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P.O. Box 960
Cincinnati, Ohio 45201-0960
Tel: 513-419-1847
Fax: 513-419-1846
anita.schafer@duke-energy.com

RECEIVED

Anita M. Schafer
Sr. Paralegal

VIA HAND DELIVERY

APR 27 2009

April 24, 2009

**PUBLIC SERVICE
COMMISSION**

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Blvd
Frankfort, KY 40601

Re: Case No. 2008-00495

Dear Mr. Derouen:

Enclosed please find for filing an original and ten copies of the Responses to Supplemental Requests for Information from the Commission Staff to Duke Energy Kentucky. We are enclosing a Petition for Confidential Treatment and an envelope containing the responses for which we are requesting confidential treatment.

Please date-stamp the extra two copies of each filing and the Petition and return to me in the enclosed envelope.

Sincerely,

Anita M. Schafer
Senior Paralegal

cc: Parties of Record

RECEIVED

APR 27 2009

**PUBLIC SERVICE
COMMISSION**

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

| | | |
|--|---|---------------------|
| Application of Duke Energy Kentucky, Inc. |) | Case No. 2008-00495 |
| for Approval of Energy Efficiency Plan Including |) | |
| an Energy Efficiency Rider and Portfolio of |) | |
| Energy Efficiency Programs |) | |

PETITION OF DUKE ENERGY KENTUCKY, INC.
 FOR CONFIDENTIAL TREATMENT OF INFORMATION
 CONTAINED IN ITS SECOND SET OF DISCOVERY RESPONSES TO
 COMMISSION STAFF

Duke Energy Kentucky, Inc. (“Duke Energy Kentucky” or “Company”), pursuant to 807 KAR 5:001, Section 7, respectfully requests the Commission to classify and protect certain information provided by Duke Energy Kentucky in response to Staff data requests No. 3(c) and 10(b) contained in the Commission’s requests for information in Appendix B, as set forth in the Commission’s Order dated April 13, 2009. The information Duke Energy Kentucky seeks confidential treatment for response 3(c) includes the Company’s projected base load high and low forecast including production and capital costs for the next several years. The information contained in response 10(b) includes present value revenue requirements (“PVRr”), projected earnings before income taxes (“EBIT”), taxes, and net margins used to calculate the specific target return on investment (“ROI”) levels requested by Staff. The responses in No. 3 (c) and 10(b) contain sensitive information, the disclosure of which would provide a list of projected costs including the Company’s high and low base load forecasts, PVRr, projected EBIT, and margins which could provide competitors with the Company’s plans for future investments.

In support of this Petition, Duke Energy Kentucky states:

1. The Kentucky Open Records Act exempts from disclosure certain commercial information. KRS 61.878 (1)(c). To qualify for this exemption and, therefore, maintain the confidentiality of the information, a party must establish that disclosure of the commercial information would permit an unfair advantage to competitors of that party. Public disclosure of the information identified herein would, in fact, prompt such a result for the reasons set forth below.

2. The information contained in Attachment STAFF-DR-SUPP-003(c) and in the Company's response to 10(b) regarding projected future high and low base load projections PVRR, projected EBIT, and margins that Duke Energy Kentucky wishes to protect from public disclosure is identified in the filing submitted concurrently herewith. This information was developed internally by Duke Energy Kentucky personnel, is not on file with any public agency, and is not available from any commercial or other source outside Duke Energy Kentucky. The aforementioned information is distributed within Duke Energy Kentucky only to those employees who must have access for business reasons. If publicly disclosed, this information setting forth Duke Energy Kentucky's costs of operation and projected impacts give the Company's competitors, vendors and suppliers an obvious advantage in any contractual negotiations to the extent they could foresee or calculate Duke Energy Kentucky's requirements, operating margins and what Duke Energy Kentucky anticipates its business model requirements to cost. Release of the PVRR, projected EBIT, and net margins would provide potential vendors, investors and competitors insight into Duke Energy Kentucky's business model and operations. Finally, public disclosure would give Duke Energy Kentucky's contractors, vendors and competitors access to Duke Energy Kentucky's cost and operational parameters, as well as insight into its contracting practices and projected

earnings under various hypothetical scenarios. Competitors, suppliers, project bidders or potential equipment vendors would have ready access to DE-Kentucky's resource cost estimates and operation values given them enough information to determine a floor for any bid or proposed price. No sophisticated vendor would consider making an offer at anything lower than DE-Kentucky's expected cost. Such access would impair Duke Energy Kentucky's ability to negotiate with prospective contractors and vendors, and could harm the Duke Energy Kentucky's competitive position in the power market, ultimately affecting the costs to serve customers.

3. The information for which Duke Energy Kentucky is seeking confidential treatment is not known outside of Duke Energy Kentucky.

4. The information that Duke Energy Kentucky seeks confidential treatment herein demonstrates on its face that it merits confidential protection. If the Commission disagrees, however, it must hold an evidentiary hearing to protect the due process rights of the Company and supply the Commission with a complete record to enable it to reach a decision with regard to this matter. *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, Ky. App., 642 S.W.2d 591, 592-94 (1982).

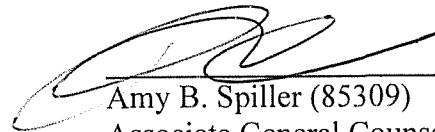
5. Duke Energy Kentucky does not object to limited disclosure of the confidential information described herein, pursuant to an acceptable protective agreement, to the Attorney General or other intervenors with a legitimate interest in reviewing the same for the purposes of participating in the above-styled proceeding. In fact both the Attorney General and Kroger have entered into such an agreement.

6. In accordance with the provisions of 807 KAR 5:001 Section 7, the Company is filing with the Commission one copy of the confidential portions of the responses to Staff's No. 3 (c) and 10(b).

WHEREFORE, Duke Energy Kentucky, Inc. respectfully requests that the Commission classify and protect as confidential the specific information described herein.

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.



Amy B. Spiller (85309)
Associate General Counsel
Rocco O. D'Ascenzo (92796)
Senior Counsel
139 East Fourth Street, Room 25 AT II
Cincinnati, OH 45202
Phone: (513) 419-1810
Fax: (513) 419-1846
e-mail: amy.spiller@duke-energy.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Duke Energy Kentucky, Inc.'s Petition for Confidential Treatment of Information was served on the following by overnight mail, this 24th day of April 2009.


Rocco O. D'Ascenzo

Hon. Dennis G. Howard, II
Hon. Paul Adams
Assistant Attorneys General
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601

Hon. Michael L., Kurtz
Attorney at Law
Boehm, Kurtz & Lowly
36 East Seventh Street
Suite 1510
Cincinnati, Ohio 45202
Counsel for Kroger Company

Hon. Anita Mitchell
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

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APR 27 2009

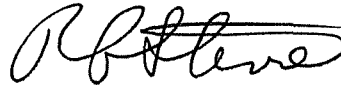
PUBLIC SERVICE
COMMISSION

VERIFICATION

State of Ohio)
)
County of Hamilton)

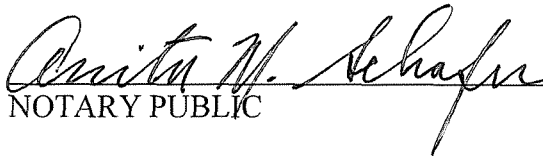
SS:

The undersigned, Richard G. Stevie, being duly sworn, deposes and says that I am employed by the Duke Energy Corporation affiliated companies as Managing Director, Customer Market Analysis; that on behalf of Duke Energy Kentucky, Inc., I have supervised the preparation of the responses to the foregoing responses to information requests; and that the matters set forth in the foregoing response to information requests are true and accurate to the best of my knowledge, information and belief after reasonable inquire.



Richard G. Stevie, Affiant

Subscribed and sworn to before me by Richard Stevie on this 17th day of April, 2009.


NOTARY PUBLIC

My Commission Expires:




ANITA M. SCHAFER
Notary Public, State of Ohio
My Commission Expires
November 4, 2009

VERIFICATION

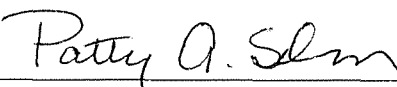
State of Ohio)
) SS:
County of Hamilton)

The undersigned, Paul G. Smith, being duly sworn, deposes and says that I am employed by the Duke Energy Corporation affiliated companies as Vice President, Rates – Ohio and Kentucky; that on behalf of Duke Energy Kentucky, Inc., I have supervised the preparation of the responses to the foregoing responses to information requests; and that the matters set forth in the foregoing response to information requests are true and accurate to the best of my knowledge, information and belief after reasonable inquire.



Paul G. Smith, Affiant

Subscribed and sworn to before me by Paul G. Smith on this 21st day of April
2009.



NOTARY PUBLIC

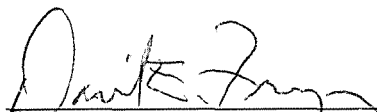
My Commission Expires:

PATTY A. SELM
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires 09-15-2009

VERIFICATION


State of Ohio)
) SS:
County of Hamilton)

The undersigned, David E. Freeman, being duly sworn, deposes and says that I am employed by the Duke Energy Corporation affiliated companies as Director, Integrated Resource Planning for Duke Energy Business Services, LLC; that on behalf of Duke Energy Kentucky, Inc., I have supervised the preparation of the responses to the foregoing responses to information requests; and that the matters set forth in the foregoing response to information requests are true and accurate to the best of my knowledge, information and belief after reasonable inquire.



David E. Freeman, Affiant

Subscribed and sworn to before me by David E. Freeman on this 22 day of April 2009.



NOTARY PUBLIC

My Commission Expires:

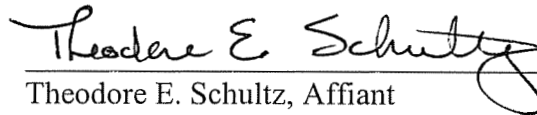


ANITA M. SCHAFER
Notary Public, State of Ohio
My Commission Expires
November 4, 2009

VERIFICATION

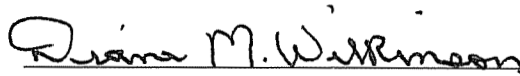
State of North Carolina)
) SS:
County of Mecklenburg)

The undersigned, Theodore E. Schultz, being duly sworn, deposes and says that I am employed by the Duke Energy Corporation affiliated companies as Vice-President Marketing & Energy Efficiency; that on behalf of Duke Energy Kentucky, Inc., I have supervised the preparation of the responses to the foregoing responses to information requests; and that the matters set forth in the foregoing response to information requests are true and accurate to the best of my knowledge, information and belief after reasonable inquire.



Theodore E. Schultz, Affiant

Subscribed and sworn to before me by Theodore E. Schultz on this 20th day of April 2009.



NOTARY PUBLIC

My Commission Expires:

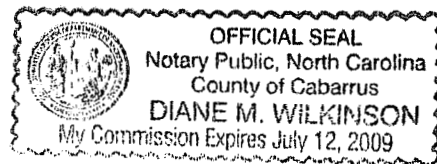


TABLE OF CONTENTS

| <u>DATA REQUEST</u> | <u>WITNESS</u> | <u>TAB NO.</u> |
|---------------------|--------------------------|----------------|
| STAFF-DR-SUPP-001 | THEODORE E. SCHULTZ..... | 001 |
| STAFF-DR-SUPP-002 | THEODORE E. SCHULTZ..... | 002 |
| STAFF-DR-SUPP-003 | DAVID E. FREEMAN | 003 |
| STAFF-DR-SUPP-004 | THEODORE E. SCHULTZ..... | 004 |
| STAFF-DR-SUPP-005 | RICHARD G. STEVIE | 005 |
| STAFF-DR-SUPP-006 | THEODORE E. SCHULTZ..... | 006 |
| STAFF-DR-SUPP-007 | RICHARD G. STEVIE | 007 |
| STAFF-DR-SUPP-008 | RICHARD G. STEVIE | 008 |
| STAFF-DR-SUPP-009 | PAUL G. SMITH..... | 009 |
| STAFF-DR-SUPP-010 | THEODORE E. SCHULTZ..... | 010 |
| STAFF-DR-SUPP-011 | PAUL G. SMITH..... | 011 |
| STAFF-DR-SUPP-012 | PAUL G. SMITH..... | 012 |
| STAFF-DR-SUPP-013 | THEODORE E. SCHULTZ..... | 013 |

STAFF-DR-SUPP-001

REQUEST:

Refer to the response to Item 1 of Commission Staff's first data request ("Staff's first request").

- a. The response references the earnings cap percentages being developed in conjunction with stakeholders in Ohio and Indiana. Identify the specific stakeholders involved in this process in each of these jurisdictions.
- b. The response also references the earnings cap percentages and relative risk being compared to other jurisdictions. Identify each of the jurisdictions to which such a comparison was made.

RESPONSE:

All of the parties to the settlement are listed below. Stakeholder(s) marked with an "*" were directly involved in the development of the earnings cap percentages.

a.

OHIO

- The Office of Ohio Consumers Counsel*
- The Kroger Company
- Ohio Partners for Affordable Energy*
- Constellation NewEnergy, Inc.
- Constellation Energy Commodities Group, Inc.
- Communities United for Action
- Public Utilities Commission Staff of Ohio*
- The Commercial Group
- The Ohio Environmental Council*
- Integrys Energy Services
- Greater Cincinnati Health Council
- Ohio Energy Group

- Natural Resources Defense Council*
- Sierra Club*
- Wal-Mart Stores East and Sam's Club Stores East
- People Working Cooperatively
- Ohio Manufacturing Association
- National Energy Marketers Association

INDIANA

- Office of Utility Consumer Counselor*
- Duke Energy Indiana Industrial Users Group
- The Kroger Company
- Wal-Mart Stores East and Sam's Club Stores East
- Steel Dynamics Incorporated
- Nucor Steel
- Vectren Indiana

b.

California, Oklahoma, North Carolina, South Carolina, Indiana, Ohio, and Kentucky.

PERSON RESPONSIBLE: Theodore E. Schultz

Duke Energy Kentucky, Inc.
Case No. 2008-00495
Supplemental Set Staff Data Requests
Date Received: April 13, 2009

STAFF-DR-SUPP-002

REQUEST:

Refer to the response to Item 3, part a. of Staff's first request which refers to "the current DSM regime in Kentucky which encourages utilities to concentrate on supply side capital investments resulting in increased electric generation, rather than encouraging investment in demand side management programs and technologies that reduce electricity sales." Given, as the response to part b. of the request accurately states, that no jurisdictional utility has ever requested that it be permitted to earn a return on its investment in demand-side management ("DSM") programs, explain how Duke Energy reached such a conclusion regarding Kentucky's current DSM regime.

RESPONSE:

In order to foster development of cost-effective DSM, a model is needed to encourage investment to counter the natural disincentive to invest in DSM. Save-a-watt affords DE-Kentucky the opportunity to turn energy efficiency into a commercial model where the utility is encouraged to invest, manage costs, and given the opportunity to create a greater albeit capped revenue stream. DSM investment is encouraged because the incentive is more closely tied to supply-side investment than what is in place today.

PERSON RESPONSIBLE: Theodore E. Schultz

Duke Energy Kentucky, Inc.
Case No. 2008-00495
Supplemental Set Staff Data Requests
Date Received: April 13, 2009

STAFF-DR-SUPP-003
PUBLIC 3(C)

REQUEST:

Refer to the response to Item 6 of Staff's first request.

- a. Explain why Duke Kentucky selected the number of years for the forecast period used in its Present Value Revenue Requirements ("PVR") analysis.
- b. Explain how the discount rate and inflation rate used in the analysis were selected.
- c. Utilities typically develop load forecasts that include a low case, base case, and high case. Provide the results of Duke Kentucky's PVR analysis based on the two cases other than that reflected in the response.

RESPONSE:

- a. The number of years was used to capture end effects. For high capital unit additions such as coal or nuclear, the economics of them comes from the fuel savings over time and just using twenty years may not be enough time for them to be economical.
- b. The discount rate of 7.33% is the effective after-tax weighted average cost of capital (WACC) as shown on page SA-41 of Duke Kentucky's IRP that was filed July 1, 2008. The 2.30% inflation rate came from Duke's Fundamental Forecast.

CONFIDENTIAL PROPRIETARY TRADE SECRET

- c. This response has been filed with the Commission under a Petition for Confidential Treatment.

PERSON RESPONSIBLE: David E. Freeman

Duke Energy Kentucky, Inc.
Case No. 2008-00495
Supplemental Set Staff Data Requests
Date Received: April 13, 2009

STAFF-DR-SUPP-004

REQUEST:

Refer to the response to Item 10 of Staff's first request. Clarify whether the discussion in the response should be interpreted as "no" to the initial request regarding whether the proposed programs could be offered under Duke Kentucky's existing DSM cost recovery mechanism.

RESPONSE:

Duke Energy Kentucky could offer the programs for KY PSC approval. However, Duke Energy Kentucky's ability to develop new ideas and to pursue new programs rests on the incentive structure approved by the Commission. The Company's proposed energy efficiency model links performance to payment and encourages the development of new programs and the aggressive pursuit of EE.

PERSON RESPONSIBLE: Theodore E. Schultz

Duke Energy Kentucky, Inc.
Case No. 2008-00495
Supplemental Set Staff Data Requests
Date Received: April 13, 2009

STAFF-DR-SUPP-005

REQUEST:

Refer to the response to Item 11, part b. of Staff's first request. Explain whether the discussion reflects that Duke Kentucky assumes that demand response tends to be temporary or short term in nature while conservation measures are longer term or more permanent in nature.

RESPONSE:

Yes. The load impacts from a demand response program are considered temporary and must be maintained every year. The impacts from conservation measures are considered to be longer term for the life of the measure.

PERSON RESPONSIBLE: Richard G. Stevie

Duke Energy Kentucky, Inc.
Case No. 2008-00495
Supplemental Set Staff Data Requests
Date Received: April 13, 2009

STAFF-DR-SUPP-006

REQUEST:

Refer to the response to Item 13 of Staff's first request, which contains orders from Ohio and Indiana on the Duke companies' Save-A-Watt proposals in those states. Various news reports have reported on decisions in North and South Carolina on Save-A-Watt proposals submitted in those jurisdictions by Duke Energy Carolinas. Provide copies of the relevant decision orders issued in each of those jurisdictions on the Save-A-Watt proposals, along with any settlement documents, if applicable.

RESPONSE:

See Attachment STAFF-DR-SUPP-002 for relevant decision orders. It should be noted that the filings in NC & SC were based on 90% of avoided cost model, and there were no earnings cap or performance thresholds like in the Company's application in this case.

PERSON RESPONSIBLE: Theodore E. Schultz

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-7, SUB 831

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|--|---|--|
| In the Matter of |) | |
| Application of Duke Energy Carolinas, LLC for Approval of Save-a-Watt Approach, Energy Efficiency Rider, and Portfolio of Energy Efficiency Programs |) | ORDER RESOLVING CERTAIN ISSUES, REQUESTING INFORMATION ON UNSETTLED MATTERS, AND ALLOWING PROPOSED RIDER TO BECOME EFFECTIVE SUBJECT TO REFUND |

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, July 28, 2008 through August 1, 2008 and August 18, 2008

BEFORE: Chairman Edward S. Finley, Jr., Presiding; Commissioner Robert V. Owens, Jr.; Commissioner Sam J. Ervin, IV; Commissioner Lorinzo L. Joyner; Commissioner Howard N. Lee; and Commissioner William T. Culpepper, III

APPEARANCES:

For Duke Energy Carolinas, LLC:

Lara S. Nichols, Associate General Counsel, Catherine E. Heigel, Assistant General Counsel, and Lawrence B. Somers, Associate General Counsel, Duke Energy Corporation, Post Office Box 1244-PB05E, Charlotte, North Carolina 28201-1244

Robert W. Kaylor, Law Office of Robert W. Kaylor, P.A., 3700 Glenwood Avenue, Suite 330, Raleigh, North Carolina 27612

For the North Carolina Waste Awareness & Reduction Network:

John D. Runkle, Post Office Box 3793, Chapel Hill, North Carolina 27515

For Carolina Industrial Group for Fair Utility Rates III and Air Products & Chemicals, Inc.:

Ralph McDonald, Bailey & Dixon, L.L.P., Post Office Box 1351, Raleigh, North Carolina 27602-1351

For Carolina Utility Customers Association:

Robert F. Page and Cynthia M. Currin, Crisp, Page & Currin, L.L.P.,
4010 Barrett Drive, Suite 205, Raleigh, North Carolina 27609

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

Gudrun Thompson, Southern Environmental Law Center, 200 W. Franklin
Street, Suite 330, Chapel Hill, North Carolina 27516-2559

Sarah C. Rispin, Southern Environmental Law Center, 210 W. Main
Street, Suite 14, Charlottesville, Virginia 22902-5065

For the North Carolina Justice Center, AARP, North Carolina Council of
Churches, and Legal Aid of North Carolina:

Jack Holtzman, Carlene McNulty, and Al Ripley, North Carolina Justice
Center, Post Office Box 28068, Raleigh, North Carolina 27611-8068

For Wal-Mart Stores East, L.P.:

Rick D. Chamberlain, Behrens, Taylor, Wheeler & Chamberlain, 6 N.E.
63rd, Suite 400, Oklahoma City, Oklahoma 73102

For Piedmont Natural Gas Company, Inc.:

Brian Heslin, Moore & Van Allen, PLLC, 100 North Tryon Street,
Suite 700, Charlotte, North Carolina 28202-4003

For the City of Durham:

Sherri Zann Rosenthal, Senior Assistant City Attorney, City of Durham,
101 City Hall Plaza, Durham, North Carolina 27701

For the Using and Consuming Public:

Kendrick C. Fentress, Robert S. Gillam, and Lucy E. Edmondson,
Staff Attorneys, and Antoinette R. Wike, Chief Counsel, Public Staff –
North Carolina Utilities Commission, 4326 Mail Service Center, Raleigh,
North Carolina 27699-4326

Leonard G. Green, Assistant Attorney General, North Carolina
Department of Justice, Post Office Box 629, Raleigh, North Carolina
27602-0629

BY THE COMMISSION: On May 7, 2007, Duke Energy Carolinas, LLC (Duke or the Company), filed a petition in this docket proposing its energy efficiency plan (the save-a-watt petition). By this filing, Duke requested approval of a new save-a-watt approach to energy efficiency (EE) programs; a portfolio of EE programs; and an EE rider (Rider EE) to compensate and reward it for verified energy efficiency results and to recover the amortization of, and a return on, 90% of the costs avoided by the save-a-watt approach. More specifically, Duke requested that the Commission, after hearing, issue an order approving (1) the implementation of the proposed save-a-watt approach for EE; (2) the portfolio of proposed EE programs; (3) the implementation of proposed Rider EE, including the proposed initial charges for customers; (4) the deferral of program costs and amortization of such costs over the life of the applicable program, with an acknowledgment that the revenues established in Rider EE based on avoided costs specifically include the recovery of incurred program costs; (5) the closing of designated existing programs; and (6) the proposed manner of accounting for the impacts of the save-a-watt approach in the Company's Quarterly Surveillance Reports (NCUC Form ES-1 Reports) to the Commission.

After receiving comments on how to proceed, the Commission issued an Order Consolidating Issues for Hearing, on August 2, 2007. Such Order consolidated the present save-a-watt docket with three pending dockets, Docket Nos. E-7, Subs 828 and 829 and Docket No. E-100, Sub 112, which the Commission had earlier consolidated to be heard as a general rate case. Save-a-watt was consolidated with the aforesaid dockets because issues had been raised as to the Commission's jurisdiction to consider the save-a-watt proposal outside the context of a general rate case. However, the Commission reserved the right to reconsider consolidation should changed circumstances make a different procedure more appropriate.

Circumstances in fact changed when Session Law 2007-397, Senate Bill 3 (SB 3) was enacted and became law on August 20, 2007. This legislation included provisions bearing on the Commission's authority to consider and authorize proposals such as the save-a-watt approach. The Commission therefore issued an Order Bifurcating Proceedings on August 31, 2007. In that Order, the present save-a-watt docket was bifurcated from the general rate case, except for certain specified issues which, although somewhat related to the save-a-watt petition, were more appropriately litigated in the rate case.¹ The Order Bifurcating Proceedings further provided that, after completion of the rulemaking proceeding to implement SB3, which was then pending in Docket No. E-100, Sub 113 (Rulemaking Docket), an order would be issued scheduling a hearing in 2008 to consider the merits of the save-a-watt petition.

The general rate case was decided by an Order Approving Stipulation and Deciding Non-Settled Issues, dated December 20, 2007. That Order, among many other things, authorized an adjustable Existing DSM Program Rider (EDPR) and provided that the EDPR and Duke's Demand-Side Management (DSM) deferred account would be subject to modification or elimination in either the Rulemaking Docket or the current proceeding. The Rulemaking Docket was decided by an Order Adopting Final Rules, issued on February 29, 2008.

¹ These issues primarily dealt with Duke's existing DSM programs and deferred account.

Interventions were filed and granted for the Environmental Defense Fund, Natural Resources Defense Council, Southern Alliance for Clean Energy, and Southern Environmental Law Center (collectively, the Coalition); North Carolina Justice Center, AARP, North Carolina Council of Churches, and Legal Aid of North Carolina (collectively, the Public Interest Intervenors); Carolina Utility Customers Association, Inc. (CUCA); Carolina Industrial Group for Fair Utility Rates III (CIGFUR); Piedmont Natural Gas Company, Inc. (Piedmont); North Carolina Waste Awareness & Reduction Network (NC WARN); Progress Energy Carolinas, Inc.; Dominion North Carolina Power; Public Service Company of North Carolina, Inc. (PSNC); North Carolina Sustainable Energy Association; City of Durham; Wal-Mart Stores East, LP; North Carolina Municipal Power Agency I; and Air Products and Chemicals, Inc. (Air Products). The intervention of the Attorney General was noted pursuant to G.S. 62-20, and the participation of the Public Staff was noted pursuant to G.S. 62-15.

On February 29, 2008, the Commission issued an Order Scheduling Hearing in this matter. On April 4, 2008, Duke filed the direct testimony and exhibits of James E. Rogers, Ellen T. Ruff, Judah Rose, Jane Sadowsky, Charles J. Cicchetti, Theodore E. Schultz, Janice D. Hager, Richard G. Stevie, Nick Hall, Stephen M. Farmer, and J. Danny Wiles. On May 9, 2008, the Commission issued an Order Rescheduling Hearing and Extending Filing Deadlines. On June 24, 2008, the Coalition filed the testimony of Brian M. Henderson and Donald Gilligan and the testimony and exhibits of J. Richard Hornby; the Public Interest Intervenors filed the testimony and exhibits of Roger D. Colton; Air Products filed the testimony of James Butz; CIGFUR filed the testimony and exhibits of Nicholas Phillips, Jr.; Wal-Mart Stores East, LP filed the testimony and exhibits of James T. Selecky; the Public Staff filed the testimony and exhibits of Richard F. Spellman, Michael C. Maness, and Jack Floyd; CUCA filed the testimony of Kevin W. O'Donnell; and NC WARN filed the testimony of John O. Blackburn. The City of Durham filed comments on the same date that were received as a prehearing brief. On June 24, 2008, Duke filed a Request for Acceptance and Approval of Stipulation of Settlement with PSNC and a Motion for a Pre-Hearing Order. On June 26, 2008, Duke filed a similar Request and Motion in regard to its stipulation with Piedmont. On July 21, 2008, Duke filed the rebuttal testimony of Charles J. Cicchetti, Richard A. Morgan, Stephen M. Farmer, J. Danny Wiles, Richard G. Stevie, Judah Rose, Janice D. Hager, and Theodore E. Schultz.

On August 18, 2008, NC WARN filed a Motion requesting that the Commission establish an independently administered energy efficiency program in North Carolina to be known as NC SAVE\$. On August 20, 2008, the Commission issued an Order opening a generic docket to consider the NC WARN proposal in Docket No. E-100, Sub 120. On December 2, 2008, the Commission issued an Order denying the motion.

This matter came on for an evidentiary hearing on July 28, 2008, as scheduled. The Commission took judicial notice of Docket Nos. E-100, Subs 109, 113, and 114. Progress Energy Carolinas, Inc., Dominion North Carolina Power, PSNC, North Carolina Sustainable Energy Association, and North Carolina Municipal Power Agency I did not participate in the hearing. The parties submitted briefs and/or proposed orders on October 7, 2008.

Proposed orders were submitted by Duke, the Public Staff, and the Public Interest Intervenors. Briefs were filed by Duke, the Public Interest Intervenors, the Coalition, CUCA, jointly by CIGFUR and Air Products (collectively, the CIGFUR Intervenors), NC WARN, and the Attorney General.

Based on the foregoing, the evidence presented at the hearing, and the entire record in this matter, the Commission makes the following

FINDINGS OF FACT

Jurisdiction

1. Duke is a public utility with a public service obligation to provide electric utility service to customers in its service area in North Carolina and is subject to the jurisdiction of the Commission.

2. The Commission has jurisdiction over this Application pursuant to the Public Utilities Act. A utility must submit all cost-effective DSM and EE options for which the utility requests incentives to the Commission for approval and seek appropriate cost recovery pursuant to G.S. 62-133.9 and Commission Rules R8-68 and R8-69.

Need for EE

3. In connection with the Company's application for a Certificate of Public Convenience and Necessity (CPCN) for two 800 megawatt (MW) supercritical pulverized coal units at the Company's Cliffside Steam Station in Docket No. E-7, Sub 790, Duke committed to invest, on an annual basis, 1% of its annual North Carolina retail revenues from the sale of electricity in EE programs subject to the appropriate regulatory treatment of the Company's EE investments. In granting Duke a CPCN for a single unit, the Commission ordered, among other things, that Duke honor its commitment to invest, on an annual basis, 1% of its annual North Carolina retail revenues from the sale of electricity in EE and DSM programs, that Duke submit all such EE and DSM programs to the Commission for approval, and that the filings be accompanied by a comprehensive plan for verifying MW savings.

4. Duke's 2007 Annual Plan filed with this Commission shows substantial load growth and the need for significant capacity additions to meet Duke's electric demand and energy needs over the next 20 years. The 2007 Annual Plan shows a cumulative need for resource additions of approximately 990 MW by 2010, 2,340 MW by 2011, and 3,190 MW by 2012.

EE and DSM Programs

5. The definitions of EE and DSM in G.S. 62-133.8(a) should apply throughout this Order:

“Demand-side management” means activities, programs, or initiatives undertaken by an electric power supplier or its customers to shift the timing of electricity use from peak to nonpeak demand periods. “Demand-side management” includes, but is not limited to, load management, electric system equipment and operating controls, direct load control, and interruptible load.

“Energy efficiency measure” means an equipment, physical, or program change implemented after January 1, 2007, that results in less energy used to perform the same function. “Energy efficiency measure” includes, but is not limited to, energy produced from a combined heat and power system that uses nonrenewable energy resources. “Energy efficiency measure” does not include demand-side management.

6. Consideration of Duke’s application for approval of its proposed DSM and EE programs is undertaken pursuant Commission Rule R8-68 and does not include approval of Duke’s proposed cost recovery mechanism.

7. Pursuant to G.S. 62-133.9(a), utility DSM and EE programs are considered to be new if they have been adopted and implemented or proposed for implementation after January 1, 2007. The reasonable and prudent costs of new EE and DSM programs, as well as utility incentives, are eligible for recovery under G.S. 62-133.9.

Duke’s Proposed EE Programs

8. Duke has requested approval of its portfolio of proposed EE and DSM programs. The portfolio includes six EE programs: (1) Residential Energy Assessments (REA); (2) Residential Smart Saver (RSS); (3) Low Income Services; (4) Energy Efficiency Education Schools Program; (5) Nonresidential Energy Assessments (NREA); and (6) Nonresidential Smart Saver (NRSS).

9. Duke has requested approval to cancel two existing EE programs: the Residential Home Program (RHP) and the Special Needs Energy Products Loan Program (SNEPLP). Because of Duke’s effort to update its EE offerings and the increase in more stringent and comprehensive EE standards since the Commission first approved these programs, the Company’s request to cancel these programs is reasonable.

Residential Energy Assessments

10. Duke’s proposed REA program will assist individually metered residential customers to use their energy wisely. The program is available to all residential customers.

11. Duke’s proposed REA program is cost-effective, and it is a new EE measure under G.S. 62-133.9.

12. Duke's proposed REA program is in the public interest because it benefits the ratepayers and encourages EE.

Residential Smart Saver

13. The proposed RSS program is an EE program that provides residential builders or customers incentives to purchase energy efficient equipment. It includes two separate measures and incentives packages: (a) the Energy Star Products measure; and (b) the Heating Ventilation and Air Conditioning (HVAC) measure.

