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Dianne B. Kuhnell  
Senior Paralegal

**VIA OVERNIGHT DELIVERY**

December 18, 2009

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

**RECEIVED**

**DEC 21 2009**

**PUBLIC SERVICE  
COMMISSION**

Re: Case No. 2008-00495

Dear Mr. Derouen:

Enclosed please find an original and twelve copies each of a second supplemental response to No. 13 in the Staff's First Set of Information Requests in the above captioned case. The Attachment to No. 13 is a Notice of Decision in the North Carolina Utilities Commission Duke Energy case as requested in the Initial Data Request from the Staff dated March 16, 2009.

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

Sincerely,

Dianne B. Kuhnell  
Senior Paralegal

cc: Parties of Record

**Duke Energy Kentucky, Inc.**  
**Case No. 2008-00495**  
**First Set Staff Data Requests**  
**Date Received: March 16, 2009**  
**Supplemented: December 16, 2009**

**RECEIVED**

**DEC 21 2009**

**STAFF-DR-01-013 Second Supplemental**

**PUBLIC SERVICE  
COMMISSION**

**REQUEST:**

Refer to pages 8-9 of the Direct Testimony of Richard G. Stevie, PH.D. ("Stevie Testimony"). Provide copies of the decision orders which have been issued by the commissions in any of the other jurisdictions in which a Duke Kentucky affiliate has filed a version of the save-a-watt plan. If a settlement was reached between the Duke Kentucky affiliate and intervenors, provide copies of the settlement document.

**RESPONSE:**

See Attachment STAFF-DR-01-013 Second Supplemental for the Notice of Decision filed with the North Carolina Utilities Commission Docket No. E-7, Sub 831 concerning the Save-A-Watt issue.

**PERSON RESPONSIBLE: N/A**

**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 ) **NOTICE OF DECISION**  
Efficiency Rider and Portfolio of Energy )  
Efficiency Programs )

**BEFORE:** Chairman Edward S. Finley, Jr., Presiding; and Commissioners Robert V. Owens, Jr., Lorinzo L. Joyner, and William T. Culpepper, III

**BY THE COMMISSION:** On June 12, 2009, Duke Energy Carolinas, LLC (Duke or Company); the Southern Alliance for Clean Energy, the Environmental Defense Fund, the Natural Resources Defense Council, and the Southern Environmental Law Center (collectively, the "Environmental Intervenors"); and the Public Staff filed an Agreement and Joint Stipulation of Settlement (Settlement Agreement) for consideration in this docket. In their filing, Duke, the Environmental Intervenors, and the Public Staff referred to themselves collectively as the "Stipulating Parties."

On June 18 and July 2, 2009, the Commission entered Orders in this docket whereby a hearing was scheduled for Wednesday, August 19, 2009, to consider the Settlement Agreement. The matter was thereafter called for hearing at the appointed time and place. All parties were present and represented by counsel. Theodore E. Schultz; J. Danny Wiles; Stephen M. Farmer; and Raiford L. Smith testified for Duke. James S. McLawhorn and Michael C. Maness testified on behalf of the Public Staff. John D. Wilson testified on behalf of the Environmental Intervenors. Roger D. Colton testified for the Public Interest Intervenors.<sup>1</sup>

The parties subsequently filed briefs and/or proposed orders for consideration by the Commission in deciding this case.

**WHEREUPON**, the Commission finds good cause, based upon a careful review of the entire record in this proceeding, to issue the present Notice of Decision to the effect that it will hereafter enter an Order Approving Agreement and Joint Stipulation of Settlement Subject to Certain Commission-Required Modifications and Decisions on Contested Issues. By that Order, the Commission will approve the Settlement Agreement subject to the following modifications and decisions on contested issues:

<sup>1</sup> The Public Interest Intervenors consist of the North Carolina Justice Center, AARP, the North Carolina Council of Churches, and Legal Aid of North Carolina.

1. The costs of Duke's demand-side management (DSM) and energy efficiency (EE) programs should first be allocated to the North and South Carolina retail jurisdictions, and such costs should then be recovered from only the class or classes of retail customers to which the programs are targeted. No costs of any approved DSM or EE program should be allocated to the wholesale jurisdiction. The reduced energy consumption resulting from the implementation of EE measures, or EE renewable energy certificates (RECs), thus paid for by Duke's retail customers should be used solely for Duke's REPS compliance obligation.

2. The Commission will approve the separate recovery of net lost revenues resulting from the Company's implementation of EE, but not DSM, measures as contemplated by the Settlement Agreement and/or the Stipulating Parties' proposed order. Further, the Commission will require Paragraph G of the Settlement Agreement to be modified to read as follows: (Modifications are shown in a track changes format.)

