



DUKE ENERGY CAROLINAS  
526 South Church St.  
Charlotte, NC 28202  
Mailing Address:  
ECO3T / PO Box 1006  
Charlotte, NC 28201-1006

LAWRENCE B. SOMERS  
Assistant General Counsel  
704.382.8142 OFFICE  
980.373.9901 FAX  
lbsomers@duke-energy.com

May 1, 2007

*VIA HAND DELIVERY*

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

RE: Cliffside Certificate of Public Convenience and Necessity  
Docket No. E-7, Sub 790

Dear Ms. Vance:

I enclose the original and 25 copies of Duke Energy Carolinas' Response to Special Interest Groups' Joint Motion for Reconsideration for filing in connection with the referenced matter.

If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lawrence B. Somers', written in a cursive style.

Lawrence B. Somers

pa

Enclosure

cc: Parties of Record (via e-mail)  
Robert W. Kaylor, Esquire  
Kevin C. Greene, Esquire

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 790

In the Matter of )  
 )  
Application of Duke Power Company LLC d/b/a ) **DUKE ENERGY CAROLINAS'**  
Duke Energy Carolinas, LLC for Approval for an ) **RESPONSE TO**  
Electric Generation Certificate of Public ) **SPECIAL INTEREST GROUPS'**  
Convenience and Necessity to Construct Two 800 ) **JOINT MOTION FOR**  
MW State of the Art Coal Units for Cliffside ) **RECONSIDERATION**  
Project )

---

Pursuant to the North Carolina Utilities Commission's ("the Commission") April 25, 2007 *Order Allowing Responses*, Duke Energy Carolinas, LLC ("Duke Energy Carolinas" or the "Company"), hereby responds to the Joint Motion for Reconsideration filed by Environmental Defense ("ED"), N.C. Sustainable Energy Association ("NCSEA"), N.C. Waste Awareness and Reduction Network ("NCWARN"), Southern Alliance for Clean Energy ("SACE") and the Southern Environmental Law Center ("SELC") (collectively, referred to herein as the "Special Interest Groups") on April 20, 2007. As set forth below, the Special Interest Groups' motion should be denied because it (1) is based upon a fundamental misunderstanding of Duke Energy Carolinas' integrated resource planning process; (2) simply rehashes arguments already made; and (3) fails to raise any legitimate issue not already considered by the Commission in finding that the public convenience and necessity requires construction of the new 800 MW advanced clean coal Cliffside unit.

**INTRODUCTION**

Duke Energy Carolinas' CPCN application for the Cliffside Project has been pending since May 11, 2005. At every step of the way, the Special Interest Groups have employed tactics of delay to advance their agendas to deny the States of North Carolina and South Carolina, and

their growing number of citizens, with needed electric generation. The current motion for reconsideration is yet another delay tactic, is without merit, and should be denied.

In the nearly two years that this docket has been open, the Commission has heard from literally hundreds of public witnesses in six public hearing sessions, received extensive expert and fact witness testimony and voluminous exhibits, and presided over two separate evidentiary hearings. The parties filed extensive briefs and proposed orders addressing all issues in contention after each of the two evidentiary hearings.

Specifically, the Commission's March 21, 2007 *Order Granting Certificate of Public Convenience and Necessity with Conditions* ("Order") carefully recites the evidence and conclusions which form the basis for the Commission's decision. Although the Commission decided not to issue CPCNs for both state-of-the-art units of the Cliffside Project as requested by Duke Energy Carolinas, the Commission considered the full record, and based its decision upon the appropriate legal standard, the public convenience and necessity. The Supreme Court has held that N.C. Gen. Stat. §62-80 allows the Commission to amend an order due to misapprehension of facts or disregard of facts shown by evidence received at the original hearing, *State ex rel. Utilities Comm. v. Edmisten*, 291 N.C. 575, 232 S.E.2d 177 (1977), but there is no such basis established in the Special Interest Group's motion. Under *Edmisten*, the Commission cannot reconsider or reverse its Order simply because the Special Interest Groups disagree with the Commission's conclusion. The Special Interest Groups' motion fails to present a single legitimate reason for the Commission to reconsider or reverse its decision to issue a CPCN for the new advanced clean coal Cliffside unit, and should be rejected.