14. In Duke's initial application, compact fluorescent light bulbs (CFLs) are the only product presently offered for the Energy Star Products measure of RSS. If Duke expands the measure to include other products as described in its proposed tariff, Duke will need to update its application and Measurement & Verification (M&V) plan accordingly.

15. The proposed Energy Star Products measure of RSS is cost-effective, and it is a new EE measure under G.S. 62-133.9.

16. The proposed Energy Star Products measure of RSS is in the public interest because it benefits the ratepayers and encourages EE.

17. The proposed HVAC measure of RSS is similar to successful programs with the same incentive levels and cost-effectiveness tests that Duke's affiliates have operated in other states. Duke's experience with this program in Ohio has indicated that it is popular with customers and effective at achieving verified energy and capacity savings.

18. The proposed HVAC measure of RSS is cost-effective and it is a new EE measure under G.S. 62-133.9.

19. The proposed HVAC measure of RSS is in the public interest because it benefits the ratepayers and encourages EE.

Low Income Services Program

20. The proposed Low Income Services program has two parts: (a) weatherization and equipment replacement assistance; and (b) distribution of EE products. It is designed to assist low-income customers in reducing energy use in their homes.

21. The proposed Low Income Services Program is a new EE measure under G.S. 62-133.9.

22. The low-income weatherization portion of this proposed program does not pass the Rate Impact Measure test, the Total Resource Cost test, the Participant Test, or the Utility Cost Test. Nevertheless, this proposed Low Income Services program is

approved in its entirety as being in the public interest because it both encourages EE and targets low-income ratepayers who could derive a great economic benefit from EE programs.

Energy Efficiency Education Schools Program

23. The proposed Energy Efficiency Education Schools Program is cost-effective, and, although Duke's 2007 Annual Plan contained programs that involved distributing EE kits, is a new EE measure under G.S. 62-133.9 because it is especially targeted at school-aged children and at schools.

24. The proposed Energy Efficiency Education Schools Program is in the public interest because it benefits the ratepayers and encourages EE.

Nonresidential Energy Assessments

25. Duke intends for the proposed NREA program to assist nonresidential customers in assessing their energy use through on-line analyses, telephone interviews, and on-site audits and analyses. Based on the assessments, Duke may then recommend EE measures to those customers.

26. The cost and energy savings data associated with the proposed NREA program is embedded in the data for the NRSS program. The proposed NREA program is cost-effective, and it is a new EE program under G.S. 62-133.9.

27. The proposed NREA program is in the public interest because it benefits the ratepayers and encourages EE.

Nonresidential Smart Saver Program

28. The proposed NRSS program would encourage the use and installation of high-efficiency equipment by new and existing nonresidential customers, and includes measures for lighting, HVAC equipment, motors, food service, and process equipment. All nonresidential customers would be eligible, but Duke would target certain types of businesses where it believes significant potential for efficiency gains exist. These businesses include schools, government, business, and hospitals.

29. For purposes of the proposed NRSS program, "high efficiency" equipment means equipment for which installation and use would result in an improvement in electric efficiency over the equipment the customer proposes to replace. In cases where electric equipment does not currently exist within the customer's facility, Duke would compare the proposed efficiency measure against the efficiency of the current code or standard electric equipment that would have been installed.

30. The proposed NRSS is cost-effective, and it is a new EE program under G.S. 62-133.9.

31. The proposed NRSS program is in the public interest because it benefits ratepayers and encourages EE.

Duke's Proposed DSM Programs

32. Duke has requested approval of two proposed DSM programs: (a) Residential Power Manager and (b) Nonresidential PowerShare.

33. Duke has had tariff-based Demand Response (DR) programs, including interruptible rates, in its approved rate structure for many years. Interruptible service provides the utility a benefit from a planning perspective because it allows the utility to remove load from the system when capacity is required to serve firm customers rather than build new capacity to serve that load.

34. Duke has requested approval to cancel three existing DSM programs: Rider LC (Residential Load Control), Rider IS (Interruptible Service), and Rider SG (Standby Generation Control). Duke proposed to transfer customers on its existing Rider LC to the proposed Power Manager program and to transfer customers on its existing Riders IS and SG to the proposed PowerShare program.

Residential Power Manager

35. The proposed Power Manager program would be available to individually metered residential customers served on Schedules RS (Residential Service), RE (Residential Service, Electric Water Heating and Space Conditioning), or ES (Residential Service, Energy Star). The proposed Power Manager program would provide billing credits during July through October in exchange for allowing Duke to interrupt service to residential customers' central air conditioning systems.

36. The proposed Power Manager program is cost-effective, and it is a new program under G.S. 62-133.9.

37. The proposed Power Manager program is in the public interest because it benefits ratepayers and encourages DR.

38. It is appropriate for Duke to cancel its existing Rider LC; however, current customers on Rider LC shall be given the opportunity to discontinue participation before being transferred automatically to the proposed Power Manager program.

Nonresidential PowerShare

39. The proposed PowerShare program would provide credits to a nonresidential customer who, at Duke's request, agrees to reduce and maintain its load at a level specified in one of three curtailment options.

40. The proposed PowerShare program is cost-effective, and it is a new program under G.S. 62-133.9.

41. The proposed PowerShare program is in the public interest because it benefits ratepayers and encourages DR.

42. It is not appropriate for Duke to cancel its existing Riders IS and SG. Because the current customers on Riders IS and SG have the right to opt out of Duke's rider for new EE and DSM programs, they should be allowed to continue to participate in these existing DSM programs at their current contract levels.

Measurement & Verification

43. Duke's M&V plan is adequate and reasonable for its proposed programs.

Existing DSM Program Rider

44. Duke presently recovers the costs of its existing DSM and EE programs through the annually-adjusted Existing DSM Program Rider (EDPR). The EDPR was recommended in the Agreement and Joint Stipulation of Partial Settlement filed in Duke's last general rate case in Docket No. E-7, Sub 828, and it was adopted by the Commission in its December 20, 2007 Order in that proceeding. The Commission's Order in Docket No. E-7, Sub 828 authorized modification or elimination of the EDPR and the DSM deferral account in order to reflect the decisions in this docket regarding the recovery of Duke's DSM and EE costs.

45. The EDPR should be maintained to allow Duke to continue to recover the costs of its existing DSM programs under Riders IS and SG.

46. The EDPR should be modified to reflect cancelation of Rider LC and its RHP and SNEPLP EE programs.

Standard Offer Programs

47. The issue of Standard Offer Programs, as brought up by the Coalition, may well have merit, and should be considered in Duke's ongoing efforts to implement additional EE and DSM programs.

Request for Flexibility

48. Duke has requested the flexibility to make program changes and reallocate resources among the programs during the lives of the programs. The Company would adjust overall portfolio spending levels on an annual basis. Changes would be based on the performance of the programs, market conditions, economics, and consumer demand. Duke has indicated that this would allow the Company to optimize results for both itself and its customers.

49. It is appropriate to require Commission approval before the following changes can be implemented: (1) program changes or shifting of program resources that would result in program costs increasing or decreasing by more than 20% of the

original program cost estimates initially approved by the Commission; (2) program changes that would increase or decrease the energy and demand savings projections by more than 20%; (3) any increases or decreases to participant incentives; (4) program changes that would alter the target customer groups; and (5) program changes that may result in the reassignment of costs and benefits from one customer class to another. Any combination of these changes would likewise require Commission approval.

Settlements with Natural Gas Companies

50. Duke entered into settlement agreements with PSNC and Piedmont, two natural gas local distribution companies serving retail natural gas customers in North Carolina. These settlement agreements were filed with the Commission on June 24, 2008, and June 26, 2008, respectively.

51. The PSNC Settlement Agreement addresses a number of aspects of the Company's proposed RSS and NRSS programs, including an agreement (a) that Duke will not shift funds to any new program that has not been approved by the Commission; (b) that incentives offered will not exceed 50% of the installed cost difference between standard and higher efficiency equipment; and (c) that the Company will promote on an equal basis and offer equivalent incentive payments for heat pumps and air conditioning. The PSNC Settlement Agreement is just and reasonable and is approved by the Commission.

52. The Piedmont Settlement Agreement acknowledges that Duke's proposed EE programs are not intended to displace natural gas nor to encourage fuel-switching. The Piedmont Settlement Agreement requires that Duke revise its description of the proposed RSS program to specify that if a home is either currently heated by a natural gas furnace or if natural gas is available at a new home, then a heat pump incentive is available if a heat pump is installed as a dual-fueled system that uses natural gas as the supplemental heat source. Duke and Piedmont further agreed to work together to develop certain joint EE programs. The Piedmont Settlement Agreement is just and reasonable and is approved by the Commission.

Save-a-watt Compensation Mechanism

53. The record in this proceeding, as it currently exists, is not adequate to allow the Commission to reach fully informed, well reasoned decisions regarding certain issues and/or sub-issues concerning the appropriateness of Duke's save-a-watt, avoided-cost-based compensation mechanism or other such mechanisms already in the record. Accordingly, Duke will be required to provide certain supplemental information and data. Intervenors will be allowed the opportunity to file comments, and Duke will be allowed an opportunity to file reply comments. Thereafter, the Commission will take such further action as it may then deem appropriate.

54. To the extent that the supplemental information requested herein is germane to the resolution of pending issues, the Commission will defer ruling on such issues at this time.

55. Duke will not be allowed to follow the accounting and reporting procedures it has proposed with respect to its save-a-watt model, but, instead, will be required to follow an approach that will more clearly provide the information necessary to allow the Commission to efficiently and effectively assess the financial implications of the Company's EE and DSM programs, including the reasonableness and efficacy of the related compensation mechanism, without regard to the specific nature of the compensation mechanism that may ultimately be approved by the Commission.

Proposed Rider EE Allowed to Become Effective Subject to Refund

56. Duke's proposed Rider EE will be allowed to become effective, at the levels requested by the Company, subject to refund with interest if the Commission, by final order entered in this docket, sets the rider at lower levels.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 AND 2

Jurisdiction

The evidence in support of these findings of fact is found in the Application, pleadings, testimony, and exhibits in this docket; and the statutes, case law, and rules governing the authority and jurisdiction of this Commission. These findings are informational, procedural, and jurisdictional in nature.

Prior to the passage of SB 3, the Commission's authority to authorize cost recovery pursuant to a rider for EE programs was unclear. The Commission requested comments on its authority to consider the Company's Application and eventually consolidated Docket No. E-7, Sub 831 with the Company's general rate proceeding. (*Order Requesting Comments* in Docket No. E-7, Sub 831 (May 31, 2007); *Order Consolidating Issues for Hearing* in Docket No. E-7, Sub 831 (August 2, 2007).) Although the Commission acknowledged that the pending SB 3 would expressly address whether the Commission possessed this authority, because enactment was possibly several weeks away, the Commission consolidated the dockets, reserving the right to reconsider its decision. Duke requested reconsideration of consolidation shortly after the General Assembly ratified SB 3. SB 3 became law soon thereafter, and the Commission accordingly granted the Company's request and bifurcated Docket No. E-7, Sub 831 from Duke's general rate case.

Among other things, SB 3 contains the new G.S. 62-133.9, which concerns cost recovery for DSM and EE programs. This specific statute grants the Commission the authority to approve an annual rider, outside of a general rate case, for recovery of reasonable and prudent costs incurred in the adoption and implementation of new DSM and EE measures. G.S. 62-133.9(c) specifically provides that utilities shall submit EE programs for which incentives are sought to the Commission for approval.

Commission Rule R8-68 establishes guidelines for the application of G.S. 62-133.9. Under this Rule, a utility must obtain Commission approval before implementing any new or modified DSM or EE measure. Rule R8-68 sets forth detailed

filing requirements and outlines what the Commission may consider in deciding whether to approve a new measure or program. The Rule also provides that reasonable and prudent costs of new DSM or EE programs approved by the Commission shall be recovered through the annual rider described in G.S. 62-133.9 and Rule R8-69. The Commission may also consider in the annual rider proceeding whether to approve any utility incentive pursuant to G.S. 62-133.9(d)(2)(a)(c).

Commission Rule R8-69 outlines the procedure whereby a utility applies for and the Commission establishes an annual DSM/EE rider. The Rule defines the DSM/EE rider as “a charge or rate established by the Commission annually pursuant to G.S. 62-133.9(d) to allow the electric public utility to recover all reasonable and prudent costs incurred in adopting and implementing new demand-side management and energy efficiency measures after August 20, 2007, as well as, if appropriate, utility incentives, including net lost revenues.” (Rule R8-69(a)(2).) Rule R8-69(c) allows a utility to apply for recovery of incentives for which the Commission will determine the appropriate ratemaking treatment.

G.S. 62-133.9, Rule R8-68, and Rule R8-69 establish a procedure whereby an electric public utility files an application in a unique docket for the Commission’s approval of an annual rider for recovery of reasonable and prudent costs of EE and DSM programs as well as appropriate utility incentives, including specifically “[a]ppropriate rewards based on capitalization of a percentage of avoided costs achieved by demand-side management and energy efficiency measures.” The incentives the Company seeks under the save-a-watt approach are based upon paying the Company a percentage of the avoided costs achieved by both DSM and energy conservation measures. The Commission concludes that it has the authority to consider the relief the Company is seeking in this docket.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3 AND 4

Need for EE

In connection with the Company’s application for a CPCN for two 800 MW supercritical pulverized coal units at the Company’s Cliffside Steam Station, Duke committed to invest, on an annual basis, 1% of its annual North Carolina retail revenues from the sale of electricity in EE programs subject to the appropriate regulatory treatment of the Company’s EE investments. In granting the Company a CPCN for a single unit, the Commission ordered, among other things, the following:

3. That Duke shall honor its commitment to invest, on an annual basis, 1% of its annual retail revenues from the sale of electricity in energy efficiency and demand-side programs, subject to the results of the ongoing collaborative workshops and subject to such appropriate regulatory treatment as the Commission may determine to be just and reasonable, and that Duke shall retire older coal-fired generating units (in addition to Cliffside Units 1 through 4) on a MW-for-MW basis, considering the impact on the reliability of the entire system, to account for actual load

reductions realized from these new programs, up to the MW level added by the Cliffside unit certificated herein.

4. That all such energy efficiency and demand-side programs shall be submitted to the Commission for approval and shall be accompanied by a comprehensive plan for verifying MW savings. Duke shall file an annual report with the Commission on March 1 of each year setting forth the investment in each approved program for the preceding year. In addition, on March 1 of each year, Duke shall submit an annual plan for identifying the number of MW saved and the coal units to be retired.

Janice Hager, Duke Energy's Managing Director of Integrated Resource Planning and Environmental Strategy, offered extensive testimony as to the annual planning process that led to the development of Duke's 2007 Annual Plan. Witness Hager testified that the Company develops and files an annual resource plan based upon a 20-year load forecast and a target planning reserve margin of 17%. Witness Hager explained that the Company's current load forecast reflects a 1.6% average annual growth in summer peak demand and a 1.4% annual growth for winter peaks. The 2007 Annual Plan identifies a cumulative resource need for 990 MW of capacity in 2010, which grows to 2,340 MW by 2011, and to 3,190 MW by 2012. No intervenor offered any evidence to contradict the Company's load forecast.

Witness Hager testified that the Company develops its resource plan to meet customers' energy needs by considering a combination of existing purchase power contracts, existing and new generation, and energy efficiency options. In the 2007 Annual Plan, Duke tested its resource portfolio options against a wide range of sensitivities and scenarios, including the possibilities of fuel commodity price changes, environmental emission mandates, and regulatory requirements. The quantitative analysis conducted by the Company during the annual Integrated Resource Planning (IRP) process indicated that a combination of additional base load, intermediate, and peaking generation; renewable resources; and EE programs is required over the next 20 years to meet customer demand.

The Company projects that its EE plan will contribute over 1,372 MW of capacity and 926,000 megawatt-hours (MWh) of energy needed in its North Carolina and South Carolina service territories over the next four years. Witness Hager confirmed that the impacts expected from the Company's proposed energy efficiency programs are consistent with those projected in the 2007 IRP.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 THROUGH 7

EE and DSM Programs

The contested issues pertaining to Duke's request for approval of DSM and EE programs are discussed immediately below, separate and apart from issues pertaining to Duke's proposed save-a-watt, avoided-cost-based compensation mechanism, which is discussed subsequently.

Applicable Statutory and Commission Rule Provisions

In approving either an EE or DSM program, the Commission must first consider whether the proposed program is cost-effective. Pursuant to G.S. 62-133.9, the Commission must further determine whether the program is a “new” EE or DSM program.

Commission Rule R8-68 establishes the Commission’s scope of review in this proceeding. The Commission must determine whether the proposed program is in the public interest by considering, among other things, whether the program benefits the electric public utility’s overall customer body. Cost-effectiveness tests – including the Rate Impact Measure (RIM) test, the Total Resource Cost (TRC) test, the Participant Test, and the Utility Cost Test (UCT) – inform the Commission’s evaluation on this question. The Commission may also consider the impact of the proposed program or measure on peak load or load factors and whether the program encourages EE or DR.

The Commission’s approval or disapproval of Duke’s proposed EE and DSM programs does not constitute approval of its proposed cost-recovery method.

Definition of EE and DSM Programs

As part of its save-a-watt petition, Duke has requested approval of its proposed portfolio of EE and DSM programs. Although Duke refers to all of its programs as EE programs, evidence adduced at the hearing indicated that Duke’s definition of EE did not comport with the definitions recently provided in G.S. 62-133.8(a). G.S. 62-133.8(a) specifically distinguishes between DSM and EE programs. DSM is defined as activities, programs, or initiatives undertaken by an electric power supplier or its customers to shift the timing of electricity use from peak to nonpeak demand periods. G.S. 62-133.8(a)(2). DSM programs are essentially DR programs. An EE measure means “an equipment, physical, or program change implemented after January 1, 2007, that results in less energy used to perform the same function.” G.S. 62-133.8(a)(4). An EE measure does not include DSM. EE measures are essentially conservation measures.

The Commission is bound by G.S. 62-133.8. Consequently, it will employ these definitions in reviewing Duke’s proposed programs. Duke may recover costs and, potentially, utility incentives for both DSM and EE programs and measures through the new annual rider established in G.S. 62-133.9.

Definition of a “New” EE or DSM Program

Another threshold question that the Commission must consider in approving these programs pursuant to G.S. 62-133.9 and Commission Rule R8-68 is whether the proposed programs are “new” under the statute. While G.S. 62-133.9(c) requires electric utilities to submit all cost-effective DSM and EE programs for which the utility requests incentives to the Commission for approval, G.S. 62-133.9(d) limits cost recovery under the new rate rider and, potentially, incentive rewards to the utility only to

new DSM and EE programs. G.S. 62-133.9(a) defines new DSM or EE programs as those “adopted and implemented on or after January 1, 2007, including subsequent changes and modifications.”² Finally, Commission Rule R8-68 also distinguishes between existing, modified, and “new” EE and DSM programs.³ Therefore, “new” programs are those adopted and implemented after January 1, 2007, including subsequent changes and modifications to those programs.⁴

Most of the discussion regarding the definition of “new” programs centered on Duke’s proposed DSM programs. The Coalition, in its Brief, noted that, according to witness Schultz, by the fourth year of save-a-watt, as proposed, Duke will have achieved only 120 MW of energy conservation or “capacity reduction,” that would offset the need for new baseload capacity. As witness Schultz acknowledged, the remaining 846 MW in “savings” would be in the form of DR, or “peak shaving.” And of this 846 MW, some 700 MW were already in the system from an existing DR program.

The Coalition asserted that, during cross-examination, Duke witness Hager admitted that Duke has included 700 MW of DSM that will be carried into save-a-watt in its last several Annual Plans, and the Commission has relied on that 700 MW in issuing its orders on Duke’s IRPs. According to the testimony of Company witness Schultz, “[i]n order for a smooth transition, the monthly capacity credits for mandatory curtailments will be the same as the old interruptible service program for currently participating customers for the initial three year contract under PowerShare.” The Coalition, therefore, argued that, for a cost of \$343 million, Duke’s North Carolina ratepayers will receive 120 MW in energy conservation, and 146 MW in new DR. According to the Coalition, these meager energy savings will not allow Duke to defer or avoid new baseload generating units within the timeframe projected in Duke’s IRP.

The Attorney General asserted that Duke’s proposal to incorporate its existing 700 MW of DSM/EE into save-a-watt programs creates minimal new value for ratepayers. SB 3 authorizes incentives based on avoided costs only for DSM and EE programs initiated after January 1, 2007. To accept expansion of the existing 700 MW programs as “new” measures would evade SB 3’s purpose of increasing the use of DSM and EE measures and its objective of providing incentives for new DSM and EE savings. According to the Attorney General, since April 1996, North Carolina ratepayers have paid Duke approximately \$280 million for operating its existing DSM/EE programs. (*Quarterly Reports on Status of DSM Account*, NCUC

² Under Section 16 of SB 3, however, the provisions of Section 4, the cost recovery mechanism provision, apply only to costs incurred on or after August 20, 2007, the date SB 3 was signed into law.

³ Commission Rule R8-68(b)(6) defines “new” consistently with G.S. 62-133.9 and Commission Rule R8-68(c)(3), which lists the filing requirements for an electric utility filing for approval of new or modified DSM or EE programs.

⁴ Further, G.S. 62-133.9(e) provides that costs of new DSM and EE programs shall be assigned only to the class or classes of customers who directly benefit from the programs; G.S. 62-133.9(f) provides that industrial customers may opt-out of participating in new DSM and EE programs and be exempted from paying for the costs through the rider; and G.S. 62-133.8(b) provides that electric public utilities may use new EE measures to meet 25% of the Renewable Energy and Energy Efficiency Portfolio Standard (REPS).

Docket No. E-7, Sub 487.) The Attorney General contended that ratepayers should not have to pay Duke new incentives to continue doing what the Company has been paid to do for many years.

NC WARN agreed with the Attorney General, stating that, as an example, Duke has had a DSM curtailment program for industrial customers, Rider IS, that has been in place since 1981, although that program has been closed to new members since approximately 1991. NC WARN remarked that the program has a capacity of approximately 700 MW but has never been used by Duke to shift load or lower peak usage. NC WARN also echoed the Attorney General's assertion, maintaining that the costs for Rider IS are recovered in base rates, and since 1996 it has cost the ratepayers approximately \$280 million. NC WARN concluded that the purpose of the save-a-watt proposal is to terminate Rider IS and reconstitute it as a "new" program called PowerShare.

The CIGFUR Intervenors added that Duke should not be allowed to repackage existing programs and treat them as new merely for purposes of enhanced cost recovery. Rider IS has been in place since 1981 as a mandatory interruptible program at times of system capacity constraint. PowerShare merely combines this mandatory program with voluntary programs (economic curtailments). They further asserted that Duke has not shown why these mandatory and voluntary programs could not continue to remain as separate options through separate riders.

Duke's Definition of "New" Programs

Duke argued that the statute, G.S. 62-133.9(a), defines "new" measures as ones that are "adopted and implemented on or after January 1, 2007," and that the proposed EE programs for which the Company seeks approval all meet this definition. The reason that each program is properly classified as "new" is simple – each program would, in fact, be adopted and implemented after January 1, 2007.

According to Duke, the responses by the intervenors centered on three lines of argument. First, the Attorney General asserted that the programs are not "new" because many of them have already been implemented in some form by Duke's affiliates in the Midwest. Second, the Attorney General maintained that because the Company's IRP already shows 700 MW of DR capacity available for planning purposes, only savings above this level can be considered "new." The 700 MW is actually derived from the 2006 IRP. DR capacity referenced in the 2007 IRP dropped, however, as Company witness Hager testified, to 600 MW. Third, the Public Staff and certain other intervenors argued that two of the Company's new programs, the Residential Power Manager program and the Nonresidential PowerShare program, are not truly "new" because they are merely continuations of existing Company programs. Duke contended that the Attorney General, the Public Staff, and other intervenors are incorrect in such arguments.

Duke asserted that the Attorney General's first argument is easily disposed of, as SB 3 applies to Duke Energy Carolinas, LLC, and, specifically, does not apply to any of its Midwestern affiliates, all of which are different legal entities. In any event, as Duke

witness Schultz testified, although there may be some similarities between the programs adopted in the Midwest and the programs adopted by the Company, there are also differences. Witness Schultz explained that those differences are specifically related to differences in the various markets, because what might work in an urban area like greater Cincinnati might not work in North Carolina, "with all its municipalities and coops that make [the Company's service territory] . . . look like Swiss cheese, [so] you end up with a different approach to how you go to market." And, as witness Schultz further testified, all this is more than "mere" marketing.

As to the Attorney General's second point, Duke responded that the programs that make up the 700 MW of DR capacity in the 2006 IRP are again not the same as the programs offered through save-a-watt. The Attorney General's argument completely misses the point of SB 3. The legislation is geared toward encouraging the implementation of EE measures, not the intricacies of how DR might or might not be accounted for in an IRP.

The Public Staff's argument was articulated by witness Floyd. Essentially, according to Duke, the point witness Floyd attempts to make is that Power Manager and PowerShare are too similar to the programs they replace to be categorized as "new." Duke asserted that witness Floyd takes this position even while he candidly admits that there are features that are different from the old programs, even features that "fall within the lines of the changes" that he would advocate. For example, one principal difference between the newly proposed Power Manager program and the Company's existing residential Load Control program is that Power Manager permits cycling of interruption periods. Cycling is a feature that might make the program more attractive to customers, as it would allow the air conditioner to operate intermittently to keep the temperature in a customer's house at a level that maintains comfort.

Duke argued that witness Floyd's view of PowerShare similarly failed to acknowledge the "newness" of the program even though he acknowledged that it contained features different from the old Rider IS and Rider SG programs that PowerShare is intended to replace. For example, witness Floyd admitted:

- That PowerShare added a credit for curtailed energy of \$0.10 per kilowatt-hour (kWh), but that Rider IS did not, and that "[t]hat is a change."
- That PowerShare added a voluntary curtailment option, which "is a new option."
- That under PowerShare customers would be paid a higher credit for participation than they would have under Rider SG.⁵

⁵ Witness Floyd testified that simply because the rate was changed does not make it a new feature – forgetting, argued Duke, that the whole purpose of save-a-watt and any EE program would be to attract greater customer participation, and that an important way to do so would be, of course, to offer more attractive terms for such participation.

- That under PowerShare customers would be better informed about how and when curtailment events would occur – again, making the program more customer-friendly and more attractive.
- That under PowerShare the number of hours the program could be used drops from 150 to 100 – again, making the program more customer-friendly and more attractive.
- That under PowerShare the penalty imposed upon noncompliant customers is less onerous.

Duke explained that in each instance, despite the fact that each modification of the existing Rider IS and Rider SG programs was implemented in order to make PowerShare more attractive to customers, witness Floyd simply refused to acknowledge that those new features made the program “new.” They might be “a step in the right direction,” but they simply were not “material” enough, even, apparently, on a cumulative basis, to enable PowerShare to be classified as “new.”

Duke asserted that the problem is that neither witness Floyd nor the Public Staff could come up with any applicable standard as to when a program is sufficiently changed to be classified as “new.” Duke observed that Commissioner Ervin had asked the following pertinent question:

All right. I guess I'm going to ask you the question nobody else was going to ask, and if this is giving you the eye, that's fine. We talked all around the question of how you determine that something was or wasn't a new program, and Ms. Heigel asked you questions about various factors that are considered, and you basically said, in effect, there wasn't a bright-line test, but you obviously had some standards that you applied in trying to make this determination. You know, we're obviously going to have to resolve this issue. What factors do you think are relevant?

In response, witness Floyd stated that there was “no bright line,” and he did not have to make that decision, the Commission did.

Duke alleged that witness Floyd and the Public Staff have it wrong. SB 3's definition of “new” is not designed to be highly technical or complicated. After all, the point behind the statute is to encourage, not discourage, the adoption and implementation of EE programs. Any such program adopted and implemented after January 1, 2007, is classified as “new” for purposes of the statute. Duke emphasized its position that it is truly that simple, and each of the programs presented by the Company in this docket qualifies since they indeed will be adopted and implemented after that date. The fact that each is also materially different from programs that the Company is discontinuing is an added reason to classify each program as “new,” but the statutory definition is met simply by the timing of the programs' adoption and implementation.

The Commission heard much testimony as to what constituted a new, as opposed to an existing, EE or DSM program. In this case, the Commission must determine whether modifications to existing EE and DSM programs convert them to "new" programs for purposes of G.S. 62-133.9. There is no bright-line test. On the one hand, Duke should not be required to completely reinvent the wheel to establish "new" EE and DSM programs. Most programs addressed by the parties in this case bear similarities to programs that have existed in the past and do not contain revolutionary, new concepts. It is often necessary, and indeed advisable, to borrow elements of other successful programs from North Carolina or elsewhere to develop "new" EE and DSM programs. Moreover, the goal of any EE program, whether new or old, is to encourage the customer to save energy, just as the goal for any DSM program, whether new or old, is to reduce and/or shift peak load. On the other hand, minor modifications, such as merely changing a few attributes or changing the program's name, are not sufficiently material enough changes to transform an existing program into a "new" one for purposes of G.S. 62-133.9. Therefore, modifications to programs existing before January 1, 2007, do not always constitute new programs under G.S. 62-133.9. Recognizing minor modifications as wholly new programs may thwart the intent of the statute to encourage utilities to adopt and implement DSM and EE programs in addition to those existing before January 1, 2007. The issue of "newness" regarding individual programs is further addressed below.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8 THROUGH 31

Proposed EE Programs

Duke has requested approval of six EE programs: (1) Residential Energy Assessments; (2) Residential Smart Saver (RSS); (3) Low Income Services; (4) Energy Efficiency Education Schools Program; (5) Nonresidential Energy Assessments; and (6) Nonresidential Smart Saver (NRSS). These programs are described in detail in Schultz's Exhibit No. 2, attached to his direct testimony filed on April 4, 2008. Duke witnesses Schultz and Stevie also attached to their direct testimony the results of the cost-effectiveness tests that Commission Rule R8-68 requires to be applied to these programs.

In its 2006 Annual Report, filed in Docket No. E-100, Sub 109, Duke listed its EE programs as: (1) Residential Energy Star rates; (2) RHP; and (3) SNEPLP. In its 2007 Annual Plan, filed in Docket No. E-100, Sub 114, Duke listed those same programs, but also included the following programs resulting from the May 22, 2006 Order Approving the Joint Recommendation of Duke Energy Carolinas, the Public Staff, and the Attorney General for Conservation and Energy Efficiency Programs in Docket No. E-7, Sub 795: (1) Energy Efficiency Kits for Residential Customers; (2) Energy Efficiency Video for Residential Customers; (3) Large Business Customer Energy Efficiency Assessments; and (4) Large Business Customer Energy Efficiency Tools.

Admittedly, Duke's proposed EE programs in this proceeding incorporate elements of these 2006 and 2007 programs into their design. Duke has, however, materially changed its EE offerings from 2006-2007. For example, while the proposed

RSS program has the same goal as the existing RHP and SNEPLP, i.e., to encourage customers to use higher efficiency equipment, RSS does not provide a loan to any customer. Instead, it provides a targeted incentive, through customer rebates and discount coupons. Moreover, Duke has requested to cancel SNEPLP and instead implement the Low Income Services Program. The Low Income Services Program differs from SNEPLP in that Duke no longer will make loans to customers, but will instead provide assistance to low-income customers through local aid agencies. Also, Duke plans to retain its Residential Energy Star rates program from 2006-2007, but also intends to ramp up its residential energy assessments by adding and emphasizing in-home assessments. Additionally, although Duke has had programs that distributed EE kits and CFLs to customers in the past, it now proposes to target that distribution to school children and school administrators, as well as to low-income customers using assistance agencies.

Duke has proposed EE programs in this proceeding that are very similar to programs it or an affiliate has already adopted and implemented in Kentucky, Ohio, or Indiana. Duke should not be faulted for proposing EE programs in North Carolina as new that have good track records in other states; this is a benefit of the Duke/Cinergy merger. As SB 3 intended to "promote the development of renewable energy and energy efficiency in the State through implementation of a renewable energy and energy efficiency portfolio standard," G.S. 62-133.9 can be reasonably read to limit cost recovery to EE and DSM programs that are new in North Carolina. This reading obviates the need to compare any proposed EE or DSM program to all of the existing EE programs nationwide (or globally, for that matter) to determine "newness" of a program at the time of approval. As stated above, successful EE programs or aspects of EE programs should be adopted and implemented in North Carolina to comply with the intent of SB 3. As noted earlier, that is not to say, however, that simply "tweaking" or renaming an existing program converts it to a new one, as will be discussed later.

