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November 7, 2016

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PSC SC
MAIL / DMS

VIA ELECTRONIC FILING

Ms. Jocelyn Boyd, Chief Clerk/Administrator
Public Service Commission of South Carolina
Synergy Business Park, Saluda Building
101 Executive Center Drive
Columbia, SC 29210

Re: Lisa M. Meserve v. Duke Energy Carolinas, LLC
Docket No. 2016-366-E

Dear Ms. Boyd:

Enclosed for filing please find Duke Energy Carolinas, LLC's Motion for Summary Judgment and Memorandum in Support, Affidavit of Kim H. Smith, and Affidavit of Robert Moreland. We respectfully request that the Commission continue to hold the testimony deadlines and hearing in abeyance pending resolution of this Motion for Summary Judgment. By copy of this letter we are serving the other parties of record in this proceeding with the same. If you have any questions, please contact me.

Very truly yours,

ROBINSON, MCFADDEN & MOORE, P.C.

Bonnie D. Shealy

Bonnie D. Shealy

/tch
Enclosures

cc/enc: Mr. & Mrs. Larry Luciano (via U.S. Mail)
Lisa M. Meserve (via email & US Mail)
Randall Dong, Hearing Examiner (via email)
Heather S. Smith, DEC Deputy General Counsel (via email)
Kim H. Smith, DEC Regulatory Affairs (via email)
Robert Moreland, Carolina AMI Project Director (via email)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2016-366-E

In re:	)	
	)	
Lisa M. Meserve,	)	**DUKE ENERGY CAROLINAS,**
Complainant/Petitioner,	)	**LLC'S MOTION FOR**
	)	**SUMMARY JUDGMENT AND**
v.	)	**MEMORANDUM IN SUPPORT**
	)	**AND REQUEST TO HOLD**
Duke Energy Carolinas, LLC,	)	**DEADLINES AND HEARING**
Defendant/Respondent.	)	**IN ABEYANCE**
	)	

Duke Energy Carolinas, LLC ("DEC" or the "Company") respectfully moves for an order granting it summary judgment in the above referenced docket pursuant to 10 S.C. Code Regs. 103-829, Rule 56, SCRCP, and other applicable rules of practice and procedure of the Public Service Commission of South Carolina ("Commission"). As explained below, there are no genuine issues as to any material fact and the Company is entitled to judgment as a matter of law in this complaint proceeding.

This motion and memorandum is based upon the reasons stated below, the application of South Carolina law, the Commission's regulations, affidavits, and materials submitted in this docket. The Company also requests that the filing deadlines for all parties and the hearing date be held in abeyance until this Motion is resolved. In support of this motion, DEC shows as follows:

BACKGROUND

Lisa M. Meserve filed a complaint with the Commission on October 20, 2016, requesting that DEC allow her to use non-DEC analog meters that she purchased for a residence located at 1270 Craig Avenue, Lancaster, South Carolina, and that she be allowed to email a photo or "call

the numbers in" showing power usage or some other acceptable way for billing purposes. She indicates that DEC placed Smart Meters on her residence on August 17, 2016, without her knowledge or consent. She asserts that her "health took a severe hit" and that her quality of life has been "radically affected" by the "RF radiation" emitted from the Smart Meters.

DEC's records indicate that the two accounts for this location were established September 22, 1997. One is a residential account and the other is a general service account. Larry Luciano is the primary account holder with Mary Luciano listed as a joint party on the residential account. The general service account for a pool is listed in the name of Larry Luciano only. The Complainant Lisa M. Meserve is Luciano's adult daughter who also resides at this location. It is our understanding that Ms. Luciano authorized Ms. Meserve to act on the Luciano's behalf and to make decisions related to the Luciano's DEC account. From September 22, 1997, until May 7, 2002, both meters for these accounts were electro-mechanical analog meters with dials. DEC meter readers had to visually read the dials on a monthly basis. *See* Smith Affidavit.

Beginning in 2002, DEC exchanged all non-communicating analog meters with either a digital Automatic Meter Reading meter, or an analog meter retrofitted with a radio transmitter inside the meter (collectively "AMR Meters"). The AMR Meters allowed DEC to gather kWh usage from the meters via a low-power radio frequency signal (900 MHz RF) that was read by equipment installed in DEC's trucks as the meter readers drove by the location. On May 7, 2002, DEC installed AMR Meters that had been retrofitted at this location. These meters were read via the 900 MHz RF signal using drive-by equipment. *See* Affidavit of Kim H. Smith.

As part of DEC's deployment of advanced metering infrastructure ("AMI") to its customers in South Carolina, DEC is replacing AMR Meters with AMI Meters or "Smart

Meters." AMI Meters operate on the same low-power radio frequency signal (900 MHz RF) as the AMR Meters. DEC follows a formal customer communication protocol during its AMI deployments. Customers scheduled to have a meter exchanged first receive a postcard approximately two to three weeks prior to the scheduled time when DEC will be working in their area. *See* **Exhibit 1A**. The postcard was mailed to the accounts at this location on July 15, 2016. *See* Smith Affidavit. Then, when the installers arrive at the premise to exchange the meter, a door hanger is left when the meter is exchanged. *See* **Exhibit 1B.** If the meter is inaccessible, or cannot be exchanged a door hanger is left requesting that the customer call for an appointment for the installer to return. *See* **Exhibit 1C**. Once the meter is installed and the readings are certified, a letter is sent to the customer informing them of the ability to access the additional usage information on the Customer Portal. *See* **Exhibit 1D.**

If a customer receives the post card regarding the meter exchange and has concerns with the Smart Meter, there is a phone number for them to reach out to a representative that will attempt to answer their questions. Currently, these representatives inform customers of the options available today should the customer not wish to have a Smart Meter. (Such options include a land line meter if available, moving the meter base, or keeping an AMR Meter until DEC has an opt-out available, as described in greater detail below). *See* Smith Affidavit.