## ARGUMENT

### **I. THE SPECIAL INTEREST GROUPS' INABILITY TO UNDERSTAND DUKE ENERGY CAROLINAS' IRP ANALYSIS IS NOT A BASIS UPON WHICH THE COMMISSION CAN RECONSIDER OR REVERSE ITS DECISION.**

The Special Interest Groups make several arguments regarding Duke Energy Carolinas' IRP analysis that demonstrate their continued lack of understanding of the utility resource planning process. First, the Special Interest Groups argue that the Commission "disregarded the fact that the Company never performed an analysis of which portfolio would be the least-cost way to meet a need for only 800 MW of baseload capacity in 2011." Motion at p. 6. Duke Energy Carolinas' comprehensive IRP process does not simply "assume" a level of baseload need, and then determine how to meet it as the Special Interest Groups seem to contend. As the Commission explained in its Order, "the Company develops and files an annual resource plan based upon a 15-year forecast and a target reserve margin of 17%." Order at p. 11. The 2006 Annual Plan identifies cumulative resource addition needs of 2120 MW by the year 2011, 2510 MW by 2012, and 6120 MW over the entire fifteen-year planning horizon (2007-2021). Hager Rebuttal Ex. 1, 2006 Annual Plan, p. 31.

The Commission's Order at pages 11 through 13 details the "considerable testimony" offered by Duke Energy Carolinas to explain its planning process to identify, evaluate and select the best portfolio combination of baseload, intermediate and peaking resource options to meet the forecasted needs of its customers, which culminated in the Company's application to add the Cliffside Project with an 800 MW unit in 2011 and an 800 MW unit in 2012. Following its review of evidence on this point, the Commission specifically held that,

The Commission concludes that it was appropriate for Duke to conduct the long-range computer analyses of various supply-side resource options, and the Commission has considered these in its deliberations herein. . . . The Commission

must take from these analyses the information that is helpful in making the present decision as to whether the public convenience and necessity are served by Duke's application for a certificate for the Cliffside project. It is appropriate for the Commission to consider many factors in making this decision, including the overall integrated resource plan of the utility, but the Commission is not bound by the results of any single least-cost computer study.

Order at p. 13. The Commission agreed with Duke Energy Carolinas' analysis that its customers need 800 MW of new advanced clean coal generation by 2011, and acknowledged that the decision not to grant a CPCN for the second Cliffside unit could require the acceleration of the Company's plans for additional natural gas generation. *Id.* at pp. 16-17. As such, it is clear from the evidence presented at the hearings and the plain language of the Commission's Order that the Commission considered Duke Energy Carolinas' analysis, among other factors, and did not "disregard" it as alleged by the Special Interest Groups.

The Special Interest Groups' second argument is that the Commission "disregarded" the "fact" that Duke Energy Carolinas' CEM analysis did not support the addition of 800 MW of the Cliffside Project in 2011. Motion at p. 7. To the contrary, the CEM analysis supported the addition of one 800 MW unit of the Cliffside Project in 2011. *See e.g.*, Jan. Tr. Vol. 3 p. 246. Moreover, this analysis was in fact the subject of extensive pre-filed testimony and cross-examination of ED/SELC/SACE witnesses Schlissel and Sommer, and refuted by Company witness Hager. *See e.g.*, Jan. Tr. Vol. 3 p. 15, 245-247; Vol. 5 p. 135-137. In its Order at pages 19-20, the Commission discusses this testimony from both sides regarding the use of CEM, including the discussion that, "Witness Hager disagreed with Schlissel and Sommer's conclusion that the updated CEM runs do not support the Cliffside project." Order at p. 20. Again, it is clear that the Commission did not "disregard" the evidence as alleged by the Special Interest Groups and their motion for reconsideration on this ground must fail.