With few exceptions, no party disputed that Duke's proposed EE programs would be cost-effective, based on the evidence submitted by Duke witnesses Schultz and Stevie. The Public Staff noted, however, that the Low Income Weatherization Services portion of the Low Income Services Program did not pass any of the cost-effectiveness tests required by Commission Rule R8-68. Notably, according to Stevie Exhibit No. 3, however, the Low Income Services Agency Kits measure of the program did pass the TRC test and the UCT. With this program, Duke intends to work with local aid agencies to assist low-income customers in saving energy, and consequently, money.

Public Interest Intervenors' witness Colton criticized Duke's proposed portfolio of EE programs as failing to serve low-income households, and described a number of exemplary programs that he suggested the Company model its programs after instead. Specifically, witness Colton expressed concern that the Low Income Energy Efficiency and Weatherization Program will not be widely available to low-income households because its application is restricted to households with incomes of 150% to 200% of the federal poverty level and is limited to owner-occupied, single-family, all-electric residences. Witness Colton criticized the Company for assuming that weatherization agencies are available to distribute and install weatherization and starter kits. He based this criticism on his assumption that Duke is planning to leverage federal funds for these

purposes, and federal regulations disallow federal weatherization assistance for households above 125% of the poverty level. Witness Colton cited the Public Service of Indiana (now Duke Energy Indiana) low-income program as an exemplary program that Duke should emulate.

Company witness Morgan testified that, contrary to witness Colton's suggestion that Duke is ignoring the needs of North Carolina's low-income population, the Company's proposed low-income program provides for full weatherization services for up to 5,000 eligible households. Witness Morgan explained that the Weatherization and Equipment Assistance component fills a service gap by targeting customers with incomes between 150% and 200% of the federal poverty level who currently cannot receive services from the existing Federal Weatherization Assistance Program (WAP). He testified that participating customers would receive full-weatherization services similar to what is currently offered through the WAP program. Witness Morgan pointed out that the proposed Refrigerator Replacement Program and the delivery structure of working with the weatherization agencies through the State is based upon this Duke Energy Indiana program that witness Colton cites as worthy of emulation.

According to witness Morgan, the Energy Efficiency Products component is designed to "piggyback" onto existing WAP services provided by local weatherization agencies. Duke would provide EE kits that can be installed while agency representatives are at participants' homes performing other weatherization work. Witness Morgan testified that, contrary to witness Colton's assumption, federal funds will not be used for the administration of the program.

Witness Morgan explained the rationale for the Company's low-income program being limited to owner-occupied, all-electric homes. Owner occupied homes allow the Company to work with customers who will benefit directly from the improvements in the home and not cross-subsidize landlords with ratepayer funds. Owners have longer tenures in their homes and thus benefits to participants and nonparticipants are longer. All-electric residences are chosen so that electric customers pay for electric savings only.

Witness Colton recommended expanding the low-income program to all recipients of food stamps receiving an Excess Shelter Deduction, low-income housing units treated through the Federal WAP program, and Section 8 housing and existing housing units developed within the last 15 years using Low-Income Housing Tax Credits (LIHTC) or Home Investment Partnership Program (HOME) subsidies. Witness Morgan testified that these changes and expansions would significantly increase the cost of this program and would likely significantly diminish its cost effectiveness. Company witness Cicchetti testified that witness Colton's expansive view of EE as a vehicle to reshape government and private institutions and investments to help low-income consumers goes too far, and that there are limits on the ability of the electric utility industry to serve as a low-income assistance agency.

Duke stated that public utilities must balance the needs of low-income customers with the rate impacts on nonparticipants in the program. According to Duke, witness Colton advocates a major increase in spending for low-income customer programs that

are not as cost effective as the Company's other current program designs, and that if his program expansions are implemented, the nonparticipant rate impacts would increase.

The Commission is of the opinion that Duke's Low Income Energy Efficiency and Weatherization Assistance Program strikes an appropriate balance between assisting low-income customers and maintaining cost effectiveness. Public Staff witness Floyd testified that, despite the fact that this program does not pass any of the cost-effectiveness tests shown on Stevie Exhibit No. 3, it is nonetheless in the public interest because it promotes the use of EE to the benefit of low-income ratepayers who otherwise might not participate in other EE programs. For the reasons set forth by Duke, the Commission agrees that the Low Income Energy Efficiency and Weatherization Assistance Program, as proposed, is in the public interest and will benefit Duke's customer body as a whole. As such, the Commission approves this program.

With respect to EE programs, another measure that did not pass certain cost effectiveness tests is the HVAC measure of the RSS program. Duke's proposed RSS program would be comprised of two measures: (a) the Energy Star Products measure and (b) the HVAC measure. The Energy Star Products measure is cost-effective. The Public Staff stated that, at this time, it is only limited to CFLs, but if Duke wants to expand that measure it should update its application. Otherwise, the Public Staff concluded that the Energy Star Products measure should be approved. Duke intends for the HVAC measure to encourage customers to purchase certain HVAC systems and geothermal systems exceeding a Seasonal EE Ratio (SEER). For new residents, \$300 per unit would be paid to the builder or the builder's designee. For existing residents, \$200 per unit would be paid to the owner of the residence, and \$100 would be paid to the HVAC dealer who sells and installs the HVAC system. Moreover, Company witness Schultz noted that Duke had implemented a similar program with success in Ohio and Indiana.

Consistent with Commission Rule R8-68(c)(2)(iv), Duke submitted the results of the following cost-effectiveness tests for the HVAC measure: the TRC test, the Participant Test, the UCT, and the RIM Test. The data suggested that the HVAC measure is cost-effective under the UCT and the Participant Test; however, it did not pass either the RIM test or the TRC test. Therefore, Public Staff witness Floyd expressed concern about the cost-effectiveness of this program. Duke argued in response to those concerns that the UCT was the primary cost-effectiveness test and that, consequently, the Commission should give more weight to the results of that test in determining whether to approve the program. The Commission has previously determined, however, that it should give no particular test any more weight than any other.

In this case, the Commission is of the opinion that the HVAC component of the present program is in the public interest, and, having passed two of the cost-effectiveness tests, should be approved.

Overall, many intervenors argued that Duke could have been more aggressive in saving energy through save-a-watt, but no party disputed that the proposed EE programs would result in some energy savings. Duke responded that it seeks approval of its initial portfolio of EE programs at this time with the intent of expanding and adding to these programs in the future. In sum, the Commission finds that Duke's proposed EE programs constitute a reasonable start and that they are, in fact, new programs. Because Duke's proposed EE programs are generally cost-effective and because they encourage EE, the Commission finds and concludes that they are all in the public interest and, as such, should be approved. The Commission further authorizes Duke to cancel its existing SNEPLP and RHP programs. The Commission strongly encourages Duke to expand and add to its initial portfolio of programs as quickly as possible.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 32 THROUGH 42

Proposed DSM Programs

In its 2006 and 2007 Annual Plans, Duke listed the following DSM programs: (1) Rider LC, (2) Residential Water Heating Direct Load Control;⁶ (3) Rider IS; and (4) Rider SG. Under save-a-watt, Duke proposed to cancel Riders LC, IS, and SG and transfer the customers into its two proposed DSM programs: Power Manager and PowerShare.

Power Manager

Power Manager is an interruptible program that would be available to individually metered residential customers. Through Power Manager, Duke would provide billing credits in exchange for allowing Duke to (1) interrupt service to residential customers' central air conditioning systems; and (2) intermittently interrupt (cycle) service to the residential customers' central air conditioning systems. Duke proposed to transfer existing air conditioning load control customers on Rider LC to Power Manager automatically upon approval of the program and require payment of the installation fee. Rider LC would then be cancelled.

The Public Staff asserted that Power Manager is virtually identical to existing Rider LC. It stated that, like Rider LC, Power Manager would: (1) allow Duke to control all central air conditioning units in the participating residences; (2) include an \$8.00 per month credit for the control periods of July through October; (3) limit the total credits paid to the customer to 35% of the current monthly bill; and (4) include a \$35 installation fee for needed wiring to connect the control devices. According to the Public Staff, the only significant difference between the programs is that existing Rider LC does not limit the control period. Power Manager will limit the exposure period to 18 hours from 6:00 a.m. until 12:00 a.m. and the interruption period to no more than 10 hours per day. Public Staff witness Floyd also testified that he did not see much difference between the dollar amounts assigned to Power Manager from that of Rider LC. Moreover, Duke indicated that there were 194,000 customers participating in Rider

⁶ This Program was cancelled in Duke's last rate case, Docket No. E-7, Sub 828.

LC as of August 2006. Duke projected 141,460 customers would participate in Power Manager. Based on the above information and the exhibits attached to witness Schultz's direct testimony, it appeared to the Public Staff that Duke intends to operate Power Manager in much the same way as it does Rider LC.

The Public Staff explained that, to convert Power Manager as described to a new program, Duke could include a cycling program that would be more attractive to customers than what is offered now. New load-control equipment that would improve the cycling of the customer interruption periods could be added. Duke contended that it included this cycling program in its save-a-watt application, but that such inclusion was not evident to Public Staff witness Floyd when he reviewed the application. Witness Floyd further stated that if Duke were to provide him with information on the equipment that it plans to use and demonstrate how it would improve the cycling as he has recommended, he would reconsider his assertion that Power Manager was not essentially different from Rider LC. Therefore, the Public Staff recommended that the Commission require Duke to provide this information to the Commission and the Public Staff for additional review.

According to Duke, Power Manager permits cycling of interruption periods. Cycling is a feature that might make the program more attractive to customers, as it would allow the air conditioner to operate intermittently to keep the temperature in a customer's house at a level that maintains comfort. The Company expects that the cycling feature will make Power Manager easier to "sell" to customers, and that higher customer participation will result in greater EE savings. Duke explained that, although witness Floyd's prefiled testimony states that the Company could make Power Manager into a "new" program by improving its cycling of interruption periods – the very improvements that the program has in fact incorporated – witness Floyd refused on cross-examination to acknowledge that the program indeed included the improved cycling he wanted to see. Witness Floyd testified that he simply did not see how "what Duke was proposing with the new Power Manager would be any more attractive to the customer than what was previously offered to the customer"

Duke stated that, under existing Rider LC, Duke may only utilize the existing load-control system in emergency situations, which typically means that control of the switches on the system is at 100% shed for the duration of the emergency event. Air conditioning load control has not been utilized under an emergency condition for over ten years. The only other time the system may be used is for testing purposes. In addition to emergency utilization, under Power Manager the air conditioner load control system will be available and operated to efficiently manage peak load for targeted cycling control hours during cooling season months as needed. A typical cycling event may last approximately two to four hours. Cycling will occur for a percentage of each half hour for the entire time period of the event with the percentage differing depending upon the temperature. Should there be a need for cooling, the cycling allows the air conditioner to operate intermittently to keep the temperature in the home at a level that maintains customer comfort while providing Duke with the needed reduction in kilowatts (kW) during the event.

The Commission agrees with Duke that its proposed cycling of interruption periods may make the program more attractive to residential customers. This improved cycling feature is sufficient to deem Power Manager a new program, and the Commission is of the opinion that Power Manager is in the public interest. Therefore, the Commission approves the Power Manager program. The Commission further requires that customers on Rider LC should be given the opportunity to discontinue participation before being transferred automatically into Power Manager and that, once the current program has been terminated, Duke is authorized to cancel Rider LC.

PowerShare

Duke proposed replacing existing Riders IS and SG with PowerShare. PowerShare would serve as the main DSM program for commercial and industrial customers.

Rider IS currently provides the opportunity for nonresidential customers to contract for up to 50,000 kW of load to be interrupted at Duke's election. Enrollment in Rider IS is limited to 1,100 MW of interruptible load. Customers' exposure periods for interruptions are limited to the following: 1:00 p.m. to 9:00 p.m. (Monday – Friday only) from June through September and 6:00 a.m. to 1:00 p.m. (Monday – Friday only), from October through May. Holidays are excluded from interruption for Schedule OPT (Optional Power Service, Time-of-Use) customers only. Exposure to interruption is limited to no more than 150 times per year and no more than 10 hours per day with 30 minutes of notice. A capacity credit is paid based on the effective interruptible demand, and a penalty is assessed if a customer exceeds the firm contract demand during the interruption period.

Rider SG is a standby power generation program in which nonresidential customers are required to shift part of their load from the Duke system to their own generation source at Duke's request. Two options are available to these customers: Standard Option and Guarantee Option. A customer contracted under the Standard Option makes its generation available on a voluntary basis and is paid a credit based on the energy generated by the customer during the control period. A customer contracted under the Guarantee Option must make its generation available at least 80% of the time Duke calls upon it and must provide a minimum of 200 kW of capacity.

Customers participating in PowerShare would choose among three options: (1) the generator option; (2) the mandatory option; and (3) the voluntary curtailment option.

Duke proposed to transition the customers on Rider IS and Rider SG to PowerShare after those Riders are cancelled. To accomplish a smooth transition, Duke proposed to maintain the same monthly capacity credits for mandatory curtailments from Rider IS and Rider SG to PowerShare.

The Public Staff questioned whether PowerShare is a new program and whether there are any actual differences between the proposed PowerShare program and the

existing Riders IS and SG. It argued that, despite changes in the variables concerning on and off-peak hours and exposure periods, PowerShare would not materially increase the amount of interruptible load from existing nonresidential DSM riders. For example, Duke presently has annual revenues of \$10,668,000 through Rider IS. With the same amount of interruptible load, Duke would derive about \$16,459,200 of annual revenues through PowerShare, an increase of approximately 54.29%. According to the Public Staff, Duke witness Schultz acknowledged on cross-examination that the revenue comparison was "fair" and that Duke would recover more from PowerShare than from existing Rider IS and Rider SG.

According to Duke, the PowerShare program includes both a mandatory option, under which customers receive a capacity and energy credit, and a voluntary curtailment option, under which customers receive an energy credit for load curtailed. Duke noted that Public Staff witness Floyd and CIGFUR witness Phillips testified that Duke's proposed PowerShare program is not a new program and, therefore, is not eligible for recovery through a rider or for incentives under SB 3. Specifically, witness Floyd contended that PowerShare is too similar to the Company's existing Rider IS and Rider SG to be considered new under the statute. Although witness Floyd detailed the differences between PowerShare and existing Rider IS and Rider SG in his prefiled testimony and acknowledged new aspects of PowerShare during his cross-examination, he testified that the Public Staff does not believe that these differences "justify consolidating Riders IS and SG into one program and renaming it PowerShare."

Duke observed that CIGFUR witness Phillips took the position that because the Company operates an interruptible service program today, no interruptible DR program regardless of the features could ever be considered "new." Further, witness Phillips argued that the Company should offer new interruptible service options that would create "another tool" for utility operation and planning with a substantially reduced notice period and substantially increased credit, but that such a new tool would not constitute a "new" program.

Company witness Schultz testified that contrary to the assertions of witnesses Floyd and Phillips, the PowerShare program represents a transition from the outdated existing Rider IS and Rider SG to a new program using new technology. Witness Schultz explained that the proposed PowerShare mandatory option is different in many aspects compared to Rider IS and Rider SG. In particular, the compensation structure for the PowerShare generator option is significantly different from Rider SG for both the capacity and energy credits. Witness Schultz testified that in addition, the voluntary curtailment option never has been a component of either Rider IS or Rider SG. Additionally, for the first time, the Company is proposing a voluntary curtailment option that will provide participants the ability to earn energy credits on day-ahead, per-event basis. Witness Schultz testified that this new option also provides the Company with expanded criteria under which it may call upon the program.

In addition, the hours for interruption for PowerShare are 50 hours fewer than for Rider IS, and Duke would pay a \$0.10 per kWh energy credit for the generator option and mandatory option of PowerShare. Duke also explained at the hearing that one major difference between PowerShare and the existing DSM riders was that, under the

existing DSM riders, the service that customers received was only a potentially interruptible service. With PowerShare, Duke would actually interrupt its interruptible customers to reduce capacity requirements.

Witness Schultz described how Rider IS and Rider SG currently operate using technology that is over 20 years old, indicating that it does not include any event planning capability and provides little flexibility in the methods of notification and for settlement and billing format. Witness Schultz explained that PowerShare will operate using new technology that addresses and improves planning, notification, metering, and settlement with respect to interruption events.

Duke again asserted that, under SB 3, if changes and modifications are made to existing EE programs, these programs may constitute new programs eligible for recovery through the rate rider and incentives available under G.S. 62-133.9 and Commission Rule R8-69.

CUCA alleged that Duke's proposal to move existing Rider IS customers into the save-a-watt program is grossly unfair to manufacturers. At the present time, Rider IS customers, after an initial five-year period, can discontinue service under the rider with a 12-month notice to Duke. CUCA submitted, however, that Duke is proposing that these Rider IS customers be moved to the save-a-watt program, pay the associated surcharge for the program, and stay in that program "for five years or for the life of the measure, whichever is longer." As a result, Duke is proposing to force customers to pay a rate surcharge for a multi-year period of time as compared to the current situation where many customers can withdraw from Rider IS with a one-year notice.

CUCA observed that witness Schultz testified that if the existing programs are cancelled and the new rider approved, Duke would recover more under save-a-watt than it does today for the existing DSM programs. Under cross-examination, witness Schultz agreed that there would be an approximate 54.3% difference on the revenue side in the amount of recovery between the current methodology versus Duke's save-a-watt proposal. CUCA explained that Duke's save-a-watt proposal is a smorgasbord in that it requires manufacturers to pay for a series of EE programs. It maintained that Duke's proposal to force Rider IS customers into save-a-watt will essentially require these customers to subsidize programs that they neither want nor can use in their daily operations or that they have already provided for themselves. CUCA does not believe that such cross-subsidizations within various EE programs are in the best interest of consumers in the Duke service territory.

According to CUCA, Duke witness Schultz explained that industrial customers cannot opt out of the individual programs pursuant to G.S. 62-133.9(f); rather, the choice to opt out applies to Duke's entire portfolio of EE and DSM programs. Once a customer elects to opt in to an EE or DSM program, the customer may not subsequently choose to opt out of Rider EE for a period of five years or for the life of the applicable measure, whichever is longer. CUCA believes that this proposal forces industrial consumers to buy into a host of EE programs from which they may not benefit. Duke's proposal offers a lighting program, a motors program, an HVAC program, and a customer-specific program. A manufacturer cannot participate in just the lighting

program, for example. Instead, the manufacturer is forced to pay a rate that would include costs associated with all of the nonresidential programs. CUCA maintained that, as proposed by Duke, North Carolina manufacturers are faced with the reality of choosing between no conservation efforts, other than their own efforts, and having to pay for programs for other industrials with whom they may compete. CUCA believes that it is in the best interest of all consumers to allow industrial customers to pick-and-choose the programs which will benefit their operations and not subsidize their competitors.

The CIGFUR Intervenors observed that Duke proposes to replace Riders IS and SG with "Rider PS," denoting PowerShare, but which would incorporate major portions of the two existing programs. The mandatory option of PowerShare contains most of the features of Rider IS, which is also a mandatory curtailment program. There are some differences as to availability, limits of exposure periods, limits on exposure, facility fees, and penalties for failure to comply with curtailment requests. However, according to the CIGFUR Intervenors, these differences are relatively minor and do not change the fundamental nature of the program.

The CIGFUR Intervenors asserted that there is considerable incentive for Duke to repackage and rename existing EE programs. Under the existing EDPR mechanism, recovery of the cost of existing EE programs is based on program costs. If the repackaged programs qualify as "new" and if the save-a-watt avoided-cost approach to cost recovery is approved, however, the levelized costs of new "Rider PS" are \$33.79 per kW versus revenues of \$51.28 per kW.

The CIGFUR Intervenors reasoned that, because of the provisions of SB 3, "Rider PS" is not likely to be effective in attracting interruptible industrial load. The costs of new DSM programs are to be assigned only to the classes of customers that directly benefit from the programs, and none of the costs of such programs may be assigned to industrial customers who elect not to participate in new, utility-sponsored programs, according to G.S. 62-133.9(e) and (f). Under this statutory framework, the CIGFUR Intervenors believe that most industrial customers are likely to elect not to participate in new, utility-sponsored programs. If this proves to be the case, participation in PowerShare would not be economic because participants would pay the costs of the program, which, including incentives to the utility, could be more than the credits they would receive.

The CIGFUR Intervenors observed that Rider IS has been approved for up to 1,100 MW of interruptible participation. However, Rider IS has been unilaterally closed by Duke to further participation. Current participation is down to 284 MW, leaving more than 800 MW of unused potential. And, Duke has filed preliminary information regarding plans to construct a 677-MW, simple-cycle, combustion-turbine, generating facility in Rockingham County (Docket No. E-7, Sub 861, July 30, 2008).

According to the CIGFUR Intervenors, Duke has acknowledged the need for additional interruptible capacity by proposing to open "Rider PS" to 1,500 MW of demand. Yet, Duke has refused to allow a recent 8 MW increase in the Air Products load to be served under Rider IS. As a result, Air Products has been forced to buy

8 MW of firm power despite its willingness to interrupt. Duke suspended the availability of Rider IS in 1991 when the program was fully subscribed. In succeeding years, Duke has continued to suspend availability of the rider to new load even though some customers have ceased participation in the rider.

The CIGFUR Intervenors maintained that Duke's decision to close Rider IS to further participation was made during a time when the Company's avoided costs of generation was declining and other resources had become a more cost-effective means of supply. This rationale is no longer valid. Duke no longer has adequate capacity, and new capacity has significantly escalated in cost since 1991. Further, the 1,100 MW cap was established at a time when Duke's system demand was considerably less than it is today.

The CIGFUR Intervenors pointed out that Duke has an immediate and pressing need for additional interruptible capability to help meet increasing demands upon its system. And in recognition of this need, Duke proposes to offer "Rider PS." Since Duke acknowledges the value of and need for additional interruptible capability now, the CIGFUR Intervenors concluded that it is inefficient to leave Rider IS potential untapped.

The CIGFUR Intervenors argued that Rider IS has not been reviewed since Duke's 1991 general rate case. Rider IS provides a monthly credit to participating nonresidential customers of \$3.50 per kW of effective interruptible demand. This credit was calculated using the "equivalent peaker approach" at a time when the installed cost of a combustion turbine was \$433 per kW. Witness Phillips calculated a \$5.625 per kW current credit using essentially the same methodology ("equivalent peaker approach") approved by the 1989 Rider IS Order.

The CIGFUR Intervenors noted that the installed cost of a combustion turbine was \$715 per kW in January 2008 dollars for Duke Energy Indiana according to a filing with the Indiana Commission on February 28, 2008. Assuming a similar cost for Duke Energy Carolinas, LLC, according to the CIGFUR Intervenors, a credit of \$5.65 per kW is appropriate today under the "equivalent peaker approach," which tends to corroborate witness Phillips' calculation of \$5.625 per kW credit.

The CIGFUR Intervenors argued that Duke's proposal to repackage existing DSM programs under new names and recover 90% of the theoretical costs avoided by the repackaged programs rather than program costs plus a return under the EDPR should also be rejected. In particular, Duke should not be allowed to cancel Rider IS and replace it with a substantially similar interruptible program repackaged as "Rider PS." Duke has a present need for additional interruptible capability. Rider IS has unused potential for approximately 800 MW of additional interruptible load. In conclusion, the CIGFUR Intervenors asserted that Duke should be required to reopen Rider IS to its authorized level so that this potential can be realized now. The current Rider IS credit of \$3.50 per kW is inadequate. The credit should be adjusted to \$5.625 per kW using the "equivalent peaker approach."

Company witness Schultz explained that interruptible service provisions were approved as part of the nonresidential rate schedules in 1979. The provisions were

removed from the schedules and incorporated into Rider IS in 1981, along with an increase in credits. There were few participants until the Rider underwent revisions in 1989 that substantially increased the credits and reduced the maximum number of hours per year a customer could be interrupted. Within two years after these changes, the Rider was fully subscribed. The Company suspended the availability of Rider IS to new customers in 1991 because other more cost-effective resource options were available. The number of customers and the amount of load have decreased over time through attrition. The Company called upon participants to actually curtail load only eight times over the last 17 years. Witness Schultz testified that given Duke's need for additional capacity, it is time to update Rider IS to improve its flexibility and effectiveness.

Witness Schultz testified that, rather than reopening outdated programs that have been underutilized by the Company, Duke believes that the best way to achieve increased participation in DR programs is by changing from the utility-centric model represented by Rider IS and Rider SG to a customer-centric model that reflects the option value of curtailable load to the customer and provides customers with the ability to choose the best options given their operational and business constraints.

In response to witness Phillips' argument that, even without any program modifications, the credit amount should be increased, Duke stated that, given the purported unmet demand for Rider IS at its current incentive value, it does not appear necessary to increase participant incentives to attract more participation. Company witness Hager also explained that rather than maximizing Rider IS and Rider SG, as suggested by Public Staff witness Floyd, the amount of DR must be controlled carefully to ensure that the reliance on the program as a system resource does not require more curtailments than participants can tolerate.

The Company is of the opinion that it has shown that the existing programs it has proposed to cancel are outdated and underutilized. Duke argued that it has developed new programs that use new technology designed to combat the problems with existing programs identified by the Company and its customers.

The Commission notes again, that the main issue with PowerShare is its newness, or lack thereof. Duke takes its interpretation of the term "new" from the language in SB 3 and from Commission Rule R8-68. Duke also points to a list of modifications that change the old Riders IS and SG into a more comprehensive PowerShare program. Additionally, Duke notes that the Public Staff and others cannot point to any bright-line test to use in defining the term "new."

Several intervenors argued that Riders IS and SG already encompass a large amount of existing DSM. The CIGFUR Intervenors, CUCA, the Attorney General, and the Public Staff asserted that Duke is simply repackaging the old programs to increase its revenues. Duke acknowledged that, of the 846 MW in DR from its proposed programs, approximately 700 MW was already included in existing DR programs.

The Attorney General argued that, to accept expansion of existing programs as "new" measures, would evade SB 3's purpose of increasing the use of DSM and

EE measures and its objective of providing incentives for new DSM and EE savings. The Attorney General and NC WARN asserted that, since North Carolina ratepayers have paid Duke about \$280 million for operating its existing DSM and EE programs since April 1996, they should not have to pay Duke new incentives to continue doing what the Company has been paid to do for many years. Instead of approving Duke's PowerShare program, the CIGFUR Intervenors request that the current Rider IS be increased to its original 1,100 MW of interruptible participation and that the kW credit be increased to a now-appropriate level based on the "equivalent peaker approach." In addition, the industrial groups point to other aspects of PowerShare that they do not like, including Duke's proposal to transition the customers on current Riders IS and SG to PowerShare after those riders are cancelled.

It is apparent to the Commission from the testimony that most of the DSM savings from PowerShare will come from a simple migration of current Rider IS and Rider SG customers. Yet, existing industrial customers, such as those represented by CIGFUR and CUCA, the type of customers that PowerShare is meant to help, do not seem to want it—at least not in the form proposed by Duke.

The Commission is of the opinion that the proposed PowerShare program is a new DSM program under G.S. 62-133.9 and that its approval is in the public interest. Nevertheless, current customers on Riders IS and SG will be allowed the opportunity to continue to participate in those programs at their current contract levels. As noted by CUCA and the CIGFUR Intervenors, to do otherwise would require current customers under Riders IS and SG to terminate their participation in Duke's DR programs altogether in order to exercise their right under G.S. 62-133.9(f) to opt out of Duke's cost recovery rider for new DSM and EE programs. The result of this all-or-nothing choice would likely be less DSM participation, not more—counter to the intent of SB 3. New customers, however, as well as additional contract volumes from current Rider IS and Rider SG customers, will only be eligible to participate in PowerShare. In preserving this option for existing customers, the Commission will not require Duke to reopen current Rider IS to additional MW of participation.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 43

Measurement and Verification Plan

Duke's M&V plan, which was commended by a number of other parties, provides for an independent review and evaluation of its proposed programs by establishing initial evaluation plan summaries that propose specific EE evaluation studies and activities. Third-party evaluation professionals will design, manage, and supervise the M&V plan and evaluations. Evaluations will be based on engineering projections of savings, as well as actual field evaluations, metering, monitoring, and M&V. Duke intends to verify generally about 5% of the installed measures, focusing more on high-savings and high-priority measures. Most utilities across the country set verification levels for their programs from zero to 10% of installed measures. Duke's M&V plan is state-of-the-art and conforms to the approaches described in the California Evaluation Protocols, National Action Plan for Energy Efficiency (NAPEE), and the International Performance Measurement and Verification Protocol (IPMVP).

Based upon the foregoing, Duke's M&V plan appears to be adequate and reasonable for its proposed programs. Accordingly, the Commission approves Duke's M&V plan.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 44 THROUGH 46

Existing DSM Program Rider

Duke presently recovers the costs of its existing DSM programs through an adjustable rider, the EDPR. The EDPR was recommended in the joint stipulation filed in Duke's last general rate case, Docket No. E-7, Sub 828, and was adopted by the Commission in its Order in that proceeding. The Order provided for modification or elimination of the EDPR and the DSM deferral account in this proceeding or in the Rulemaking Docket, so that the EDPR and deferral account may be appropriately adjusted to reflect the decisions in those dockets regarding the recovery of Duke's DSM and EE costs.

Consistent with this Order, the EDPR must be maintained and modified to allow Duke to continue recovering the costs for Riders IS and SG and to terminate cost recovery for cancelled programs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 47

Standard Offer Programs

The Coalition brought up the issue of standard offer programs. It stated that this is something that has been used to jumpstart EE programs elsewhere in the country. According to witness Henderson:

The Standard Offer is a mechanism for acquiring demand-side resources (energy efficiency and demand management) under which the utility purchases energy and/or demand savings using a pre-determined and pre-established rate (\$/kWh and/or \$/kW) These rates are based on the value of the energy and demand savings to the utility system and not on the cost of implementation, and are pre-established based on economic analysis and [by definition] meet required cost-effectiveness tests.

In other words, in a standard-offer program, the utility offers a "bounty" per kWh, that is less costly than the cost to the utility of generating that electricity, to industrial and commercial users to go out and find energy conservation and deliver it to the utility. Energy service providers often become involved, doing the analysis and implementation for users who would not otherwise be able to find those savings for themselves. As witness Henderson testified, these programs have had massive effects, generating millions of kWh in lifetime savings from single customers for very little money. The Coalition argued that "[t]his streamlined and straightforward program mechanism allows the energy service provider to generate and deliver projects easier and faster . . . while

also delivering significant lifetime energy cost savings to customers at very cost-effective program incentive levels.” The Coalition stated that, in light of those results, it is at odds with Duke’s pronouncements on its commitment to energy conservation in that this has been left out of save-a-watt altogether. According to the Coalition, Duke’s only response to witness Henderson’s criticism, that a standard offer program should have been included, was witness Schultz’s statement that save-a-watt’s nonresidential programming “is identical to the standard offer proposal, except that Duke would collect the bounty for the energy and demand impacts it achieves by partnering with customers and paying suppliers for their services.”

The Coalition responded that Duke’s response makes little sense. The whole point of a standard offer program, as witness Henderson explained, is that, at little or no implementation cost to the utility, companies will be incentivized, on their own or with the help of an energy service company, to rapidly retrieve the most economical efficiencies available and ones that the utility would not necessarily be in a good position to identify and/or attain.

Since this type of program was not proposed by Duke, the Commission will not require the Company to add a new program of this nature at this time. However, the Commission is of the opinion that a standard offer program may well have merit and, therefore, that Duke should be requested to give this concept serious consideration in the future as it investigates other EE and DSM mechanisms.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 48 AND 49

Request for Flexibility

As part of its save-a-watt proposal, Duke requested the flexibility to move funding from a program that Duke believes is achieving less success to one that is more successful. Duke explained that this flexibility was necessary to properly allocate resources so as to achieve the greatest measure of savings. Duke proposed to report to the Commission significant program changes, new programs, and program evaluation results. Company witness Schultz explained that such flexibility will allow the Company to maximize customer benefits; will let customer demand and markets dictate the ebb and flow of program funding; and will help the Company pursue impacts at the lowest possible cost. The Company also agrees that such flexibility should have its limits.

Witness Schultz provided an example of how such flexibility would assist Duke in administering its programs. With regard to participant incentives, Duke would report only changes to a maximum incentive amount. Duke would not report any changes to previously approved participant incentives that did not involve this maximum amount. Witness Schultz explained that if Duke determined it was in the customers’ best interest to vary the incentive amount to participants, it would do so without reporting this to the Commission. Duke did not provide any information to the Commission in its direct or rebuttal testimony on how it would notify customers or the Commission of such changes, although witness Schultz testified on cross-examination that the information

would be available on-line, through vendor networks, and, eventually, included in Duke's annual filing.

