STATE OF SOUTH CAROLINA

(Caption of Case)

In the Matter of:
Petition of the Office of Regulatory Staff to Establish Dockets to Consider Implementing the Requirements of 1251 (Net Metering and Additional Standards of the Energy Policy Act of 2005

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2005 - 385 - E

(Please type or print)

Submitted by: Catherine E. Heigel
Address: 526 S. Church Street, EC03T
Charlotte, NC 28202

SC Bar Number: 9268
Telephone: 704-382-8123
Fax: 704-382-5690
Other:
Email: ceheigel@duke-energy.com

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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)		
☒ Electric	☐ Affidavit	☐ Letter	☐ Request
☐ Electric/Gas	☐ Agreement	☐ Memorandum	☐ Request for Certificatio
☐ Electric/Telecommunications	☐ Answer	☒ Motion	☐ Request for Investigatio
☐ Electric/Water	☐ Appellate Review	☐ Objection	☐ Resale Agreement
☐ Electric/Water/Telecom.	☐ Application	☐ Petition	☐ Resale Amendment
☐ Electric/Water/Sewer	☐ Brief	☐ Petition for Reconsideration	☐ Reservation Letter
☐ Gas	☐ Certificate	☐ Petition for Rulemaking	☐ Response
☐ Railroad	☐ Comments	☐ Petition for Rule to Show Cause	☐ Response to Discovery
☐ Sewer	☐ Complaint	☐ Petition to Intervene	☐ Return to Petition
☐ Telecommunications	☐ Consent Order	☐ Petition to Intervene Out of Time	☐ Stipulation
☐ Transportation	☐ Discovery	☐ Prefiled Testimony	☐ Subpoena
☐ Water	☐ Exhibit	☐ Promotion	☐ Tariff
☐ Water/Sewer	☐ Expedited Consideration	☐ Proposed Order	☐ Other:
☐ Administrative Matter	☐ Interconnection Agreement	☐ Protest	
☐ Other:	☐ Interconnection Amendment	☐ Publisher's Affidavit	
	☐ Late-Filed Exhibit	☐ Report	

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2005-385-E

In the Matter of: Petition of the Office of Regulatory Staff to Establish Dockets to Consider Implementing the Requirements of 1251 (Net Metering and Additional Standards of the Energy Policy Act of 2005	))))))	**DUKE ENERGY CAROLINAS' MOTION TO STRIKE TESTIMONY**

1. This matter comes before the Public Service Commission of South Carolina (the "Commission") on the Petition of the Office of Regulatory Staff ("ORS") to Establish Dockets to Consider Implementing the Requirements of Section 1251 (Net Metering and Additional Standards) and to Consider Implementing the Requirements of Section 1252 (Smart Metering) of the Energy Policy Act of 2005.

2. On May 15, 2007, the Commission held a hearing at which parties, including Duke Energy Carolinas, LLC, Progress Energy Carolinas, Inc., and South Carolina Electric & Gas Company (collectively, the "Utilities"), presented testimony and exhibits concerning implementing in South Carolina the net metering provisions of the Energy Policy Act of 2005. On August 30, 2007, the Commission issued Order No. 2007-618 (the "Commission's Order") in which it approved a net metering program that provides that a customer who opts to be net metered would be subject, on a monthly basis, to a basic facilities charge at the tariff rate and a demand charge at the tariff rate for the customer's highest demand in that month, and further that (1) on-peak customer generation would offset the customer's on-peak consumption, with the net on-peak

consumption billed at the on-peak tariff rate; (2) off-peak customer generation would offset the customer's off-peak consumption, with the net off-peak consumption billed at the off-peak tariff rate; (5) excess on-peak customer generation would be used to offset customer's off-peak consumption, but not vice versa, recognizing the higher cost of on-peak generation; and (6) customer credits would carry over to the succeeding month for one year, at which time any remaining credits would be zeroed out. The Commission's Order required the Utilities to file within ninety (90) days of the filing of the order a "flat rate" tariff and a "time-of-use with demand component" tariff. The flat rate tariff was to be designed to allow residential and small commercial customers to pay the utility's existing flat kWh rate for any power purchased from the utility while receiving a credit for any excess generation provided to the utility on a peak/off-peak or real time pricing basis. The Commission specifically directed the Utilities that "[t]his tariff should be designed to eliminate, as much as possible, any cross-subsidization of customers." Order No. 2007-618, at 3.

3. On or about November 27, 2007, the Utilities filed their respective net metering and flat rate tariffs in accordance with the Commission's Order. Thereafter, the Commission issued Order No. 2008-101 requesting the Utilities to appear before the Commission on February 14, 2008 to answer the Commission's questions on the Utilities' respective tariff filings in this docket. The Utilities appeared before the Commission as instructed on February 14, 2008 to explain their proposed tariffs. Thereafter, on March 6, 2008 the Commission issued Notices of Hearing and Pre-filing of Testimony in response to a Motion to Establish a Second Hearing filed by Pamela Greenlaw. The Notice of Hearing establishes the purpose of the second hearing, which is

scheduled for April 22, 2008, as being for the "taking [of] testimony regarding the net metering tariffs that have been filed" by the Utilities in this docket. Thus, the sole purpose of this proceeding is for the Commission to accept public comments on the tariffs as filed by the Utilities.

