

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson III, Administrative Law Judge

Case No. 10-ALJ-17-0270-CC

Duke Energy Corporation.....Appellant,

v.

South Carolina Department of Revenue.....Respondent.

RECORD ON APPEAL

VOLUME XVIII

Milton G. Kimpson
J. Abraham Gutting
South Carolina Department of Revenue
PO Box 12265
Columbia, SC 29211
(803) 898-5131

John M.S. Hoefler
Tracey C. Green
John W. Roberts
Willoughby & Hoefler, P.A.
PO Box 8416
Columbia, SC 29202
(803) 252-3300

Harry A. Hancock, Esq.
The Law Office of Dean B. Bell, LLC
1 Corpus Christie Place, Suite 105
Hilton Head Island, SC 29928
(843) 785-9772

Attorneys for Respondent

Burnet R. Maybank III
James Frederick Reames III
Tanya A. Gee
NEXSEN PRUET, LLC
1230 Main Street, Suite 700
PO Drawer 2426 (29202)
Columbia, SC 29201
(803) 771-8900

Eric S. Tresh, *Pro Hac Vice*
Maria M. Todorova, *Pro Hac Vice*
SUTHERLAND ASBILL & BRENNAN LLP
999 Peachtree Street, NE, Suite 2300
Atlanta, GA 30309
(404) 853-8000

Jeffrey A. Friedman, *Pro Hac Vice*
SUTHERLAND ASBILL & BRENNAN LLP
700 Sixth St NW #700
Washington, DC 20001
(202) 383-0718

Attorneys for Duke Energy Corporation

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State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

June 15, 1998

Duke Power Corporation
422 Church Street
Charlotte, NC 28242-0001
Attn: Mr. Rick McCarver

Dear Rick,

I'm faxing the waiver to you and sending the original by mail.
Please fax back a copy of executed waiver to my attention at (803) 898-5685, and return the original to me at SC Department of Revenue, PO Box 125, Columbia, SC 29214.

I'm sorry again for the delay, but I was in charge of my Mother's 6 month battle with lung cancer which ended June 9, 1998, and everything got put on the back burner. I'm back on the job again and will get with my supervisor next week to get his thoughts on the methods we were using to see if he has any different ideas.

I'll give you a call next week and let you know where we stand.
Give me a call if we need to talk.

Yours Very Truly,



Randy Wilson, Auditor
(803) 898-5615

DES00000388

COPY



State of South Carolina
DEPARTMENT OF REVENUE
FIELD SERVICES DIVISION
CONSENT TO EXTEND THE TIME TO ASSESS TAX

FS-43
Rev 1/99
2024

File No. 20090024-9

Duke Energy Corp. (Formerly) Duke Power Co.) & Combined Affiliates SSN/FEI 56-0205520
Name of Taxpayer

422 S. Church St., Charlotte, NC 28242-0001
Address (Number, Street, City or Town, State, Zip Code)

and the SOUTH CAROLINA DEPARTMENT OF REVENUE consent and agree to the following:

(1) The amount of any STATE Income/License Fee tax due on any return(s) made by or for the above taxpayer(s) for the period(s) ended December 31, 1978 - December 31, 1999 (Income) December 31, 1984 - December 31, 2000 (License Fee) may be assessed at anytime on or before December 31, 2002 (Expiration Date)

This agreement extends the time for making the notice of assessment or refund of the above tax pursuant to the provisions of Section 12-54-85(C)(5) of the 1976 South Carolina Code of Laws, as amended.

Duke Energy Corporation
(Name of Taxpayer)

By: *[Signature]*
(Taxpayer, Partner, Officer of Corp., etc.)

Senior Vice President Corporate Tax
(Title)

6-21-02
(Date)

SOUTH CAROLINA DEPARTMENT OF REVENUE
By: Robert Anderson/ By:
[Signature]
(Administrator, Field Services Division)

6/21/02
(Date)

If this waiver is executed on behalf of a corporation, it will be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition, to which the seal, if any, of the corporation must be affixed.

DES00000389

COPY



State of South Carolina
DEPARTMENT OF REVENUE
FIELD SERVICES DIVISION
CONSENT TO EXTEND THE TIME TO ASSESS TAX

FS-43
Rev 1/99
2/84

File No. 20090024-9

Duke Energy Corp. (Formerly Duke Power Co.) & Combined Affiliates SSN/FBI 56-0205520
Name of Taxpayer

422 S. Church St., Charlotte, NC 28242-0001
Address (Number, Street, City or Town, State, Zip Code)

and the SOUTH CAROLINA DEPARTMENT OF REVENUE consent and agree to the following:

(1) The amount of any STATE Income/License Fee tax due on any return(s) made by or for the above taxpayer(s) for the period(s) ended December 31, 1979 - December 31, 1999 (Income) December 31, 1984 - December 31, 2000 (License Fee) may be assessed at anytime on or before December 31, 2002 (Expiration Date)

This agreement extends the time for making the notice of assessment or refund of the above tax pursuant to the provisions of Section 12-54-85(C)(5) of the 1976 South Carolina Code of Laws, as amended.

Duke Energy Corporation
(Name of Taxpayer)

By: [Signature]
(Taxpayer, Partner, Officer of Corp., etc.,)

Senior Vice President Corporate Tax
(Title)

6-21-02
(Date)

SOUTH CAROLINA DEPARTMENT OF REVENUE
By: Robert Anderson/By:

[Signature]
(Administrator, Field Services Division)

6/21/02
(Date)

If this waiver is executed on behalf of a corporation, it will be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition, to which the seal, if any, of the corporation must be affixed.