Public Staff witness Floyd testified that it was unclear what would constitute a "significant" program change. He recommended that the Commission maintain oversight of implementation of the programs. Witness Floyd noted that the Commission had considered a similar issue in the Rulemaking Docket and determined that it needed to maintain some oversight because of the untested nature of G.S. 62-133.9. Therefore, witness Floyd recommended requiring Commission approval of: (1) program changes or shifting of program resources that would result in program costs increasing or decreasing by more than 20% of the original program cost estimates initially approved by the Commission; (2) program changes that would increase or decrease the energy and demand savings projections by more than 20%; (3) any increases or decreases to participant incentives; (4) program changes that would alter the target customer groups; and (5) program changes that may result in the reassignment of costs and benefits from one customer class to another. Any combination of these changes would likewise require Commission approval.

According to Duke witness Schultz, certain of witness Floyd's suggestions seemed to contradict the intention of providing program flexibility. For example, witness Floyd recommended that the Company's flexibility should be limited if program costs, energy savings, or demand impacts vary by more than 20% above or below approved levels. Furthermore, witness Floyd suggested that "[c]hanges to the participant incentives offered" should trigger a review by the Commission. Witness Schultz pointed out that in compliance with the Commission's rules, Duke had provided the maximum incentives that may be offered under each of its proposed programs. Should the Company seek to change these maximums, it agrees that Commission approval is warranted; however, Duke disagrees that variations below the maximum level should require approval. Instead, the Company believes that such variances might be in the customers' best interest and should not necessarily require further regulatory review. Witness Schultz testified that such flexibility would allow the Company to shift funding among programs as the market dictates in order to derive the highest benefit while reducing unnecessary costs.

The Company proposed that the Commission should approve total avoided cost savings for the portfolio of energy efficiency and demand-response programs proposed by the Company and that spending 20% above such approved level would require additional Commission approval. In addition, Duke recommended that program changes that result in the reassignment of costs and benefits from one customer class to another, changes to the maximum participant incentives that may be offered, adding any new or removing any existing programs from the proposed portfolio of products and services, and any combination of the above changes should require additional Commission approval.

After consideration, the Commission concludes that it is in the best interest of the ratepayers for the Commission to maintain oversight as recommended by the Public Staff. Therefore, prior to implementation, Duke shall be required to obtain approval from the Commission for the program changes in the five categories as recommended

by witness Floyd. Specifically, the following types of program changes that will require Commission approval are: (1) program changes or shifting of program resources that would result in program costs increasing or decreasing by more than 20% of the original program cost estimates initially approved by the Commission; (2) program changes that would increase or decrease the energy and demand savings projections by more than 20%; (3) any increases or decreases to participant incentives; (4) program changes that would alter the target customer groups; and (5) program changes that may result in the reassignment of costs and benefits from one customer class to another, as well as any combination of these changes.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 50 THROUGH 52

Settlements with Natural Gas Companies

Duke and PSNC entered into a Settlement Agreement filed with the Commission on June 24, 2008. Duke and Piedmont entered into a Settlement Agreement filed with the Commission on June 26, 2008. These Agreements resolve all issues between Duke and PSNC as well as between the Company and Piedmont in this proceeding, as expressly stated in Paragraph 1 of each of the respective Agreements.

No party objected to the PSNC Settlement Agreement or the Piedmont Settlement Agreement. The Commission concludes that the PSNC and Piedmont Settlement Agreements are in the public interest. The PSNC Settlement Agreement provides additional clarity as to the intention and design of the Company's EE programs and provides for the opportunity for program flexibility while ensuring cost-effectiveness. The Piedmont Settlement Agreement commits both the Company and Piedmont to ongoing collaborative efforts to promote EE in their joint service territories. Customers will benefit from increased program offerings through this coordinated effort. The Agreements support the Company's overall commitment for increased EE activity and may enhance customer EE offerings in both gas and electric territories. The Commission finds and concludes that the provisions of the PSNC Settlement Agreement and the Piedmont Settlement Agreement are just and reasonable and should be approved.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 53 THROUGH 55

Save-a-watt Compensation Mechanism

In its Application, Duke proposed a save-a-watt, avoided-cost-based compensation mechanism under which the Company would be allowed to recover 90% of the costs avoided through implementation of Duke's proposed EE and DSM programs. According to Duke, under the save-a-watt approach, there are no specific provisions for the recovery of program costs; rather, Duke assumes the risk that revenues related to actual savings will materialize in an amount such that the Company will be adequately compensated for program costs and participant incentives. Moreover, according to Duke, while the Company, under its proposal, would have the opportunity to realize net income levels that are commensurate to those that could have

been earned on avoided supply-side options, there is no guarantee that the Company will do so.

Synopsis of Duke's Proposal

According to Duke, to compensate the Company for and encourage it to promote EE, the Company requested approval of an energy efficiency rider, Rider EE. If approved by the Commission as proposed, such rider would allow the Company to recover 90% of the costs avoided through implementation of Duke's proposed EE and DSM programs, including amortization of and a return thereon. Under Duke's proposal, the Commission would establish Rider EE, adjusting it annually, based upon updated projections of energy savings results, including projected incremental avoided costs and the actual results achieved by Duke.⁷

Duke's justification in support of its proposed rider, per se, was that recovery of 90% of avoided costs provides an appropriate incentive, because it allows the Company a rate of return similar to investment in generation, yet offers a 10% discount to customers compared to supply-side investment.

The Rider EE billing factors, as proposed, would be calculated separately for residential and nonresidential customers. The residential charge would be calculated based on the avoided costs of programs available to residential customers; the nonresidential charge would be calculated based on the avoided costs of programs applicable to nonresidential customers.

The first year Rider EE charge would be \$0.001275 per kWh for residential customers and \$0.001073 per kWh for nonresidential customers.⁸

Pursuant to G.S. 62-133.9(f) and Commission Rules R8-69(a)(3) and R8-69(d), the Company must allow commercial customers with annual usage of at least 1,000,000 kWh and all industrial customers to opt out of paying for new EE programs upon providing Duke with a statement that the customer has or will implement EE measures on its own. Under its proposal, the Company would provide the Commission with a list of those customers that have opted out at the time it petitions for the annual rider.

To implement the save-a-watt approach and match the EE and DSM program expenses with the recognition of revenues from Rider EE in a reasonable manner for

⁷ Duke witness Farmer explained that rates under Rider EE would consist of two components: (1) a charge based on 90% of the revenue requirement applicable to projected capacity and energy costs that are avoided by DSM and EE programs; and (2) a true-up adjustment based on the differences between actual and projected demand and energy savings and between actual and projected kWh sales.

⁸ In its Proposed Order, Duke stated that "Rider EE will cost the average residential customer only 98 cents per month, or 1.2% when compared to rates in effect for the twelve months ending December 2007, while non-residential customer rates will rise 1.3% (assuming no opt-outs) when compared to rates in effect during the same time period."

financial purposes, Duke requested that it be authorized to defer program costs and to amortize them over the life of the applicable program, with the acknowledgement that the revenues established under the proposed rider, which are based on avoided costs, specifically include the recovery of incurred program costs.

With regard to jurisdictional earnings information included in quarterly ES-1 Reports provided by the Company to the Commission, Duke proposed, in essence, that it be allowed to calculate and present such earnings by incorporating save-a-watt expenses at the greater of 90% of the avoided generation costs, as calculated in Rider EE, or actual program costs incurred. Duke further proposed that, to the extent 90% of the avoided generation costs exceeded actual program costs, the Company would disclose actual program costs for the reporting period in a footnote in the ES-1 Reports. According to Duke, such reporting is appropriate because it excludes save-a-watt incentives from the Company's jurisdictional earnings so that the Company's reported earnings, when assessed against its allowed rate of return, are not inflated by the incentives that are needed and appropriate to encourage investment in EE measures.

*Overview of Intervenor Arguments in
Opposition to Duke's Save-a-watt Compensation Mechanism*

The Coalition asserted that save-a-watt, as proposed, (1) would cost too much and yield too little energy savings; (2) would, under the avoided-cost-based compensation approach, bias the Company in favor of DSM programs and against conservation programs;⁹ and (3) would allow the Company to capture an excessive share of the benefits of EE, with little benefit to customers.

The Coalition commented that DR and energy conservation have different implications for the addition of future generating capacity. Reduction in peak demand from DR will primarily help avoid the need for relatively inexpensive new peaking capacity. Reduction in annual energy from energy conservation, however, will help to delay or avoid the need for expensive new base load and intermediate generating capacity, reducing supply costs and the environmental impacts of the avoided generation, including emissions of greenhouse gases.

According to the Coalition, the save-a-watt program, as proposed, is extremely DR heavy, to the detriment of significant energy conservation achievement. The Coalition argued that the meager energy savings that would result from save-a-watt, as proposed, would not allow Duke to defer or avoid the need for new base load generating units within the timeframe projected in Duke's IRP. The Coalition stated that, in fact, Duke's latest projections are that it will need 3,100 MW of new capacity by the end of the save-a-watt program in 2012; the 120 MW in energy conservation expected to be achieved by save-a-watt, according to the Coalition, would offset just 3.7% of that

⁹ The Coalition noted that SB 3 explicitly puts EE on the same footing as electric generation as a method for meeting electric demand in North Carolina.

increase.¹⁰ The Coalition averred that such a result was “a far smaller achievement than one would expect, given the purportedly revolutionary nature of Duke’s save-a-watt program — a program for which Duke has asked that it be paid a premium over more traditional energy efficiency programs.”

The Coalition opined that, under the traditional cost of service model as compared to the pure avoided-cost model, a utility can afford to try more innovative programs and that effectiveness in “generating” kWh through energy conservation should be considered in conjunction with cost-effectiveness in the program selection process. The Coalition, while acknowledging Duke’s willingness to try new things, expressed concern that, under save-a-watt, there is no mechanism to ensure that Duke will not leave measures that could achieve significant EE on the table, particularly, according to the Coalition, in light of the weak menu of programs put forward thus far.

The Coalition argued that the Company’s save-a-watt, avoided-cost-based compensation scheme was fundamentally flawed, for reasons including those highlighted above, and as such should be rejected by the Commission. The Coalition observed that, despite repeated questions from the Commission and counsel for intervenors, Duke witnesses — including top executives — could offer no support for the appropriateness of the 90% figure, as opposed to some other percentage, other than the notion that it would represent a “discount” of 10% compared to the cost of generation. The Coalition contended that, instead of approving Duke’s proposed compensation approach, the Commission should adopt a compensation mechanism based on recovery of program costs and lost revenues and an equitable performance incentive tied to explicit savings targets.

In particular, the Coalition recommended that the Commission

[d]isapprove the Company’s proposed avoided-cost-based compensation mechanism and proposed Rider EE and

1. Approve a compensation mechanism for Duke’s energy efficiency gains under the save-a-watt programs including the following:
 - a. Recovery of reasonable and prudent program costs;
 - b. Compensation for three years of net lost revenues; and
 - c. A bonus incentive based on a percentage of shared savings of 5% for demand response and a range of 10-12% for conservation programs if savings meet or exceed [certain] targets

2. In the alternative, require Duke to file a new application for a compensation mechanism; in the interim, [allow Duke to place] program

¹⁰ The Coalition argued that, by inappropriately basing avoided cost on the cost of new peaker generation rather than new baseload and intermediate power plants, too few EE measures are counted as “cost-effective” under save-a-watt, and too many, therefore, are systematically excluded from the program.

costs [in] . . . a deferred account [on which] Duke . . . [would be allowed to] earn a return . . . per G.S. 62-133.[9](d) [and] NCUC Rule R8-69(b)(6).

The Public Interest Intervenors maintained that (1) the eligibility requirements and availability criteria within Duke's save-a-watt approach, EE rider, and portfolio of EE programs proposed in Duke's Application would result in the exclusion of a disproportionately large segment of Duke's low income and elderly poor residential customers from Duke's EE programs; (2) the implementation of Duke's Application would result in an increase in the monthly charges for Duke's low-income and elderly poor residential customers while denying them any meaningful usage reduction offset resulting from participation in Duke's EE programs; and (3) the implementation of Duke's 90% avoided cost methodology would result in a mismatch between Duke's save-a-watt related costs and revenues. The Public Interest Intervenors' witness Colton testified that the 90% avoided cost methodology proposed by Duke for its save-a-watt approach would result in Duke receiving an improperly high rate of return.

The Public Interest Intervenors asserted that the evidence presented in this proceeding fails to show that Duke's Application and the 90% avoided cost methodology would result in rates to all its customers that are just and reasonable, or that its Application would meet the required least-cost mix standard. The Public Interest Intervenors observed that, in the Public Utilities Act, the General Assembly established that electric power suppliers are required to use the least-cost mix of demand reduction and generation measures that meet the electricity needs of their customers, and that the Commission may only approve the EE riders of electric public utilities that result in rates that are both just and reasonable. In this regard, the Public Interest Intervenors argued as follows:

The Duke save-a-watt program violates one of the fundamental precepts of the North Carolina's Public Utilities Act, that for rates to be just and reasonable, they must appropriately match costs and revenues. In the Duke save-a-watt proposal, the Company seeks to completely abandon that principle. As witness Colton states, 'The Company's [save-a-watt proposal] fails to take into account this matching principle. Instead, the Company proposes to adjust for changes in the level of revenue without taking into consideration the corresponding changes in the level of expenses that may well leave the Company continuing to earn its allowed rate of return If Duke shareholders are to be held harmless against a decrease in revenue, they should not also be allowed to benefit from the decrease in expenses.'

If the Commission were to approve an adjustment allowing Duke to collect reduced revenues without requiring the Company to disgorge the decreased expenses incurred in the same time period, the result would be an artificially inflated rate of return. See State ex rel. Utilities Comm. v. Duke Power Company, 305 N.C. 1, 17-18, 287 S.E.2d 786, 796 (1988). To account for one factor (reduced revenues) without accounting for the corresponding factor (reduced expenses) would not result in just and reasonable rates Nor would such a mismatch meet the 'least cost

mix' standard. An inappropriate mismatch results when rates account for revenues from current customers without taking into account the expenses from those same customers. State ex rel. Utilities Comm. v. Carolina Water Service, 335 N.C. 493, 504-505, 439 S.E.2d 127, 133 (1994). Thus, approval of an adjustment such as Duke proposes in its Application that does not match costs and revenues would be contrary to controlling North Carolina case law.

The matching principle is particularly important when there is a correlation between the changes in costs and the changes in revenues. State ex rel. Utilities Comm. v. Carolina Water Service of North Carolina, 328 N.C. 299, 304-305, 401 S.E.2d 353, 356 (1991). The Duke save-a-watt proposal presents a classic instance where there are correlated changes in costs and revenues. Energy efficiency investments, Duke argues, will reduce the Company's revenues. Duke proposes an adjustment clause to permit the Company to increase rates to allow the Company to recover those reduced revenues.

The same energy efficiency investments that will reduce Company revenues will also reduce Company expenses. The Company, however, seeks to avoid modifying rates to reflect those decreased expenses. This mismatch of changes in costs and revenues, as proposed by Duke through its save-a-watt mechanism will, as noted by the North Carolina Supreme Court in another Duke Energy case, result in 'a more than fair rate of return for Duke.' State ex rel. Utilities Comm. v. Duke Power Company, 305 N.C. at 18. This is exactly the situation here regarding the save-a-watt proposal. As witness Colton noted:

. . . on the revenue side, under Duke Energy's proposed Rider, the revenue that the Company loses as a result of the usage reduction resulting from these low-income efficiency programs will be imputed to the Company. The Company's proposed Rider would allow the Company to recover these lost revenues and charge those revenues to all other customers. Second, on the expense side, there is no corresponding mechanism that the Company has proposed to reflect these decreased costs resulting from the efficiency investments. As a result, these dollars of non-energy avoided costs, in the absence of their capture and distribution for purposes of expanding low-income efficiency investments, would simply flow through as increased earnings to Duke shareholders.

Because Duke's save-a-watt proposal results in a mismatch between costs and revenues, unless mitigated by witness Colton's recommendation to require Duke to disgorge its reduced expenses . . . there is a fatal flaw in the save-a-watt proposal. Absent approval of the proposal requiring Duke to disgorge its reduced expenses, this flaw, unto

itself, merits a rejection of save-a-watt. Duke's Application has not met the required 'least cost mix' standard under G.S. 62-133.9(b), and as a result of its 90% avoided cost methodology, would not, if approved, result in rates to all its customers that are either 'just' or 'reasonable' as required by G.S. 62-131(a). Duke's Application should therefore also be disapproved for these additional reasons.

In summary, the Public Interest Intervenors asserted that Duke's save-a-watt proposal, rider, and portfolio of EE programs are contrary to North Carolina law in three respects, as follows:

1. Duke's Application, if approved, would result in the vast majority of Duke's low-income and elderly poor customers being charged rates and provided with services that are unjust and unreasonable, in violation of G.S. 62-131(a) and (b);

2. Duke's Application, if approved, would result in Duke's low-income and elderly poor residential customers having to cross-subsidize the rates of Duke's middle and upper class residential customers, creating an unreasonable and improper intra-class prejudice and disadvantage to Duke's low-income and elderly poor residential customers as to their rates and services that is therefore discriminatory, in violation of G.S. 62-140(a); and

3. Duke's proposal would result in a violation of North Carolina's requirement that electric power suppliers use the least-cost mix of demand reduction and generation measures that meet the electricity needs of their customers. (G.S. 62-133.9(b)). Duke's proposed sole use of an avoided cost method and requirement that it receive 90% of its avoided costs would thus result in rates to all Duke customers that are unjust and unreasonable, in violation of G.S. 62-131(a).

In conclusion, the Public Interest Intervenors contended that Duke's Application is not in the public interest and should, therefore, be disapproved as submitted. However, the Public Interest Intervenors proposed that, if the Commission should determine that approval with modifications is warranted, Duke's Application should be modified such that it would not be based upon a 90% avoided cost methodology. Instead, it should be based upon a structure that properly matches any changes in Duke's costs with related changes to Duke's revenue, so as not to create an artificially inflated rate of return. Further, the Public Interest Intervenors recommended that Duke should be required to revise its Application to include several programs and program modifications, as discussed elsewhere herein, so as to expand the coverage and availability of its proposed EE programs to allow low-income and elderly poor residential customers to meaningfully participate in those programs, should they so choose.

CUCA requested that the Commission deny Duke's save-a-watt Application as filed. CUCA believes that Duke is proposing to separate the link between earnings and sales so that the utility can earn ever-increasing profits even when its sales decrease. The regulatory model proposed by Duke in its save-a-watt Application is known as

revenue decoupling; and it is CUCA's opinion that it is nothing more than a huge profit center for Duke that will, at best, produce minimal benefits for consumers. Current utility regulation allows utilities an opportunity to earn a fair rate of return. CUCA explained that, under Duke's revenue decoupling save-a-watt proposal, the utility would actually welcome a decline in sales as it could then argue that the decline in sales was due to its EE programs that could, not surprisingly, provide the utility with returns which are much higher than its currently-allowed regulated rate of return. CUCA asserted that the earnings shield for Duke would reduce the incentive of the utility to provide efficient service to its consumers since the focus of the utility would be on sales and not on controlling expenses. CUCA maintained that the Commission should not approve any measure that would reduce the incentive of a utility to provide efficient and reliable service to its captive consumers.

Regarding lost revenues, CUCA commented that Duke had argued that lost revenues are defined as lost sales and that Duke believed that lost margins reflected lost sales (all expenses plus a return on plant investment) that the utility is entitled to recover under the current regulatory model. CUCA, on the other hand, argued that Duke had no lost revenues in its real world operations and that it would be improper for Duke to be compensated for hypothetical expenses, which the Company proposes to recover from its retail ratepayers, and then be allowed to earn another return on its "saved" kWh through sales into the open wholesale market. CUCA maintained that Duke, through a future general rate case, would be made whole for its plant investment and that maintaining the current ratemaking approach would be preferable to that proposed under save-a-watt. CUCA concurred with Public Staff witness Spellman's testimony that Duke had not demonstrated that save-a-watt would be superior to a cost-of-service ratemaking framework from the standpoint of achieving greater reductions in annual kWh consumption and peak kW demand.

CUCA asserted that Duke's save-a-watt proposal was too restrictive. CUCA observed that an industrial customer cannot opt out of individual programs; rather, the choice to opt out applies to Duke's entire portfolio of EE and DSM programs. Consequently, once a customer elects to opt in to an EE/DSM program offered by Duke, the customer may not subsequently choose to opt out of Rider EE for a period of five years or the life of the applicable measure, whichever is longer. CUCA believes that this proposal forces industrial consumers to buy into a host of EE programs from which they may not receive benefits. For example, a manufacturer cannot participate in just the lighting program. Instead, the manufacturer is forced to pay a rate that would include costs associated with all nonresidential programs. CUCA commented that it would be in the best interest of all consumers to allow industrial consumers to pick-and-choose on a program-by-program basis. Such an approach, according to CUCA, would allow industrial consumers to benefit their individual operations without having to subsidize their competitors.

With respect to the reporting of save-a-watt earnings, CUCA opposed Duke's proposal that net earnings from save-a-watt not be reflected in or computed as part of Duke's actual jurisdictional earnings in the Company's ES-1 Reports to the Commission, noting that Duke would be earning substantial returns on save-a-watt, if approved as filed. CUCA further commented that, if the Commission was inclined to agree with

Duke, at the very least, the Company should be required to report save-a-watt earnings separately in its ES-1 Reports so that the Commission and consumer advocates could be informed as to the program's true profitability.

CUCA noted that Duke had repeatedly stated that EE should be treated as the "fifth fuel" in meeting customer demand, along with advanced nuclear, clean coal, natural gas, and renewable energy. CUCA stated in its Brief that, if Duke seeks to treat EE as an equal resource to meet customer demand, then the compensation, including the incentive, Duke receives should be based upon the conventional rate base, rate-of-return approach. However, CUCA further commented that it would be amenable to an additional incentive, over and above Duke's currently authorized return on equity of 11%, if Duke should exceed specific EE savings thresholds that could be independently verified by a third party.

Further, CUCA remarked that, while Duke witness Ruff testified that save-a-watt would provide benefits to customers in the form of reduced costs, she also acknowledged that she was not aware of Duke's having prepared a quantitative analysis that actually compared the cost of save-a-watt for a given set of EE programs with the cost to customers under a cost-of-service approach. Consequently, inasmuch as Duke did not perform such an analysis, CUCA asserted that Duke cannot prove that save-a-watt meets the least-cost criteria.

In conclusion, CUCA argued that Duke's save-a-watt proposal is simply too lucrative for Duke at the expense of North Carolinians, many of whom are struggling to survive in today's economy. CUCA explained that the record is replete with numerous examples of how much money Duke can potentially earn through the save-a-watt program. For example, Duke's filings projected a 45.4% profit margin for 2009 — net income of \$24.9 million on \$54.8 million in spending for North Carolina and South Carolina. According to CUCA, Duke contended that, by 2012, the profit margin would drop to 21.9%. Nevertheless, CUCA continued to maintain that Duke's proposed level of profit is excessive, especially when compared to Duke's currently authorized 11% return on common equity approved by the Commission in Duke's 2007 general rate case proceeding.

As a fair way of compensating Duke for its save-a-watt proposal, CUCA suggested that the Commission should consider compensating Duke through a performance-adjusted rate of return on the Company's actual save-a-watt expenses. According to CUCA, under its proposal, Duke would recover its actual expenses incurred in the save-a-watt program as well as earn a return thereon. Therefore, if Duke achieved more EE savings than expected, the Commission could choose to grant the utility a return greater than its currently authorized 11% return on common equity. Although this incentive to produce results may not be as great as the incentive Duke envisions under its proposal, according to CUCA, its proposal is fair to the utility as well as to consumers. Further, CUCA is of the opinion that, for any program that the Commission may approve, it should create a program-specific rider, as Duke's proposal of a one-size-fits-all rate rider would not be attractive to manufacturers that do not want to subsidize their competitors who may not have done as much EE work.

The CIGFUR Intervenors opposed Duke's proposed save-a-watt approach to EE program¹¹ cost recovery because they believe that such an approach would be unreasonably profitable for Duke and unnecessarily expensive for ratepayers. The CIGFUR Intervenors asserted that save-a-watt would change the regulatory paradigm by allowing Duke to be compensated for implementing EE by recovering substantially all of the theoretical costs¹² avoided by the EE programs implemented. This value-based approach to pricing far exceeds the contemplation of the Public Utilities Act as amended by SB 3. G.S. 62-133.9 provides for recovery of reasonable and prudent EE program costs and, in the Commission's discretion, appropriate incentives. Instead of recovering its investment plus reasonable incentives, however, Duke is proposing to recover 90% of the theoretical costs avoided by EE programs. Consequently, the CIGFUR Intervenors maintained that Duke's save-a-watt proposal goes far beyond what the General Assembly intended, not in terms of the number of EE programs proposed, but rather, in terms of the extent to which Duke should profit from their implementation.

The CIGFUR Intervenors observed that, in response to a CIGFUR data request, Duke projected what the program revenues and costs would be during the first four years that save-a-watt is in place. According to the CIGFUR Intervenors, if lost margins are treated as a cost, as Duke chose to do in its response to CIGFUR's data request, Duke would realize after-tax income ranging from 30% to 78% of expenditures during the four years of the save-a-watt projection — an extraordinarily profitable exercise for Duke. The CIGFUR Intervenors also noted that these percentages will increase dramatically (to as high as 123% in the fourth year) if lost margins are properly treated as an incentive instead of a cost and added to net income; this treatment reveals save-a-watt to be an even more extraordinarily profitable exercise for Duke.

The CIGFUR Intervenors argued that Duke does not need profits of the magnitude that the save-a-watt, avoided-cost-based approach would produce in order to promote EE. In particular, the CIGFUR Intervenors pointed out that Duke enjoyed steady growth in customers and sales for more than 15 years (1991-2007) following Duke's rate case Order issued by the Commission in Docket No. E-7, Sub 487. That growth enabled Duke to thrive without a rate increase even though it invested and amortized more than \$1 billion to comply with the Clean Smokestacks Act. The CIGFUR Intervenors noted that, recently, Duke was called in to show cause, in Docket No. E-7, Sub 828, why its rates should not be found unjust and unreasonable. That proceeding resulted in a reduction in Duke's base rates of \$286.9 million, effective January 1, 2008. However, despite that reduction in base rates, Duke's revenues have continued to grow. According to the CIGFUR Intervenors, between the end of the test year used in the rate case in Docket No. E-7, Sub 828 (December 31, 2006) and

¹¹ The CIGFUR Intervenors noted in their Joint Post-Hearing Brief (Joint Brief) that in Duke's save-a-watt filing and in the testimony offered in support of such filing, Duke refers to both EE and DSM measures as EE. As a result, in order to avoid confusion, the CIGFUR Intervenors also refer to EE and DSM measures, collectively, as EE.

¹² The save-a-watt approach would compensate Duke for implementing EE on the basis of the cost of capacity and energy deemed avoided. The calculation of avoided cost would entail application of the costs associated with building and operating a generating plant to estimated rather than metered demand and energy savings.

March 31, 2008, Duke's North Carolina revenues grew from \$3.7 billion to \$4.1 billion, and net operating revenues grew from \$671.3 million to \$724.7 million. (Per Duke's ES-1 Report, March 31, 2008, Schedule 6.)

Further, the CIGFUR Intervenors stated that Duke's steady growth in customers and sales (1.6% average annual demand; 1.4% average annual energy) is projected to continue through the 20-year planning horizon even after active promotion of EE. (Per the 2007 Duke Energy Carolinas Annual Plan, November 15, 2007, Docket No. E-100, Sub 114.) Consequently, the CIGFUR Intervenors maintained that any Duke claim of a need for extraordinary incentives to induce it to implement EE programs should be carefully weighed against this continued growth, which will occur with or without additional EE.

The CIGFUR Intervenors also asserted that, under the regulatory compact, Duke is given an opportunity to recover its costs and earn a fair return on its investment in exchange for the obligation to provide safe and reliable service; and the company is also required to implement the least-cost mix of generation and demand reduction. The CIGFUR Intervenors explained that this least-cost obligation in the case of EE is analogous to the least-cost obligation in build-or-buy situations. Although it does not earn a return on purchased power, the Company is required to purchase power rather than install additional generation when the purchase is the least-cost option. The CIGFUR Intervenors opined that Duke must pursue EE if it is the least-cost option and it is not entitled to extraordinary incentives for doing so.

Further, the CIGFUR Intervenors disagreed with Duke's position that its shareholders should be held harmless from the loss of earnings opportunities caused by implementing EE measures instead of generation. The CIGFUR Intervenors argued that Duke is not entitled to an assurance of an ever-increasing revenue stream; rather, Duke is entitled only to an opportunity to recover its costs and earn a fair return on its investment, while providing least-cost, safe, and reliable service. (Per G.S. 62-133 and G.S. 62-2(a)(3a).

Additionally, the CIGFUR Intervenors observed that, at the same time Duke seeks to have ratepayers pay the cost of holding it harmless from the loss of earnings opportunities caused by implementing EE measures instead of installing generation, Duke also seeks authority, in Docket No. E-7, Sub 858, to serve the City of Orangeburg, South Carolina at native-load priority, at average system costs. According to the CIGFUR Intervenors, Orangeburg, which has been served by South Carolina Electric and Gas Company for 90 years, is a 190-MW load and growing. Thus, the CIGFUR Intervenors opined that it seems fundamentally inconsistent for Duke to charge North Carolina avoided costs to reduce load while seeking to take on new, South Carolina load at average system costs.

In conclusion, the CIGFUR Intervenors maintained that Duke's save-a-watt, avoided-cost approach to EE cost recovery should be rejected because it is unreasonably profitable for Duke and, as a result, unnecessarily expensive for ratepayers. The CIGFUR Intervenors asserted that (1) Duke's proposal to recover 90% of the theoretical costs avoided by EE programs is inconsistent with cost-of-service

ratemaking and far exceeds the contemplation of the General Assembly in enacting SB 3 to promote the development of renewable energy and EE; (2) the recovery of anything more than reasonable and prudent EE program costs plus appropriate incentives is unwarranted and unreasonable, particularly when ratepayers are being asked to bear all the costs; and (3) if Duke is not required to "share the pain" of implementing this State policy, it should at least be restrained from claiming excessive returns on investment in EE programs.

NC WARN asserted that Duke's save-a-watt approach should not be approved because it would cost too much and do too little. NC WARN believes that Duke's proposal is fundamentally flawed and will not come close to achieving cost-effective programs that reduce usage and demand.

NC WARN opined that, under Duke's cost recovery approach, Duke would receive a much higher share of the savings from the reductions to be achieved through its proposed programs, calculated as avoided costs minus program costs, lost revenue, and taxes, than under previous utility EE and DSM programs in North Carolina. NC WARN asserted that, not only was this not an appropriate award, it was contrary to the statutory requirements that every rate made, demanded, or received by any public utility should be just and reasonable.

NC WARN witness Blackburn expressed concern about reliance on avoided cost figures in general. He testified that, should new base load plants become the relevant measure of avoided cost, the capacity charges would be much higher than they are now. NC WARN observed that the whole point of EE programs was to avoid these expensive investments. NC WARN argued that under Duke's save-a-watt proposal, the profit on EE measures, and especially on the low-cost measures, would be excessive. NC WARN explained that, according to AG Rogers Cross-Examination Exhibit 1, under the save-a-watt funding mechanism, Duke's potential profits for each of the first four years would be 59% to 69% before taxes and 34.8% to 40.6% after taxes.

Further, NC WARN asserted that the success of Duke's save-a-watt approach rests upon such approach becoming a cost-effective alternative to new power plant construction. NC WARN contended that, if the program was too expensive, it would fail. NC WARN expressed concern that, in another few years, Duke would likely seek to end its EE programs because it could not justify the costs to the ratepayers and to the Commission, and the loss of profits to its shareholders, i.e., it would not be in the public interest to continue them. Duke's fallback plan would then be to build more base load generating plants, with resulting increases in ratepayer bills.

Additionally, NC WARN asserted that Duke's save-a-watt proposal relies too heavily on existing DSM programs and does too little to promote EE. NC WARN observed that most of the Duke witnesses, in their prefiled testimony and on the witness stand, combined both DSM and EE into what they then termed "energy efficiency."¹³

¹³ NC WARN commented that, at some points in the testimony, the statutory definition of "energy efficiency" was also referred to as "conservation" while DSM was referred to as "demand response."

NC WARN argued that this is misleading and contrary to the statutory definitions in G.S. 133.8(a)(2) and (a)(4).