On October 10, 2016, DEC filed with the Commission a Request for Approval of an AMI Opt-Out Rider (Docket No. 2016-354-E) which the Commission recently approved. In Docket No. 2016-354-E, DEC proposes to offer Manually Read Meter Rider ("Rider MRM") as an option for those customers who object to the installation of a Smart Meter. As more Smart Meters are deployed, drive-by routes are being discontinued which necessitates the need for a long-term solution for those customers. *See* DEC's Request for Approval of AMI Opt-Out Rider

filed October 20, 2016, Docket No. 2016-354-E. ORS supports DEC's request for approval of the Rider MRM. *See* ORS letter dated October 20, 2016, Docket No. 2016-354-E. Due to the significant nature of the information technology changes required in the customer billing system to effectuate Rider MRM, it will be available by November 15, 2017.

Since the account holders did not contact DEC after the postcard was sent, the AMR Meters at the residence were replaced by AMI Meters on August 17, 2016. Ms. Luciano contacted DEC on August 25, 2016. DEC offered to exchange the new AMI Meters temporarily for AMR Meters similar to those previously in place. A $50 service call fee per meter would have been charged to reinstall the AMR Meters. This option is being offered until a determination is made by the Commission on approval of the Rider MRM. The Commission approved Rider MRM on November 2, 2016, to become effective no earlier than November 15, 2017. *See In re: DEC's Request for Approval of AMI Op-Out* Rider, Docket No. 2016-354-E, Commission Directive dated Nov. 2, 2016. Other options were also discussed with the account holder. Service could be provided pursuant to Commission approved Tariff Leaf No. 320, Remote Meter Reading and Usage Data Service, which allows remote meter reading via a dedicated analog telephone landline. The customer could also relocate the meter bases away from the house at their expense. The account holder refused any of the proffered options. *See* Smith Affidavit and Affidavit of Robert Moreland.

Ms. Luciano and Ms. Meserve filed a written complaint with the S.C. Office of Regulatory Staff ("ORS") on August 29, 2016, asking to have the AMI Meters removed and replaced with analog meters. The Company responded to ORS's request for information during its investigation. *See* **Exhibit 2,** DEC letter to ORS dated September 21, 2016. ORS notified Ms.

Luciano and Ms. Meserve that DEC had not violated the Commission's approved tariffs or the Commission's regulations via letter on or about September 22, 2016. *See* **Exhibit 3.**

On September 22, 2016, DEC received via mail the two AMI Meters installed by DEC from the account holder and photographs of General Electric meters installed at the location and notices regarding trespassing. The removal and replacement of the DEC meters by Ms. Meserve or Ms. Luciano violated numerous Commission regulations. In addition to creating a hazardous or dangerous condition to the consumer's premises and/or the company's system, these actions violated 10 S.C. Code Regs. 103-324 by removing the seal from the DEC meter which is installed to prevent tampering or theft of current. DEC does not allow a non-DEC meter to be installed on its lines for safety considerations and to ensure compliance with the Commission's regulations. DEC contacted ORS who agreed that these actions by Ms. Luciano or Ms. Meserve were violations of Commission regulations and a safety hazard. Service was terminated the same day. *See* 10 S.C. Code Regs. 103-342(a),(b),(d) and 103-344. *See also* Moreland Affidavit.

Ms. Luciano agreed to accept a digital AMR Meter with the same radio frequency as the old AMR Meter on September 23, 2016. An AMR Meter was installed and service was reconnected after a Lancaster County Inspector inspected the meter bases in question and found them to be in good operable condition. Robert Moreland, Carolina AMI Project Director, contacted Ms. Luciano on October 3, 2016, to discuss the other options available which included remote reading via a dedicated telephone landline or moving the meters away from the house. *See* Moreland Affidavit. The subject complaint was filed on October 20, 2016.

ARGUMENT

Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Moore v. Barony House*

Restaurant, 382 S.C. 35, 674 S.E.2d 500 (Ct. App. 2009). The Commission must view the facts in the light most favorable to the non-moving party, but it "cannot ignore facts unfavorable to that party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts." *Bloom v. Ravoira,* 339 S.C. 417, 529 S.E.2d 710, 713 (Sup. Ct. 2000). Under the facts presented, a favorable decision is not reasonably possible; therefore, summary judgment is appropriate.

Rule 56, SCRCP, should be interpreted and applied in a manner that allows it to serve its function of disposing of cases promptly and efficiently. "One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses." *Celotex Corp. v. Catrett,* 477 U.S. 317, 323-324, 106 S.Ct. 2548, 2553 (1986). Summary judgment is an essential tool to satisfy "the affirmative obligation of the trial judge to prevent 'factually unsupported claims and defenses' from proceeding to trial." *Felty v. Graves-Humphreys Co.,* 818 F.2d 1126, 1128 (4th Cir. 1987). There is no material fact in dispute in this case. Service to the residence is being provided in accordance with the Federal Communications Commission ("FCC") and this Commission's regulations.

1. Meter Compliance

The electric meters serving the residence at issue are in compliance with FCC standards and the Commission's regulations. All of the AMR and AMI Meters installed at this location used the same 900 MHz radio frequency. All AMR and AMI Meters were tested and comply with applicable Federal Communications Commission rules and guidelines. *See* Moreland Affidavit and **Exhibit 2, p. 3.**

Nearly every household device that is powered by electricity emits electromagnetic frequencies in some amount. Smart meters emit a fraction of the types of radio frequency

emissions that come from cellular phones, microwave ovens, and many other household devices in use today. The FCC sets exposure limits for all of these types of devices, including electric meters, and each device must be certified to the FCC rules. The FCC classifies devices into three categories – intentional radiators, unintentional radiators, and incidental radiators.