#### **G. Net Lost Revenues**

1. Net lost revenues mean revenue losses, net of marginal costs avoided at the time of the lost kilowatt-hour sale(s) incurred by the Company's public utility operation as the result of a new demand-side management or energy efficiency measure. Net lost revenues shall also be net of any increases in revenues resulting from any activity by the Company's public utility operations that cause a customer to increase demand or energy consumption, whether or not that activity has been approved pursuant to Commission Rule R8-68. Programs or measures with the primary purpose of promoting general awareness and education of energy efficiency as well as research and development activities are ineligible for the recovery of net lost revenues. Pilot programs or measures are also ineligible for the recovery of net lost revenues, unless the Commission approves the Company's specific request that a pilot program or measure be eligible for the recovery of net lost revenues when the Company seeks approval of that pilot program or measure. Utility activities shall be closely monitored by the Company to determine if they are causing a customer to increase demand or consumption, and the Company shall identify and keep track of all of its activities that cause customers to increase demand or consumption, whether or not those activities are associated with demand-side management or energy efficiency programs, as provided in the Settlement Agreement, so that they may be evaluated by the parties and the Commission for possible confirmation as "found revenues." When authorized by Commission Rule R8-69, and unless the Commission determines otherwise in a G.S. 62-133.9 DSM/EE rider proceeding, net lost revenues shall be recovered for 36 months for each vintage year, except that the recovery of net lost revenue will end upon Commission approval of

(1) an alternative recovery mechanism, or (2) the implementation of new rates in a general rate case or comparable proceeding to the extent that rates set in a rate case or comparable proceeding are set to explicitly or implicitly recover those net lost revenues.

3. The Commission will further order that its approval of the recovery of net lost revenues means revenue losses, net of all marginal costs, including energy-related and nonenergy-related costs, actually avoided; and that such net lost revenues shall be so calculated and otherwise determined, at the latest, under the true-up and measurement and verification provisions of the Settlement Agreement. The Commission, in ruling on this matter, will reserve judgment as to all matters concerning the appropriateness of the methodology employed and/or to be employed in the calculation of net lost revenues for purpose of this proceeding, notwithstanding any provision of the Settlement Agreement approved by the Commission or any provision of the Commission's present ruling; and state that it retains the discretion to review and decide all aspects of any and all issues that may arise in the future in connection with the net lost revenues true-up provisions of the Settlement Agreement.

4. The Commission will clarify the accounting and reporting requirements for the save-a-watt program as follows:

That, in regard to save-a-watt, Duke shall be, and hereby is, required (1) to include all actual program revenues (estimated, if not known) and actual program costs (estimated, if not known) 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 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 standalone, program-class basis, that is, with earnings from DSM programs, collectively, and earnings from EE programs, collectively, shown separately. Detailed calculations of the foregoing shall also be provided. Such schedules and/or calculations shall show, at a minimum, actual revenues; expenses; taxes; operating income; investment base, including major components where applicable; and applicable capitalization ratios and cost rates, including overall rate of return and return on common equity. Net lost revenues realized (estimated, if not known) for each reporting period shall be clearly disclosed as supplemental information.

5. Regarding the adequacy of Duke's programs for low-income participants, the Commission will direct the Advisory Group to consider expanding programs for low-income customers to the extent possible, but will not direct that the Advisory Group adhere to a specific timetable; nor will the Commission require specific mandates on required action as requested by NC WARN and the Public Interest Intervenors.

6. As the Commission has scheduled an evidentiary hearing to consider the 2009 integrated resource plan (IRP) filed by Duke in Docket No. E-100, Sub 124, it is important that the information and tables presented in the Company's IRP plan properly reflect the most recent and appropriate information regarding Duke's EE and DSM goals. Therefore, the Commission will require Duke to address this issue in its direct testimony to be filed in the IRP docket on January 11, 2010, as well as any other revised information as may be necessary.

7. The Commission will deny the request made by NC WARN and the Public Interest Intervenors for a mandate that Duke should be required to achieve the goals set out in the Settlement Agreement.

Accordingly, Duke is hereby authorized to submit revised save-a-watt rates and tariffs for implementation for service rendered on and after January 1, 2010. Duke is requested to consult with the Public Staff prior to filing any revised tariffs to ensure that the Public Staff is in agreement therewith. If Duke proposes to change save-a-watt rates effective January 1, 2010, the Company shall consult with the Public Staff to develop a proposed customer notice for review and approval by the Commission. The proposed customer notice and revised tariffs shall be filed not later than Monday, December 21, 2009.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 14<sup>th</sup> day of December, 2009.

NORTH CAROLINA UTILITIES COMMISSION

*Gail L. Mount*

Gail L. Mount, Deputy Clerk