DES00000390

COPY



State of South Carolina
DEPARTMENT OF REVENUE
FIELD SERVICES DIVISION
CONSENT TO EXTEND THE TIME TO ASSESS TAX

FS-43
Rev 1/99
2024

File No. 20090024-9

Duke Energy Corp. (Formerly Duke Power Co.) & Combined Affiliates SSN/FEI 56-0205520

Name of Taxpayer

422 S. Church St., Charlotte, NC 28242-0001

Address (Number, Street, City or Town, State, Zip Code)

and the SOUTH CAROLINA DEPARTMENT OF REVENUE consent and agree to the following:

(1) The amount of any STATE Income/License Fee tax due on any return(s) made by or for the above taxpayer(s) for the period(s) ended December 31, 1978 - December 31, 1999 (Income) December 31, 1984 - December 31, 2000 (License Fee)

may be assessed at anytime on or before December 31, 2002 (Expiration Date)

This agreement extends the time for mailing the notice of assessment or refund of the above tax pursuant to the provisions of Section 12-54-85(C)(5) of the 1976 South Carolina Code of Laws, as amended.

Duke Energy Corporation (Name of Taxpayer)

By: [Signature] (Taxpayer, Partner, Officer of Corp., etc.)

Senior Vice President Corporate Tax (Title)

6-21-02 (Date)

SOUTH CAROLINA DEPARTMENT OF REVENUE
By: Robert Anderson/ By:

[Signature] (Administrator, Field Services Division)

6/21/02 (Date)

If this waiver is executed on behalf of a corporation, it will be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition, to which the seal, if any, of the corporation must be affixed.

DES00000391

COPY



State of South Carolina
DEPARTMENT OF REVENUE
FIELD SERVICES DIVISION
CONSENT TO EXTEND THE TIME TO ASSESS TAX

FS-43
Rev 1/99
2024

File No. 20090024-9

Duke Energy Corp. (Formerly Duke Power Co.) & Combined Affiliates SSN/FEI 56-0205520
Name of Taxpayer

422 E. Church St., Charlotte, NC 28242-0001
Address (Number, Street, City or Town, State, Zip Code)

and the SOUTH CAROLINA DEPARTMENT OF REVENUE consent and agree to the following:

(1) The amount of any STATE Income/License Fee tax due on any return(s) made by or for the above taxpayer(s) for the period(s) ended December 31, 1978 - December 31, 1999 (Income) December 31, 1984 - December 31, 2000 (License Fee) may be assessed at anytime on or before December 31, 2002 (Expiration Date)

This agreement extends the time for mailing the notice of assessment or refund of the above tax pursuant to the provisions of Section 12-54-85(C)(5) of the 1976 South Carolina Code of Laws, as amended.

Duke Energy Corporation (Name of Taxpayer)

By: [Signature]
(Taxpayer, Partner, Officer of Corp., etc.)

Senior Vice President Corporate Tax (Title)

6-21-02 (Date)

SOUTH CAROLINA DEPARTMENT OF REVENUE
By: Robert Anderson/ By:

[Signature]
(Administrator, Field Services Division)

6/23/02 (Date)

If this waiver is executed on behalf of a corporation, it will be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition, to which the seal, if any, of the corporation must be affixed.

DES00000392

State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina, 29214

December 19, 1997

Duke Energy Corporation
422 South Church St.
Charlotte, NC 28242-0001

Attn: Mr. Rick McCarver

Dear Rick,

Please have the enclosed waiver signed before December 31, 1997 and return to me at your earliest convenience. I am completing the report this week to be reviewed possibly by year-end and mailed to you early January.

I hope you and your family have a happy holiday season.

Yours very truly,

SC DEPARTMENT OF REVENUE
FIELD SERVICES DIVISION



Randy Wilson
Auditor
(803)898-5615

/tb

DES00000393



STATE OF SOUTH CAROLINA
 DEPARTMENT OF REVENUE AND TAXATION
 FIELD SERVICES DIVISION
 CONSENT TO EXTEND THE TIME TO ASSESS TAX

FS-43
 Rev. (10/93)
 2024

File No. 20090024-9

Duke Power Co. (Now renamed Duke Energy Corp.)

SSN FEI# 56-0205520

Name of Taxpayer(s)

422 South Church St. Charlotte, NC 28242-0001

Address (Number, Street, City or Town, State, Zip Code)

and the SOUTH CAROLINA DEPARTMENT OF REVENUE AND TAXATION consent and agree to the following:

- (1) The amount of any STATE Corp. Income/License Fee tax due on any return(s) made by or for the above taxpayer(s) for the period(s) ended Dec. 31, 1978 through Dec. 31, 1994 (Income)
Dec. 31, 1984 through Dec. 31, 1995 (License)

may be assessed at any time on or before June 30, 1998

(Expiration Date)

This agreement extends the time for mailing the notice of assessment or refund of the above tax pursuant to the provisions of Section 12-54-80 of the 1976 South Carolina Code of Laws, as amended.

DUKE POWER CO. (Now renamed Duke Energy Corp.)

(Name of Taxpayer)

By: *E. G. Ruff*

(Taxpayer, Partner, Officer of Corp., etc.,)

Ellen T. Ruff
 Vice President and General Counsel, Electric Operations

12/22/97

(Title)

(Date)

SOUTH CAROLINA DEPARTMENT OF REVENUE AND TAXATION

By: *Maurin N. ...*

(Director, Field Services Division)

12/19/97

(Date)

If this waiver is executed on behalf of a corporation, it will be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition, to which the seal, if any, of the corporation must be affixed.