- The typical devices that fall into the intentional radiator category include cordless telephones, remote control toys, garage door openers, wireless routers, baby monitors, and any mobile data devices such as cellular phones and tablets. Any communicating meter (AMR or AMI) also falls into this category.

- Unintentional radiators are devices that generate RF signals, but are not intended to emit RF. These include such things as personal computers, printers, automobile dashboard electronics, radio receivers, televisions, and any other devices that have an internal "clock" within the device.

- Incidental radiators are devices that generate RF energy during the course of their operation, but are not designed to generate or emit RF energy. This would include automobile ignition systems, ceiling fans, vacuum cleaners, electric shavers, and mechanical light switches.

FCC standards for intentional and unintentional radio emissions and safety related to RF exposure, Parts 1 and 2 of the FCC's Rules and Regulations (47 C.F.R. 1.1307(b), 1.1310, 2.1091, 2.1093), govern the certification and design of all of the devices mentioned above including communicating meters. The meters serving the residence are in compliance with FCC standards and the Commission's regulations. *See* Moreland Affidavit.

DEC has confirmed that the meters have been tested in accordance with Title 47, Part 15 of the CFR and have been certified by the FCC. *See* Moreland Affidavit and **Exhibit 2, p. 3.** ORS confirmed that DEC has properly applied the Commission's regulations. *See* **Exhibit 3.** "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Moore v. Barony House,* 674 S.E.2d at 503; *Rife v. Hitachi Constr. Mach. Ltd.,* 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005).

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *Rife v. Hitachi,* 609 S.E. 2d at 568. A summary judgment motion is the principal tool by which factually insufficient claims can be isolated and prevented from going to trial with the attendant unwarranted consumption of public and private resources. *Celotex v Catrett*, 106 S.Ct. at 2555. To allow Ms. Meserve to move forward with her claim would be an inappropriate use of time and resources of the Commission and the Company.

2. Relief Requested

The Commission is a government agency of limited power and jurisdiction, which is conferred either expressly or impliedly by the General Assembly. *Kiawah Property Owners Group v. Public Service Com'n*, 359 S.C. 105, 597 S.E.2d 145 (Sup. Ct. 2004). The Commission's jurisdiction is limited to the adjudication of any claim regarding any act or omission by an electrical utility allegedly in violation "of any law which the commission has jurisdiction to administer or of any order or rule of the commission." S.C. Code Ann. § 58-27-1940 (Supp. 2014).

Ms. Meserve asserts in the voluminous attachments to her complaint that her health has been impacted by RF emissions. These types of concerns are more appropriately regulated through FCC rules, standards and guidelines. She also asserts that she is entitled to compensation of $100,000 and $10,000 per day of denied or failed service for violation of Federal wiretapping laws, the U.S. Constitution, Bill of Rights, the 4th Amendment and U.S. Code Title 18, Section 113. Such assertions are also without merit. A statement by an individual seeking compensation for personal injury and violations of federal laws is more appropriately adjudicated in another forum and is outside of the Commission's jurisdiction.

If the requested relief is viewed as damages, the Commission has no statutory authority to award damages. *Sizemore v. DEC,* Order No. 2014-1002, Docket No. 2014-392-E (PSC Dec. 1, 2014); *Bryant v. Carolina Water Service, Inc.*, Order No. 97-1003, Docket No. 97-358-W (PSC Nov. 24, 1997); *Jackson v. SCE&G,* Order No. 2002-752, Docket No. 2002-298-E (PSC Oct. 24, 2002); *Watts v. BellSouth,* Order No. 96-104, Docket No. 95-1201-C (PSC Mar. 5, 1996).

The Luciano account in this case has been served for fourteen years with an AMR Meter which uses a RF transmission on the same frequency as that used by the AMI Meter. Furthermore, DEC offered the account holder the options that are available for metering at the present time pursuant to the Commission's approved tariff and regulations. As a result, summary judgment should be granted and this case dismissed.

CONCLUSION

DEC is entitled to judgment as a matter of law based on the information and affidavits submitted in this case. The DEC investigation determined that the meters are in compliance with the FCC standards and Commission regulations. ORS has confirmed that DEC has not violated any rule or regulation. Therefore, there is no genuine issue as to any material fact and DEC is entitled to judgment as a matter of law. Furthermore, the relief requested cannot be granted without exceeding Commission authority. As a result, summary judgment should be granted and the complaint dismissed.

WHEREFORE, Duke Energy Carolinas moves the Commission to grant it summary judgment and dismiss the Complaint with prejudice, hold the testimony deadlines for all parties and the hearing in abeyance pending resolution of this motion, and requests such other relief as the Commission deems just and proper.

Dated this 7th day of November, 2016.

Heather Shirley Smith, Deputy General Counsel
Rebecca Jean Dulin, Senior Counsel
Duke Energy Carolinas, LLC
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Greenville, SC 29601
Telephone 864.370.5045
heather.smith@duke-energy.com
Rebecca.Dulin@duke-energy.com

and

Robinson, McFadden & Moore, P.C.

/s Bonnie D. Shealy
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Post Office Box 944
Columbia, South Carolina 29202
Phone: 803-779-8900 ax: 803-252-0724
Email: bshealy@robinsonlaw.com

Attorney for Duke Energy Carolinas, LLC

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2016-366-E

In re:	)
	)
Lisa M. Meserve,	)
Complainant/Petitioner,	)
	)
v.	)
	)
Duke Energy Carolinas, LLC,	)
Defendant/Respondent.	)
	)

EXHIBIT 1

AMI Notices

Exhibit 1A

DUKE ENERGY®

ST12A | 400 S Tryon Street
Charlotte, NC 28202

PRESORT
FIRST-CLASS MAIL
U.S. POSTAGE
PAID
GREENVILLE, SC
PERMIT NO. 153

We will be upgrading the meter at:

www.duke-energy.com/**SmartMeter**

Exhibit 1A

Meter upgrade coming soon.