NC WARN contended that Duke could do much more to promote EE in a cost-effective manner. NC WARN also noted that several of the witnesses, including NC WARN witness Blackburn, SELC witness Gilligan, and Public Staff witness Spellman, all stated that a 10% goal in 10 years was both achievable and cost-effective. NC WARN also noted that the size of the potential for efficiency gains in the use of electricity was affirmed in the GDS Associates report, made in conjunction with the La Capra REPS study in December 2006.¹⁴ NC WARN maintained that the minimum goal for EE alone should be 10% in the next 10 years.

NC WARN further commented that Duke witness Rogers testified that Duke expects to start an EE program in 2015 that would increase 1% per year for 10 years. According to NC WARN, the 1% annual increase would be measured from Duke's 2009 sales, currently estimated at 954,770 MWh.¹⁵ That program results from a commitment Duke witness Rogers entered into with three national associations — the Alliance to Save Energy, Energy Future Coalition, and the American Council for an Energy-Efficient Economy — to begin a more ambitious EE program in 2015. NC WARN pointed out that Duke witness Schultz made it clear that such commitment was contingent “upon approval of its save-a-watt initiative.” NC WARN observed that the difference between starting the 1% annual increase in EE now and beginning in 2015 or later, as Duke proposes under the national commitment, is shown in NC WARN Rogers Cross-Examination Exhibit 1. In effect, according to NC WARN, if Duke were to begin this program now rather than postponing it until 2015, that would obviate the need for two large base load power plants, with an estimated savings of \$16 billion to \$24 billion to ratepayers.

In conclusion, NC WARN recommended that the Commission should not approve Duke's save-a-watt plan. NC WARN explained that this funding mechanism would lead to excessive profits far beyond what would be an appropriate reward under G.S. 62-133.9(d) or just and reasonable under G.S. 62-131(a). NC WARN contended that Duke's proposed plan, if approved by the Commission, would make EE extremely expensive, and would do nothing to stop the increase in ratepayer bills from costly new construction. NC WARN opined that Duke's save-a-watt proposal, even with its national commitment, does not come close to obtaining the EE available to Duke.

The Attorney General argued that the net profit margins to Duke, under the Company's proposal, were excessive and that the save-a-watt cost recovery mechanism was unlawful. The Attorney General argued that save-a-watt's 90% of avoided cost methodology was an inappropriate departure from traditional cost-of-service/rate-of-return ratemaking principles; that it would not result in least-cost

¹⁴ GDS Associates, Inc., “A Study of the Feasibility of Energy Efficiency as an Eligible Resource as Part of a Renewable Portfolio Standard for the State of North Carolina,” December 2006.

¹⁵ Table 3.2, “Load Forecast,” in the 2007 Integrated Resource Plan; also shown in Hager Late-filed Exhibit 1.

service; and that it would not result in just and reasonable rates. The Attorney General stated:

Pursuant to G.S. 62-2(a)(3a), the Commission can consider 'appropriate rewards to utilities for efficiency and conservation which decrease utility bills.' Similarly, under G.S. 62-133.9(d)(2)(b), the Commission may approve '[a]ppropriate rewards based on capitalization of a percentage of avoided costs achieved by demand-side management and energy efficiency measures.' However, these statutes do not authorize the Commission to depart from standard cost-based ratemaking methodology that produces least cost services by utilities.

According to the Attorney General, the Public Staff's "shared savings" proposal,¹⁶ contrary to the methodology proposed by Duke, is consistent with the Commission's authority under G.S. 62-133.9(d)(2)(a) to provide utilities "[a]ppropriate rewards based on the sharing of savings achieved by the demand-side management and energy efficiency measures," with one modification. Regarding the modification, the Attorney General recommended that the Commission modify the Public Staff's cost recovery and incentive mechanism such that Duke would not be permitted to recover lost sales margins. Otherwise, the Attorney General supports the Public Staff's approach. According to the Attorney General, given the new incentives of (1) annual recovery of program operating costs, (2) rate base capitalization of program capital costs, and (3) the additional incentive of a percentage of shared savings, it would not be appropriate for the Commission to reward the utility further with lost sales margins as proposed by the Public Staff.

Finally, the Attorney General commented that, under G.S. 62-133.9(e), the Commission "shall assign the costs of the programs only to the class or classes of customers that directly benefit from the programs." The Attorney General observed that, as evidenced by the testimony of certain Duke witnesses, all of Duke's customers will directly benefit from MW saved by save-a-watt, including the Company's wholesale customer class. Therefore, the Attorney General contended that the Commission should find that Duke's wholesale customers will directly benefit from save-a-watt and that, accordingly, appropriate levels of save-a-watt program costs and incentive payments should be assigned to the wholesale customer class.

In conclusion, the Attorney General commented that (1) the Company's save-a-watt cost recovery and incentive proposal does not comport with the least cost and reasonable rate requirement of the Public Utilities Act; and (2) the evidence does not show that shareholders' risks under save-a-watt and the new value created for ratepayers justify the level of incentives that Duke would be paid if its revenues were based on 90% of avoided generation costs. Therefore, the Attorney General asserted that the Commission should not approve Duke's save-a-watt cost recovery and

¹⁶ In summary, the Public Staff's proposal consists of three main components for cost and incentive recovery: (1) actual program costs; (2) a percentage of the verified net dollar savings, with net savings computed by taking the total kW or kWh savings and multiplying those by avoided costs, then deducting the program costs; and (3) net lost revenues during the first three vintage years of each program.

incentive proposal, but rather, should adopt the Public Staff's shared-savings approach, modified to eliminate the recovery of lost sales margins.

Regarding Duke's save-a-watt, avoided-cost-based compensation approach, the Public Staff asserted that

1. Duke's proposed save-a-watt mechanism would result in excessive charges to ratepayers and excessive margins for Duke.

2. In comparison with the level of incentives available to Duke under the proposed save-a-watt mechanism, the amount of kWh savings that Duke expects to achieve is meager.

3. The incentives created by Duke's proposed save-a-watt mechanism are skewed, in that Duke is much more generously compensated for DSM programs than for EE programs, whereas the need is greater for EE programs than DSM programs.

4. Duke's proposed save-a-watt mechanism is inconsistent with the Commission's traditional ratemaking principles.

5. Duke's proposed save-a-watt mechanism is inconsistent with the established principle that the ratemaking process should be transparent.

6. Incentive mechanisms generally include recovery of prudently incurred costs and may include recovery of lost revenues as well as a performance incentive.

7. The more successful EE programs generally provide incentives beyond cost recovery to utilities, though none of the cost recovery mechanisms for these programs allow the direct recovery of lost revenue or are based on avoided costs. Successful EE programs generally have explicit savings goal targets, a cap on the maximum incentive, and may even impose financial penalties if targets are not met. Maximum incentives range for such successful programs from 8% to 12%.¹⁷

The Public Staff proposed an alternative to Duke's save-a-watt, avoided-cost-based compensation model. Under the Public Staff's proposed cost recovery and incentive mechanism, Duke would be allowed to recover (1) all prudently incurred expenses estimated to be incurred during the current rate period for DSM and EE programs approved by the Commission, with true-up of the differences between estimated and actual expenses during the test period; (2) net lost revenues associated with approved programs, on a program-specific vintage year basis, with such recovery

¹⁷ According to information provided by Public Staff witness Spellman, in essence, New Hampshire provides for a bonus incentive of up to 12% of program budgets, whereas Connecticut provides for a bonus incentive of up to 8% of the total cost of the programs.

limited exclusively to the first three years, including the vintage year, that the DSM or EE programs are in effect,¹⁸ and (3) a bonus incentive.

Under the Public Staff's proposal, the initial bonus incentive would be based on the assumption that the Commission-approved projections of net savings would be achieved. The initial estimated bonus incentive would be equal to 5% for DSM programs, and 10% for EE programs, of the annual allocated net present value savings, thereby providing a higher bonus incentive for programs that save kWh than for programs that save only kW.¹⁹

Pursuant to the Public Staff's plan, the bonus incentives would be trued-up for a given vintage year following completion and review of final measurement and verification. At the completion of the true-up process for the first three vintage years for a given measurement unit (and for subsequent three vintage-year periods), if the total aggregate actual lifetime kW and kWh impact for the measurement unit and vintage years in question is 50% or less of the aggregate initially projected, the total bonus incentive for that measurement unit and those vintage years would be reduced to 1% for DSM measures and 2% for EE measures.

Further, with respect to DSM measures under the Public Staff's plan, if the aggregate actual lifetime impact is 150% or more of that projected, and Duke's portfolio of DSM measures installed during the applicable three vintage years has reduced annual peak demand in excess of 3% of the peak demand for the test year in question, the total bonus incentive for that measurement unit and those vintage years would be increased to 7%. For EE measures, if the aggregate actual lifetime impact is 150% or more of that projected, and Duke's portfolio of EE measures installed during the applicable three vintage years has reduced annual kWh sales in excess of 3% of the kWh sales for the test year in question, the total bonus incentive for that measurement unit and those vintage years would be increased to 14%.

Finally, under the Public Staff's plan, the Commission would review the bonus incentive mechanism at least once every three years to ensure the continued appropriateness of the sharing percentages and make any necessary modifications.

The Public Staff explained that

1. The Public Staff's proposed cost recovery mechanism would: (a) tie the costs to ratepayers for EE and DSM programs directly to the actual costs of these programs, not to forecasts of future electric avoided costs; (b) provide for recovery of prudently incurred costs, recovery of lost revenues, and a fair and reasonable margin for shareholders of the Company; (c) provide higher incentives for EE programs than for DSM programs; and (d) provide substantial

¹⁸ Net lost revenues would be trued-up following completion and review of final program evaluation and would cover all vintage years for which complete data was available.

¹⁹ The Public Staff explained that its initial proposed bonus incentive was higher for EE programs than for DSM programs because some DSM equipment costs would be included in rate base and because EE programs can save kWh across the whole year instead of the peak reductions brought about by DSM.

incentives for Duke to achieve each year 1% or more savings of annual retail kWh sales or system peak load.

2. The Public Staff's proposed mechanism would appropriately compensate Duke for its prudently incurred costs and reasonable net lost revenues and provide an adequate, targeted performance incentive to Duke to induce it to devote sufficient resources to creating and sustaining successful EE and DSM programs.

3. The Public Staff's proposed mechanism would protect ratepayers by (a) compensating Duke only for prudently incurred costs and three years of net lost revenues; and (b) providing an incentive that is based on achieved, verified performance targets, capped at a reasonable level.

4. Compared to Duke's proposed save-a-watt compensation mechanism, the Public Staff's proposed mechanism is more likely to achieve verified energy savings at a lower cost to ratepayers while providing a reasonable incentive to Duke to pursue cost-effective DSM and EE programs.

The Public Staff also objected to the Company's proposed method of determining save-a-watt expenses for purposes of calculating its jurisdictional earnings included in quarterly reports (i.e., ES-1 Reports) to the Commission. Under the Company's proposal, such earnings would be calculated based upon actual revenues realized from application of Rider EE, but the level of related expenses would be the greater of 90% of avoided costs or actual program costs incurred. However, if 90% of avoided costs exceeded actual program costs, actual program costs would be included for informational purposes as a footnote in the reports.

The Public Staff pointed out that, as noted by Coalition witness Hornby, Duke's proposal would result in the under-reporting of the Company's actual jurisdictional earnings, and in particular, earnings associated with save-a-watt, during periods when save-a-watt's actual costs were less than its associated revenues.

The Public Staff commented that the lack of transparency in the Company's save-a-watt proposal was only compounded by Duke's proposed method of accounting for the earnings impact of its proposed Rider EE in ES-1 Reports to the Commission.

Finally, in the present regard, the Public Staff contended that actual jurisdictional earnings should reflect actual costs incurred, including the effects of approved deferral accounting. In essence, the Public Staff argued that the level of a utility's earnings is a key indicator of its financial viability, including its profitability and the reasonableness of its rates, and as such, should be unambiguously available to the Commission for its use in regulating Duke's North Carolina retail electric utility operations.

With regard to the issue as to whether a portion of the save-a-watt costs should be assigned to Duke's wholesale jurisdiction, the Public Staff is of the opinion that it should be, as, according to the Public Staff, the save-a-watt DSM and EE programs benefit both retail and wholesale customers.

*Summary of Intervenor Objections to
Duke's Proposed Save-a-watt Compensation Mechanism*

As detailed above, the intervenors objected to and strongly opposed Duke's save-a-watt, avoided-cost-based compensation mechanism. Such objections may be summarized as follows:

1. Save-a-watt is too costly to ratepayers, given the expected benefits.
2. Save-a-watt's avoided-cost-based compensation mechanism would produce far greater returns for the Company than are reasonable and necessary to encourage Duke to aggressively pursue DSM and EE benefits for its customers, in excess of the modest savings that Duke projects it would achieve.
3. Save-a-watt's avoided-cost-based compensation mechanism, as proposed, represents a major and unjustified departure from traditional least-cost, earnings-based rate regulation and, as such, would require the use of measures far less transparent and meaningful than those currently in place for purposes of establishing and evaluating the reasonableness of rates charged for DSM and EE program services.
4. Save-a-watt's DSM programs appear to be far more profitable to Duke than its EE programs, thereby inappropriately strongly favoring DSM over energy conservation.
5. Save-a-watt is vastly different from and appears to be significantly inferior to the compensation mechanisms employed in other states with successful DSM and EE programs, particularly in consideration of (a) the relative successfulness of the programs in other states compared to that expected from Duke's proposed save-a-watt approach; and (b) the costs, including incentives, incurred relative to the benefits realized in other states in comparison to those expected to be incurred and realized under Duke's proposal. Additionally, Duke's proposal appears to be significantly inferior to that proposed by the Public Staff, particularly in consideration of the following: (a) the reasonableness of the components²⁰ and the overall structure of the Public Staff's proposed compensation mechanism, including the fact that such mechanism is clearly a more logical and effectual approach to ensuring that prices for DSM and EE services reflect their true actual underlying economic costs, pursuant to the provisions of Chapter 62 of the General Statutes; and (b) the fact that the Public Staff's approach is far more consistent with the conventional least-cost, cost-based ratemaking principles and practices traditionally employed by the Commission.

²⁰ The Public Staff's compensation mechanism would allow recovery of the sum of actual program costs, net lost revenues for a three-year period, and a bonus incentive based on net margin.

6. Save-a-watt's costs should be assigned, in part, to the Company's wholesale operations because it, too, would "directly" benefit from save-a-watt's programs. Duke does not oppose or object to such treatment. However, the Company does question whether wholesale customers "directly" benefit from the present programs. SB 3 provides that the costs of the programs shall be assigned only to those classes of customers that directly benefit from the programs.

7. Save-a-watt is flawed due to the inappropriateness of the accounting procedures and reporting format that the Company has proposed to use in measuring and reporting the financial effect of save-a-watt on the Company's North Carolina retail operations in periodic reports to the Commission.²¹

*Summary of Duke's Arguments in Favor of Its
Proposed Save-a-watt Compensation Mechanism*

Duke disagreed with the points of view propounded by the intervenors in support of their various contentions. The Company, in essence and among other things, asserted as follows:

1. That cost-of-service is not the only accepted regulatory paradigm and that cost-of-service does not fit very well in terms of pricing energy efficiency.
2. That 90% of avoided costs is appropriate because it allows the Company a rate of return similar to investment in generation, yet provides a 10% discount to customers compared to supply-side investment.
3. That 90% is always less than 100% of the avoided costs for traditionally supplied energy, so the verified savings under save-a-watt always trump supply-side choices.

²¹ As Company witness Wiles explained, for purposes of its quarterly ES-1 Reports to the Commission, the Company proposed that it be allowed to report actual revenues earned through Rider EE but report expenses as the greater of 90% of avoided costs or actual program costs incurred. However, if 90% of avoided costs exceed actual program costs, actual program costs would be included for informational purposes as a footnote in the reports. Thus, actual earnings from save-a-watt, in effect, would be reported to the Commission as part and parcel to its North Carolina retail operations, under the Company's proposal, only in those instances, if any, where actual program costs exceeded or were equal to 90% of avoided costs or, stated alternatively, only in those instances where actual program costs exceeded or were equal to save-a-watt revenues. Therefore, under Duke's proposal, the Company's jurisdictional earnings reported to the Commission would include the impact of save-a-watt only in those instances where there was a net loss or break-even income effect. Positive net income effects from save-a-watt, in essence, would be treated as being part and parcel to the Company's nonutility or unregulated operations.

4. That save-a-watt's cost to customers is fair. Rider EE will cost the average residential customer only \$0.98 per month, or 1.2% when compared to rates in effect for the 12 months ending December 2007, while nonresidential customer rates will rise 1.3% (assuming no opt-outs) when compared to rates in effect during the same time period.

5. That save-a-watt places the risk of nonperformance upon the Company; whether the Company retains the revenues generated by the rider is dependent upon its production of verified and measured energy savings. Likewise, whether the revenues actually retained generate earnings is dependent upon the Company adequately controlling its costs and attracting participation in its energy efficiency programs.

6. That, because Duke will be paid for achieving actual EE results under save-a-watt, such approach has built-in incentives to save more, not less.

7. That the Commission should heavily discount Public Staff witness Spellman's testimony because it was filled with errors; purports to make comparisons with energy efficiency costs of southeastern utilities, but in a completely result-oriented manner and without any consideration given to the effectiveness of those utilities' efficiency efforts; and purports to make comparisons with EE costs of northeastern utilities, but in an "apples to oranges" fashion.

8. That traditional cost-plus recovery models, like the one proposed by witness Spellman, do not provide adequate incentives to utilities to pursue all cost-effective EE.

9. That, when the full impact of lost revenues and the impact of taxes are included, the Public Staff's model actually results in a negative return, creating a disincentive to pursue EE.

10. That the bonus incentives, as proposed by the Public Staff under its shared-savings approach, would need to be increased by at least a multiple of four to place EE on a level playing field with supply-side resources.

11. That the Company's proposed accounting and reporting procedures with respect to save-a-watt are appropriate, as the Company is of the opinion that incentives earned from save-a-watt should not be included in earnings reports submitted to the Commission to be used for purposes of assessing whether rates should be increased or decreased. Otherwise, according to Duke, the Company would be reporting actual earnings that included the incentive and measuring that against allowed returns that did not.

Commission Conclusions

As indicated above, the evidence and arguments of the intervenors, in support of their contention that the Company's save-a-watt, avoided-cost-based compensation

mechanism should not be approved, were based, to a significant extent, upon certain measures and opinions regarding the appropriateness of the level of earnings that Duke could reasonably be expected to actually realize under its proposed rider. Such earnings, however, were not quantified and/or expressed, in most instances, in conventional terms of art customarily employed in rate base, rate-of-return regulation, such as "overall rate of return" and/or "return on common equity."²²

Moreover, other than a modified internal rate of return (Modified IRR) analysis provided in response to questions raised by the Commission, the Company itself has not provided a clearly defined, cost-of-service-based statement of the "overall rate of return" and/or "return on common equity" that it would expect to realize under its save-a-watt proposal. That said, the Commission notes that it is well aware of the evidence and arguments offered by certain parties, principally the Company and the Public Staff, to the effect that a net-present-value-based margin approach, and not a rate base, rate-of-return approach, is the more appropriate, if not the key, methodology to be used in evaluating program feasibility and/or overall financial results for purposes of this proceeding.

To be sure, the Commission itself considers the margin approach, including the margin-related data provided by the parties, to be informative and of major significance. However, the Commission is also of the opinion that certain supplemental information and data, including earnings data, which is not now part of the record, would appear to be of significant importance to the proper resolution of the issues at hand as well.²³ Accordingly, the Commission is of the opinion that Duke should be requested to provide such information as provided below.

The supplemental information to be provided by the Company, which is specified following discussion of another matter below, is relevant, in certain respects and to varying degrees, to the resolution of a number of the issues and/or sub-issues here before the Commission relative to the appropriateness of Duke's avoided-cost-based compensation mechanism. Therefore, the Commission will defer ruling on those issues at this time; upon receipt and review of the supplemental information and data herein requested and subsequent comments and reply comments, as provided for elsewhere herein, the Commission will take such further action as it shall then deem appropriate.

²² For example, the Public Staff argued that projected margins for save-a-watt's DSM and EE programs reach over 60% per year; according to CIGUR III, Duke will realize after-tax income ranging from 30% to 78% of expenditures, excluding income taxes, during the four years of save-a-watt projections and that such percentages will increase dramatically, to a high of 123% in year four, if lost margins are properly treated as an incentive instead of a cost; and the Attorney General contended that Duke's net income as a percent of program costs before income taxes will range from 59% to 69% during the programs' first four years.

²³ Such information would appear to be particularly useful in light of the fact that the record is not entirely clear as to the appropriate base line(s) to which Duke's expected earnings, measured in terms of "margin" or in other less traditional public utility regulatory ways, are to be compared and evaluated from the standpoint of assessing their reasonableness.

Accounting and Reporting: Certain intervenors argued that Duke's save-a-watt approach was flawed, among other reasons, due to the inappropriateness of the accounting procedures and reporting format that the Company had proposed to use in measuring and reporting the financial effect of save-a-watt on the Company's North Carolina retail operations in periodic reports to the Commission.

Duke witness Wiles testified that the Company's proposed reporting of the earnings impact of the save-a-watt approach ensures that the earnings stream produced by the proposed energy plan is treated similarly to that which would have been produced by the avoided plant investment. As witness Wiles explained, for purposes of its quarterly ES-1 Reports to the Commission, the Company proposed that it report actual revenues earned through Rider EE but report expenses as the greater of 90% of avoided costs or actual program costs incurred.²⁴ If 90% of avoided costs exceed actual program costs, actual program costs would be included for informational purposes as a footnote in the reports. Thus, the actual impact of save-a-watt would be included in regulated earnings, in reports to the Commission, under the Company's proposal, only in those instances, if any, where actual costs exceeded or were equal to 90% of avoided costs.

Public Staff witness Maness testified, in essence, that jurisdictional earnings presented in ES-1 Reports to the Commission should be based on and reflect actual costs, including the effects of approved deferral accounting. Witness Maness observed that, as noted in *Quarterly Review* reports published by the Commission, the level of a utility's earnings was a key indicator of its financial viability, including its profitability and the reasonableness of its rates, and as such, should be unambiguously available to the Commission for its use in regulating Duke's North Carolina retail electric utility operations.

In response to witness Maness, witness Wiles contended that the Company's proposal effectively presents to the Commission key financial ratios excluding the effect of incentives, if any, earned from its save-a-watt program. Witness Wiles testified that such an approach was appropriate, as the Company was of the opinion that incentives earned from save-a-watt should not be included in earnings reports submitted to the Commission to be used for purposes of assessing whether rates should be increased or decreased. According to witness Wiles, the Company's proposed reporting method acknowledges the provision for incentives in SB 3 by excluding the impact of the incentives from the amount of earnings reported in the Company's quarterly ES-1 Reports to the Commission. Otherwise, according to witness Wiles, the Company would be reporting actual earnings that included the incentive and measuring that against allowed returns that did not include the incentive.

Witness Wiles further contended that the Commission approved an accounting treatment similar to that proposed by the Company in this instance in Docket No. E-7, Sub 828. The related issue in that docket concerned the appropriate

²⁴ This proposal is a revision to the reporting method proposed in the Company's May 7, 2007 Application. Under the method proposed in the Application, the Company would report expenses as 90% of the avoided costs and provide actual program costs as a footnote.

accounting treatment to be accorded that portion of the net revenues realized from Bulk Power Marketing (BPM) sales that was to be retained by the Company. The Commission's Order provided that the 10% of said revenues that was to be retained by the Company was not to be included in the Company's North Carolina retail cost of service for ratemaking and reporting purposes. In responding to witness Wiles' testimony in this regard, the Public Staff stated that the record in the BPM docket shows that the present regulatory and reporting treatment was part of an Agreement and Stipulation of Partial Settlement that expressly provided that it was subject to the Commission's decision in future general rate cases. Thus, according to the Public Staff, it has no bearing on the reporting of profits in this or in any other case.

In commenting in regard to the Company's accounting and reporting proposal, Coalition witness Hornby testified that the Company "apparently wants to under-report its earnings from save-a-watt revenues during periods when its actual program costs are less than those revenues." Witness Hornby further testified that "[i]f the Commission does not reject the Company's request, I recommend that it require the Company to report its earnings on save-a-watt revenues based upon its actual program costs."

CUCA commented that,

If . . . the Commission is inclined to agree with Duke on the [save-a-watt] earnings reporting, CUCA maintains that, in the least, the earnings should be reported separately in the report so that the Commission and consumer advocates can understand the accounting of the [save-a-watt] earnings and ascertain the programs' true profitability.

The Commission agrees in large measure with the intervenors and, to a certain extent, with Duke witness Wiles, as discussed below.

No party disputes that the Commission has a continuing statutory obligation to ensure, among other things, that the rates and charges (collectively hereafter, rates) of jurisdictional investor-owned electric utilities are just and reasonable, from the standpoint of both investor and ratepayer interests. No party appears to dispute that the level of jurisdictional earnings that a utility is currently achieving is a key indicator of the reasonableness of its jurisdictional rates or that it is inappropriate or unnecessary for the Commission to monitor those earnings on an ongoing quarterly basis.

Indeed, the Commission is of the opinion that the aforesaid information is central to the Commission's effective fulfillment of its present statutory duties and responsibilities. The Commission is also of the opinion that it is critical that the jurisdictional information provided by the utility (including income statements and statements of rate base and return) be developed and presented utilizing established regulatory accounting principles, practices, and procedures and that such information, including key financial ratios, be provided, presented, and expressed in unambiguous conventional terms of art, including overall rate of return and return on common equity. Such information and data should, of course, be accurate and complete; it should be compiled into a form and expressed in terms as needed by the Commission, that is, in

effect, without requiring the Commission to first modify, reclassify, reallocate, or recalculate the data provided, or to import data from other dockets or filings, so as to accommodate the Commission's needs; it should be reasonably accessible to the Commission and interested parties in a timely manner; and last but not least, it should be truly transparent.

Simply stated, the Commission is of the opinion that Duke's proposed save-a-watt accounting and reporting procedures are inadequate and inappropriate, as they do not in large measure satisfy the foregoing criteria and, as such, would not provide the Commission with the fundamental information it needs to allow it to appropriately assess the financial implications of the Company's proposed DSM and EE programs, among other things. In particular, based upon the Company's proposal, Duke would not quantify and report the level of earnings realized from save-a-watt to the Commission on a stand-alone basis and such earnings would not appear to be reasonably determinable by the Commission from information contained in the Company's ES-1 Reports to the Commission.²⁵ Moreover, under the Company's proposal, it would not, in effect, include actual earnings, that is, net income, from save-a-watt at all in determining its overall jurisdictional earnings. On the other hand, however, the Company would include net losses.

Under the Company's proposal, in effect, actual net profits from save-a-watt would be treated as nonutility in nature whereas net losses would be assigned to the Company's regulated operations.²⁶ That is particularly problematic in at least two respects. First, from the standpoint of fairness and equity, it would appear to be illogical and inappropriate for the Company to, in effect, exclude save-a-watt profits from its regulated operations while including save-a-watt losses.²⁷ Further, in consideration of the foregoing, it would appear that the Company's proposed accounting and reporting procedures are inconsistent with its argument to the effect that its model is justified, in

²⁵ Even if the Commission could, potentially, calculate save-a-watt earnings from raw data contained in the Company's ES-1 Reports, it would be inefficient and inappropriate for the Commission to allow the Company to require it to do so. The information needed by the Commission should be compiled and provided directly by the Company, and it should be expressed in terms and in the format needed by the Commission.

²⁶ As witness Wiles explained, for purposes of its quarterly ES-1 Reports to the Commission, the Company proposed that it report actual revenues realized through Rider EE (which would reflect 90% of avoided costs) as being applicable to the Company's regulated operations; however, the Company further proposed to report save-a-watt related expenses as the greater of 90% of avoided costs or actual program costs incurred. Thus, as long as Duke's save-a-watt revenues exceeded its actual save-a-watt expenses, which would result in net income to the Company, such income, in substance, would not be recognized as income from the Company's regulated operations because Duke would record save-a-watt expenses at 90% of avoided costs, an amount exactly equal to its save-a-watt revenues. However, on the other hand, when save-a-watt revenues were less than or equal to actual save-a-watt expenses or, stated alternatively, when actual save-a-watt expenses were greater than or equal to save-a-watt revenues, the Company's proposed accounting and reporting procedures would treat the resulting net loss or break-even income effect from save-a-watt as part of Duke's regulated business.

²⁷ The Company does not appear to have offered any explanation as to why such incongruous treatment is warranted.

part, because all costs would be presumed to be recovered through its proposed cost recovery mechanism based on 90% of avoided costs and that, according to the Company, under its model, the Company's shareholders would bear 100% of the risk of loss from save-a-watt.

For the foregoing reasons, including those offered by the intervenors, the Commission is of the opinion and, therefore, so finds and concludes, that Duke's proposed accounting and reporting procedures for ES-1 purposes are inappropriate and, as such, should not be approved. Furthermore, the Commission is of the opinion and, therefore, so finds and concludes that, without regard to the nature of the compensation mechanism that may ultimately be approved, the Company should be required (1) to include actual program revenues and only actual program costs for purposes of calculating and presenting its regulated earnings to the Commission for ES-1 purposes; (2) to provide supplementary schedules setting forth the Company's jurisdictional earnings excluding the effects of its EE and DSM programs; and (3) to provide schedules separately stating the earnings impact of its DSM and EE programs on a combined basis as well as on a stand-alone, program-class basis, that is, with earnings from DSM programs, collectively, and earnings from EE programs, collectively, shown separately. Detailed calculations of the foregoing should also be provided. Such schedules and/or calculations should show, at a minimum, actual revenues; expenses; taxes; operating income; rate base, including components; and applicable capitalization ratios and cost rates, including overall rate of return and return on common equity.²⁸

Supplemental Information: Regarding the supplemental information needed by the Commission for purposes of this proceeding as discussed hereinabove, the Commission is of the opinion, and therefore so finds and concludes, that Duke should be, and hereby is, requested to provide the following information and data:

1. Modified IRR analyses²⁹ under the following scenarios based upon the guidelines and assumptions as set forth below:

²⁸ As noted above, Company witness Wiles testified that the Company was of the opinion that incentives earned from save-a-watt should not be included in earnings reports submitted to the Commission to be used for purposes of assessing whether rates should be increased or decreased. If such incentives were included, according to witness Wiles, the Company would be reporting actual earnings that included the incentive and measuring that against allowed returns that did not. The Commission is of the opinion that witness Wiles' concern is valid. However, it disagrees with the Company's proposed remedy. Rather than following the approach advocated by Duke as discussed above, the Commission is of the opinion that the approach it has heretofore set forth and adopted appropriately resolves witness Wiles' concern, while achieving full disclosure and transparency. The Commission-adopted approach should provide the necessary information needed to allow the Commission to reasonably monitor and assess the financial results of the Company's EE and DSM programs as well as the Company's actual level of jurisdictional earnings, including and excluding the effects of the Company's EE and DSM programs, whereas Duke's proposed approach would not.

²⁹ This information is being requested because the Commission, at this time, is of the opinion that the Modified IRR technique appears to be, in effect, an appropriate method for use in estimating the expected rate of return on program costs for purposes of this proceeding.

Scenario A: The Modified IRR analysis provided under this scenario should be performed in a manner consistent with the methodology and assumptions utilized by Duke in preparing Confidential Schultz Supplemental Exhibit No. 1, labeled "Modified Internal Rate of Return on Energy Efficiency Programs," as previously filed in this docket, except that the amount of net lost revenues included in the analysis shall be limited for any given vintage year to a three-year period, including the vintage year in which the loss occurred. This analysis shall be provided in the same format and in the same level of detail as Confidential Schultz Supplemental Exhibit No. 1.

Scenario B: The Modified IRR analysis provided under this scenario should be performed in a manner consistent with the methodology and assumptions utilized by Duke in preparing Confidential Schultz Supplemental Exhibit No. 1, except that data inputs are to be modified as required so as to base the analysis on the cost recovery and incentive mechanism as proposed by the Public Staff. This analysis shall be provided in the same format and in the same level of detail as Confidential Schultz Supplemental Exhibit No. 1.

Scenario C: The Modified IRR analysis provided under this scenario should be performed in a manner consistent with the methodology and assumptions utilized by Duke in preparing Confidential Schultz Supplemental Exhibit No. 1, except that data inputs are to be modified as required so as to base the analysis on the cost recovery and incentive mechanism contained in the *Agreement and Stipulation of Partial Settlement*, filed in Docket No. E-2, Sub 931, in the matter of *Application by Progress Energy, for Approval of DSM and Energy Efficiency Cost Recovery Rider Pursuant to G.S. 62-133.9 and Commission Rule R8-69*. This analysis shall be provided in the same format and in the same level of detail as Confidential Schultz Supplemental Exhibit No. 1.