DES00000394



STATE OF SOUTH CAROLINA
 DEPARTMENT OF REVENUE AND TAXATION
 FIELD SERVICES DIVISION
 CONSENT TO EXTEND THE TIME TO ASSESS TAX

FS-43
 Rev. (10/93)
 2024

File No. 20090024-9

Duke Power Co. (Now renamed Duke Energy Corp.)

SSN FEI# 56-0205520

Name of Taxpayer(s)

422 South Church St. Charlotte, NC 28242-0001

Address (Number, Street, City or Town, State, Zip Code)

and the SOUTH CAROLINA DEPARTMENT OF REVENUE AND TAXATION consent and agree to the following:

(1) The amount of any STATE Corp. Income/License Fee tax due on any return(s) made by or for the above taxpayer(s) for the period(s) ended Dec. 31, 1978 through Dec. 31, 1994 (Income)
Dec. 31, 1984 through Dec. 31, 1995 (License)

may be assessed at any time on or before June 30, 1998

(Expiration Date)

This agreement extends the time for mailing the notice of assessment or refund of the above tax pursuant to the provisions of Section 12-54-80 of the 1976 South Carolina Code of Laws, as amended.

DUKE POWER CO. (Now renamed Duke Energy Corp.)

(Name of Taxpayer)

By: *E. O. Ruff*

(Taxpayer, Partner, Officer of Corp., etc.)

Ellen T. Ruff
Vice President and General Counsel, Electric Operations

12/22/97

(Title)

(Date)

SOUTH CAROLINA DEPARTMENT OF REVENUE AND TAXATION

By: *Marvin A. Lavant*

(Director, Field Services Division)

12/19/97
 (Date)

If this waiver is executed on behalf of a corporation, it will be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition, to which the seal, if any, of the corporation must be affixed.

DES00000395

SOUTH CAROLINA TAX COMMISSION
FIELD SERVICES DIVISION
CONSENT TO EXTEND THE TIME TO ASSESS TAX

File No. 20090024-9

Duke Power Co.
Name of Taxpayer(s)

SSN FEI #56-020520

422 South Church St. Charlotte, NC 28242-0001
Address (Number, Street, City or Town, State, Zip Code)

and the SOUTH CAROLINA TAX COMMISSION consent and agree to the following:

(1) The amount of any STATE Corp. Income/License Fee tax due on any return(s) made by or for the above taxpayer(s) for the period(s) ended December 31, 1978 through December 31, 1992 (Income)
December 31, 1984 through December 31, 1993 (License)

may be assessed at any time on or before June 30, 1997
(Expiration Date)

This agreement extends the time for mailing the notice of assessment or refund of the above tax pursuant to the provisions of Section 12-54-80 of the 1976 South Carolina Code of Laws, as amended.

DUKE POWER COMPANY

By: Robert A. Lohman
(Name of Taxpayer)
(Taxpayer, Partner, Officer of Corp., etc.,)
V.P.
(Title)

6-3-96
(Date)

SOUTH CAROLINA TAX COMMISSION

By: Martin A. Darnold PW
(Director, Field Services Division)

5/30/96
(Date)

If this waiver is executed on behalf of a corporation, it will be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition, to which the seal, if any, of the corporation must be affixed.

FS-43 (11/85)

DES00000396

SOUTH CAROLINA TAX COMMISSION
FIELD SERVICES DIVISION
CONSENT TO EXTEND THE TIME TO ASSESS TAX

File No. 20090024-9

Duke Power Co.

SSN FEI #56-0205520

Name of Taxpayer(s)

422 South Church St. Charlotte, NC 28242-0001

Address (Number, Street, City or Town, State, Zip Code)

and the SOUTH CAROLINA TAX COMMISSION consent and agree to the following:

(1) The amount of any STATE Corp. Income/License Fee tax due on any return(s) made by or for the above taxpayer(s) for the period(s) ended December 31, 1978 through December 31, 1992 (Income)
December 31, 1984 through December 31, 1993 (License)

may be assessed at any time on or before June 30, 1997
(Expiration Date)

This agreement extends the time for mailing the notice of assessment or refund of the above tax pursuant to the provisions of Section 12-54-80 of the 1976 South Carolina Code of Laws, as amended.

DUKE POWER COMPANY

(Name of Taxpayer)

By:

Robert S. Lehman

(Taxpayer, Partner, Officer of Corp., etc.,)

V.P.

(Title)

6-3-96

(Date)

SOUTH CAROLINA TAX COMMISSION

By:

Marvin A. Darnold RW

(Director, Field Services Division)

5/30/96

(Date)

If this waiver is executed on behalf of a corporation, it will be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition, to which the seal, if any, of the corporation must be affixed.

FS-43 (11/85)

DES00000397



STATE OF SOUTH CAROLINA
 DEPARTMENT OF REVENUE AND TAXATION
 FIELD SERVICES DIVISION
 CONSENT TO EXTEND THE TIME TO ASSESS TAX

FS-43
 Rev. (10/93)
 2024

File No. 20090024-9

Duke Power Co.
 Name of Taxpayer(s)

SEM FBI# 56-0205520

422 South Church Street Charlotte, NC 28242-0001
 Address (Number, Street, City or Town, State, Zip Code)

and the SOUTH CAROLINA DEPARTMENT OF REVENUE AND TAXATION consent and agree to the following:

- (1) The amount of any STATE Corp. Income/License Fee tax due on any return(s) made by or for the above taxpayer(s) for the period(s) ended December 31, 1983 through December 31, 1991 (Income)
December 31, 1984 through December 31, 1992 (License)

may be assessed at any time on or before June 30, 1996
 (Expiration Date)

This agreement extends the time for mailing the notice of assessment or refund of the above tax pursuant to the provisions of Section 12-54-80 of the 1976 South Carolina Code of Laws, as amended.