In the next few weeks, we will be in your area to install new smart meters. Here's what you can expect:

- For your safety and security, every Duke Energy employee or contractor carries a picture ID card.
- Our technician will install a new smart meter at your home or business. If no one is available, the technician will leave a note saying the installation was successful. If the technician was not able to access the meter, he/she will leave a note indicating an appointment is needed, along with instructions to schedule an appointment. If the property has more than one meter, one or more visits may be made.
- The installation process may cause a brief interruption in service.

For more information about the new smart meters being installed, visit **duke-energy.com/SmartMeter.**

We appreciate your cooperation as we bring you new digital technology, options and programs to help you manage your energy use and costs.

Questions about this meter change?
Call us toll-free 877.675.1656
Monday – Friday 8 a.m. – 4:30 p.m.

DUKE ENERGY®

©2016 Duke Energy Corporation 162178 6/16

Exhibit 1B

DUKE ENERGY.

Congratulations!

Duke Energy has successfully installed a new smart meter(s). You will receive a letter once the meter has been tested and certified. Until you receive that notification, we will still need access to read the meter to prepare your monthly bill.

Once certified, the meter will offer you many advantages, including:

- Better control over your energy use and costs, with access to your actual usage information by logging in to your Duke Energy account
- Remote meter reading
- Fewer estimated bills
- Faster service – remote connectivity means you'll no longer have to wait for a technician to connect service

To learn more about the new smart meter installed and additional benefits and programs available, please visit duke-energy.com/SmartMeter.

©2016 Duke Energy Corporation 162799 9/16

Exhibit 1C

DUKE ENERGY®

Sorry we missed you.

We were unable to install your new smart meter today. Please call to set up a time when we can visit again. For more information about the new smart meters being installed, visit **duke-energy.com/SmartMeter**.

Please call 855.741.9009
Monday - Friday: 7 a.m. - 8 p.m. EST
Saturday: 7 a.m. - 5 p.m. EST

©2016 Duke Energy Corporation 162636 8/16

Exhibit 1D

Duke Energy
ST12A | 400 South Tryon Street
Charlotte, NC 28202

<Date>

A new smart meter has been installed. You can now view your daily energy usage.

<Owner1>
<Address1>
<City, State Zip>

The electric meter has been updated at <Address1>

Dear First_Last,

You may recall receiving information from us about the installation of a new, smart meter for your account. The installation is complete and we have tested and certified the meter, so there is nothing else you need to do. Now you can begin enjoying the benefits of this new technology to better control your energy use and costs.

The new smart meter is part of Duke Energy's overall grid modernization program, which also means:

- **Quicker service**. Some requests (such as turning service on) can be performed remotely.
- **Greater reliability**. Digital technology will automate many of the manual functions that are currently required to maintain the power grid and respond to power outages. It can also improve the power grid's efficiency by reducing the amount of energy lost from power lines as the energy travels long distances.
- **More information**.Through your Duke Energy online account, you can now view your daily energy usage and adjust your electric usage to help lower your energy costs. If you do not have a Duke Energy online account, visit duke-energy.com to register.

Duke Energy is dedicated to helping you take control of how you use energy, and the new smart meter at your location is vital to making this possible. As we utilize this technology, we're excited about shaping the future of energy with you.

For more information, please visit **duke-energy.com/SmartMeter**.

Sincerely,

Grid Modernization team

Note: If we've had to estimate any of your previous bills since the new meter was installed, we may adjust those bills with actual readings. This may result in a charge or credit on your bill. If you have any questions about your billing or energy usage charges, please contact our customer service department at 800.777.9898.

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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2016-366-E

In re:	)
	)
Lisa M. Meserve,	)
Complainant/Petitioner,	)
	)
v.	)
	)
Duke Energy Carolinas, LLC,	)
Defendant/Respondent.	)
	)

EXHIBIT 2

DEC Letter To ORS

9700 David Taylor Dr.
Charlotte, N. C. 28262

Duke Energy Carolinas
Mail Code:DT01V
Charlotte, N. C. 28262

September 21, 2016

Mr. Brad Kirby
Office of Regulatory Staff
Consumer Services
1401 Main Street, Suite 900
Columbia, SC 29201

Subject: Larry and Mary Luciano
Lancaster, SC 29720
Account #s:

Dear Mr. Kirby:

I have investigated the above customer's concerns and offer you the following information.

There are two accounts at , Lancaster, SC: residential and general service. The residential account is the home and the generar service account # noted in our records as a pool service. Both accounts list Larry Luciano as the primary account holder with Mary Luciano listed as joint party on the residential account only. Their daughter, Lisa Meserve, is not listed on either account as a roommate or as being authorized to discuss either account.

Both accounts were established September 22, 1997.

Before we get into specific details about the location, I have provided some explanatory terms regarding metering and meter reading:

AMI (Automated Metering Infrastructure) is a universal acronym used by all metering solutions manufacturers. Almost every meter manufacturer has some type of AMI program. It only means no one physically walks or drives by the location to read the meter. Readings are transmitted via the grid.

Open Way – The meter manufacturer, Itron, has copyrighted this name. They own this specific method of AMI meter reading. On the nameplate of their meter it will say Open Way.

Encoder Receiver Transmitter (ERT)–
The ERT module is a radio transmitter inside the meter. This is usually associated with the term MMR (Mobile Meter Read).

