying its bill on numerous occasions and has had a past-due balance on its account since 2009. Complainant's failure to maintain a current paid balance has resulted in twenty-three (23) delinquency suspensions between October 2012 and January 2017. Respondent has negotiated three deferred payment plans with Complainant in order to

permit Complainant to spread out and pay past-due bills over several months to avoid disconnection. DEC has had a customer representative work closely with Complainant and its management in an effort to keep power on to the Sit-In Museum, and DEC's representatives have made every reasonable effort within the Company's procedures and the Commission's rules to avoid disconnection for past-due bills.

2. Any consequences to Complainant as a result of disconnection or deposit payment requirement are the sole result of the poor payment history of Complainant and not the fault of DEC or its representatives.

WHEREFORE, having fully responded to all allegations contained in the Complaint, Duke Energy Carolinas, LLC requests that the Commission act as expeditiously as possible in view of the outstanding balance on Complainant's account, the fact that Complainant has not paid the deposit of \$18,224.00 as set forth in paragraph 2 of the **FIRST DEFENSE** above and that the Commission dismiss the Complaint for failure to state a claim upon which relief can be granted, with prejudice, and requests such other and further relief as the Commission deems just, equitable and proper.



Respectfully submitted, this the 9<sup>th</sup> day of May, 2017.

By: Robert W. Kaylor

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*Counsel for Duke Energy Carolinas, LLC*

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DEC Exhibit 1

FILED

APR 24 2017

Clerk's Office  
N.C. Utilities Commission

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April 24, 2017

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Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, NC 27699-4325

E-7 SUB 1140

RE: Complaint Against Duke Energy from Sit-In Movement, Inc., a Non-profit Corporation, Regarding Power Services to 134 South Elm Street, Greensboro, NC

Dear Sir or Madam:

1.

This is a complaint against Duke Energy from Sit-In Movement, Inc., (Museum) a non-profit corporation which has electrical service at 134 South Elm Street, Greensboro, NC which is provided by Duke Energy..

2.

Duke Energy has threatened to cut off the electrical service for customer Sit-In Movement, Inc., unless it posts a \$18,224.00 deposit in addition to paying the regular electric bill. The electric bill is fully current. We have attempted to resolve this matter through the public staff at the Utilities Commission who have been very helpful, but who have not been able to get any resolution from Duke Energy.

3.

Sit-in Movement, Inc.'s utility service at 134 South Elm Street, Greensboro, NC is in jeopardy if the Museum does not pay the \$18,224.00 deposit, and we request of the Utility Commission that the service be ordered to remain on until the Commission can rule on this complaint in a final ruling and that no deposit be required until there are further orders of the Utility Commission.

FACTS

4.

Sit-In Movement, Inc., has maintained the power connection at the above address for nearly twenty years and over these twenty years, it has paid hundreds of thousands of dollars in electric bills to Duke Energy and its predecessor company including \$829,675.00 in the immediately preceding seven years and three months.

5.

Sit-In Movement, Inc., owns the property located at 134 South Elm Street, Greensboro, NC and has owned it since 1996. The real property is valued at over \$10 million and has a less than 5% debt to equity ratio.

6.

Sit-In Movement, Inc., is a national historic site. As of the end of 2016, it has successfully completed a tax credit program under the federal government related to

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May 09 2017

Chief Clerk  
North Carolina Utilities Commission  
April 24, 2017  
Page Two

6. historic properties as well as a companion tax credit program under the federal government for financially distressed areas as defined by their zip codes.

7. Duke Energy is well-aware that Sit-In Movement, Inc., has been under some temporary financial pressure due to financial charges associated with the successful completion of the tax credit programs. Duke Energy has worked with the Museum during this time. The Museum is now up-to-date and current on its power bill. The Museum informed Davis Montgomery that the Museum would have all past-due power bills caught up by the end of February and be completely current on its bill (which in fact was accomplished).

8. On January 25, 2017, Duke Energy sent a written notice to Sit-In Movement, Inc., that if the bill was not caught up by February 16, 2017, that power would be disconnected. The Sit-In Movement, Inc., put checks in the mail the week previous to the due date which checks should have cleared and did clear. In any event, Davis Montgomery who had acted as our Duke Energy liaison would customarily reach our director, John Swaine, on his cell phone and/or email to discuss any concerns.

9. On this occasion, however, Davis Montgomery made no contact whatsoever with the Museum Director, the Chairman of the Board, the Vice-Chair of the Board, or with me as the attorney for the Board, but instead Duke Energy at approximately 8:00 a.m. on February 16, 2017, cut off power to the Museum. At the time the power was cut off, checks for full payment were already in the possession of Duke Energy making the bill current, and there was no reason to cut off power. Our Director, John Swaine, on learning of the problem contacted Duke Energy who confirmed that they did have the checks; two hours later, Duke Energy cut the power back on without deposit or re-connection fees by reason that it was their error and not the Museum's.