Duke Power Company
 (Name of Taxpayer)
 By: Robert A. Lohm
 (Taxpayer, Partner, Officer of Corp., etc.)
V.P. & Tax Counsel
 (Title)

8-21-95
 (Date)

SOUTH CAROLINA DEPARTMENT OF REVENUE AND TAXATION
 By: Mavis A. Davant by RW
 (Director, Field Services Division)

8/9/95
 (Date)

If this waiver is executed on behalf of a corporation, it will be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition, to which the seal, if any, of the corporation must be affixed.

DES00000398



STATE OF SOUTH CAROLINA
 DEPARTMENT OF REVENUE AND TAXATION
 FIELD SERVICES DIVISION
 CONSENT TO EXTEND THE TIME TO ASSESS TAX

FS-43
 Rev. (10/93)
 2024

File No. 20090024-9

Duke Power Company
 Name of Taxpayer(s)

ESN FEI #56-0205520

422 South Church St. Charlotte, NC 28242-0001
 Address (Number, Street, City or Town, State, Zip Code)

and the SOUTH CAROLINA DEPARTMENT OF REVENUE AND TAXATION consent and agree to the following:

- (1) The amount of any STATE Corp. Income/License Fee tax due on any return(s) made by or for the above taxpayer(s) for the period(s) ended December 31, 1983 through December 31, 1990 (Income)
December 31, 1984 through December 31, 1991 (License)

may be assessed at any time on or before November 30, 1995
 (Expiration Date)

This agreement extends the time for mailing the notice of assessment or refund of the above tax pursuant to the provisions of Section 12-54-80 of the 1976 South Carolina Code of Laws, as amended.

DUKE POWER COMPANY
 (Name of Taxpayer)
 By: Robert A. Lilius
 (Taxpayer, Partner, Officer of Corp., etc.)
V.P. & TAX COUNSEL
 (Title)

5-7-95
 (Date)

SOUTH CAROLINA DEPARTMENT OF REVENUE AND TAXATION

By: Joseph P. Southard for Marvin Devant
 (Director, Field Services Division)

2 May 1995
 (Date)

If this waiver is executed on behalf of a corporation, it will be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition, to which the seal, if any, of the corporation must be affixed.

DES00000399



STATE OF SOUTH CAROLINA
 DEPARTMENT OF REVENUE AND TAXATION
 FIELD SERVICES DIVISION
 CONSENT TO EXTEND THE TIME TO ASSESS TAX

FS-43
 Rev. (10/93)
 2024

File No. 20090024-9

Duke Power Company
 Name of Taxpayer(s)

SSN

422 South Church St. Charlotte, NC 28242-0001
 Address (Number, Street, City or Town, State, Zip Code)

and the SOUTH CAROLINA DEPARTMENT OF REVENUE AND TAXATION consent and agree to the following:

(1) The amount of any STATE Corp. Income/License Fee tax due on any return(s) made by or for the above taxpayer(s) for the period(s) ended December 31, 1983/84, December 31, 1984/85, December 31, 1985/86, December 31, 1986/87, December 31, 1987/88, December 31, 1988/89, December 31, 1989/90 and December 31, 1990/91

may be assessed at any time on or before May 30, 1995.

(Expiration Date)

This agreement extends the time for mailing the notice of assessment or refund of the above tax pursuant to the provisions of Section 12-54-80 of the 1976 South Carolina Code of Laws, as amended.

Duke Power Company

(Name of Taxpayer)

By: Robert A. Zichin, Vice Pres.
 (Taxpayer, Partner, Officer of Corp., etc.,)

Vice President

(Title)

8-29-94

(Date)

SOUTH CAROLINA DEPARTMENT OF REVENUE AND TAXATION

By: Marvin N. Davant Jr.
 (Director, Field Services Division)

8/24/94

(Date)

If this waiver is executed on behalf of a corporation, it will be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition, to which the seal, if any, of the corporation must be affixed.

DES00000400



STATE OF SOUTH CAROLINA
 DEPARTMENT OF REVENUE AND TAXATION
 FIELD SERVICES DIVISION
 CONSENT TO EXTEND THE TIME TO ASSESS TAX

FS-43
 Rev. (10/93)
 2024

File No. 20090024-9

Duke Power Company
 Name of Taxpayer(s)

SSN

422 South Church St. Charlotte, NC 28242-0001
 Address (Number, Street, City or Town, State, Zip Code)

and the SOUTH CAROLINA DEPARTMENT OF REVENUE AND TAXATION consent and agree to the following:

(1) The amount of any STATE Corp. Income/License Fee tax due on any return(s) made by or for the above taxpayer(s) for the period(s) ended December 31, 1983/84, December 31, 1984/85, December 31, 1985/86, December 31, 1986/87, December 31, 1987/88, December 31, 1988/89, December 31, 1989/90 and December 31, 1990/91

may be assessed at any time on or before May 30, 1995
 (Expiration Date)

This agreement extends the time for mailing the notice of assessment or refund of the above tax pursuant to the provisions of Section 12-54-80 of the 1976 South Carolina Code of Laws, as amended.

Duke Power Company
 (Name of Taxpayer)
 By: Robert L. Linton, Vice Pres.
 (Taxpayer, Partner, Officer of Corp., etc.,)
Vice President
 (Title)

8-29-94
 (Date)

SOUTH CAROLINA DEPARTMENT OF REVENUE AND TAXATION

By: Maurice N. Davand Jr.
 (Director, Field Services Division)

8/24/94
 (Date)

If this waiver is executed on behalf of a corporation, it will be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition, to which the seal, if any, of the corporation must be affixed.