The two methods of meter reading listed above were used to obtain readings for both this customer's accounts. For more information on ERT or mobile read technology, see Itron's website:
http://www.gridinsight.com/community/documentation/itron-ert-technology/

Specific information related to [redacted] Lancaster, SC:
[redacted] **in Lancaster – Account #** [redacted] **Residential**

From 09/22/1997 until 05/07/2002:

- Serial Number: 08S03232444188
  - Read method: walk-by (Duke Energy meter reader visually read the dials)
  - Register style: Electro-mechanical
    - Dial on the face of the meter.

From 05/07/2002 until 08/17/2016:

- Serial Number: 08J06247757175
  - Read method: ERT
  - Register style: Electro-mechanical
    - Dial on the face of the meter but able to be read MMR

From 08/17/2016 until present:

- Serial Number: Z250796752316
  - Read method: AMI
  - Register type: Solid state
    - Solid state has the appearance of an LED screen on the face of the meter. Unlike dial meters when the ERT on this meter type stops working the whole meter stops working because it is a computer.

[redacted] **in Lancaster, Account #** [redacted] **- General Service**

From 09/22/1997 until 05/07/2002

- Serial number: 08J06397726876
  - Read method: walk-by (Duke Energy meter reader visually read the dials) Register type: Electro-mechanical.
  - Register style: Electro-mechanical

From 05/07/2002 until 08/17/2016

- Serial number: 08J06397726876
  - Read method: MMR/RF
  - Register type: Electro-mechanical.
    - Dials on the face of the meter.
    - Dial on the face of the meter but able to be read MMR
    - Serial number: Z2507967523216
  - Read method: AMI
  - Register type: Solid State
    - Solid state has the appearance of an LED screen on the face of the meter. Unlike dial meters when the ERT on this meter type stops working the whole meter stops working because it is a computer.

The meters were changed out to AMI (Automated Metering Infrastructure) on August 17, 2016. AMI technology enhances service and reliability, creates more opportunities for our customers, company and the environment. The benefits include more reliable service, quicker response to identifying and outages, real time data to assist customers with their energy use and monthly energy bills, and enables the leverage of technology to reduce costs.

The first proactive communication is a postcard advising we will be in the customer's area to install new digital smart meters. The phone number, 704-382-5009, is provided so the customer may contact Duke Energy with any questions.

The postcard was mailed to the Luciano's on 07/15/2016. Because there was no communication from the Luciano's, the meter exchange took place on 08/17/2016.

When Mrs. Luciano called on 08/25/2016, Duke offered to exchange the meters back to a drive-by meters for $50. This is to cover the cost of the work involved to exchange the meters. We make this offer to customers who change their mind after the meter has been installed. This is in lieu of a future opt-out. Mrs. Luciano refused this option.

The next option provided to Mrs. Luciano is land-line meter option. This requires a dedicated land-line for readings to be transmitted. There is a charge of $45 per meter per month. Mrs. Luciano refused this option.

The final option given was for the customer to relocate the meter bases away from the house at their expense. Mrs. Luciano refused this option.

Mrs. Luciano said they wanted the old meters back and would not pay for any other options.

The new meters operate on the same 900 MHz bandwidth as the drive by meters. The difference is they are two-way communicating meters versus one-way. 900 MHz bandwidth is acceptable to use by the FCC. The meters installed (and being installed) have been tested in accordance with Title 47, Part 15 of the Code of Federal Regulations (CFR), and have been certified by the FCC (ID #s: SK9AMI-3, SK9AMI-4, SK9CRUG1).

Duke Energy provides educational information on our website (https://www.duke-energy.com/about-us/smart-meter.asp?utm_source=direct-mail&utm_medium=AMI-communications&utm_campaign=AMI%20install%20communication#C0R9). On the Duke Energy web page there are additional links to independent information regarding smart meters.

Please feel free to give me a call if you have further questions.

Sincerely,

Paula Bullaboy

Paula Bullaboy
Consumer Affairs Specialist

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2016-366-E

In re:	)
	)
Lisa M. Meserve,	)
Complainant/Petitioner,	)
	)
v.	)
	)
Duke Energy Carolinas, LLC,	)
Defendant/Respondent.	)
	)

EXHIBIT 3

S.C. Office of Regulatory Staff

Letter to Ms. Meserve

C. DUKES SCOTT
EXECUTIVE DIRECTOR

1401 Main Street, Suite 900
Columbia, SC 29201

NANETTE S. EDWARDS
DEPUTY EXECUTIVE DIRECTOR

Toll Free: 1-800-922-1531
www.regulatorystaff.sc.gov

April B. Sharpe
Manager of Consumer Services

Mrs. Mary-Louise Luciano and Ms. Lisa Meserve

Lancaster, SC 29720

File No. 2016-E-1213

Dear Mrs. Luciano and Ms. Meserve:

This letter is in response to your written complaint filed with the Office of Regulatory Staff ("ORS") on August 29, 2016 against Duke Energy Carolinas ("DEC" or "Company"). Your complaint is regarding your request for DEC to remove the smart meters at your service location and replace them with analog meters.

The ORS contacted Duke Energy and requested the company assist in investigating your complaint and provide a respond to your complaint. Enclosed is a copy of the Duke Energy's response to your complaint.

The ORS investigation of your complaint, does not find that DEC has violated the Public Service Commission ("PSC") approved tariffs nor the PSC rules and regulations.

Please be advised, you have the right to file a petition and request a hearing before the PSC if you are unable to resolve your complaint by working with the utility or the ORS. To file your complaint with the PSC, complete the Complaint Form, found on the PSC's website at www.psc.sc.gov.

Sincerely,

Brad Kirby, Investigator
Consumer Services
Office of Regulatory Staff

Enclosure: Duke Energy Carolinas Complaint Response

Cc. Duke Energy (via e-mail)

9700 David Taylor Dr.
Charlotte, N. C. 28262

Duke Energy Carolinas
Mail Code:DT01V
Charlotte, N. C. 28262

September 21, 2016

Mr. Brad Kirby
Office of Regulatory Staff
Consumer Services
1401 Main Street, Suite 900
Columbia, SC 29201

Subject: Larry and Mary Luciano
Lancaster, SC 29720
Account #s

Dear Mr. Kirby:

I have investigated the above customer's concerns and offer you the following information.

