



OFFICIAL COPY

Kendrick C. Fentress  
Associate General Counsel

Mailing Address:  
NCRH 20/P. O. Box 1551  
Raleigh, North Carolina 27602

o: 919-546-6733  
f: 919-546-2694

kendrick.fentress@duke-energy.com

FILED

OCT 25 2013

Clerk's Office  
N.C. Utilities Commission

October 25, 2013

Ms. Gail Mount  
Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, NC 27699-4325

**Re: Docket No. E-100, Sub 136  
Biennial Determination of Avoided Cost Rates for Electric  
Utility Purchases from Qualifying Facilities- 2012**

Dear Mr. Mount:

Enclosed for filing in the above-referenced docket is an original and 30 copies of Dominion North Carolina Power's, Duke Energy Progress, Inc.'s and Duke Energy Carolinas, LLC's Joint Motion to Strike North Carolina Sustainable Energy's correspondence and Report filed on October 18, 2013.

Please do not hesitate to contact me if you have any questions.

Sincerely yours,

Kendrick C. Fentress

Enclosures

cc: Parties of Record

(22)  
AK  
7 Com  
Watson  
Green  
Duffy  
Coul  
Haw  
Benson  
Kite  
Hillman  
Chico  
Jones  
E. Ruy  
Lopez 3  
Sant 3  
Fark 2  
Elet 3

CERTIFICATE OF SERVICE

I certify that Dominion North Carolina Power's, Duke Energy Progress, Inc.'s and Duke Energy Carolinas, LLC's Motion to Strike North Carolina Sustainable Energy's correspondence and accompanying Report in Docket No. E-100, Sub 136, has been served on all parties of record either by hand delivery, email or by depositing said copy in the United States mail, postage prepaid.

This the 25<sup>th</sup> day of October, 2013.

A handwritten signature in cursive script, reading "Kendrick C. Fentress", written over a horizontal line.

Kendrick C. Fentress  
Associate General Counsel  
Duke Energy  
PO Box 1551/NCRH20  
Raleigh, North Carolina 27602  
Tel: 919.546.6733  
kendrick.fentress@duke-energy.com

**OFFICIAL COPY**

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

**DOCKET NO. E-100, SUB 136**

**FILED**

**OCT 25 2013**

Clerk's Office  
N.C. Utilities Commission

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**

In the Matter of:

Biennial Determination of Avoided Cost  
Rates for Electric Utility Purchases from  
Qualifying Facilities

)  
)  
) **DOMINION NORTH CAROLINA**  
) **POWER'S, DUKE ENERGY PROGRESS,**  
) **INC.'S, AND DUKE ENERGY**  
) **CAROLINAS, LLC'S MOTION TO**  
) **STRIKE NORTH CAROLINA**  
) **SUSTAINABLE ENERGY**  
) **ASSOCIATION'S LETTER AND**  
) **REPORT**  
)

Pursuant to North Carolina Utilities Commission ("the Commission") Rules R1-5, R1-7 and R1-24, and N.C. Gen. Stat. § 62-65, Dominion North Carolina Power ("DNCP"), Duke Energy Progress, Inc. ("DEP"), and Duke Energy Carolinas, LLC ("DEC") (collectively, the "Utilities") move the Commission to strike the North Carolina Sustainable Energy Association's correspondence and attached Report authored by CrossBorder Energy ("Report") filed in this docket on October 18, 2013. NCSEA's correspondence and Report were not filed in compliance with the Commission's Rules and procedures, and their filing prejudices the Utilities. Therefore, the Utilities are filing this motion to strike.

In support thereof, the Utilities show the following:

1. NCSEA is an intervenor in this docket. The Intervenor's deadline to file testimony and exhibits was September 27, 2013. NCSEA filed the direct testimony and exhibits of Karl R. Rabago on September 27, 2013.

2. The deadline for the Utilities to file their rebuttal testimony and exhibits was October 18, 2013. Accordingly, they filed their rebuttal testimony on October 18, 2013.

3. Also on October 18, 2013, NCSEA filed correspondence and an accompanying Report that materially amends and supplements Mr. Rabago's pre-filed testimony and exhibits. As described in the transmittal letter, NCSEA is materially amending the answers provided by Mr. Rabago in his pre-filed testimony. In addition, the transmittal letter states that the Report and its conclusions "offer *additional* support for Mr. Rabago's conclusions and recommendations as set out in his pre-filed testimony." (emphasis added).

4. N.C. Gen. Stat. § 62-65 provides that the Commission shall apply the rules of evidence applicable in civil actions in Superior Court, insofar as practicable to its proceedings. It further provides that every party to a proceeding shall have the right to call and examine witnesses, to cross-examine opposing witnesses on any matter relevant to the issues, and to rebut evidence against such party.

5. Commission Rule R1-24(g)(2) provides that all intervenors shall file all testimony, exhibits, and other information that is to be relied upon at the hearing 20 days in advance of the scheduled hearing. Subsection (g)(4) further provides and contemplates

that all witnesses presenting evidence shall be subject to cross-examination with regard to any exhibits or testimony such witness seeks to offer.

6. The Commission's rules and procedures are intended to preserve the rights of the parties in presenting their cases. The Utilities have the burden of proof in this proceeding. N.C. Gen. Stat. § 62-75. In preparing their rebuttal testimony, they relied upon the timely-filed direct testimony and exhibits of the Intervenors. Thus, the Utilities are prejudiced by NCSEA's supplement to its pre-filed direct testimony and exhibits. Because NCSEA filed this amended testimony and supplemental exhibit on the same day as rebuttal testimony was due, the Utilities were effectively foreclosed from addressing them in their rebuttal testimony. Furthermore, they are unable to cross-examine the authors of the Report, who have not filed testimony in this proceeding.

7. Moreover, NCSEA had ample opportunity to prepare and present its testimony and supporting exhibits in this matter prior to September 27, 2013. The Utilities filed their avoided cost rates on November 1, 2012, almost a year ago. NCSEA has been involved in this matter since that filing. The parties to this proceeding filed comments outlining their positions between the months of February and March 2013. The Commission issued its order first scheduling an evidentiary hearing on June 6, 2013. Like the other intervenors, NCSEA had over six weeks after the filing of the Utilities' direct testimony and exhibits to prepare and file its own direct testimony and exhibits. With all of these opportunities to present its case, NCSEA should not now be allowed "to notify" the Commission and all parties that it intends to materially supplement its pre-filed direct testimony and exhibits just nine days prior to the evidentiary hearing and essentially after the parties with the burden of proof have filed their rebuttal testimony.

The Commission's rules and procedures do not provide for a "second bite of the apple" for NCSEA in this matter.

8. For foregoing reasons, the Utilities respectfully move to strike the correspondence and accompanying Report filed by NCSEA on October 18, 2013. Counsel for DNCP has authorized counsel for DEC and DEP to sign this Motion on her behalf.

Respectfully submitted, this the 25<sup>nd</sup> day of October, 2013.

---

Kendrick C. Fentress  
Associate General Counsel  
Duke Energy Progress, Inc.  
Duke Energy Carolinas, LLC.  
P.O. Box 1551  
PEB 20  
Raleigh, North Carolina 27602-1551  
Telephone: 919-546-6733  
Fax: 919-546-2694  
[Kendrick.Fentress@duke-energy.com](mailto:Kendrick.Fentress@duke-energy.com)