DES00000401

State of South Carolina
Department of Revenue and Taxation
301 Gervais Street, P.O. Box 125, Columbia, South Carolina, 29214

October 19, 1993

Duke Power Company
422 South Church St.
Charlotte, NC 28242-0001

Attn: Mr. Wilson R Taylor

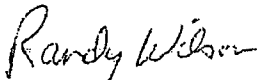
Dear Remi:

Please have the enclosed waiver signed and returned to me at your earliest convenience. Also, when you complete your spreadsheet or have any additional information regarding the audit, give me a call so I can make plans to complete my examination.

Your cooperation is appreciated.

Yours very truly,

SOUTH CAROLINA TAX COMMISSION
FIELD SERVICES DIVISION



Randy Wilson
Auditor
(803) 737-4408

/dd
Enclosure

DES00000402

SOUTH CAROLINA TAX COMMISSION
FIELD SERVICES DIVISION
CONSENT TO EXTEND THE TIME TO ASSESS TAX

File No. 20090024-9

Duke Power Company

SSN

Name of Taxpayer(s)

422 South Church Street Charlotte, NC 28242-0001

Address (Number, Street, City or Town, State, Zip Code)

and the SOUTH CAROLINA TAX COMMISSION consent and agree to the following:

(1) The amount of any STATE Corp. Income/License Fee tax due on any return(s) made by or for the above taxpayer(s) for the period(s) ended December 31, 1983/84, December 31, 1984/85, December 31, 1985/86, December 31, 1986/87, December 31, 1987/88, December 31, 1988/89 and December 31, 1989/90 may be assessed at any time on or before December 31, 1994 (Expiration Date)

This agreement extends the time for mailing the notice of assessment or refund of the above tax pursuant to the provisions of Section 12-54-80 of the 1976 South Carolina Code of Laws, as amended.

Duke Power Company
(Name of Taxpayer)

By: Robert A. Linton, VP & Tax Counsel
(Taxpayer, Partner, Officer of Corp., etc.)

VP. & Tax Counsel
(Title)

11-16-93
(Date)

SOUTH CAROLINA TAX COMMISSION

By: Maurin H. Dawant by Randy Wilson
(Director, Field Services Division)

10/19/93
(Date)

If this waiver is executed on behalf of a corporation, it will be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition, to which the seal, if any, of the corporation must be affixed.

FS-43 (11/85)

DES00000403

To Duke Power Company
P.O. Box 33189
Charlotte, NC 28242
Attn: Mr. Wilson R. Taylor

FROM: S. C. TAX COMMISSION
P. O. BOX 125
Columbia, South Carolina 29214
Phone: (803) 737-4408

SUBJECT: Waiver 83-89
PLEASE RETURN WITHIN 10 DAYS
DATE: 12/15/92

REPLY MESSAGE
Please have the enclosed waiver signed & return to me
Thanks,
Karl D. Wilson

PLEASE REPLY BELOW
Steps Ready
DATE: 12/23/92
SIGNED: [Signature]

RETURN PINK COPY WITH REQUESTED INFORMATION, KEEP WHITE COPY
C-157 (10/86)

DES00000404



STATE OF SOUTH CAROLINA
 SOUTH CAROLINA TAX COMMISSION
 FIELD SERVICES DIVISION
 CONSENT TO EXTEND THE TIME TO ASSESS TAX

FS-43
 Rev. (7/90)
 2024

File No. 20090024-9

Duke Power Company
 Name of Taxpayer(s)

SSN

P O Box 33189 Charlotte, NC 28242 Attn: Mr. Wilson R. Taylor
 Address (Number, Street, City or Town, State, Zip Code).

and the SOUTH CAROLINA TAX COMMISSION consent and agree to the following:

(1) The amount of any STATE Income/License Fee tax due on any return(s) made by or for the above taxpayer(s) for the period(s) ended December 31, 1983/84, December 31, 1984/85, December 31, 1985/86, December 31, 1986/87, December 31, 1987/88, December 31, 1988/89 and December 31, 1989/90 may be assessed at any time on or before December 31, 1993 (Expiration Date)

This agreement extends the time for mailing the notice of assessment or refund of the above tax pursuant to the provisions of Section 12-54-80 of the 1976 South Carolina Code of Laws, as amended.

By: John P. Kelp (Name of Taxpayer)
 (Taxpayer, Partner, Officer of Corp., etc.)
VP Taxes (Title)

12/23/92 (Date)

SOUTH CAROLINA TAX COMMISSION

By: Marvin N. Davant by Randy Wilson
 (Director, Field Services Division)

12/14/92 (Date)

If this waiver is executed on behalf of a corporation, it will be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition, to which the seal, if any, of the corporation must be affixed.

DES00000405

NO AND REPLY

TO Duke Power Company
P.O. Box 33189
Charlotte, N.C. 28242
Attn: Wilson R Taylor

FROM



S. C. TAX COMMISSION

P. O. BOX 125

Columbia, South Carolina 29214

Phone (803) 737-4408

SUBJECT

Waiver for 1983 + 1984 tax years; 84 + 85 Waiver Fees

PLEASE RETURN WITHIN 10 DAYS

DATE

12/20/88

Remi

Please have the enclosed waiver signed & returned to me as soon as possible so that we can complete this audit during the first part of next year. I'll need to have this in hand prior to 12/31/88 so the quicker you can put it back in the mail the better.