There are two accounts at 1270 Craig Ave in Lancaster, SC: residential and general service. The residential account #C the home and the general service account # is noted in our records as a pool service. Both accounts list Larry Luciano as the primary account holder with Mary Luciano listed as joint party on the residential account only. Their daughter, Lisa Meserve, is not listed on either account as a roommate or as being authorized to discuss either account.

Both accounts were established September 22, 1997.

Before we get into specific details about the location, I have provided some explanatory terms regarding metering and meter reading:

AMI (Automated Metering Infrastructure) is a universal acronym used by all metering solutions manufacturers. Almost every meter manufacturer has some type of AMI program. It only means no one physically walks or drives by the location to read the meter. Readings are transmitted via the grid.

Open Way – The meter manufacturer, Itron, has copyrighted this name. They own this specific method of AMI meter reading. On the nameplate of their meter it will say Open Way.

Encoder Receiver Transmitter (ERT) –
The ERT module is a radio transmitter inside the meter. This is usually associated with the term MMR (Mobile Meter Read).

The two methods of meter reading listed above were used to obtain readings for both this customer's accounts. For more information on ERT or mobile read technology, see Itron's website:
http://www.gridinsight.com/community/documentation/itron-ert-technology/

Specific information related to [redacted] Lancaster, SC:
[redacted] **in Lancaster – Account #** [redacted] **Residential**

From 09/22/1997 until 05/07/2002:

- Serial Number: 08S03232444188
  - Read method: walk-by (Duke Energy meter reader visually read the dials)
  - Register style: Electro-mechanical
    - Dial on the face of the meter.

From 05/07/2002 until 08/17/2016:

- Serial Number: 08J06247757175
  - Read method: ERT
  - Register style: Electro-mechanical
    - Dial on the face of the meter but able to be read MMR

From 08/17/2016 until present:

- Serial Number: Z250796752316
  - Read method: AMI
  - Register type: Solid state
    - Solid state has the appearance of an LED screen on the face of the meter. Unlike dial meters when the ERT on this meter type stops working the whole meter stops working because it is a computer.

[redacted] **e in Lancaster, Account #** [redacted] **General Service**

From 09/22/1997 until 05/07/2002

- Serial number: 08J06397726876
  - Read method: walk-by (Duke Energy meter reader visually read the dials) Register type: Electro-mechanical.
  - Register style: Electro-mechanical

From 05/07/2002 until 08/17/2016

- Serial number: 08J06397726876
  - Read method: MMR/RF
  - Register type: Electro-mechanical.
    - Dials on the face of the meter.
    - Dial on the face of the meter but able to be read MMR
    - Serial number: Z2507967523216
  - Read method: AMI
  - Register type: Solid State
    - Solid state has the appearance of an LED screen on the face of the meter. Unlike dial meters when the ERT on this meter type stops working the whole meter stops working because it is a computer.

The meters were changed out to AMI (Automated Metering Infrastructure) on August 17, 2016. AMI technology enhances service and reliability, creates more opportunities for our customers, company and the environment. The benefits include more reliable service, quicker response to identifying and outages, real time data to assist customers with their energy use and monthly energy bills, and enables the leverage of technology to reduce costs.

The first proactive communication is a postcard advising we will be in the customer's area to install new digital smart meters. The phone number, 704-382-5009, is provided so the customer may contact Duke Energy with any questions.

The postcard was mailed to the Luciano's on 07/15/2016. Because there was no communication from the Luciano's, the meter exchange took place on 08/17/2016.

When Mrs. Luciano called on 08/25/2016, Duke offered to exchange the meters back to a drive-by meters for $50. This is to cover the cost of the work involved to exchange the meters. We make this offer to customers who change their mind after the meter has been installed. This is in lieu of a future opt-out. Mrs. Luciano refused this option.

The next option provided to Mrs. Luciano is land-line meter option. This requires a dedicated land-line for readings to be transmitted. There is a charge of $45 per meter per month. Mrs. Luciano refused this option.

The final option given was for the customer to relocate the meter bases away from the house at their expense. Mrs. Luciano refused this option.

Mrs. Luciano said they wanted the old meters back and would not pay for any other options.

The new meters operate on the same 900 MHz bandwidth as the drive by meters. The difference is they are two-way communicating meters versus one-way. 900 MHz bandwidth is acceptable to use by the FCC. The meters installed (and being installed) have been tested in accordance with Title 47, Part 15 of the Code of Federal Regulations (CFR), and have been certified by the FCC (ID #s: SK9AMI-3, SK9AMI-4, SK9CRUG1).

Duke Energy provides educational information on our website (https://www.duke-energy.com/about-us/smart-meter.asp?utm_source=direct-mail&utm_medium=AMI-communications&utm_campaign=AMI%20install%20communication#C0R9). On the Duke Energy web page there are additional links to independent information regarding smart meters.

Please feel free to give me a call if you have further questions.

Sincerely,

Paula Bullaboy

Paula Bullaboy
Consumer Affairs Specialist

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2016-366-E

In re:	)	
	)	
Lisa M. Meserve,	)	
Complainant/Petitioner	)	
	)	**CERTIFICATE OF SERVICE**
v.	)	
	)	
Duke Energy Carolinas, LLC,	)	
Defendant/Respondent	)	
	)	

This is to certify that I, Toni C. Hawkins, a Paralegal with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below **Duke Energy Carolinas, LLC's Motion for Summary Judgment, Memo in Support, Affidavits of Kim H. Smith and Robert Moreland** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

Ms. Lisa M. Meserve
[illegible]
Lancaster, SC 29720

Mr. & Mrs. Larry Luciano
[illegible]
Lancaster, SC 29720

Dated at Columbia, South Carolina this 7th day of November, 2016.