Scenario D: The Modified IRR analysis provided under this scenario should be performed in a manner consistent with the methodology and assumptions utilized by Duke in preparing Confidential Schultz Supplemental Exhibit No. 1, except that data inputs are to be modified as required so as to base the analysis on the cost recovery and incentive mechanism as provided for in the *Stipulation and Agreement*, entered into by and between Duke Energy Indiana, Inc. and the Indiana Office of Utility Consumer Counselor, filed with the Indiana Utility Regulatory Commission on August 15, 2008, in Cause No. 43374.³⁰ This analysis shall be provided in the same format and in the same level of detail as Confidential Schultz Supplemental Exhibit No. 1.

³⁰ Verified Petition of Duke Energy Indiana, Inc. Requesting the Indiana Utility Regulatory Commission to Approve an Alternate Regulatory Plan Pursuant to Ind. Code § 8-1-2.5-1, et. seq., for the Offering of Energy Efficiency Conservation, Demand Response, and Demand-Side Management Programs, and Associated Rate Treatment Including Incentives Pursuant to a Revised Standard Contract Rider No. 66 in Accordance with Ind. Code §§ 8-1-2.5-1, et. seq., and 8-1-2-42(a); Authority to Defer Program Costs Associated with Its Energy Efficiency Portfolio of Programs; Authority to Implement New and Enhanced Energy Efficiency Programs, Including the PowerShare® Program in Its Energy Efficiency Portfolio of Programs; and Approval of a Modification of the Fuel Adjustment Clause Earnings and Expense Tests.

Scenario E: The Modified IRR analysis provided under this scenario should be performed in a manner consistent with the methodology and assumptions utilized by Duke in preparing Confidential Schultz Supplemental Exhibit No. 1, except that data inputs are to be modified as required so as to base the analysis on the cost recovery and incentive mechanism as proposed by the Public Staff, except that the bonus incentive component of the Public Staff's proposed approach shall be modified such that the resultant Modified IRR would be equal to Duke's currently authorized net-of-tax overall rate of return.³¹ This analysis shall be provided in the same format and in the same level of detail as Confidential Schultz Supplemental Exhibit No. 1.

2. A schedule, in comparative form, setting forth the following information and data, where applicable, with respect to the Company's save-a-watt proposal as filed and for each of the five scenarios described above:

- (A) Modified IRR:³²
 - Residential
 - Nonresidential
 - EE Programs
 - DSM Programs
 - Overall
- (B) Present value of cash outflows excluding net lost revenues:
 - Residential
 - Nonresidential
 - Overall
- (C) Present value of net lost revenues under three-year constraint:
 - Residential
 - Nonresidential
 - Overall
- (D) Present value of total net lost revenues:
 - Residential
 - Nonresidential
 - Overall
- (E) Future value of projected cash inflows:
 - Residential
 - Nonresidential
 - Overall

³¹ The Commission recognizes that, under this scenario, no analysis is required to determine the Modified IRR, per se, inasmuch as it has been established as a parameter of the model. But rather, this analysis is requested in order to accommodate procurement of the other supplemental information as requested herein.

³² Please indicate whether the returns have been determined and are stated on a net-of-tax basis.

3. A schedule, in comparative form, setting forth the following information and data with respect to the Company's save-a-watt proposal as filed and for each of the five scenarios described above:

- (A) Projected MWh savings:
 - Residential
 - Nonresidential
 - Overall
- (B) Projected MWh savings as a percent of 2008 MWh sales:
 - Residential
 - Nonresidential
 - Overall
- (C) Projected MW savings:
 - Residential
 - Nonresidential
 - Overall
- (D) Projected MW savings as a percent of 2008 summer peak demand:
 - Residential
 - Nonresidential
 - Overall
- (E) Projected per-month cost to customers (\$):
 - Residential
 - Nonresidential (assuming no opt-outs)
- (F) Projected per-month increase in cost to customers (%):³³
 - Residential
 - Nonresidential (assuming no opt-outs)

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 56

Rider EE Allowed to Become Effective Subject to Refund

In consideration of the importance of the matters here before the Commission, to all concerned, and the record in this proceeding, the Commission is of the opinion, and so finds and concludes, that good cause exists to allow Duke's proposed Rider EE to become effective, at the levels requested by the Company, subject to refund with interest if the Commission, by final order entered in this docket, sets the rider at lower levels.

IT IS, THEREFORE, ORDERED as follows:

1. That Duke's request for approval of the portfolio of proposed EE programs shall be, and hereby is, granted as follows: (1) Residential Energy Assessments; (2) Residential Smart Saver; (3) Low Income Services; (4) Energy Efficiency Education Schools Program; (5) Nonresidential Energy Assessments; and (6) Nonresidential

³³ This percentage increase in cost to customers is to be determined in comparison to rates currently in effect.

Smart Saver. Further, such programs are approved as “new” EE programs pursuant to G.S. 62-133.9.

2. That Power Manager shall be, and hereby is, approved as a “new” DSM program pursuant to G.S. 62-133.9.

3. That PowerShare shall be, and hereby is, approved as a “new” DSM program. However, current customers on Rider IS and Rider SG must be allowed to continue to participate in those programs at their current contract levels. New customers, as well as additional contract volumes from current Rider IS and Rider SG customers, will be eligible to participate only in PowerShare.

4. That Duke’s request for approval to close the existing RHP and SNEPLP programs shall be, and hereby is, approved.

5. That Duke’s request for approval to cancel Rider LC shall be, and hereby is, approved. However, current customers on Rider LC shall be given the opportunity to discontinue participation before being transferred automatically to Power Manager.

6. That Duke’s EDPR shall be, and hereby is, maintained to continue to provide for the recovery of the costs associated with Duke’s existing Rider IS and Rider SG. The EDPR shall be modified to terminate cost recovery for cancelled programs.

7. That Duke’s proposed Measurement & Verification Plan shall be, and hereby is, approved.

8. That the following types of program changes shall require Commission approval prior to implementation: (1) program changes or shifting of program resources that would result in program costs increasing or decreasing by more than 20% of the original program cost estimates initially approved by the Commission; (2) program changes that would increase or decrease the energy and demand savings projections by more than 20%; (3) any increases or decreases to participant incentives; (4) program changes that would alter the target customer groups; and (5) program changes that may result in the reassignment of costs and benefits from one customer class to another. Any combination of these changes shall, likewise, require Commission approval.

9. That the Settlement Agreements between Duke and Piedmont, and Duke and PSNC, filed in this docket shall be, and hereby are, approved.

10. That Duke shall be, and hereby is, required to provide the supplemental information and data as specified under the findings and conclusions as set forth herein. Such information shall be filed with the Commission not later than close of business, Tuesday, March 31, 2009. The Public Staff shall be, and hereby is, requested to review the supplemental information as filed by Duke and file its comments with the Commission. Other parties are allowed to do so. Comments of the Public Staff and other intervenors shall be filed not later than close of business, Friday, May 1, 2009.

Duke shall be, and hereby is, allowed until close of business, Monday, May 18, 2009, to file reply comments. Thereafter, the Commission will take such further action as it may then deem appropriate.

11. That Duke shall not follow the accounting and reporting procedures it has proposed with respect to its save-a-watt model, but, instead, shall be, and hereby is, required to follow the approach as specified under the findings and conclusions as set forth herein.

12. That Duke's proposed Rider EE shall be, and hereby is, allowed to become effective 10 days from the date of this Order, at the levels requested by the Company, subject to refund with interest if the Commission, by final order entered in this docket, sets the rider at lower levels. Duke shall work with the Public Staff to prepare a Notice to Customers giving notice of the rate changes as provided herein, and Duke shall file such notice for Commission approval within 10 days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th of February, 2009.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

Commissioner Sam J. Ervin, IV resigned from the Commission effective December 31, 2008, and did not participate in this decision.

dh022609.01

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-7, SUB 831

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)
Application of Duke Energy)
Carolinas, LLC for Approval of) ERRATA ORDER
Save-a-Watt Approach, Energy)
Efficiency Rider, and Portfolio of)
Energy Efficiency Programs)

BY THE CHAIRMAN: On February 26, 2009, the Commission issued an Order Resolving Certain Issues, Requesting Information on Unsettled Matters, and Allowing Proposed Rider to Become Effective Subject to Refund. It has come to the attention of the Commission that the *Supplemental Information* section of said Order, beginning on Page 60 and ending on Page 63 is in error and needs to be replaced with the following section:

Supplemental Information: Regarding the supplemental information needed by the Commission for purposes of this proceeding as discussed hereinabove, the Commission is of the opinion, and therefore so finds and concludes, that Duke should be, and hereby is, requested to provide the following information and data:

1. Modified IRR analyses²⁹ under the following scenarios based upon the guidelines and assumptions as set forth below:

Scenario A: The Modified IRR analysis provided under this scenario should be performed in a manner consistent with the methodology and assumptions utilized by Duke in preparing Confidential Schultz Supplemental Exhibit No. 1, labeled "Modified Internal Rate of Return on Energy Efficiency Programs," as previously filed in this docket, except that the amount of net lost revenues included in the analysis shall be limited for any given vintage year to a three-year period, including the vintage year in which the loss occurred. This analysis shall be provided in the same format and in the same level of detail as Confidential Schultz Supplemental Exhibit No. 1.

Scenario B: The Modified IRR analysis provided under this scenario should be performed in a manner consistent with the methodology and assumptions utilized by Duke in preparing Confidential Schultz Supplemental Exhibit No. 1, except

²⁹ This information is being requested because the Commission, at this time, is of the opinion that the Modified IRR technique appears to be, in effect, an appropriate method for use in estimating the expected rate of return on program costs for purposes of this proceeding.

that data inputs are to be modified as required so as to base the analysis on the cost recovery and incentive mechanism as proposed by the Public Staff, which includes a bonus incentive component of 5% for DSM programs and 10% for EE programs . This analysis shall be provided in the same format and in the same level of detail as Confidential Schultz Supplemental Exhibit No. 1.

Scenario C: The Modified IRR analysis provided under this scenario should be performed in a manner consistent with the assumptions and provisions set forth in Scenario B above, except that the Public Staff's bonus incentive component shall be modified by substituting 8% for 5% with respect to DSM programs and by substituting 13% for 10% with respect to EE programs.

Scenario D: The Modified IRR analysis provided under this scenario should be performed in a manner consistent with the methodology and assumptions utilized by Duke in preparing Confidential Schultz Supplemental Exhibit No. 1, except that data inputs are to be modified as required so as to base the analysis on the cost recovery and incentive mechanism contained in the *Agreement and Stipulation of Partial Settlement*, filed in Docket No. E-2, Sub 931, in the matter of *Application by Progress Energy, for Approval of DSM and Energy Efficiency Cost Recovery Rider Pursuant to G.S. 62-133.9 and Commission Rule R8-69*, which includes a program performance incentive (PPI) of 8% for DSM programs and 13% for EE programs. This analysis shall be provided in the same format and in the same level of detail as Confidential Schultz Supplemental Exhibit No. 1.

Scenario E: The Modified IRR analysis provided under this scenario should be performed in a manner consistent with the assumptions and provisions set forth under Scenario D above, except that the PPI shall be modified by substituting 10% for 8% for DSM programs and by substituting 15% for 13% for EE programs.

Scenario F: The Modified IRR analysis provided under this scenario should be performed in a manner consistent with the methodology and assumptions utilized by Duke in preparing Confidential Schultz Supplemental Exhibit No. 1, except that data inputs are to be modified as required so as to base the analysis on the cost recovery and incentive mechanism as provided for in the *Stipulation and Agreement*, entered into by and between Duke Energy Indiana, Inc. and the Indiana Office of Utility Consumer Counselor, filed with the Indiana Utility Regulatory Commission on August 15, 2008, in Cause No. 43374,³⁰ except that

³⁰ Verified Petition of Duke Energy Indiana, Inc. Requesting the Indiana Utility Regulatory Commission to Approve an Alternate Regulatory Plan Pursuant to Ind. Code § 8-1-2.5-1, et. seq., for the Offering of Energy Efficiency Conservation, Demand Response, and Demand-Side Management Programs, and Associated Rate Treatment Including Incentives Pursuant to a Revised Standard Contract Rider No. 66 in Accordance with Ind. Code §§ 8-1-2.5-1, et. seq., and 8-1-2-42(a); Authority to Defer Program Costs Associated with Its Energy Efficiency Portfolio of Programs; Authority to Implement New and Enhanced Energy Efficiency Programs, Including the PowerShare® Program in Its Energy Efficiency Portfolio of Programs; and Approval of a Modification of the Fuel Adjustment Clause Earnings and Expense Tests.

the percentage of avoided costs retained by the Company shall be modified by substituting 60% for 75% for DR programs and 75% for 60% for EE programs. Also, instead of the \$260 MM total avoided cost savings used to determine compensation levels, the total forecasted avoided cost savings for four years under Duke's energy efficiency plan in North Carolina shall be used. Other provisions of the present mechanism shall remain unchanged, including (1) the capped rate of return of 15% on program costs; (2) the three-year constraint on the recovery of lost revenues; (3) limitation of the rate impact on the residential customer class to a maximum of 3% for Rider EE; and (4) the provision whereby the Company assumes the risk that the avoided cost revenues will cover program costs. This analysis shall be provided in the same format and in the same level of detail as Confidential Schultz Supplemental Exhibit No. 1.

Scenario G: The Modified IRR analysis provided under this scenario should be performed in a manner consistent with the assumptions and provisions set forth in Scenario F above, except that the percentage of avoided costs retained by the Company shall be modified by substituting 65% for 60% (75% in the stipulated Indiana plan) for DR programs and 80% for 75% (60% in the stipulated Indiana plan) for EE programs.

Scenario H: The Modified IRR analysis provided under this scenario should be performed in a manner consistent with the methodology and assumptions utilized by Duke in preparing Confidential Schultz Supplemental Exhibit No. 1, except that data inputs are to be modified as required so as to base the analysis on the cost recovery and incentive mechanism as proposed by the Public Staff, except that the bonus incentive component of the Public Staff's proposed approach shall be modified such that the resultant Modified IRR would be equal to Duke's currently authorized net-of-tax overall rate of return.³¹ This analysis shall be provided in the same format and in the same level of detail as Confidential Schultz Supplemental Exhibit No. 1.

2. A schedule, in comparative form, setting forth the following information and data, where applicable, with respect to the Company's save-a-watt proposal as filed and for each of the eight scenarios described above:

³¹ The Commission recognizes that, under this scenario, no analysis is required to determine the Modified IRR, per se, inasmuch as it has been established as a parameter of the model. But rather, this analysis is requested in order to accommodate procurement of the other supplemental information as requested herein.

- (A) Modified IRR:³²
 - Residential
 - Nonresidential
 - EE Programs
 - DSM Programs
 - Overall
- (B) Present value of cash outflows excluding net lost revenues:
 - Residential
 - Nonresidential
 - Overall
- (C) Present value of net lost revenues under three-year constraint:
 - Residential
 - Nonresidential
 - Overall
- (D) Present value of total net lost revenues:
 - Residential
 - Nonresidential
 - Overall
- (E) Future value of projected cash inflows:
 - Residential
 - Nonresidential
 - Overall

3. A schedule, in comparative form, setting forth the following information and data with respect to the Company's save-a-watt proposal as filed and for each of the eight scenarios described above:

- (A) Projected MWh savings:
 - Residential
 - Nonresidential
 - Overall
- (B) Projected MWh savings as a percent of 2008 MWh sales:
 - Residential
 - Nonresidential
 - Overall
- (C) Projected MW savings:
 - Residential
 - Nonresidential
 - Overall
- (D) Projected MW savings as a percent of 2008 summer peak demand:
 - Residential
 - Nonresidential
 - Overall

³² Please indicate whether the returns have been determined and are stated on a net-of-tax basis. Also, please provide a statement setting forth the reasons why a period of 25 years was used in performing the Modified IRR analysis as reflected in Confidential Schultz Supplemental Exhibit No. 1.

- (E) Projected per-month cost to average customer (\$):
 - Residential
 - Nonresidential (assuming no opt-outs)
- (F) Projected per-month increase in cost to average customer (%).³³
 - Residential
 - Nonresidential (assuming no opt-outs)

The Chairman finds good cause to issue this Errata Order.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of February, 2009.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

Dh022609.02

³³ This percentage increase in cost to customers is to be determined in comparison to rates currently in effect.

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2007-358-E - ORDER NO. 2009-109

FEBRUARY 27, 2009

IN RE: Application of Duke Energy Carolinas, LLC) ORDER DENYING
for Approval of Energy Efficiency Plan) APPLICABILITY OF TEN-
Including an Energy Efficiency Rider and) DAY NOTICE
Portfolio of Energy Efficiency Programs) PROVISION AND
) RULING ON 'SAVE-A-
) WATT' PROPOSAL

This matter comes before the Public Service Commission of South Carolina ("Commission") as a result of correspondence from Counsel for Duke Energy Carolinas, LLC ("Duke"), which was received at the Commission on February 19, 2009, and which purportedly gave the Commission the "ten-day notice" that it has failed to timely issue an order in a rate case under South Carolina Code Section 58-27-870(C).

By way of its letter, Duke seeks to compel the Commission to issue its order ruling upon Docket No. 2007-358-E, the Company's Application for Approval of Energy Efficiency Plan, including an Energy Efficiency Rider and Portfolio of Energy Efficiency Programs, more commonly known as "save-a-watt." However, our examination of the relevant statutes and regulations, along with a review of Duke's filings in this docket, confirm that "save-a-watt" was not brought as a rate case, and is not subject to the six-month deadline for issuance of an order required by South Carolina Code Section 58-27-870(B). Because this docket is not a rate proceeding as contemplated in Section 58-27-

DOCKET NO. 2007-358-E – ORDER NO. 2009-109
FEBRUARY 27, 2009
PAGE 2

870, Duke is not entitled to compel action by this Commission by way of filing its alleged ten-day notice.

From its beginning, this docket has not been characterized by Duke as a rate case, but as an application for approval of an energy efficiency plan brought under South Carolina Code Section 58-37-20. Duke's decision not to file a notice of intent to seek to implement new rates thirty days prior to filing its application, as required of all rate proceedings by South Carolina Code Section 58-27-860, confirms that save-a-watt was not filed as a rate case. Additionally, Duke did not provide the typical test-year data required by Commission Regulation 103-823(A)(3).

In fact, Duke's own expert witness, Dr. Charles J. Cicchetti, testified that the proceeding at issue was not a rate case. In testimony before the Commission during Duke's hearing on its save-a-watt application, Dr. Cicchetti repeatedly insisted that an energy efficiency plan such as save-a-watt should not be pursued in a rate proceeding. For instance, Dr. Cicchetti explicitly stated that, "*A rate case is not the place to consider and approve an innovative new business model for energy efficiency regulation, such as save-a-watt.*" Tr. 910-911 (Vol. 2). Moreover, during cross-examination, Dr. Cicchetti later added that, "*Nobody's asking for a rate case.*" Tr. 938 (Vol. 2).

Clearly, at the time of the hearing, neither the Commission nor Duke viewed this proceeding as a rate case. Having failed to meet the threshold statutory and regulatory requirements for filing a rate case, Duke cannot now demand enforcement of the six month deadline in the rate case statute. To do so is disingenuous, and inappropriate.

DOCKET NO. 2007-358-E – ORDER NO. 2009-109
FEBRUARY 27, 2009
PAGE 3

In its letter of February 19, 2008, Duke also asserts that if the Commission does not approve save-a-watt it could:

jeopardize Duke's ability to assist the state in obtaining funding for energy efficiency programs created by Title VII of the 2009 American Recovery and Reinvestment Act (also known as the "Stimulus Bill") because such grants will be limited to the expansion of existing energy efficiency programs "approved" by the Commission.

While Duke did not provide a more specific citation to the Stimulus Bill, we believe that it is referring to the Competitive Grants which may be awarded by the Secretary of Energy pursuant to Title IV, Section 410 of the Stimulus Bill. We have examined this provision and are satisfied that it does not require approval of Save-a-watt in order for the state to be eligible for these competitive grants. The competitive grants provision contemplates funding for "the expansion of existing energy efficiency and renewable energy programs", Title IV, Section 410(3) (emphasis added), and we do not believe that this language would preclude funding of future energy efficiency measures for any of our state's electric and gas utilities, all of which already have energy efficiency plans in effect in one form or another.

Nevertheless, we do not wish to delay action on save-a-watt, or energy efficiency programs in general, and therefore we dispose of the Company's application by this same order. A review of Section 58-37-20 reveals that, if the Commission adopts an energy efficiency program, it must have the following characteristics:

- Provide incentives and cost recovery for energy suppliers and distributors who invest in energy supply and end-use technologies that are cost effective, environmentally acceptable, and reduce energy consumption or demand,

DOCKET NO. 2007-358-E – ORDER NO. 2009-109
FEBRUARY 27, 2009
PAGE 4

- Allow energy suppliers and distributors to recover costs,
- Allow energy suppliers and distributors to obtain a reasonable rate of return on their investment in qualified demand-side management programs sufficient to make these programs at least as financially attractive as construction of new generating facilities, and,
- Have rates and charges that ensure that the net income of an electrical or gas utility regulated by the Commission after implementation of specific cost-effective energy conservation measures is at least as high as the net income would have been if the energy conservation measures had not been implemented.

Section 58-37-20 does not force this Commission to adopt the save-a-watt PURPA avoided cost compensation model for energy efficiency programs. Even Duke Energy concedes as much in its brief, merely suggesting instead that PURPA avoided cost is an appropriate option for the Commission.

While the Commission values energy efficiency, and is determined to have viable and effective energy efficiency programs in place for each of our regulated utilities in the near future, the record before us does not support the save-a-watt proposal for the following reasons:

- 1) The proposed program's complexity results in a lack of transparency to customers and regulators. The resulting difficulty in explaining a utility's program to the public is contrary to traditional regulatory principles. The underlying data used in calculating Duke's PURPA avoided costs is confidential, which only adds to the

DOCKET NO. 2007-358-E – ORDER NO. 2009-109
FEBRUARY 27, 2009
PAGE 5

program's complexity and lack of transparency. Customers should understand how much they will pay for energy efficiency programs and why.

- 2) Save-a-watt does not limit the actual rate of return that the company could earn on an energy efficiency program. The possibility exists that Duke will earn an unreasonably high profit on at least some of its energy efficiency and demand side management programs. In some cases, the profits could exceed 100% of Duke's costs. While Duke's witnesses insisted that such a scenario was not likely, they could not convincingly deny its possibility.
- 3) The save-a-watt program does not give the Commission, the Office of Regulatory Staff, or other parties sufficient input into the selection, implementation, balancing of, and possible cancellation of programs.
- 4) The settlement agreement lacks sufficient safeguards against the above-listed problems. It would be very difficult to conduct a meaningful review of the save-a-watt programs two years from now, as many of the proposed energy efficiency programs will have a horizon that is much longer than two years. Although up front expenditures will already have been made, and customers will already be paying for these programs, it will be difficult to verify the success of these programs, let alone terminate them, two years from now.

While this decision does not rule out the possibility that avoided cost could serve as the basis for compensation in an energy efficiency program, departing from the transparency and accountability of a traditional cost-based model proposes real

DOCKET NO. 2007-358-E – ORDER NO. 2009-109
FEBRUARY 27, 2009
PAGE 6

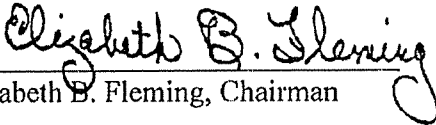
challenges, and, in this case, the proposal before us must be denied for the reasons previously stated.

We do not want the parties or the public to misinterpret this decision as a vote against energy efficiency. This Commission has made clear that it is determined to see strengthened energy efficiency programs in place for each of the state's regulated utilities implemented in the very near future – preferably within the year. Indeed, we commend Duke for being the first company to file a proposal with us. However, it is critical that we implement a viable, understandable, transparent and cost effective energy efficiency program that will enjoy the long term support of the company's customers.

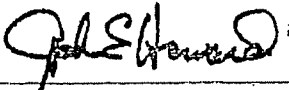
We urge the Company to return with a proposal designed to address the Commission's concerns. We are prepared to take extraordinary measures to consider a new proposal on an expedited basis while ensuring that all interested parties have an opportunity to be heard.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:


Elizabeth B. Fleming, Chairman

ATTEST:



John E. Howard, Vice Chairman

(SEAL)

STATE OF SOUTH CAROLINA)

(Caption of Case))

In re:)

Petition of Duke Energy Carolinas, LLC For)
 Approval of Energy Efficiency Programs And An)
 Accounting Order To Defer Costs Incurred in)
 Connection with Development and Implementation)
 of Energy Efficiency Programs)

BEFORE THE)
 PUBLIC SERVICE COMMISSION)
 OF SOUTH CAROLINA)

COVER SHEET)

DOCKET)

NUMBER: 2009 - - E)

(Please type or print)

Submitted by: Catherine E. Heigel

SC Bar Number: 9268

Address: 526 S. Church Street, EC 03T
Charlotte, NC 28202

Telephone: 704-382-8123

Fax: 704-382-5690

Other: _____

Email: ceheigel@duke-energy.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

Emergency Relief demanded in petition Request for item to be placed on Commission's Agenda expeditiously

Other: _____

| INDUSTRY (Check one) | NATURE OF ACTION (Check all that apply) | | |
|--|--|--|---|
| <input checked="" type="checkbox"/> Electric | <input type="checkbox"/> Affidavit | <input type="checkbox"/> Letter | <input type="checkbox"/> Request |
| <input type="checkbox"/> Electric/Gas | <input type="checkbox"/> Agreement | <input type="checkbox"/> Memorandum | <input type="checkbox"/> Request for Certificatio |
| <input type="checkbox"/> Electric/Telecommunications | <input type="checkbox"/> Answer | <input type="checkbox"/> Motion | <input type="checkbox"/> Request for Investigator |
| <input type="checkbox"/> Electric/Water | <input type="checkbox"/> Appellate Review | <input type="checkbox"/> Objection | <input type="checkbox"/> Resale Agreement |
| <input type="checkbox"/> Electric/Water/Telecom. | <input type="checkbox"/> Application | <input checked="" type="checkbox"/> Petition | <input type="checkbox"/> Resale Amendment |
| <input type="checkbox"/> Electric/Water/Sewer | <input type="checkbox"/> Brief | <input type="checkbox"/> Petition for Reconsideration | <input type="checkbox"/> Reservation Letter |
| <input type="checkbox"/> Gas | <input type="checkbox"/> Certificate | <input type="checkbox"/> Petition for Rulemaking | <input type="checkbox"/> Response |
| <input type="checkbox"/> Railroad | <input type="checkbox"/> Comments | <input type="checkbox"/> Petition for Rule to Show Cause | <input type="checkbox"/> Response to Discovery |
| <input type="checkbox"/> Sewer | <input type="checkbox"/> Complaint | <input type="checkbox"/> Petition to Intervene | <input type="checkbox"/> Return to Petition |
| <input type="checkbox"/> Telecommunications | <input type="checkbox"/> Consent Order | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation |
| <input type="checkbox"/> Transportation | <input type="checkbox"/> Discovery | <input type="checkbox"/> Prefiled Testimony | <input type="checkbox"/> Subpoena |
| <input type="checkbox"/> Water | <input type="checkbox"/> Exhibit | <input type="checkbox"/> Promotion | <input type="checkbox"/> Tariff |
| <input type="checkbox"/> Water/Sewer | <input type="checkbox"/> Expedited Consideration | <input type="checkbox"/> Proposed Order | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Administrative Matter | <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest | |
| <input type="checkbox"/> Other: | <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit | |
| | <input type="checkbox"/> Late-Filed Exhibit | <input type="checkbox"/> Report | |

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009- -E

| | | |
|---|---|-----------------------------------|
| In the Matter of: |) | |
| |) | |
| Petition of Duke Energy Carolinas, LLC |) | |
| For Approval of Energy Efficiency |) | DUKE ENERGY CAROLINAS' |
| Programs And An Accounting Order To |) | PETITION FOR APPROVAL OF |
| Defer Costs Incurred in Connection with |) | ENERGY EFFICIENCY PROGRAMS |
| Development and Implementation of |) | AND AN ACCOUNTING ORDER |
| Energy Efficiency Programs |) | |

Duke Energy Carolinas, LLC (“Duke Energy Carolinas” or the “Company”) hereby files with the Public Service Commission of South Carolina (the “Commission”) pursuant to S.C. Code Ann. § 58-27-1540 (Supp. 2008) and 26 S.C. Code Ann. Reg. 103-825 (1976, as amended) a petition seeking (1) approval of a portfolio of energy efficiency¹ programs, as more fully described herein, and (2) an accounting order for regulatory accounting purposes authorizing the Company to defer in a regulatory asset account all costs that are being or will be incurred by the Company in connection with the development and implementation of its energy efficiency programs pending a decision by the Commission on the appropriate compensation model for such activities in the general rate case the Company will file later this year. Further, Duke Energy Carolinas requests assurance from the Commission that the Company may true-up

¹ The term “energy efficiency,” as used in this Petition, includes both energy efficiency/conservation and demand-side management/demand response measures.

incentives for costs deferred pursuant to this petition in accordance with the Commission's order on the appropriate compensation mechanism in the Company's general rate proceeding.

The request for relief set forth herein will not involve a change to any of Duke Energy Carolinas' retail rates or prices at this time, or require any change in any Commission rule, regulation or policy. In addition, the issuance of the requested accounting order will not prejudice the right of any party to address these issues in the subsequent general rate case proceeding. Accordingly, neither notice to the public at-large, nor a hearing is required regarding this Petition.²

In support of this petition, Duke Energy Carolinas respectively shows the Commission the following key facts and petitions the Commission for the following relief:

Name and Address of Duke Energy Carolinas

- 1) The correct name and post office address of the Company are:

Duke Energy Carolinas, LLC
Post Office Box 1006
Charlotte, NC 28201-1006

Notices and Communications

- 2) The names and addresses of the attorneys of Duke Energy Carolinas who are authorized to receive notices and communications with respect to this petition are:

Catherine E. Heigel, Associate General Counsel
Duke Energy Carolinas, LLC
P. O. Box 1006 (EC03T)
Charlotte, NC 28201-1006
Telephone: 704-382-8123
Email: ceheigel@duke-energy.com

All correspondence and any other matters relating to this proceeding should be addressed to the Company's authorized representative listed above.

² As a courtesy, Duke Energy Carolinas has provided an advance copy of this filing to the parties of record in Docket No. 2007-358-E, the Company's last energy efficiency proceeding.

Description of the Company

- 3) Duke Energy Carolinas is engaged in the generation, transmission, distribution, and sale of electric energy at retail in the central and western portions of North Carolina and the western portion of South Carolina. The Company also sells electricity at wholesale to municipal, cooperative and investor-owned electric utilities and its wholesale sales are subject to the jurisdiction of the Federal Energy Regulatory Commission. Duke Energy Carolinas is a corporation organized and existing under the laws of North Carolina authorized to transact business in the State of South Carolina and is a public utility under the laws of that State. Accordingly, its operations in South Carolina are subject to the jurisdiction of the Public Service Commission of South Carolina pursuant to the provisions of Chapter 27 of Title 58 of the South Carolina Code of Laws.

Energy Efficiency Programs

- 4) Duke Energy Carolinas attaches to this Petition as Exhibit No. 1 ten (10) tariffs and one service agreement for the Commission's approval. Specifically, the Company seeks approval of its PowerShare[®] Service Agreement, as well as tariff filings for Schedule HP – X, Residential Energy Assessments, PowerShare[®], Power Manager, Nonresidential Smart Saver[®], Residential Smart Saver[®], Residential Smart Saver[®] for Air Conditioning, Nonresidential Energy Assessments, Energy Efficiency Education Program, and Low Income Energy Efficiency and Weatherization (the "Programs"). The Programs are identical to the programs previously filed by the Company for approval in Docket No. 2007-358-E on November 21, 2008. Duke Energy Carolinas also has several additional programs under development and anticipates filing these programs soon.

- 5) The Company developed its Programs in collaboration with interested stakeholders participating in the Company's South Carolina Energy Efficiency Collaborative Group (the "Collaborative"). The Collaborative includes a diverse group of customers, state agencies, environmental groups, and other stakeholders. Participants in the Collaborative include The South Carolina Office of Regulatory Staff, The Timken Corporation, Sierra Club, Environmental Edge Consulting, The University of South Carolina Upstate, Greenville County Schools, and the South Carolina State Energy Office. Advanced Energy Corporation moderates each meeting of the Collaborative. Advanced Energy Corporation is a non-profit national resource based in North Carolina that works with utilities to develop programs and services to benefit their customers. Duke Energy Carolinas continues to evaluate ways to enhance its stakeholder engagement process and remains open to working with interested groups to develop new programming ideas.