SIGNED

Randy Wilson

PLEASE REPLY BELOW

DATE

SIGNED

RETURN PINK COPY WITH REQUESTED INFORMATION, KEEP WHITE COPY

C-107 (10/84)

DES00000424

SOUTH CAROLINA TAX COMMISSION
FIELD SERVICES DIVISION
CONSENT TO EXTEND THE TIME TO ASSESS TAX

File No. 20090024-9

Duke Power Company
Name of Taxpayer(s)

SSN

P.O. Box 33189 Charlotte, NC 28242
Address (Number, Street, City or Town, State, Zip Code)

and the SOUTH CAROLINA TAX COMMISSION consent and agree to the following:

(1) The amount of any STATE Income Tax / License Fee tax due on any return(s) made by or for the above taxpayer(s) for the period(s) ended December 31, 1983/84 and

December 31, 1984/85

may be assessed at any time on or before March 31, 1989
(Expiration Date)

This agreement extends the time for mailing the notice of assessment or refund of the above tax pursuant to the provisions of Section 12-54-80 of the 1976 South Carolina Code of Laws, as amended.

(Name of Taxpayer)

By: _____
(Taxpayer, Partner, Officer of Corp., etc.)

(Title)

(Date)

SOUTH CAROLINA TAX COMMISSION

By: Marvin M. Davant RW
(Director, Field Services Division)


12/20/88
(Date)

If this waiver is executed on behalf of a corporation, it will be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition, to which the seal, if any, of the corporation must be affixed.

FS-43 (11/85)

DES00000425

TO Duke Power Compo
Po Box 33189
Charlotte, N.C. 28242
Attn: Wilson R. Taylor

FROM S.C. TAX COMMISSION
 P.O. BOX 125
Columbia, South Carolina 29214
Phone (803) 737-4408

SUBJECT Waiver For 1983+1984 tax years PLEASE RETURN WITHIN 10 DAYS DATE 8/9/88

Remi
MESSAGE
Please have the enclosed waiver signed and return to me so that I can conduct the audit after September 15. The week of October 10 or October 31 are still open on my calendar. If one of these weeks looks ok to you, please let me know when you return the waiver or give me a call. Thanks SIGNED Randy Wilson

PLEASE REPLY BELOW
Randy -
Attached is the expected consent to extend the time to assess tax on 83 & 84 income and 84 net assets -
call me around 1st of September so we can set a date -
DATE 8-16-88 SIGNED Remi Taylor

RETURN PINK COPY WITH REQUESTED INFORMATION, KEEP WHITE COPY
C-157 (10/84)

DES00000427

SOUTH CAROLINA TAX COMMISSION
FIELD SERVICES DIVISION
CONSENT TO EXTEND THE TIME TO ASSESS TAX

File No. 20090024-9

Duke Power Company

Name of Taxpayer(s)

SSN

PO Box 33189 Charlotte NC 28242

Address (Number, Street, City or Town, State, Zip Code)

and the SOUTH CAROLINA TAX COMMISSION consent and agree to the following:

(1) The amount of any STATE Income Tax / License Fee tax due on any return(s) made by or for the above taxpayer(s) for the period(s) ended December 31, 1983/84 and
December 31, 1984/85
may be assessed at any time on or before December 31, 1988
(Expiration Date)

This agreement extends the time for mailing the notice of assessment or refund of the above tax pursuant to the provisions of Section 12-54-80 of the 1976 South Carolina Code of Laws, as amended.

Duke Power Company

(Name of Taxpayer)

By: John P. O. Rife

(Taxpayer, Partner, Officer of Corp., etc.,)

VP, Taxes

(Title)

8/16/88

(Date)

SOUTH CAROLINA TAX COMMISSION

By: Marvin N. Davant pw

(Director, Field Services Division)

August 9, 1988

(Date)

If this waiver is executed on behalf of a corporation, it will be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition, to which the seal, if any, of the corporation must be affixed.

FS-43 (11/85)

DES00000428

870
 7. December
 1983)

Department of the Treasury,
 Internal Revenue Service
 Waiver of Restrictions on Assessment
 and Collection of Deficiency in Tax
 and Acceptance of Overassessment

Date received by
 Internal Revenue
 Service

Names and Address of taxpayers
 Duke Power Company
 P.O. Box 33189
 422 South Church Street
 Charlotte, N. C. 28242-0001

Social security or employer
 identification number
 56-0205520

Increase (Decrease) in Tax and Penalties

Tax year ended	Amount of Tax	Penalty	Penalty
12/31/79	\$ (557,034)	N/A	N/A
12/31/80	\$ (1,381,339)	N/A	N/A
12/31/81	\$ (628,783)	N/A	N/A
12/31/82	\$ (235,305)	N/A	N/A
12/31/83	None	N/A	N/A
	\$	\$	\$

Other Information:

Restricted Interest:

Since \$135,954 of the decrease in tax for the year 1980 results from the carryback of Research Credit from 1983, interest is due on that amount from the due date of the 1983 income tax return (March 15, 1984) under the provisions of Section 6611(f)(2) of the Internal Revenue Code. For the remaining decrease in tax for 1980, interest begins March 16, 1981, the due date of the return.

INTERNAL REVENUE SERVICE
 RECEIVED

SEP 24 1992

District Director-Greensboro District
 CHARLOTTE, N. C.
 100423

Consent to Assessment and Collection

I consent to the immediate assessment and collection of any deficiencies (increase in tax and penalties) and accept any overassessment (decrease in tax and penalties) shown above, plus any interest provided by law. I understand that by signing this waiver, I will not be able to contest these years in the United States Tax Court, unless additional deficiencies are determined for these years.