Toni C. Hawkins

Toni C. Hawkins

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2016-366-E

In re:	)	
	)	
Lisa M. Meserve,	)	
Complainant/Petitioner,	)	**AFFIDAVIT OF**
	)	**KIM H. SMITH**
v.	)	
	)	
Duke Energy Carolinas, LLC,	)	
Defendant/Respondent.	)	
	)	

PERSONALLY appeared before me, Kim H. Smith who first being duly sworn did state as follows:

1. My name is Kim H. Smith and I am Regulatory Affairs Manager for Duke Energy Carolinas, LLC ("Duke Energy Carolinas" or "DEC"). I am responsible for directing the proper administration of Duke Energy Carolinas' rate schedules and service regulations and the Public Service Commission of South Carolina's ("Commission") rules and regulations. I am also responsible for the investigation of customer complaints received through the Commission and the Office of Regulatory Staff ("ORS").

2. This affidavit is based upon my personal knowledge and review of documents received and maintained in the ordinary course of business by Duke Energy Carolinas. I am familiar with the records of Duke Energy Carolinas that pertain to the residential account for [redacted] Lancaster, South Carolina ("location at issue"). I have personally worked on said documents and records, and as to the following facts, I know them to be true of my own knowledge or I have gained knowledge of them from the business records of Duke Energy Carolinas, which were made at or about the time of the events, recorded, and which are

maintained in the ordinary course of business by Duke Energy Carolinas. If called as a witness, I could and would testify to the same.

3. I assisted our attorneys in preparing Duke Energy Carolinas' Motion for Summary Judgment and Memorandum in Support ("Motion"). I have read the Motion and verify that the information contained within the Motion is accurate and true to the best of my knowledge, information, and belief.

4. I have reviewed the billing history and DEC account information for the location at issue. Larry Luciano is the primary account holder with Mary Luciano listed as a joint party on the residential account. The general service account for a pool is listed in the name of Larry Luciano only. The Complainant Lisa M. Meserve is Luciano's adult daughter who resides with them. DEC's privacy policies prevent the company from discussing a customer's account with another individual unless the customer has provided specific authorization to do so. During discussions with DEC, Ms. Luciano authorized Ms. Meserve to act on the Luciano's behalf and to make decisions related to the Luciano's DEC account.

5. According to DEC's business records the residential account and the general service account were established September 22, 1997. Both accounts had electro-mechanical analog meters with dials. DEC meter readers had to come to the location to read the dials on a monthly basis. On May 7, 2002, DEC installed analog meters retrofitted with a radio transmitter inside ("AMR Meter"). The radio transmitter is an Encoder Receiver Transmitter that allowed DEC to gather kWh usage from the meters via a low-power radio frequency signal of 900 MHz. The meters were read by equipment installed in DEC's trucks as the meter readers drove by the location.

6. As part of DEC's deployment of advanced metering infrastructure ("AMI") to its customers in South Carolina, DEC is replacing AMR Meters with AMI Meters or "Smart Meters." DEC follows a formal customer communication protocol during its AMI deployments. Customers scheduled to have a meter exchanged first receive a postcard approximately two to three weeks prior to the scheduled time when DEC will be working in their area. *See* **Exhibit 1A** of the Motion for Summary Judgment. The postcard was mailed to the accounts at this location on July 15, 2016.

2. The next communication via a door hanger occurs when the installers arrive at the premise to exchange the meter. *See* **Exhibit 1B** of the Motion for Summary Judgment. If the meter is inaccessible, or cannot be exchanged a door hanger is left requesting that the customer call for an appointment for the installer to return. *See* **Exhibit 1C** of the Motion for Summary Judgment. Once the meter is installed and the readings are certified, a letter is sent to the customer informing them of the ability to access the additional usage information on the Customer Portal. *See* **Exhibit 1D.**

3. DEC's records indicate that the Luciano's did not contact DEC after the initial postcard was sent. The AMR Meters at the residence were replaced by AMI Meters on August 17, 2016.

4. DEC's records indicate that Mrs. Luciano contacted DEC on August 25, 2016, and DEC offered to exchange the new AMI Meters temporarily for AMR Meters similar to those previously in place. A $50 service call fee per meter would have been charged to reinstall the meters. The other options discussed with the account holder included a land-line meter option or relocation of the meter bases away from the house at their expense. Mrs. Luciano and Ms.

Meserve did not agree to any of the options. They indicated they wanted the old meters back and would not pay for any other options.

5. DEC received the two new AMI meters via mail from Mrs. Luciano and/or Ms. Meserve along with photographs of General Electric meters installed at the location and trespass notices on September 22, 2016. Service was disconnected the same day.

6. The customer's service was restored on September 23, 2016, once Mrs. Luciano agreed to allow DEC to install digital AMR Meters.

7. The DEC AMI Notices, ORS letter, and DEC letter attached to the Motion for Summary Judgment as **Exhibits 1, 2 and 3** are true and accurate copies of records maintained by Duke Energy Carolinas in the ordinary course of business.

FURTHER AFFIANT SAYETH NOT.

Dated this 2nd day of November, 2016.

DUKE ENERGY CAROLINAS

Kim H. Smith
Regulatory Affairs Manager

SWORN TO BEFORE ME

This 2 day of November, 2016.