The Company employed a three-step process to determine the programs to be included in the proposed portfolio. First, it compiled a list of energy efficiency programs already offered and tested by Duke Energy Carolinas' and its affiliate utility operating companies. Implementing programs already offered by the Company's affiliates is likely to result in lower costs and operational efficiency through shared administration and best practices. Second, the Company solicited new program ideas from all members of the Collaborative and solicited direct input from South Carolina customers through primary research. Third, the Company refined these ideas, applying multiple cost-effectiveness analyses to evaluate all current or proposed programs. Programs deemed cost-effective were incorporated into a master list of program ideas, reviewed and agreed to by the

Collaborative members, and finally, consolidated into the list of energy efficiency programs included in the portfolio.

- 6) The Programs are designed to greatly expand the reach of energy efficiency in the Company's South Carolina service territory by providing more options for customers to control their energy usage and manage their bills. During these tough economic times, the Programs can generate real bill savings for South Carolina citizens and businesses at a time when they need it most. The programs also provide customers with the opportunity to lower their environmental footprint through direct participation in energy efficiency. Duke Energy Carolinas' proposal includes the following mix of conservation and demand-response programs:

- a) **Residential Energy Assessments** are designed to help residential customers identify opportunities to use energy more efficiently through mail-in analysis, on-line analysis, and on-site energy audit. Participating customers will receive either an energy efficiency kit or compact fluorescent light bulbs at the time of audit to begin their energy savings immediately.
- b) **Non-Residential Energy Assessments** are designed to help general service and industrial customers identify opportunities to use energy more efficiently through on-line analysis, telephone interviews, and on-site energy audits.
- c) **Smart Saver[®] and Smart Saver[®] for Air Conditioning** will provide residential customers with incentives to install more energy-efficient, ENERGY STAR[®] certified equipment, such as compact fluorescent light bulbs and high-efficiency air conditioners and heat pumps. The non-residential customer program

will provide incentives to install high-efficiency lighting, heating, ventilation, and air conditioning equipment, motors, pumps, and other high efficiency equipment.

d) **Low Income Energy Efficiency and Weatherization** will assist low income residential customers with energy efficiency measures using kits or through assistance in purchasing equipment and weatherizing homes.

e) **Power Manager** will enable residential customers to receive a monthly credit from July to October in exchange for allowing Duke Energy to cycle their central air conditioning systems in times of peak power demand and to interrupt the central air conditioning when the Company has capacity constraints.

f) **PowerShare[®]** will enable nonresidential customers to receive a credit on their bills in exchange for reducing their electric use in times of peak power demand or unexpected capacity constraints.

- 7) In connection with the implementation of the proposed portfolio of energy efficiency programs, the Company requests approval to cancel Riders IS, SG, and LC, as well as the Existing Residential Housing Program (Leaf 142). Riders IS and SG are replaced in the new portfolio with PowerShare[®]. Rider LC is replaced in the new portfolio with Power Manager. The Existing Residential Housing Program (Leaf 142) is replaced by the Smart Saver[®] Program. No changes are proposed at this time for the Residential Energy Star rate. Customers currently enrolled in Riders IS and SG will be given up to twelve months to transition to the new programs. Customers on Rider LC will automatically be converted to Power Manager, but will be given advance notice that they can request removal from the new program at any time.

Accounting Treatment

- 8) Based on the foregoing, Duke Energy Carolinas seeks an order from the Commission authorizing the Company to defer as a regulatory asset all costs incurred in connection with the Company's development and implementation of the Programs. The Company will file a general rate proceeding later this year. The Company anticipates seeking specific authority at that time to collect revenues sufficient to cover the Company's energy efficiency program costs, lost revenues, and an incentive, including the balance of the requested deferred costs charged as a regulatory asset.

Effective Date

- 9) Development costs will be incurred in advance of implementing the Programs; however, for purposes of this Petition only, the Company requests that the deferral be effective for costs incurred on and after June 1, 2009, the expected start date for implementation of the Programs. The accounting order will not preclude the Commission from addressing the reasonableness of the costs deferred in the regulatory asset account in the Company's general rate proceeding later this year.
- 10) Duke Energy Carolinas requests an order approving this deferral as soon as possible, but no later than May 31, 2009.

Conclusion

- 11) In summary, approving the Programs and authorizing deferral of the costs relating to development and implementation of the Programs will benefit the Company's customers by providing much-needed energy efficiency programming options that can help reduce their bills and lower their environmental footprint. Further, timely approval of the Company's Petition will help position Duke Energy Carolinas to have programs available

to customers coincident with the possible receipt of grant monies by the state issuing from the federal government pursuant to Section 410 of Title VII of the 2009 American Recovery and Reinvestment Act³ (also known as the Stimulus Bill).

The Commission recently has authorized similar deferral accounting treatment for South Carolina Electric and Gas Company in Docket No. 2009-98-E for the costs of energy efficiency programs. Thus, Commission precedent supports similar treatment for the costs at issue here. Finally, Duke Energy Carolinas would note that the Company's requests in this Petition are consistent with the recommendation of the Southern Environmental Law Center, Southern Alliance for Clean Energy, Environmental Defense Fund and Coastal Conservation League (collectively, the "Environmental Parties") in Docket No. 2007-358-E. On December 10, 2008, the Environmental Parties filed a letter with the Commission in the aforementioned docket in which they recommended, in part, that "a possible interim solution would be to approve the Save-a-watt programs on an interim basis, with incurred costs placed into a deferred account for later true-up once an appropriate compensation mechanism is approved."

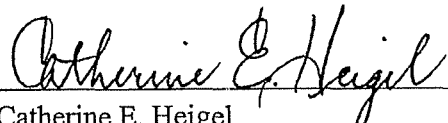
WHEREFORE, having set forth its Petition, Duke Energy Carolinas respectively requests the Commission to issue an order (i) approving the Program tariffs and service agreement set forth in Exhibit No. 1; (ii) cancelling Riders IS, SG, and LC, as well as the Existing Residential Housing Program (Leaf 142); (iii) allowing the Company to establish a regulatory asset account to which it may charge the costs incurred related to development and implementation of the Programs from June 1, 2009 until the date these costs are reflected in electric rates; (iv) stating that the Company may true-up incentives for costs deferred pursuant to this petition in

³ American Recovery and Reinvestment Act of 2009, 111 P.L. 5, 123 Stat. 115 (2009).

accordance with the Commission's order on the appropriate compensation mechanism in the Company's general rate proceeding; and (v) granting such other and further relief as is just and proper.

Respectfully submitted this 15th day of April, 2009.

DUKE ENERGY CAROLINAS, LLC

BY: 
Catherine E. Heigel
Associate General Counsel
Duke Energy Carolinas, LLC
526 South Church Street/03T
Charlotte, North Carolina 28202

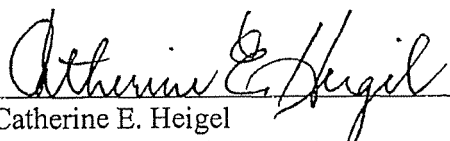
BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009- -E

In the Matter of:)
)
Petition of Duke Energy Carolinas, LLC)
For Approval of Energy Efficiency)
Programs And An Accounting Order To)
Defer Costs Incurred in Connection with)
Development and Implementation of)
Energy Efficiency Programs)

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this the 15th day of April one copy of Duke Energy Carolinas, LLC's **Petition for Approval of Energy Efficiency Programs and An Accounting Order to Defer Costs Incurred in Connection with Development and Implementation of Energy Efficiency Programs** *via* email and first class United States mail, postage prepaid, to the person(s) named below at the address set forth:

Jeffrey Nelson, Esquire
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201



Catherine E. Heigel
Associate General Counsel
Duke Energy Carolinas, LLC
526 S. Church Street, EC03T
Charlotte, North Carolina 28202

EXHIBIT NO. 1

Duke Energy Carolinas, LLC

Electricity No. 4
South Carolina Original (Proposed) Leaf No. 78

RIDER PS (SC)
POWERSHARE NON-RESIDENTIAL LOAD CURTAILMENT

AVAILABILITY (South Carolina only)

Available on a limited and voluntary basis, at the Company's option to nonresidential customers receiving concurrent service from the Company on Schedule G, GA, I, OPT, MP and HP-X; however, customers on Schedule HP-X are eligible only for the Mandatory Curtailment Option. This Rider is not available to customers receiving service on Rider NM or Rider SCG. The Company shall limit the acceptance of contracts under the Mandatory Curtailment and Generator Curtailment Option to a collective total of 1,500,000 KW of Maximum Curtailable Demand on the Company's system.

GENERAL PROVISIONS

Under this Rider the Customer receives credits when, at the Company's request, the Customer agrees to reduce and maintain his load to a level specified in the individual contract, or as nominated on a per event basis, or transfers load to a standby generator, under one of the curtailment options below. The provisions of this Rider apply in addition to the stated provisions of the Customer's rate schedule.

Service under the Mandatory or Voluntary options of this Rider will not begin until, or unless the Company has satisfactory interval load data for the purposes of establishing the Forecasted Demand.

Continued service under this Rider is subject to satisfactory performance by the Customer, as determined by the Company, in response to the Company's request for curtailment.

DEFINITIONS

Contract Demand: The Contract Demand is the maximum kilowatt demand which the Company shall be required to supply to the Customer.

Maximum Curtailable Demand: The Maximum Curtailable Demand of not more than 50,000 KW is either (a) that portion of the Contract Demand which the Company will supply to the Customer at all times except during Curtailment Periods under the Mandatory or Voluntary Curtailment Option or (b) the capacity the Customer agrees to transfer from the Company's source to the standby generator during Curtailment Periods under the Generator Curtailment Option. The customer will be required to curtail at least 200 kW during Curtailment Periods under the Mandatory or Voluntary Curtailment Option. The customer will be required to transfer at least 200 kW during Curtailment Periods and Tests under the Generator Option

Firm Demand: The Firm Demand is that portion of the Contract Demand which the Company will supply to the Customer without limitation on periods of availability under the Mandatory or Voluntary Curtailment Option, and is the same value all months of the year. For customers served on Schedule HP-X, the Firm Demand must be less than the Customer Baseline (CBL).

Forecasted Demand: The Forecasted Demand is the kW per hour which the customer would be expected to register absent a Curtailment Period and is used to determine the Energy Credits applicable under the Mandatory or Voluntary Curtailment Option.

Curtailment Period: A Curtailment Period is that interval of time, initiated and terminated by the Company, (a) during which the participating customer will require service at no more than the Firm Demand under the Mandatory or Voluntary Curtailment Option, or (b) during which the Customer is requested to offset load from the Company's source by transferring load to the Customer's engine/generator unit under the Generator Curtailment Option.

Exposure Period: The Exposure Period is that period of time within the month corresponding to the weekday peak demand periods and during which curtailment under these provisions is most likely to occur. Specifically, the Exposure Period for the purpose of computing monthly credits is defined as follows:

Summer Months of June through September
1:00 p.m. to 9:00 p.m., Monday through Friday

Winter Months of October through May
6:00 a.m. to 1:00 p.m., Monday through Friday

Rider PS (SC) continued

MANDATORY CURTAILMENT OPTION

GENERAL PROVISIONS

Contracts for Mandatory Curtailment service will be accepted by the Company for not more than 50,000 KW of Maximum Curtailable Demand. The Company's request to curtail service under this option may be at any time the Company has capacity constraints, including generation, transmission or distribution capacity constraints or reactive power concerns. The Company, at its sole discretion, may limit requests for curtailment to certain groups of customers for valid reasons.

Under this option the customer agrees to reduce and maintain load to the Firm Demand specified in the contract. Customers served under the Mandatory Curtailment Option may also contract for service under the Voluntary Curtailment Option, but may not contract under the Generator Curtailment Option.

The Company reserves the right to test the provisions of this Rider twice per year, and shall give advance notice of any test to customers served under this Rider.

TRANSITION PROVISION

Customers served under Rider IS on (the date Rider PS is initially approved) are eligible to enter into a new contract for Rider PS, Mandatory Curtailment Option, on or before (date 12 months from approval of Rider PS) with an original term not less than three (3) years and under which the capacity credits will remain at the level approved effective (the date Rider PS is initially approved) through (date 48 months after Rider PS is initially approved) Effective (date 48 months after Rider PS is initially approved), contracts entered into under the foregoing provision will automatically renew annually until terminated as outlined herein; however, the capacity credits will be the approved credits in effect on (date 48 months after Rider PS is initially approved), and thereafter be subject to change as approved by the South Carolina Utilities Commission.

RATE

Facilities Fee \$ 40.00 per month

Credits*

1. Capacity Credit

Each month, a determination of the curtailable capacity available to the Company during the Exposure Period will be made in order to compute a credit under the Mandatory Curtailment Option. The resulting amount will be the Effective Curtailable Demand (ECD) and shall not be less than zero. The monthly Capacity Credit is equal to the $ECD \times \$3.50/kW$.

2. Energy Credit

During any month when curtailment is requested, the Customer will also receive an energy credit of \$.10 per kWh for the energy curtailed between the Firm Demand and the Forecasted Demand during a Curtailment Period.

* HP-X customers see Schedule HP-X, Provision For Customers Served Under Rider PS

Penalty and Penalty Computation

If the Customer fails to reduce and maintain load at, or below the Firm Demand during any Curtailment Period, a penalty will be applied to the Customer's account for the month of occurrence at the rate of \$2.00 per kWh for all kWh used above the Firm Demand.

CONTROL NOTICES AND LIMITATIONS

The Customer shall be notified of all initiations of Curtailment Periods at least thirty (30) minutes prior to such times. The Company may invoke Curtailment Periods for not more than 100 hours in any year. Further, the Company shall have the right to invoke a Curtailment Period at any time, subject to a maximum duration of 10 hours in any calendar day, which may be extended only by mutual agreement with the Customer.

Rider PS (SC) continued

VOLUNTARY CURTAILMENT OPTION

GENERAL PROVISIONS

The Company's request to curtail service under the Voluntary Curtailment Option may be at any time. Under this option, the customer agrees, on a per event basis, to reduce load to a Firm Demand. Customers served under the Voluntary Curtailment Option may also contract for service under the Mandatory Curtailment Option, but may not contract under the Generator Curtailment Option.

Customers who agree to curtail load during a Curtailment Period must indicate their desire to participate in the event in accordance with an offer, the details of which will be posted on the Duke Energy web site. The Customer will be required to nominate an amount of load to be reduced during the Curtailment Period by establishing a Firm Demand. Customer nominations to curtail load will be accepted on a first-come, first-served basis, and are not firm until the Company has accepted the Customer's nomination. Prior to acceptance of any nomination, the Company may rescind the offer based on customer responses to the offer or due to changes in load conditions.

Under the Voluntary Curtailment Option each participating customer will receive notice of an offer to participate in a curtailment event. In no case will the notice be given less than one hour prior to the beginning of the Curtailment Period. The offer will include the hourly energy prices (\$/ kWh) for each hour of the Curtailment Period to be used to determine the Energy Credit.

The Company reserves the right to test the provisions of this Rider twice per year, and shall give advance notice of any test to customers served under this Rider.

RATE

Facilities Fee \$ 40.00 per month (see Exception)

Exception. The Facilities Fee does not apply to customers concurrently enrolled under the Mandatory Curtailment Option.

Credits

Energy credits will be paid to the customer for the load curtailed between the Forecasted Demand and the Firm Demand during the Curtailment Period. Energy Credits are not paid for load curtailed below the Firm Demand.

Penalty and Penalty Computation

No payment will be made to the customer during a Curtailment Period unless the customer curtails at least 50% of the nominated load reduction in kilowatt hours.

CONTROL LIMITATIONS

The Company may invoke Voluntary Curtailment Periods for an unlimited number of hours per year with no limit on the number of hours in any given calendar day.

CONCURRENT PARTICIPATION IN THE MANDATORY CURTAILMENT AND VOLUNTARY CURTAILMENT OPTION

For Customers participating under both the Mandatory Curtailment Option and the Voluntary Curtailment Option, the following provisions apply:

If prior to or during any Voluntary Curtailment Period the Company invokes a Mandatory Curtailment request, any customer participating in the Voluntary Curtailment Period will receive notice under the Mandatory Curtailment provision and be required to also comply with the Mandatory Curtailment provisions.

If prior to or during any Mandatory Curtailment period the Company invokes a Voluntary Curtailment request, any customer participating in the Mandatory Curtailment Period may receive an offer under the Voluntary Curtailment provision and be allowed to participate in the Voluntary Curtailment Period by providing additional curtailable load beyond their Mandatory Curtailment Option obligation.

Credits and penalties under the Mandatory Curtailment Option take precedence and will be determined before calculating credits under the Voluntary Curtailment Option. For concurrent participation in a Mandatory and Voluntary Curtailment event, the requirement under the Voluntary Curtailment Option to curtail at least 50% of the nominated load will be waived for Mandatory and Voluntary Curtailment Periods that run concurrently. In addition, during a concurrent Mandatory and Voluntary Curtailment Period, credits for the Voluntary Curtailment Period will exclude all load curtailed pursuant to the Mandatory Curtailment provisions.

Rider PS (SC) continued

GENERATOR CURTAILMENT OPTION

GENERAL PROVISIONS

Contracts for Generator Curtailment will be accepted for a minimum of 200 KW of load to be transferred from the Company's source to the standby generator. Under this option, the customer agrees to provide a source of capacity through load reduction at any time the Company has capacity constraints, including generation, transmission or distribution capacity constraints or reactive power concerns. The Company, at its sole discretion, may limit requests for curtailment to certain groups of customers for valid reasons. The Generator Option is not available to customers served under the Mandatory Curtailment Option or the Voluntary Curtailment Option.

When the Company requests the operation of the standby generator, a watt-hour meter(s) installed on or near the generator bus of the Customer's facility will record the kWh output at the generator. The Customer shall supply a 110-volt continuous source of power for the meter.

The Company will test the operation of the Customer's generator(s) each month, during which time the Customer will transfer load from the Company's source to the generator(s).

TRANSITION PROVISION

Customers served under Rider SG on (the date Rider PS is initially approved) are eligible to enter into a new contract for Rider PS, Mandatory Curtailment Option, on or before (date 12 months from approval of Rider PS, with an original term not less than three (3) years and under which the capacity credits will remain at the level approved effective (the date Rider PS is initially approved) through (date 48 months after Rider PS is initially approved) Effective (date 48 months after Rider PS is initially approved), contracts entered into under the foregoing provision will automatically renew annually until terminated as outlined herein; however, the capacity credits will be the approved credits in effect on (date 48 months after Rider PS is initially approved), and thereafter be subject to change as approved by the South Carolina Utilities Commission

RATE

Facilities Fee \$ 155.00 per generator meter per month (See Exception)

Exception: If, in the Company's sole opinion, cellular communication technology cannot be utilized to retrieve data from the meter, the customer may still be allowed to participate in the Generator Option by providing, at his expense, a dedicated telephone line. In such a case, the Facilities Fee will be reduced by \$30.00.

Credits

1. Capacity Credit

The Customer will receive a Capacity Credit of \$3.50 per kW based on the average capacity generated, based on kilowatt-hours associated with the Maximum Curtailable Demand, during all Curtailment Periods of the current month and all tests.

2. Energy Credit

The Customer will receive an Energy Credit of \$.10 per kWh based on the metered output of the Customer's generator, for all kWh below the Maximum Curtailable Demand, during Curtailment Periods of the month and all tests.

Penalty and Penalty Computation

If the Customer fails to transfer to the generator at least 50% of the Maximum Curtailable Demand on a continuous basis, during a Curtailment Period, a penalty will be applied to the Customer's account for the month of occurrence at the rate of \$2.00 per kWh for the difference between the generated capacity and 50% of the Maximum Curtailable Demand.

CONTROL NOTICES AND LIMITATIONS

The Customer shall be notified of all initiations of Curtailment Periods at least fifteen (15) minutes prior to such times. The Company may invoke Curtailment Periods for not more than 100 hours in any year. Further, the Company shall have the right to invoke a Curtailment Period at any time, subject to a maximum duration of 10 hours in any calendar day, which may be extended only by mutual agreement with the Customer.

Rider PS (SC) continued

CONTRACT

MANDATORY CURTAILMENT OPTION AND GENERATOR OPTION

The Mandatory Curtailment Option and Generator Curtailment Option shall have an original minimum term of three (3) years, and shall renew annually thereafter until terminated by the Customer giving at least twelve (12) months' previous notice of such termination in writing. In the event the Customer requests an amendment to or termination of the service agreement for this rider before the end of the original term or required notice period, which ceases or reduces the Customer's obligation to curtail load, and continues the agreement for service under the applicable rate schedule at the same location, the Customer shall pay a termination fee as follows:

1. \$42.00 per kW of the average monthly Effective Curtailable Demand measured during the previous 12 months.

Plus

2. The monthly Facilities Fee for each month in the remaining original term of contract and required notice period.

The termination fee may be adjusted based on the Maximum Curtailable Demand established in an amended contract by the customer.

VOLUNTARY CURTAILMENT OPTION

The Voluntary Curtailment Option shall have a minimum original term of one (1) year and shall renew annually thereafter until terminated by the Customer giving at least sixty (60) days previous notice of such termination in writing. In the event the Customer requests termination of service under this Rider before the end of the original term, and continues the agreement for service under the applicable rate schedule at the same location the Customer shall pay a termination fee equal to the monthly Facilities Fee for each month in the remaining original term of contract and required notice period

The Company reserves the right to terminate the Customer's Contract under this Rider at any time upon written notice to the Customer for the failure to perform satisfactorily during three or more events as determined by the Company, in response to requests for curtailment, or for violation of any of the terms or conditions of the applicable Schedule or this Rider.

South Carolina Original (Proposed) Leaf No. 78
Effective June 1, 2009
PSCSC Docket No.
Order No.

Duke Energy Carolinas, LLC

Electricity No. 4
South Carolina Original (Proposed) Leaf No. 71

RIDER PM (SC)
POWER MANAGER LOAD CONTROL SERVICE

AVAILABILITY (South Carolina only)

Available to individually-metered residential customers receiving concurrent service from the Company on Schedule RS, RE, RB, or ES, who are not served under Rider SCG.

This Rider is available on a voluntary basis, at the Company's option, in areas where the Company operates load control devices. This Rider is available for control of electric central air conditioning (cooling) systems where the following requirements are met:

1. The Customer must agree to control of all central air conditioning installed in the residence.
2. The Company shall have the right to require that the owner of the controlled equipment give satisfactory written approval for the Company's installation and operation of load control devices on that equipment before entering an agreement with the Customer and making such installation.
3. Neither the Customer nor his agent shall disconnect or otherwise interfere with the Company's equipment required to control the Customer's air conditioning system.
4. The Customer shall immediately notify the Company of the removal or damage to the Customer's equipment or the remote control unit.

INTERRUPTION PERIODS

The Company shall have the right to interrupt service to the Customer's central air conditioning (cooling) systems at any time the Company has capacity problems, including generation, transmission or distribution capacity problems or reactive power problems.

In addition, the Company shall have the right to intermittently interrupt (cycle) service to the Customer's central electric air conditioning (cooling) systems. The Company will restrict its operation of the load control devices so that during the eighteen (18) hour period from 6:00 a.m. to 12 midnight, the total duration of cycling interruption shall not exceed ten (10) hours.

The Company, at its sole discretion, may limit requests for curtailment to geographic regions for valid reasons.

The Company reserves the right to test the function of these load control provisions at any time.

CREDITS FOR LOAD CONTROL

Payments will be made to the Customer as a billing credit as follows:

| <u>Billing Month</u> | <u>Credit</u> |
|----------------------|-------------------|
| July – October | \$ 8.00 per month |

The total credits on any monthly bill shall not exceed 35% of the current monthly bill calculated on the appropriate rate schedule exclusive of such credits. In addition, the monthly bill shall not be less than the Basic Facilities Charge for the applicable schedule.

INSTALLATION FEE

Service under this Rider requires a circuit wired through a Company meter enclosure, exclusive of any other load, and suitable for the installation of a load control device. The Customer shall pay a fee as follows:

| | |
|--|-----------|
| Prewired for load control service | No charge |
| Additional wiring for air conditioning service | \$35.00 |

The Company will not be required to install additional wiring for the charge listed above if the Company determines the wiring cannot be done in a manner which is economically feasible.

Rider PM (SC) (continued)

CONTRACT PERIOD

The Company offers a contract for customers allowing load control for an initial term of one year and thereafter until terminated by either party on thirty days' written notice. The Company reserves the right to terminate the Customer's contract under this Rider at any time upon notice to the Customer for violation of any of the terms or conditions of the applicable schedule or this Rider. If within the first year, the Customer wishes to discontinue load control service the Customer will pay a \$25.00 service charge.

South Carolina Original (Proposed) Leaf No. 71
Effective June 1, 2009
PSCSC Docket No.
Order No.

(Page 2 of 2)

Duke Energy Carolinas, LLC

Electricity No. 4
South Carolina Original (Proposed) Leaf No. 171

NON RESIDENTIAL SMART SAVER™
ENERGY EFFICIENT PRODUCTS PROGRAM (SC)

PURPOSE

The purpose of this program is to encourage the installation of high efficiency equipment in new and existing nonresidential establishments. The program will provide incentive payments to offset a portion of the higher cost of energy efficient equipment.

PROGRAM

- Payments are available to owners of, or customer's occupying, new or existing nonresidential establishments served on Duke Energy Carolinas' general service rate and industrial rate schedules from Duke Energy Carolinas' retail distribution system.
- Payments are available for a percentage of the cost difference between standard equipment and higher efficiency equipment.
- The Company may vary the percentage incentive by type of equipment and differences in efficiency in order to provide the minimum incentive needed to drive customers to purchase higher efficiency equipment.
- The Company reserves the right to adjust the incentive, for specific equipment, on a periodic basis, as equipment efficiency standards change, and as customers naturally move to purchase higher efficiency equipment.
- The following types of equipment are eligible for incentives.
 - High efficiency lighting
 - High efficiency HVAC (cooling) equipment
 - High efficiency motors, pumps, and variable frequency drives
 - High efficiency commercial clothes washers
 - High efficiency food service equipment
 - High efficiency process equipment
 - Other high efficiency equipment as determined by the Company on a case by case basis.
- In order to receive payment under this program, the owner must submit an application before or within ninety (90) days of installation, along with the required documentation and verification that the installed efficiency measures meet the requirements of this program. The Company reserves the right to inspect the premises of the customer both before and after implementation of the measure for which payment is requested. Payments will be made only after the equipment has been installed, and is operable, as verified by the Company.
- Multiple incentive payments may be requested for each establishment; however, the Company reserves the right to limit the payments per establishment per year.
- The amount of the incentive payment for various standard types of equipment will be filed with the Commission annually, for information, and posted to the Company's website at www.duke-energy.com.

PAYMENT

- The payment to the customer or owner will be an amount up to 50% of the installed cost difference between standard equipment and higher efficiency equipment.
- With Company approval, the customer or owner may designate that payment be made to the vendor or other third-party.

South Carolina Original (Proposed) Leaf No. 171
Effective June 1, 2009
PSCSC Docket No.
Order No.

Duke Energy Carolinas, LLC

South Carolina Original (Proposed) Leaf No. 170

NONRESIDENTIAL ENERGY ASSESSMENT PROGRAM (SC)

PURPOSE

The purpose of this program is to assist nonresidential customers in assessing their energy usage and to provide recommendations for more efficient use of energy. The program will also help identify those customers who could benefit from other Duke Energy Carolinas Energy Efficiency programs.

PROGRAM

- This program is available to nonresidential customers served on a Duke Energy Carolinas' retail nonresidential rate schedule. The Telephone Interview Analysis and the On-site Audit and Analysis options are available only where the maximum kilowatt demand registered during the previous twelve (12) months is 500 kW or greater, or at the Company's option, for other nonresidential customers where, in the Company's sole opinion, an assessment would result in actionable recommendations for applicable to one or more of the customer's facilities on the Duke Energy Carolinas' system.
- The types of available energy assessments are as follows:
 - On-line Analysis. The customer provides information about its facility. Duke Energy Carolinas will provide a report including energy saving recommendations.
 - Telephone Interview Analysis. The customer provides information to Duke Energy Carolinas through a telephone interview after which billing data, and if available, load profile data, will be analyzed. Duke Energy Carolinas will provide a detailed energy analysis report with an efficiency assessment along with recommendations for energy efficiency improvements. A 12-month usage history may be required to perform this analysis.
 - On-site Audit and Analysis. An On-site Audit and Analysis are available for customers who have completed a Telephone Interview Analysis and where in the Company's sole opinion, the results indicate the likelihood for actionable energy efficiency measures. Duke Energy Carolinas will cover 50% of the costs of an on-site assessment. The customer's portion of the assessment will be refunded upon payment, by the Company of incentives for equipment installed under the Company's Nonresidential Smart Saver Program. The equipment incentive must be equal to or greater than 50% of the assessment cost paid by the customer. Duke Energy Carolinas will provide a detailed energy analysis report with an efficiency assessment along with recommendations, tailored to the customer's facility and operation, for energy efficiency improvements. A 12-month usage history may be required to perform this analysis. The Company reserves the right in its sole discretion, to limit the number of on-site assessments for customers who have multiple facilities on the Duke Energy Carolinas system. Duke Energy Carolinas may provide additional engineering and analysis, if requested and the customer agrees to pay the full cost of the assessment.

South Carolina Original (Proposed) Leaf No. 170
Effective June 1, 2009
PSCSC Docket No.
Order No.

Duke Energy Carolinas, LLC

South Carolina Original (Proposed) Leaf No. 151

LOW INCOME ENERGY EFFICIENCY AND
WEATHERIZATION ASSISTANCE PROGRAM (SC)

PURPOSE

The purpose of this program is to assist low income customers with energy efficiency measures in their home to reduce energy usage.

PROGRAM

- This program is available to low income customers served on a residential rate schedule from Duke Energy Carolinas' retail distribution system.

- This program consists of two parts as follows:

Weatherization and Equipment Replacement Assistance is available for up to 5000 qualified customers on the Duke Energy Carolinas' system in existing, individually metered, owner-occupied single-family, all-electric residences, condominiums, and mobile homes.

- Funds are available for (i.) weatherization measures, and/or (ii.) refrigerator replacement with an Energy Star appliance, and/or (iii.) heating system replacement with a 14 or greater SEER heat pump. The measures eligible for funding will be determined by an energy audit of the residence.
- A home energy audit will be provided at no charge to the customer.
- Availability of this program will be coordinated through local agencies that administer state weatherization programs, and the agency must certify that the household income of the participant is between 150% and 200% of the federal poverty level.
- Participants are not eligible for payments under any other Duke Energy Carolinas Energy Efficiency Programs for the same energy efficiency measure provided under this program.

Energy Efficiency Products, such as energy efficiency starter kits and compact fluorescent light bulbs, not to exceed \$30.00 in value, are available to customers in existing, individually metered, residences, condominiums, apartments and mobile homes.

- Duke Energy Carolina will provide eligible Energy Efficiency Products to local assistance agencies to be distributed to low income customers who participate in an energy survey. Participants who receive an incentive under this program provision are not eligible to receive the same incentive under any other Duke Energy Carolinas Energy Efficiency program.

PAYMENT

Participants in the Weatherization and Equipment Replacement Assistance provision of this program will receive assistance with energy efficiency measures as shown below. Payments will be made to the administering agency on behalf of the customer.

1. Weatherization Tier 1. Homes with energy usage up to 7 kWh per square foot of conditioned space can receive up to \$600 for weatherization measures.
2. Weatherization Tier 2. Homes with energy usage more than 7 kWh per square foot of conditioned space can receive assistance of up to \$4,000 for weatherization measures.
3. Equipment Replacement
 - a) Replacement cost, up to \$610, for a refrigerator with an Energy Star refrigerator.
 - b) Replacement cost of an electric heating system, up to \$ 6600, with a heat pump having a Seasonal Energy Efficiency Ratio (SEER) of 14 or greater.

South Carolina Original (Proposed) Leaf No. 151
Effective June 1, 2009
PSCSC Docket No.
Order No.

Duke Energy Carolinas, LLC

Electricity No. 4
South Carolina Original Leaf No. 152

ENERGY EFFICIENCY EDUCATION PROGRAM (SC)

PURPOSE

The purpose of this program is to educate students about energy efficiency in homes and schools through energy efficiency curriculum, Duke Energy Carolinas' online home audit and on-site school audits.