**II. THE SPECIAL INTEREST GROUPS' ARGUMENT THAT THE COMMISSION "DISREGARDED" THE RATE IMPACTS OF ITS DECISION IS SIMPLY A RENEWAL OF THEIR REJECTED COST ARGUMENT, AND IGNORES THE FACTS AND THE PUBLIC CONVENIENCE AND NECESSITY STANDARD.**

The Special Interest Groups also argue that the Commission "disregarded the rate impacts of the project it approved." Motion at p. 9. In reality, however, the Special Interest Groups are attempting to contest the costs of the approved Cliffside unit yet again. The entire purpose of the January 17-19, 2007, supplemental evidentiary hearing was to "receive evidence concerning the appropriateness of the updated cost estimate and the cost effectiveness of the proposed facilities as compared to alternatives." Order at p. 5. The Commission's Order contains an extensive review of its consideration of the costs, risks and Present Value of Revenue Requirements ("PVRR") of the various alternatives to meet customer needs in the 2011 timeframe. *Id.* at pp. 12-13; 24-26; 29-30; 31-32. By considering the costs, risks and PVRR of various options, the Commission has considered the rate impacts of those options. The Commission concluded that the cost estimate for the approved 800 MW Cliffside unit was reasonable. *Id.* at pp. 31-32.

Furthermore, the Special Interest Groups ignore the fact that cost is but one element of the required legal test of public convenience and necessity. *State ex rel. Utilities Comm. v. High Rock Lake Ass'n*, 37 N.C. App. 138, 245 S.E.2d 787, *disc. rev. denied*, 295 N.C. 646, 248 S.E.2d 257 (1978). Indeed, the Commission noted in its Order that "the Commission has considered all of these factors – need, the size and mix of existing plants, pooling, purchases, DSM, alternative technologies including renewables, fuel costs, and construction costs – in determining whether the public convenience and necessity are served by Duke's proposal in this docket." Order at p. 10. In reaching its decision to grant the CPCN for one 800 MW unit of the Cliffside Project, the Commission properly considered all of the evidence presented by the parties and concluded that

the “public convenience and necessity require the construction of one 800-MW SCPC generating unit.” *Id.* at p. 9. The Commission’s Order contains a lengthy discussion of its basis for this finding, including the fuel diversity, security and environmental benefits that the Cliffside unit will add to the Duke Energy Carolinas’ system. *Id.* at pp. 27-30; 32-34. Accordingly, the “disregarded” rate impact or cost issue that the Special Interest Groups cite as a basis for the motion for reconsideration was in fact fully considered by the Commission as part of the public convenience and necessity test, and the motion for reconsideration should be dismissed.

**III. THE COMMISSION RECEIVED AMPLE EVIDENCE ON THE ISSUE OF HOW POTENTIAL FUTURE CARBON REGULATION SHOULD BE CONSIDERED, AND THE SPECIAL INTEREST GROUPS’ MISCHARACTERIZATION OF A RECENT U.S. SUPREME COURT DECISION IS SIMPLY A RED HERRING.**

The Special Interest Groups’ final argument is misguided at best. They claim that the United States Supreme Court’s decision in *Massachusetts v. EPA*, 549 U.S. \_\_\_, 127 S. Ct. 1438 (2007) held that “EPA has the authority and the obligation to regulate greenhouse gases” and that this, somehow, is a “change of condition” that invalidates Duke Energy Carolinas’ sensitivity analyses of potential future carbon impacts and the entire record in this case. Motion at pp. 10-11. First, *Massachusetts* dealt with new motor vehicle emissions, not power plant emissions. Second, the EPA Administrator himself directly contradicted the Special Interest Groups’ characterization of the *Massachusetts* opinion in testimony before the United States Senate on April 24, 2007, as follows,

*Importantly, the Court did not hold that EPA was required to regulate greenhouse gas emissions under section 202, or any other section, of the Clean Air Act. Rather, the Court merely concluded that greenhouse gas emissions were “air pollutants” under the Clean Air Act, and, therefore, they could be regulated under section 202 by the EPA subject to certain determinations . . .*