DUKE POWER COMPANY

Signatures: _____

By *John P. O'Keefe* U.D. Taxes

Date 9/23/92

NUCLEAR FUEL DEPRECIATION
1978 - 1987 ADJUSTMENT

	VINTAGE 1978	VINTAGE 1979	VINTAGE 1980	VINTAGE 1981	VINTAGE 1982	VINTAGE 1983	TOTAL
INCREASE (DECREASE)							
DEPRECIABLE BASE	5,117,968	12,000,282	20,302,606	(197,690)	(1,525,103)	31,467	35,729,530
<hr/>							
INCREASE (DECREASE)							
DEPRECIATION EXPENSE							
1978	1,023,594						1,023,594
1979	1,637,750	2,400,056					4,037,806
1980	1,074,773	3,840,090	4,060,521				8,975,384
1981	767,756	2,520,060	6,496,834	(29,654)			9,754,996
1982	460,571	1,800,186	4,263,547	(43,492)	(228,765)		6,252,047
1983	153,524	1,079,918	3,045,635	(41,515)	(335,523)	4,720	3,906,759
1984		359,972	1,827,052	(41,515)	(320,272)	6,923	1,832,160
1985			609,017	(41,514)	(320,272)	6,608	253,839
1986					(320,271)	6,608	(313,663)
1987						6,608	6,608
TOTAL	5,117,968	12,000,282	20,302,606	(197,690)	(1,525,103)	31,467	35,729,530

INCREASE (DECREASE)							
ITC GENERATED	392,337	920,022	1,556,533	(19,769)	(152,510)	2,517	2,699,130

NOTES:	SYSTEM LIFE METHOD		
1978-1980	ADR	5	DDB-2 YEARS
			SYD-3RD YEAR .4375
			4TH YEAR .5556
			5TH YEAR .7500
			6TH YEAR BALANCE
1981-1983	ACRS	5	TABLE 1ST YEAR .15
			2ND YEAR .22
			3RD YEAR .21
			4TH YEAR .21
			5TH YEAR .21

Form **2297**
(Rev. March 1982)

Department of the Treasury Internal Revenue Service

WAIVER OF STATUTORY NOTIFICATION
OF CLAIM DISALLOWANCE

I, Duke Power Company (56-0205520) of P.O. Box 33189, 422 South Church Street
(Name, SSN or EIN) (Number, Street, City or Town, State, Zip Code)
Charlotte, North Carolina 28242-0001

waive the requirement under the Internal Revenue Code section 6532(a)(1) that a notice of claim disallowance be sent to me by certified or registered mail for the claims for credit or refund shown in column (d), below.

I understand that the filing of this waiver is irrevocable and it will begin the 2-year period for filing suit for refund of the claims disallowed as if the notice of disallowance had been sent by certified or registered mail.

CLAIMS			
(a) TAXABLE PERIOD ENDED:	(b) KIND OF TAX	(c) AMOUNT OF CLAIM	(d) AMOUNT OF CLAIM DISALLOWED
December 31, 1979	Income	\$ 557,034.00	\$ None
December 31, 1980	Income	1,245,385.00	None
December 31, 1981	Income	777,581.00	148,798.00
December 31, 1982	Income	290,505.00	55,200.00
December 31, 1983	Income	None	None

INTERNAL REVENUE SERVICE
RECEIVED
SEP 24 1992

If you file this waiver for a joint return, both you & your spouse must sign the original & duplicate of this form. Sign your name exactly as it appears on the return. If you are acting under power of attorney for your spouse, you may sign as agent for him or her.

For an agent or attorney acting under a power of attorney, a power of attorney must be sent with this form if not previously filed.

For a partnership with excise or employment tax liability, all partners must sign. However, one partner may sign with appropriate evidence of authorization to act for the partnership.

For a person acting in a fiduciary capacity (executor, administrator, trustee) file Form 56, Notice Concerning Fiduciary Relationship, with this form if not previously filed.

For a corporation, enter the name of the corporation followed by the signature and title of the officer(s) authorized to sign.

District Director - Greensboro District
CHARLOTTE, N. C.
100423
(Date Signed)

Spouse's Signature If A Joint Return Was Filed
(Date Signed)

Partners/
Corporate Name: DUKE POWER COMPANY
(Date Signed)

Partners/
Corporate
Officers
Sign Here
John P. O'Keefe
VP Taxes.
(Title)
(Date Signed) 9/23/92

NOTE - Filing this waiver within 6 months from the date the claim was filed will not permit filing a suit for refund before the 6-month period has elapsed unless a decision is made by the Service within that time disallowing the claims.

Form **2297**

Name(s), SSN or EIN, and address of taxpayer(s) (Number, Street, City or Town, State, ZIP Code)
 DUKE POWER COMPANY 56-0205520
 P. O. BOX 33189
 422 SOUTH CHURCH STREET
 CHARLOTTE, NC 28242-0001

INTERNAL REVENUE SERVICE *72*
 RECEIVED
 SEP 24 1992

District Director - Greensboro District
 CHARLOTTE, N.C.
 100423

Year or Period	Date Claim Filed	Kind of Tax	Amount of Claim	Amount of Claim Disallowed	Amount of Claim Allowed
12/31/79	12/30/91	Income	\$ 557,034.	\$ -0-	\$ 557,034.
12/31/80	12/30/91	Income	1,245,385.	-0-	1,245,385.
12/31/81	12/30/91	Income	777,581.	148,798.	628,783.
12/31/82	12/30/91	Income	290,505.	55,200.	235,305.
12/31/83	12/30/91	Income	N/A	N/A	N/A

I accept the proposal of the Internal Revenue Service to disallow the claim(s) to the extent described above. This means only that I do not want the Service to consider the claim(s). It does not waive my right to file suit on the disallowance.

If you file this acceptance for a joint return, both you & your spouse must sign the original & duplicate of this form. Sign your name exactly as it appears on the return. If you are acting under power of attorney for your spouse, you may sign as agent for him or her.