PROGRAM

- This program is available, at the company's option, to K-12 students enrolled in public and private schools who reside in households served by Duke Energy Carolinas.
- This program provides eligible students the ability to perform an on-line energy audit of their home, and the ability to assist in an energy assessment of their school. Each eligible student who completes a home energy audit will receive an energy efficiency measure for their home, not to exceed \$30.00 in value, such as a package of compact fluorescent light bulbs or an energy efficiency starter kit.

South Carolina Original (Proposed) Leaf No. 152
Effective June 1, 2009
PSCSC Docket No.
Order No.

Duke Energy Carolinas, LLC

Electricity No. 4
South Carolina Seventh (Proposed) Revised Leaf No. 54
Superseding South Carolina Sixth Revised Leaf No. 54

SCHEDULE HP-X (SC)
HOURLY PRICING FOR INCREMENTAL LOAD

AVAILABILITY (South Carolina Only)

Available to non-residential establishments with a minimum Contract Demand of 1000 KW who qualify for service under the Company's rate schedules G, GA, I, GT, IT, OPT, or PG, at the Company's option on a voluntary basis. The maximum number of customers on the system to be served under this schedule is one hundred fifty (150).

Service under this Schedule shall be used solely by the contracting Customer in a single enterprise, located entirely on a single, contiguous premises.

This Schedule is not available for a customer who qualifies for a residential schedule, nor for auxiliary or breakdown service. Power delivered under this schedule shall not be used for resale or as a substitute for power contracted for or which may be contracted for, under any other schedule of the Company, except at the option of the Company, under special terms and conditions expressed in writing in the contract with the Customer.

The obligations of the Company in regard to supplying power are dependent upon its securing and retaining all necessary rights-of-way, privileges, franchises and permits, for the delivery of such power. The Company shall not be liable to any customer or applicant for power in the event it is delayed in, or is prevented from, furnishing the power by its failure to secure and retain such rights-of-way, rights, privileges, franchises and permits.

The Company may cancel this schedule at any time it deems necessary.

TYPE OF SERVICE

The Company will furnish 60 Hertz service through one meter, at one delivery point at one of the following approximate voltages, where available:

- Single-phase, 120/240 volts; or
- 3-phase, 208Y/120 volts, 460Y/265 volts, 480Y/277 volts; or
- 3-phase, 3-wire, 240, 460, 480, 575, or 2300 volts; or
- 3-phase, 4160Y/2400, 12470Y/7200, or 24940Y/14400 volts; or
- 3-phase voltages other than those listed above may be available at the Company's option if the size of the Customer's contract warrants a substation solely to serve that Customer, and if the Customer furnishes suitable outdoor space on the premises to accommodate a ground-type transformer installation, or substation, or a transformer vault built in accordance with the Company's specifications.

The type of service supplied will depend upon the voltage available. Prospective customers should determine the available voltage by contacting the nearest office of the Company before purchasing equipment.

Motors of less than 5 H.P. may be single-phase. All motors of more than 5 H.P. must be equipped with starting compensators. The Company reserves the right, when in its opinion the installation would not be detrimental to the service of the Company, to permit other types of motors.

BILL DETERMINATION

The monthly bill under this schedule shall be the sum of the Baseline Charge, Rationing Charge, Incremental Demand Charge, Standby Charge (if applicable), Energy Charge, and Power Factor Charge (if applicable)

- Where: Baseline Charge = \$ amount calculated from CBL
Rationing Charge = Sum of [(New Load kWh per hour – Reduced Load kWh per hour) X Hourly Rationing Charge]
Incremental Demand Charge = Incremental Demand KW X \$.25 per KW
Standby Charge = (see Provision for Customers Operating in Parallel with the Company)
Energy Charge = (a) + (b)
Power Factor Charge = (see Power Factor Adjustment)

Where:

- (a) = Sum of [(New Load kWh per hour – Reduced Load kWh per hour) X Hourly Energy Charge]
- (b) = Net New Load kWh X .5 Cents per kWh Incentive Margin, but not less than zero.

DEFINITIONS

Customer Baseline Load (CBL): The CBL (kWh per hour) is one full year (365 days) of the individual customer's hourly loads representing the customer's energy use and load pattern on the applicable qualifying rate schedule. The CBL, as agreed to by the Customer and the Company, is used to define the level of kWh in each hour, above which all kWh will be billed at the hourly energy prices described under Schedule HP-X.

Baseline Contract Demand: The maximum monthly billing demand of the CBL.

SCHEDULE HP-X (SC) (continued)

DEFINITIONS (continued)

New Load: New Load (kWh per hour) is the amount by which actual kWh in any hour exceeds the CBL kWh for the same hour.

Reduced Load: Reduced Load (kWh per hour) is the amount by which actual kWh in any hour is less than the CBL kWh for the same hour.

Net New Load: Net New Load (kWh per month) is the sum of New Load kWh per hour during the month less the sum of Reduced Load kWh per hour during the month.

Incremental Demand: The Incremental Demand for local distribution facilities (KW per month) is the amount by which the maximum integrated 30-minute demand during the month for which the bill is rendered exceeds billing demand used in determining the baseline charge for the same period.

Month: The term "month" as used in the Schedule means the period intervening between readings of electronic pulse data for the purpose of monthly billings. Such data will be collected each month at intervals of approximately thirty (30) days.

Contract Demand: The Company will require contracts to specify a Contract Demand which will be the maximum demand to be delivered under normal conditions.

RATE:

Baseline Charge: The Baseline Charge (\$/month) is determined each month by calculating a bill on the current revision of the customer's qualifying rate schedule using Customer Baseline Load for the month to arrive at the appropriate monthly demand and energy amounts. Provisions of the qualifying rate schedule, including Determination of Billing Demand, Adjustment for Fuel Cost, Extra Facilities Charge, Interconnection Facilities Charge, etc. will apply to the bill calculation used to determine the Baseline Charge.

Rationing Charge: The Rationing Charge (¢/kWh) consists of a generation component and/or a transmission component and/or a distribution component and will be determined on an hourly basis during the month. The generation component applies to any hour of the month when low reserve margins for available generation are expected to require the operation of combustion turbines. The transmission and/or distribution component applies to any hour during the billing month when the system demand is expected to exceed 90 percent of the forecasted summer peak demand. The transmission component applies to customers served from the transmission system. Both the transmission and distribution components apply to customers served from the distribution system. If none of the above conditions occur during the month, the Rationing Charge will be zero. The Rationing Charge will be communicated as described in Energy Price Determination.

Incremental Demand Charge: \$.25 per KW per month

Energy Charge: The Energy Charge (¢/kWh) is the hourly charge equal to expected marginal production cost including line losses, and other directly-related costs. The Energy Charge will be communicated as described in Energy Price Determination.

Incentive Margin: .5¢ per kWh which is applied to Net New Load, but shall not be less than zero.

MINIMUM BILL

The Minimum Bill will be calculated on an annual basis and will be the Baseline Charge, Rationing Charge, Incremental Demand Charge, Standby Charge and Energy Charge summed over the year. The total for the year of CBL Demand Charges plus Standby Charges plus Incremental Demand Charges plus the Incentive Margin applied to Net New Load, shall not be less than the total of \$17.88 per KW per year of Baseline Contract Demand plus \$3.00 per year multiplied by the difference between Contract Demand and Baseline Contract Demand.

DETERMINATION OF PRICING PERIODS

Each hour of the day is a distinct pricing period. The initial pricing period of the day is a one-hour period beginning at 12:00:01 a.m. and ending at 1:00:00 a.m. The last pricing hour of the day begins at 11:00:01 p.m. and ends at 12:00 midnight.

ENERGY PRICE DETERMINATION

Each business day by 4:00 p.m., the hourly Energy Charges, and Rationing Charges, if applicable, for the 24 hours of the following day will be communicated to the Customer. Prices for weekends and Company holidays will be communicated to the Customer by 4:00 p.m. on the last business day before the weekend or holiday. The customer is responsible for notifying the company if he fails to receive the price information.

SCHEDULE HP-X (SC) (continued)

PROVISION FOR CUSTOMERS OPERATING IN PARALLEL WITH THE COMPANY

If a customer has power generating facilities operated in parallel with the Company and the Baseline Charge is not calculated under Schedule PG, the Standby Charge, along with the paragraphs, Determination of Standby Charges and Interconnection Facilities Charge shall be applicable to service under this schedule. The Incremental Demand Charge does not apply to any incremental demand that is less than Standby Demand

PROVISION FOR CUSTOMERS SERVED UNDER RIDER IS

For customers served under Rider IS, the Interruptible Contract Demand shall be the same as that contracted for during the baseline period. Further, the calculation of the Effective Interruptible Demand (EID) each month will exclude all energy consumed above the CBL. The Rationing Charge will not apply to reduced load above Firm Contract Demand during the hours of interruption periods.

PROVISION FOR CUSTOMERS SERVED UNDER RIDER PS

For customers served under PowerShare, Rider PS, the Maximum Curtailable Demand shall be the same as that contracted for during the baseline period and the PowerShare Firm Demand must be at least 200 kW less than the Customer Baseline (CBL). Further, the calculation of the Effective Curtailable Demand (ECD) each month will exclude all energy consumed above the CBL. The PowerShare Curtailed Energy Credit will apply to only the load curtailed between the Firm Demand and the smaller of the Forecasted Demand and the CBL, provided the Forecasted Demand is greater than the Firm Demand. The Hourly Energy Charge and Hourly Rationing Charge will not apply to HP Reduced Load above the PowerShare Firm Demand during a Curtailment Period.

POWER FACTOR ADJUSTMENT

The Company will adjust, for power factor, the kWh for any customer operating in parallel, and may adjust the kWh for any other customer served under this schedule. The power factor adjustment may result in a Power Factor Charge, if applicable, as follows:

Power Factor Charge = Sum of Hourly Load Correction Amounts for all hours in the billing period, but not less than zero,

Where:

Hourly Load Correction Amount = Hourly Load Correction kWh X Hourly Price

Hourly Load Correction kWh = [total hourly kWh X (.85 ÷ hourly power factor)] – total hourly kWh

ADJUSTMENT FOR FUEL COSTS

The Company's Adjustment for Fuel Costs is incorporated as a part of, and will apply to all service supplied under the Schedule, including determination of the Baseline Charge.

EXTRA FACILITIES CHARGE

A monthly "Extra Facilities Charge" equal to 1.7% of the installed cost of extra facilities necessary for service under Schedule HP-X, but not less than \$25, shall be billed to the Customer in addition to the bill under Schedule HP-X described under Bill Determination and any applicable Extra Facilities Charge included in the Baseline Charge.

MODIFICATIONS OF THE CBL

The CBL will normally represent a full year under the same rate design or structure, and may be reestablished every four years. Modifications to the CBL may be allowed at the option of the Company under certain situations. These situations may include, but are not limited to, the following:

- Adjustments of load patterns associated with annual plant shutdowns, or to smooth random variations in the load pattern, provided the modifications result in revenue neutrality
- One-time permanent modifications to the physical establishment capacity completed prior to initiating service on this schedule
- Adjustments to reflect any Company-sponsored load management program

PAYMENT

Bills under this Schedule are due and payable on the date of the bill at the office of the Company. Bills are past due and delinquent on the fifteenth day after the date of the bill. If any bill is not so paid, the Company has the right to suspend service. In addition, all bills not paid by the twenty-fifth day after the date of the bill shall be subject to a one and one-half percent (1 1/2%) late payment charge on the unpaid amount. This late payment charge shall be rendered on the following month's bill and it shall become part of and be due and payable with the bill on which it is rendered.

CONTRACT PERIOD

Each Customer shall enter into a contract to purchase electricity under this schedule for a minimum original term of one (1) year, and thereafter from year to year upon the condition that either party can terminate the contract at the end of the original term, or at any time thereafter, by giving at least sixty (60) days previous notice of such termination in writing.

If the Customer requests an amendment to or termination of the agreement before the expiration of the initial term of the agreement, the Customer shall pay to the Company an early termination charge as set forth in the Company's Service Regulations.

Duke Energy Carolinas, LLC

Electricity No. 4
South Carolina Original (Proposed) Leaf No. 156

RESIDENTIAL SMART SAVER™
ENERGY EFFICIENT PRODUCTS PROGRAM (SC)

PURPOSE

The purpose of this program is to encourage the installation of ENERGY STAR or other high efficiency products in new or existing residences. The program will provide incentives to offset a portion of the higher cost of higher efficiency products.

PROGRAM

- Incentives are available to builders of new residences or to owners of, or customer's occupying, new or existing residences served on a Duke Energy residential rate schedule from Duke Energy Carolinas' retail distribution system provided; however, that incentives for energy efficient products considered to be fixtures are available only to builders or owners of residences served on the Duke Energy Carolina's retail distribution system.
- The types of equipment eligible for incentives may include but are not limited to the following:
 - High efficiency lighting
 - High efficiency clothes washers
 - High efficiency refrigerators
 - High efficiency dishwashers
 - Other high efficiency equipment as determined by the Company on a case by case basis, but not including water heaters, heating or cooling systems.
- Incentives may be offered in a variety of ways including, but not limited to discount coupons, in-store promotions, on-line discounted purchases, etc.
- The Company's incentive will be an amount up to 50% of the installed cost difference between standard equipment and higher efficiency equipment; however, the incentives for high efficiency lighting may be higher than 50%. Incentives for certain products will be provided only in conjunction with incentives provided by manufacturers, distributors, or retailers during promotional periods.
- Incentives under this program are only available for ENERGY STAR or other energy efficiency products for which incentives pass the Company's Utility Cost Test (UCT).
- The Company may vary the incentive by type of equipment and differences in efficiency in order to provide the minimum incentive needed to drive customers to purchase higher efficiency equipment.
- The Company reserves the right to adjust the incentive, for specific equipment, on a periodic basis, as equipment efficiency standards change, and as customers naturally move to purchase higher efficiency equipment.
- The amount of the incentive payment for various standard types of equipment will be filed with the Commission, for information, and posted to the Company's website at www.duke-energy.com.
- Incentives may be limited to one of any product, per residence, under all Duke Energy Carolinas' Energy Efficiency Programs.
- With Company approval, the builder, owner or customer may designate that incentive be provided to the vendor or other third-party.

South Carolina Original (Proposed) Leaf No. 156
Effective June 1, 2009
PSCSC Docket No.
Order No.

Duke Energy Carolinas, LLC

Electricity No. 4
South Carolina Original (Proposed) Leaf No.154

RESIDENTIAL SMART SAVER™
PROGRAM FOR AIR CONDITIONING (SC)

PURPOSE

The purpose of this program is to encourage the installation of high efficiency central air conditioning (cooling) systems.

PROGRAM

- Payments are available for heat pumps and central air conditioning systems in new or existing individually-metered residences, condominiums and mobile homes served by Duke Energy Carolinas' residential rate schedules from Duke Energy Carolinas' retail distribution system.
- The new central air conditioning system or heat pump must have a Seasonal Energy Efficiency Ratio (SEER) of 14 or more and also include an electronically commutative fan motor (ECM fan) on the indoor unit. Geothermal heat pumps must have an Energy Efficiency Ratio (EER) of 11.5 or more and include an ECM fan on the indoor unit. The Heating Seasonal Performance Factor (HSPF) for electric rating for electric heat pumps must be 8.2 or more.
- The new Heating Ventilation and Air Conditioning (HVAC) system must include a properly matched outdoor unit and inside coil, which must be listed as such by the American Refrigeration Institute (ARI). This listing is available at www.ahridirectory.org.
- Payments are available to the builder of a new structure, (or his designee) and to both the owner and to the HVAC dealer (or sales representative) who sells and installs the HVAC system in existing structures.
- Heat pumps and central air conditioning systems must be installed by a Duke Energy Carolinas participating HVAC dealer.
- Heat pumps may use natural gas or any fuel for supplemental or backup heating.
- To qualify for payment under this program, qualifying systems must be installed on or after (date) and the application for payment must be made within 90 days of installation.

PAYMENT AMOUNT

Payments will be made for qualifying HVAC equipment as follows:

New Residences

A payment of \$300 per unit will be made to the builder or the builder's designee.

Existing Residences

A payment of \$200 per unit will be made to the owner of the residence, and

A payment of \$100 per unit will be made to the HVAC dealer (or sales representative) who sells and installs the HVAC system.

South Carolina Original (Proposed) Leaf No. 154
Effective June 1, 2009
PSCSC Docket No.
Order No.

(Page 1 of 1)

Duke Energy Carolinas, LLC

Electricity No. 4
South Carolina Original (Proposed) Leaf No. 153

RESIDENTIAL ENERGY ASSESSMENT PROGRAM (SC)

PURPOSE

The purpose of this program is to assist residential customers in assessing their energy usage and to provide recommendations for more efficient use of energy in their homes. The program will also help identify those customers who could benefit most by investing in new energy efficiency measures, undertaking more energy efficient practices and participating in Duke Energy programs.

PROGRAM

- This program is available for residences served on Duke Energy Carolinas' residential rate schedules from Duke Energy Carolinas' retail distribution system.
- The Company may require a minimum number of months of historical usage data before performing an analysis under one of the options available to customers as follows:

Energy Analysis

The customer provides information about their home, family, appliances, equipment and energy usage through an online energy survey. Customers without internet access may complete a mail-in survey. Duke Energy Carolinas will create a customized energy report including energy saving recommendations.

On-site Audit and Analysis

Duke Energy Carolinas will perform on-site assessments of owner-occupied residences and their energy efficiency related features where the customer's average monthly energy usage during the summer months exceeds 1000 kilowatt hours. Assessments may be limited to one per residence during the life of this program. Duke Energy Carolinas will provide a detailed Home Energy Assessment including energy efficiency recommendations.

- Participating customers will be offered a home energy efficiency measure, not to exceed \$30.00 in value, such as an energy efficiency starter kit or compact fluorescent light bulbs. The incentive may be delivered in a variety of ways including but not limited to, direct mail, rebates, discount coupons, in-store promotions or online discounts.
- Energy efficiency measure incentives are not available under this program if the customer has previously received the same incentive for this or any other Duke Energy Carolinas Energy Efficiency Program.

South Carolina Original (Proposed) Leaf No. 153
Effective June 1, 2009
PSCSC Docket No.
Order No.

(Page 1 of 1)



POWERSHARE[®]

Service Agreement

Commencement Date: _____
 (to be provided by Duke Energy)

Customer Information

Company Name ("Customer") «Company_Name» Facility Name: «Facility_Name»

Service Address «Service_Address»

City «City» State «State» Zip Code «Zip_Code»

Electric Service Agreement

Duke Energy Account Number «Duke_Energy_Account_Number» Contract Demand «Contract_Demand»

Rate Schedule «Rate_Schedule»

Select Program Options: ^(a)

- Mandatory Option (may also select Voluntary Option)**
- Mandatory Option for Hourly Pricing**

Term (years): Three (3)

Facilities Fee: \$ 40.00 per month

Firm Demand ^(b) (kW): _____

Voluntary Option

Term (years): One (1)

Facilities Fee^(c): \$ 40.00 per month

Generator Option:

Term (years): Three (3)

Facilities Fee: \$ 155.00 per month per generator meter

Total Maximum Curtailable Demand ^(d) (kW): _____

If, in Duke Energy's sole opinion, cellular communication technology cannot be utilized to retrieve data from the Customer's generator meter, the Customer may still participate in the Generator Option by providing, at its sole expense, a dedicated telephone line sufficient for such purposes. In such a case, the Meter Facilities Fee will be reduced by \$ 30.00.

Generator Information (insert additional rows as needed)

| Generator # | Nameplate Rating (kVA) | Maximum Curtailable Demand (kW) | Facilities Fee per Generator Meter |
|-------------|------------------------|---------------------------------|------------------------------------|
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| Total | | | |

Customer Contact Information

On employees who should have access to MyDuke.com curtailment information and / or the ability to nominate load for voluntary curtailment ^(e):

Name \ Address \ Business Phone No. \ Mobile Phone No. \ Fax No. \ Pager No. \ Email Address \ SMS Email Address (100 character pager address)

Footnotes:

Customers electing to decline the Transition Provisions may provide a letter to Duke Energy conveying the decision prior to their Commencement Date. Customer-owned generators may not operate in parallel with the Duke Energy system, with 2 exceptions. Contact your Duke Representative for additional information.

1. Momentary paralleling is allowed, subject to prior review and approval by Duke Energy.
2. Parallel operation is allowed under Schedule HP (NC) subject to the interconnection provisions of Schedule HP (NC).

- (a) Mandatory Option for Hourly Pricing and Generator Option not available in combination with any other Options.
- (b) Value must be at least 200 kW less than Contract Demand. Additional requirements apply to the Hourly Pricing Option.
- (c) Not applicable if the Mandatory Option was also selected.
- (d) Value must be at least 200 kW.
- (e) Customer shall enter contact information into MyDuke.com on employees who should be notified of pending Curtailment Periods.



POWERSHARE[®]

This PowerShare Service Agreement ("Agreement") is entered into between Customer and Duke Energy. Customer shall be enrolled in Duke Energy's PowerShare program pursuant to the terms and conditions hereof.

1. Service: (a) Upon Duke Energy's readiness to provide such service to Customer, including without limitation installation of necessary Facilities, as defined below, at Customer's premises and receipt of necessary historic meter data, Duke Energy shall provide and Customer shall receive service under Duke Energy's PowerShare Non-Residential Load Curtailment program, Rider PS ("PowerShare") , as further set forth herein.

(b) Duke Energy shall provide prompt notice to Customer at the address set forth below of the satisfaction of the conditions set forth in Section 1(a) and the date ("Commencement Date") upon which Duke Energy shall commence providing, and Customer shall commence receiving, PowerShare service.

(c) The original minimum term, as that term is defined in the PowerShare Rider, shall commence on the Commencement Date. For avoidance of doubt, on and after the Commencement Date, Duke Energy shall provide Customer with Credits, and Customer shall respond to the curtailment requests of Duke Energy, all in accordance with the PowerShare Rider.

(d) Prior to the Commencement Date, Customer shall provide to Duke Energy contact information for those personnel to be contacted by Duke Energy for notification of Curtailment Periods and shall thereafter timely keep Duke Energy apprised of any changes to such contact information, all as further instructed by Duke Energy.

2. Facilities: (a) In order for Customer to participate in the PowerShare program, certain Facilities ("Facilities") may need to be installed on Customer's premises. Promptly after execution of this Agreement, Duke Energy will install and connect necessary Facilities on Customer's premises to enable Customer to receive PowerShare service. Customer shall provide Duke Energy safe and reasonable access to Customer's premises and facilities to allow Duke Energy to install such Facilities. Subject to Section 3, Facilities shall remain at all times the property of Duke Energy.

(b) Those Customers electing the Generator Option, in compliance with specifications provided by Duke Energy, shall (i) install and maintain a metering cabinet and (ii) install all other necessary metering equipment provided by Duke Energy.

3. Abandon in Place: In the event that Duke Energy provides Facilities for Customer under the Generator Option, and an event occurs under which Customer cannot or elects not to receive PowerShare service Duke Energy may, at its sole election, abandon any Facilities in place at the Customer's premises. Such abandoned Facilities shall become the property of Customer and Duke Energy shall have no further liability relating thereto.

4. Assignment: Customer may not assign or otherwise transfer this Agreement without the prior written consent of Duke Energy.

5. Tariffed Services: Customer acknowledges that Duke Energy's provision of PowerShare services hereunder is governed and controlled by the PowerShare Rider. On and after the Commencement Date, any conflicts between this Service Agreement and the PowerShare Rider shall be resolved in favor of the PowerShare Rider. To the extent this Agreement conflicts with any provisions of the Electric Service Agreement, the provisions of this Agreement shall control. The provision of PowerShare service hereunder shall in all respects be subject to and in accordance with all the terms and conditions of the PowerShare Rider, the applicable rate schedule, and Duke Energy's Service Regulations, as approved by the Commission, which are hereby incorporated by reference and made a part hereof as though fully set forth herein. Duke Energy's Service Regulations, the applicable rate schedule, and the PowerShare Rider are subject to change, revision, alteration or substitution, either in whole or part, upon order of the Commission or any other regulatory authority having jurisdiction, and any such change, revision, alteration, or substitution shall immediately be made a part hereof as though fully written herein, and shall nullify any prior provision in conflict therewith.

6. Miscellaneous: No waiver by either party of any default shall be deemed a waiver of any subsequent default. The Agreement constitutes the entire agreement of the parties and supersedes any oral or written understandings, proposals or other communications by the parties prior to this Agreement. If any provision of the Agreement is held to be invalid, such invalidity shall not affect the remaining provisions of the Agreement. Subject to Section 5, amendments to the Agreement must be in writing and signed by both parties. Headings are provided for the convenience of the parties, and shall not affect the interpretation of any provision.

Duke Energy Carolinas, LLC

[Customer]

By: _____
Name: _____
Title: _____
Email: _____
Fax: _____
Date: _____

By: _____
Name: _____
Title: _____
Mailing Address:
Street: _____

City: _____
State/Zip: _____
Email: _____
Fax: _____
Date: _____

Duke Energy Kentucky, Inc.
Case No. 2008-00495
Supplemental Set Staff Data Requests
Date Received: April 13, 2009

STAFF-DR-SUPP-007

REQUEST:

Refer to the market potential study filed in response to Item 15 of Staff's first request and page 13 of the Direct Testimony of Richard G. Stevie, PH.D. Explain whether Duke Kentucky has evaluated the results of the study to determine whether there are additional programs it wishes to implement.

RESPONSE:

Because the market potential study was completed in February 2009 (two months after the submission of the application in this case), the Company has not yet determined if there are additional programs from the market potential study that should be implemented.

PERSON RESPONSIBLE: Richard G. Stevie

Duke Energy Kentucky, Inc.
Case No. 2008-00495
Supplemental Set Staff Data Requests
Date Received: April 13, 2009

STAFF-DR-SUPP-008

REQUEST:

Refer to the response to Item 20, part b. of Staff's first request. The response indicates that Duke Kentucky intends to use several methods (e.g., e-mail, web, letter, etc.) to notify non-residential customers of Commission approval of its energy efficiency plan. The last sentence in the response indicates that Duke Kentucky will use the approach approved by the Commission, State, specifically, which approach Duke Kentucky is requesting that the Commission approve.

RESPONSE:

Unless restricted by the Commission, the Company would like to retain the ability to utilize a variety of methods to notify customers about the approved programs. Typically, when marketing a program, the Company will test a variety of notification methods in order to determine which method(s) work best. At this time, the Company has not yet determined the specific method(s) it will ultimately use.

PERSON RESPONSIBLE: Richard G. Stevie

Duke Energy Kentucky, Inc.
Case No. 2008-00495
Supplemental Set Staff Data Requests
Date Received: April 13, 2009

STAFF-DR-SUPP-009

REQUEST:

Refer to the response to Item 1 of the Attorney General's ("AG") first data request. The last sentence of the response refers to a need for comparable earnings for energy efficiency as utilities have for generation options. Identify any instances in the past five years in which Duke Kentucky or a Duke Kentucky affiliate has been authorized a 15 percent return on rate base or capitalization in a base rate proceeding.

RESPONSE:

Duke Energy Kentucky has not been authorized a 15% after tax return on rate base or capitalization in the last 5 years. In this proceeding, the Company is requesting an earnings opportunity (not a guarantee) of up to 15% (after tax) on program expenditures. Also, the earnings opportunities proposed by the Company reflect the risk being assumed by the Company that it will not achieve energy efficiency impacts. The Company does not bear this same risk with asset additions.

PERSON RESPONSIBLE: Paul G. Smith

Duke Energy Kentucky, Inc.
Case No. 2008-00495
Supplemental Set Staff Data Requests
Date Received: April 13, 2009

STAFF-DR-SUPP-010
PUBLIC (b)

REQUEST:

Refer to the response to Item 17 of the AG's first data request. Duke Kentucky based its proposal to recover 75 percent of avoided capacity costs from demand response programs and 50 percent of avoided energy and capacity costs from conservation programs on producing a 15 percent return on investment.

- a. It appears from the response that recovery of 58 and 40 percent, respectively, of such avoided costs is required to recover program costs with no return. Confirm whether this is an accurate understanding of the response.
- b. Provide the percentages of avoided cost recovery, both for demand response and conservation programs, needed to generate returns on investment of seven, ten, and thirteen percent. Show all calculations.
- c. The response shows Duke Kentucky's pro forma revenues for each year from 2009 through 2013 based on its load forecast and proposed Rider-SAW rate. Provide, for Duke Energy's electric operations, the pro forma revenues for the same period based on continuing its current DSM programs and cost recovery mechanism.

RESPONSE:

- a. That is correct – 58% and 40% are the percentages of avoided costs necessary to recover only the electric programs' costs with no return. This assumes that Duke Energy achieves its estimated 100% of efficiency impact at the estimated cost. To the extent that cost and efficiency impacts are different, the percentages mentioned above will change. These percentages do not include the recovery of lost margins.
- b.

CONFIDENTIAL PROPRIETARY TRADE SECRET

The redacted portions of this response are filed with the Commission under a Petition for Confidential Treatment.

| | | | |
|--------------------------------|--------|--------|--------|
| Target ROI (Electric Programs) | 7% | 10% | 13% |
| Total Avoided Costs (PV) | | | |
| Conservation % | 44% | 46% | 48% |
| Demand Response % | 65% | 68% | 70% |
| Revenue Requirement (PV) | | | |
| Program Costs (PV) | \$14.5 | \$14.5 | \$14.5 |
| EBIT | | | |
| Taxes | | | |
| Net Margin | | | |
| ROI | 7.0% | 10.0% | 13.0% |

- c. The projected revenues associated with the existing programs is not expected to change over the next 5 years because the program spending and level of customer participation is not projected to change. The Company estimates that projected revenues would be \$7.2 million for each year.

PERSON RESPONSIBLE: Theodore E. Schultz

Duke Energy Kentucky, Inc.
Case No. 2008-00495
Supplemental Set Staff Data Requests
Date Received: April 13, 2009

STAFF-DR-SUPP-011

REQUEST:

Refer to the response to Item 21 of the AG's first data request and paragraph X on pages 16-17 of the application.

- a. Confirm whether it is Duke Kentucky's intent that its actual program costs will not be included in the expenses reported on its income statement.
- b. Confirm whether it is Duke Kentucky's intent that the avoided costs on which its energy efficiency revenues are based will be included in the expenses reported on its income statement.
- c. If the answer to part a. or b. of this request is affirmative, explain, from an accounting standpoint, why Duke Kentucky is not proposing to include its actual program costs in the expenses reported on its income statement and show its avoided costs in a footnote.

RESPONSE:

- a. Duke Kentucky's reported income statement will include its actual program costs (i.e. actual program costs will not "not be included" in the expenses reported on its income statement).
- b. No, Duke Kentucky's reported income statement will not include the avoided costs in the expenses reported on its income statement.
- c. Not applicable. Duke is proposing to include its actual program costs in the expenses reported on its income statement and show its avoided costs in a footnote.

PERSON RESPONSIBLE: Paul G. Smith

Duke Energy Kentucky, Inc.
Case No. 2008-00495
Supplemental Set Staff Data Requests
Date Received: April 13, 2009

STAFF-DR-SUPP-012

REQUEST:

Refer to the attachment to the response to Item 28 of the AG's first data request. The request refers to testimony which stated that the energy efficiency plan would result in an increase of \$0.18 over the current demand-side management rate for a residential customer using 1,000 kWh per month. However, the current and proposed residential rates in the attachment produce an increase of \$0.36 based on 1,000 kWh used per month. Explain the discrepancy between the testimony and the attachment.

RESPONSE:

The \$0.36 amount, found in the response to item AG-DR-01- 028, compares Rider-SAW to the current DSMR residential rider of \$0.001416/kWh. The DSMR amount includes costs from previous years, including lost margin recovery and the true up calculation.

The \$0.18 amount, found in the direct testimony of Julie Janson, attempts to compare Rider-SAW to Rider-DSMR with only one year of costs. Because the proposed Rider-SAW amount does not include lost margin recovery or a true up based on results from previous years, these two amounts associated with previous years were removed.

PERSON RESPONSIBLE: Paul G. Smith

Duke Energy Kentucky, Inc.
Case No. 2008-00495
Supplemental Set Staff Data Requests
Date Received: April 13, 2009

STAFF-DR-SUPP-013

REQUEST:

Refer to the response to Item 30 of the AG's first request. Identify the utilities referenced in the second sentence that have filed rate proposals in California, Oklahoma and North Carolina for new recovery mechanisms for energy efficiency.

RESPONSE:

Oklahoma Gas and Electric (Oklahoma), Public Service of Oklahoma (Oklahoma), Duke Energy Carolinas (North Carolina), Progress Energy (North Carolina), Southern California Edison (California) and Pacific Gas and Electric (California)

PERSON RESPONSIBLE: Theodore E. Schultz