4. On March 28, 2008, Intervenors David Odell, Elizabeth Smith and Pamela Greenlaw filed testimony in this docket. In addition, Ms. Greenlaw had two additional witnesses filing testimony on her behalf – Frank Knapp, Jr. and Arno Froese. Duke Energy Carolinas respectfully submits that much of the testimony filed on March 28, 2008 by the Intervenors is inadmissible because it (1) is irrelevant; (2) is not based on personal knowledge; and (3) contains impermissible hearsay.

5. Commission Rule 103-846 (A) provides that, "Irrelevant, immaterial or unduly repetitious evidence shall be excluded." Further, South Carolina Rule of Evidence 402 provides that "[e]vidence which is not relevant is not admissible." Therefore all arguments in the Intervenors' testimony concerning matters already decided by this Commission in Order No. 2007-618 and previous dockets are irrelevant, inadmissible and must be stricken. Specifically, Duke Energy Carolinas requests that the Commission strike on these grounds the following portions of the Intervenors' testimony:

a. Elizabeth M. Smith: page 2, line 30 through page 4, line 45.

b. David Odell: page 2, line 4 through page 5, line 24.

c. Pamela Greenlaw: page 1, line 13 through page 2, line 37; page 2, line 63 through page 3, line 107.

d. Arno Froese: entire pre-filed testimony and attachments.

e. Frank Knapp: page 3, line 21 through page 5, line 26.

6. South Carolina Rule of Evidence 801 (C) defines "hearsay" as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." South Carolina Rule of Evidence 802 provides that, "Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute." Duke Energy Carolinas has identified the following portions of Intervenor testimony as impermissible hearsay and accordingly requests, in addition to any other request made by the Company in this Motion, that the Commission strike the following portions of said testimony:

a. Elizabeth Smith: page 3, lines 5-7 and lines 43-46; page 4, lines 11-12 and lines 25-33.

b. David Odell: page 4, lines 27-38. The articles and reports relied upon by Mr. Odell and shown as footnotes to his testimony are hearsay and should be stricken.

c. Pamela Greenlaw: page 1, lines 20-30 and page 1, lines 32 through page 2, line 37. Also, it should be noted that Ms. Greenlaw references on line 32 of page 1 an exhibit of "Best Practices" based on this hearsay evidence. Duke Energy Carolinas did not receive this exhibit with the copy of Ms. Greenlaw's testimony served on the Company, but to the extent such an exhibit exists, the Company requests that it also be stricken as impermissible hearsay.

d. Arno Froese: page 1, last paragraph beginning, "We found the following information . . ." through the end of the same paragraph on page 2 ending, ". . . not governed by Net Metering Law." This paragraph and the attachments to Mr. Froese's testimony are hearsay and thus inadmissible.

e. Frank Knapp: page 3, line 26 through page 4, line 24; page 5, lines 6-26.

7. South Carolina Rule of Evidence 602, "Lack of Personal Knowledge," states, in part, that, "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." By Mr. Knapp's own admission, he is not an expert on net metering and his testimony is predicated on conversations "with people in South Carolina and North Carolina who are much more knowledgeable on the subject." Knapp Testimony, p. 2, lines 19-24. Accordingly, in addition to other relief requested herein, Duke Energy Carolinas requests that the testimony of Frank Knapp be stricken in its entirety.

WHEREFORE, Duke Energy Carolinas requests that the Commission grant the Company's Motion to Strike Testimony of the Intervenors in this proceeding as set forth hereinabove.

Respectfully submitted this the 11th day of April, 2008.

DUKE ENERGY CAROLINAS, LLC

Catherine E. Heigel
Assistant General Counsel
Duke Energy Carolinas, LLC
526 S. Church Street, EC03T
Charlotte, NC 28202
Telephone: (704) 382-8123
Facsimile: (704) 382-5690
Email: ceheigel@duke-energy.com

ATTORNEY FOR DUKE ENERGY
CAROLINAS, LLC

CERTIFICATE OF SERVICE

I, Catherine E. Heigel, hereby certify that I have placed copies of Duke Energy Carolinas' Motion to Strike Testimony in the U.S. mail on this date to the parties of record at the addresses shown below, with sufficient postage attached:

Nanette Edwards, Esquire
Office of Regulatory Staff
1441 Main Street, Suite 300
Columbia, SC 29201

Shannon Bowyer Hudson, Esquire
Office of Regulatory Staff
1441 Main Street, Suite 300
Columbia, SC 29201

Len S. Anthony
Progress Energy Service Co., LLC
Post Office Box 1551
Raleigh, NC 27602-1551

K. Chad Burgess
South Carolina Electric & Gas Co.
1426 Main Street, MC 130
Columbia, SC 29201

John F. Hardaway
1338 Pickens Street
Columbia, SC 29201

Mel Jenkins
3324 Montgomery Avenue
Columbia, SC 29205

Ruth Thomas
1339 Sinkler Road
Columbia, SC 29206

David Odell
154 Greybridge Road
Pelzer, SC 29669

Pamela Greenlaw
1001 Wotan Road
Columbia, SC 29229

Elizabeth M. Smith
611 North Shore Drive
Charleston, SC 29412

Catherine D. Taylor
South Carolina Electric & Gas Co.
1426 Main Street, M/C 130
Columbia, SC 29201

Richard L. Whitt, Esquire
Austin Lewis & Rogers, PA
Post Office Box 11716
Columbia, SC 29211

This the 11th day of April, 2008.

Catherine E. Heigel

Catherine E. Heigel
Assistant General Counsel
Duke Energy Carolinas, LLC