Sheila Lemoine
Print Notary Name: Sheila Lemoine
Notary Public for North Carolina
My Commission Expires: July 2, 2019

Sheila Lemoine
Notary Public
Mecklenburg County
North Carolina
My Commission Expires 7/2/2019

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2016-366-E

In re:	)	
	)	
Lisa M. Meserve,	)	
Complainant/Petitioner,	)	**AFFIDAVIT OF**
	)	**ROBERT G. MORELAND**
v.	)	
	)	
Duke Energy Carolinas, LLC,	)	
Defendant/Respondent.	)	
	)	

PERSONALLY appeared before me, Robert G. Moreland, who first being duly sworn did state as follows:

1. My name is Robert G. Moreland and I am Carolina AMI Project Director for Duke Energy Carolinas, LLC ("Duke Energy Carolinas" or "DEC"). My office is located in 400 South Tyron, Charlotte, NC 28202. I have worked for DEC since 2001. I received a Bachelor of Science in Computer Science for Business from DeVry Institute of Technology, Atlanta GA. I have held my current position as Carolina AMI Project Director since July 2012.

2. My job current responsibilities include Project Management of the deployment of the AMI technology in Duke Energy Carolinas. The scope of the project is the planning and deployment of the AMI meters and ensuring operational teams can support the technology when the project is done. My team is responsible for all events involved in exchanging the AMI meters including identifying and working with vendors/partners, financials, safety, customer interactions and meter exchanges.

3. This affidavit is based upon my personal knowledge and review of documents received and maintained in the ordinary course of business by Duke Energy Carolinas. I am

familiar with the records of Duke Energy Carolinas that pertain to the residential account for [redacted], Lancaster, South Carolina ("location at issue"). I have personally worked on said documents and records, and as to the following facts, I know them to be true of my own knowledge or I have gained knowledge of them from the business records of Duke Energy Carolinas, which were made at or about the time of the events, recorded, and which are maintained in the ordinary course of business by Duke Energy Carolinas. If called as a witness, I could and would testify to the same.

4. I assisted our attorneys in preparing Duke Energy Carolinas' Motion for Summary Judgment and Memorandum in Support ("Motion"). I have read the Motion and verify that the information contained within the Motion is accurate and true to the best of my knowledge, information, and belief.

5. When the Luciano's established service in 1997, DEC was using electro-mechanical analog meters with dials which registered usage. DEC meter readers had to visit each meter on a monthly basis to record usage. Beginning in 2001, DEC began exchanging the analog meters with Automatic Meter Reading meters so that equipment installed in DEC trucks could gather kWh usage via the 900 MHz radio frequency signal. During this time DEC exchanged the analog meters with either a digital Automatic Meter Reading meter or an analog meter retrofitted with a radio transmitter inside (collectively "AMR Meters"). The radio transmitter is an Encoder Receiver Transmitter. On May 7, 2002, DEC installed AMR Meters that had been retrofitted at the location at issue.

6. DEC is now deploying advanced metering infrastructure ("AMI") in South Carolina. AMR Meters are being replaced with AMI Meters, also known as "Smart Meters."

Smart Meters use radio frequency communications to transmit energy usage data. AMI Meters operate on the same 900 MHz radio frequency signal as AMR Meters.

7. All AMI and AMR Meters are tested to confirm that they are in compliance with Federal Communications Commission ("FCC") rules and guidelines which sets exposure limits for all types of devices that emit electromagnetic frequencies. The FCC standards for intentional and unintentional radio emissions and safety related to RF exposure, Parts 1 and 2 of the FCC's Rules and Regulations (47 C.F.R. 1.1307(b), 1.1310, 2.1091, 2.1093) govern the certification and design of communicating meters and other devices such as cordless phones, remote control toys, personal computers, televisions, vacuum cleaners, among others. DEC's records confirm that the AMR and AMI Meters at this location have been tested and found to be in compliance with both the FCC and Commission rules and regulations.

8. As more Smart Meters are deployed, drive-by routes are being discontinued which necessitates the need for a long-term solution for those customers who object to the installation of a Smart Meter. On October 10, 2016, DEC filed a Request for Approval of an AMI Opt-Out Rider, Docket No. 2016-354-E.

9. When Mrs. Luciano and Ms. Meserve objected to the installation of the Smart Meter, DEC offered to exchange the new AMI Meters temporarily for AMR Meters similar to those previously in place. This option is being offered until a determination is made by the Commission on approval of the Rider MRM. Other options were also discussed with the account holder. Service could be provided pursuant to Commission approved Tariff Leaf No. 320, Remote Meter Reading and Usage Data Service, which allows remote meter reading via a dedicated analog telephone landline if a capable meter is available. All major manufacturers of electric meters have stopped making analog meters. The customer could also relocate the meter

bases away from the house at their expense. Mrs. Luciano did not initially agree to any of these options.

10. Mrs. Luciano or Ms. Meserve then mailed in the AMI Meters to DEC. Someone at Mrs. Luciano or Ms. Meserve's direction replaced the DEC's meters with General Electric analog meters. DEC does not allow a non-DEC meter to be installed on its lines by customers for safety considerations and to ensure compliance with the Commission's regulations. DEC contacted ORS who agreed that these actions by Mrs. Luciano and/or Ms. Meserve were violations of Commission regulations and a safety hazard. Service was terminated the same day.

11. Mrs. Luciano agreed to accept a digital AMR Meter with the same radio frequency as the old AMR Meter on September 23, 2016. An AMR Meter was installed and service was reconnected after a Lancaster County Inspector inspected the meter bases in question and found them to be in good operable condition.

12. I personally contacted Mrs. Luciano on October 3, 2016, to discuss the other options available described earlier.

FURTHER AFFIANT SAYETH NOT.

Dated this 2nd day of November, 2016.

DUKE ENERGY CAROLINAS

Robert G. Moreland
Carolina AMI Project Director

SWORN TO BEFORE ME

This 2nd day of November, 2016.

Print Notary Name: CHARLES ABTOTTE
Notary Public for Mecklenburg County
My Commission Expires: 09/28/2019