11. In the meantime, a large group of eighty-one disadvantaged school children who had been bused in from Union County had to have their tour cancelled although they at least were able to see the Historic Lunch Counter in somewhat darkened conditions. The Museum refunded the \$765.00 that had been paid on their behalves. At the same time, a corporate client had also scheduled a conference at the Museum. That conference had to be moved across the street to a different conference center, and the Museum refunded \$800.00. All of this happened because Duke Energy varied from its usual routine and did not call the Director. If they had, they would have learned that they already had the checks. Additionally, a group from Durham also had to be cancelled (after they had already arrived) and \$253.00 was refunded to them.



Chief Clerk  
North Carolina Utilities Commission  
April 24, 2017  
Page Three

12.

Thereafter, because the Sit-in Movement, Inc.'s power had been disconnected through no fault of its own, Duke Energy demanded an \$18,224.00 deposit and demanded that the Museum pay \$3,224.00 per month payments toward the \$18,224.00 or Duke Energy would cut off the power to the Museum if the payment was two days late which we believe is against the Utility Commission Rules. Given our experience of having the power cut off when Duke Energy already had the checks for the regular billing, especially when the Museum was paid in full and current was unacceptable to the Museum.

13.

The Museum believes that Duke Energy has deviated from its usual basis in dealing with institutions of our approximate size and power usage especially considering the Museum's ownership of the building and the years of service. Other companies which used more power and had hundreds of thousands of dollars in electric bills overdue for months did not have the power cut off and did not have to provide a deposit.

14.

The Museum believes further that Davis Montgomery, acting on behalf of Duke Energy, deviated from normal procedures in dealing with the Sit-Museum, Inc., in that he neither telephoned nor e-mailed our Director whom he had always emailed or telephoned in the past with any concerns or to clarify any confusion. Instead, he telephoned the City Manager of Greensboro. Neither the Mayor nor the City Manager has any authority or ability to issue checks on behalf of Sit-In Museum, Inc., or to deal with the Museum's power bill from Duke Energy. So Mr. Montgomery called people who could do nothing and failed to call people who could do something and with whom he had dealt with in the past.

15.

Furthermore, Mr. Montgomery was well-aware that the *Greensboro News & Record* regularly monitored the City of Greensboro emails that involved Sit-In Museum, and that there certainly would be emails (and there were emails) detailing the power cut-off at the Museum if the City were contacted and it would have the affect of embarrassing the Museum, affecting donors to the Museum, and affecting general public confidence in the Museum toward the negative.

16.

Furthermore, Mr. Montgomery was well-aware that the Mayor of the City had in recent years led an effort to take over the Museum from the black majority Board of Directors and leadership of the Museum which is the largest black-run comparable entity in the City. It can only be interpreted that Mr. Montgomery intended to help those forces who wished to take over the Museum and indeed, Mr. Montgomery in the past had expressed concern that there had been too much change of leadership in the Museum and that the Museum needed stability.



Chief Clerk  
North Carolina Utilities Commission  
April 24, 2017  
Page Four

17.

During 2016, Mr. Montgomery and another Duke executive had appeared in front of the Board and said "There is \$250,000.00 with your name on it (the Sit-In Museum) which we would like to give you if you will keep your power bill exactly current for six months." Thereafter, the Museum kept its bill current for six months, approached Duke Energy about the funds, and were then told that it really ought to be more like a year and that furthermore, Duke Energy was very concerned that there had been too many changes in directors at the Museum and that Duke wanted to see some stability before they put in the \$250,000.00 that they had promised.

18.

Based upon the above, it appears that Duke Energy through the person of Davis Montgomery involved itself in the politics of Greensboro and particularly in the race relations in Greensboro and had injected itself into the situation to help put financial pressure on the Museum, embarrass the Museum, and to hurt fundraising with the end result that the black-run Civil Rights Museum in Greensboro would collapse and allow the City of Greensboro as they had attempted before.

19.

Additionally, no notice was put on the building on the day the power was cut off saying that the power was cut off such that Director John Swain was initially unsure whether there had been a power failure at the Museum or in downtown Greensboro or what was going on. We believe that this, too, was an irregularity.


20.

The Museum seeks from the Utility Commission a ruling that inasmuch as the Museum's month to month Duke Energy bill is current and that the cut off of power resulted from a mistake on Duke Energy's part when they actually had the checks in hand, that Duke Energy has abused its discretion in requiring a deposit in the amount of \$18,224.00.

21.

The Museum's Duke Power bill is current and our request here is that until the Commission rules that Duke Power has abused its discretion due to the above-stated facts and is not entitled to impose a deposit on Sit-In Movement, Inc.'s building in Greensboro, North Carolina.

Respectfully submitted, this the 24<sup>th</sup> day of April, 2017.



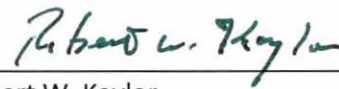
Douglas S. Harris  
Attorney for Sit-In Museum, Inc.

Docket No. E-7, Sub 1140

**CERTIFICATE OF SERVICE**

I certify that a copy of Duke Energy Carolinas, LLC's Response to Complaint and Motion to Dismiss in this docket has been served by electronic mail or by hand delivery or by depositing a copy in the United States Mail, first class postage prepaid, properly addressed to all parties of record.

This the 9th day of May, 2017



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