*Statement of Stephen L. Johnson, Administrator, USEPA, Before the Committee on Environment and Public Works of the U.S. Senate, p. 16 (April 24, 2007) (emphasis supplied).* [http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore\\_id=a22ae455-717e-45e0-a31a-0b3742d83210](http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=a22ae455-717e-45e0-a31a-0b3742d83210). Furthermore, even if EPA were to regulate power plant CO<sub>2</sub> emissions after some future rulemaking proceeding, which could take several years to complete, nothing has changed since the Commission heard and considered extensive testimony on the issue of modeling the impacts of future, unknown carbon regulation. ED/SELC/SACE witnesses Schlissel and Sommer, and Company witness Hager testified during both the September 2006 and January 2007 evidentiary hearings as to competing views of the details of how, when, and at what price potential future carbon regulation should be considered. Even though the form of future carbon regulation was unknown (and still is today post-*Massachusetts*), Duke Energy Carolinas analyzed the impacts of potential future carbon regulation, the results of which still supported the decision to pursue the Cliffside Project. The Special Interest Groups' mischaracterization of the *Massachusetts* does not justify the reconsideration they seek.

**IV. THE COMMISSION SHOULD PROMPTLY REJECT THE SPECIAL INTEREST GROUPS' EFFORT TO INCREASE CUSTOMERS' COSTS AND JEOPARDIZE RELIABLE ELECTRIC SERVICE THROUGH ADDITIONAL DELAY.**

The Commission is well aware of the Special Interest Groups' repeated motions and other attempts to delay the Commission's decision in this matter. In rejecting the Special Interest Groups' arguments in its Order, the Commission explicitly recognized the significant cost and reliability impacts of any further delay in the schedule for the new Cliffside unit. Order at p. 23. The Special Interest Groups' motion for reconsideration is yet another attempt to delay this critically needed resource and thereby disadvantage Duke Energy Carolinas' customers.

Accordingly, the Commission should immediately dismiss the Special Interest Group's motion without further delay.

**CONCLUSION**

Although the Commission did not grant a CPCN for both units of the Cliffside Project as requested by Duke Energy Carolinas, the Commission considered the full record and based its decision upon the appropriate legal standard, the public convenience and necessity. The Special Interest Groups' Joint Motion for Reconsideration fails to raise any new substantive issues that have not already been fully considered by the Commission, and for all the foregoing reasons, the motion should be promptly denied.

This, the 1<sup>st</sup> day of May, 2007.



Lawrence B. Somers, Assistant General Counsel  
Duke Energy Corporation  
Post Office Box 1006  
Charlotte, North Carolina 28201-1006  
Telephone: 704-382-8142

Robert W. Kaylor  
Law Office of Robert W. Kaylor, P.A.  
225 Hillsborough Street, Suite 160  
Raleigh, North Carolina 27603  
Telephone: 919-828-5250

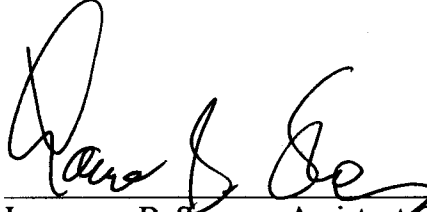
Kevin C. Greene  
Brandon F. Marzo  
Troutman Sanders, LLP  
Bank of America Plaza, Suite 5200  
600 Peachtree Street  
Atlanta, GA 30308-2216

ATTORNEYS FOR  
DUKE ENERGY CAROLINAS, LLC

**CERTIFICATE OF SERVICE**

I certify that a copy of *Duke Energy Carolinas' Response to Special Interest Groups' Joint Motion for Reconsideration* has been served by electronic mail on all parties.

This the 1<sup>st</sup> day of May, 2007.

A handwritten signature in black ink, appearing to read "Lawrence B. Somers", written over a horizontal line.

Lawrence B. Somers, Assistant General Counsel  
Duke Energy Corporation  
Post Office Box 1006  
Charlotte, North Carolina 28201-1006  
Telephone: 704-382-8142