For an agent or attorney acting under a power of attorney, a power of attorney must be sent with this form if not previously filed.

For a partnership with excise or employment tax liability, all partners must sign. However, one partner may sign with appropriate evidence of authorization to act for the partnership.

For a person acting in a fiduciary capacity (executor, administrator, trustee) file Form 56, Notice Concerning Fiduciary Relationship, with this form if not previously filed.

For a corporation, enter the name of the corporation followed by the signature and title of the officer(s) authorized to sign.

YOUR SIGNATURE → _____ (Date Signed) _____

Spouse's Signature If A Joint Return Was Filed → _____ (Date Signed) _____

Taxpayer's Representative Sign Here → _____ (Date Signed) _____

Partnership/Corporate Name: DUKE POWER COMPANY

Partners/Corporate Officers Sign Here → Edward P. O. Kelly (Date Signed) _____
 (Title) CVP Taxel
 (Date Signed) 9/23/92

Form 870-AD
(rev. 04/1992)

Department of the Treasury-Internal Revenue Service

Offer to Waive Restrictions on Assessment and Collection
of Tax Deficiency and to Accept Overassessment

Symbols: AP LMSB GBO TM	Name of Taxpayer: Duke Energy Corporation and Affiliates: Formerly, Duke Power Company and Affiliates	SSN or EIN: 56-0205520
----------------------------	--	---------------------------

Under the provisions of section 6213(d) of the Internal Revenue code of 1986 (the Code), or corresponding provisions of prior internal revenue laws, the undersigned offers to waive the restrictions provided in section 6213(a) of the Code or corresponding provisions of prior internal revenue laws, and to consent to the assessment and collection of the following deficiencies and additions to tax, if any, with interest as provided by law. The undersigned offers also to accept the following overassessments, if any, as correct. Any waiver or acceptance of an overassessment is subject to any terms and conditions stated below and on the reverse side of this form.

Deficiencies (Overassessments)
and Additions to Tax

Year Ended	Kind of Tax	Tax			
December 31, 1984	Income	\$12,335.00			
December 31, 1986	Income	(\$4,458,182.00)			
December 31, 1987	Income	\$11,276,912.00			

Accepted as of the date the Joint Committee on Taxation completes its review without objection or the date accepted for the Commissioner, whichever is later.

This offer must be accepted for the Commissioner of Internal Revenue and will take effect on the date it is accepted. Unless and until it is accepted, it will have no force or effect.

If this offer is accepted, the case will not be reopened by the Commissioner unless there was:

- fraud, malfeasance, concealment or misrepresentation of a material fact
- an important mistake in mathematical calculation
- a deficiency or overassessment resulting from adjustments made under Subchapters C and D of Chapter 63 concerning the tax treatment of partnership and subchapter S items determined at the partnership and corporate level
- an excessive tentative allowance of a carryback provided by law

No claim for refund or credit will be filed or prosecuted by the taxpayer for the years stated on this form, other than for amounts attributed to carrybacks provided by law. See exceptions on back.

The proper filing of this offer, when accepted, will expedite assessment and billing (or overassessment, credit or refund) by adjusting the tax liability. This offer, when executed and timely submitted, will be considered a claim for refund for the above overassessment(s), if any.

Signature of Taxpayer:	Date:
Signature of Taxpayer:	Date:
Signature of Taxpayer's Representative:	Date:
Corporate Name: Duke Energy Corporation and Affiliates: Formerly, Duke Power Company and Affiliates	Date:
By Corporate Officer: <i>[Signature]</i>	Title: Vice President Date: 5/9/2001
For Internal Revenue Use Only	Date Accepted for Commissioner: May 11, 2001 Office: AP LMSB GBO TM Signature: <i>Thomas M. Custer</i> Title: Appeals Team Case Leader

(See second page for signature instructions)

Form 870-AD-c (Rev. 4/1992)

This offer may be executed by the taxpayer's attorney, certified public accountant, or agent provided this is specifically authorized by a power of attorney which, if not previously filed, must accompany this form. If this offer is signed by a person acting in a fiduciary capacity (for example: an executor, administrator, or a trustee) Form 56, Notice Concerning Fiduciary Relationship, must accompany this form, unless previously filed.

If this offer is executed for a year for which a joint return was filed, it must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If this offer is executed by a corporation, it must be signed with the corporate name followed by the signature and title of the officer(s) authorized to sign. If the offer is accepted, as a condition of acceptance, any signature by or for a corporate officer will be considered a representation by that person and the corporation, to induce reliance, that such signature is binding under law for the corporation to be assessed the deficiencies or receive credit or refund under this agreement. If the corporation later contests the signature as being unauthorized on its behalf, the person who signed may be subject to criminal penalties for representing that he or she had authority to sign this agreement on behalf of the corporation.

Notwithstanding any of the preceding terms and conditions to which this offer is subject, the taxpayer reserves the right to timely file and prosecute a claim or claims for refund or credit for the years stated in this form, based solely upon any or all of the grounds specified in the subparagraphs immediately following this paragraph. This offer is not to be construed as a claim for refund or credit, formal or informal, concerning the matters for which the right to file a claim or claims is reserved.

(a) The entitlement of Duke Power Company to claim additional 1986 and 1987 research and experimentation credits and related adjustments made to reflect changes in depreciation expense, as well as any adjustments to section 174 deductions related to these additional claims for research and experimentation credits (specifically including the taxpayer's Form 1120-X for 1986 and 1987 filed on or about September 23, 1999).

RECEIVED

MAY 10 2001

APPEALS OFFICE - GREENSBORO
SOUTHEAST REGION

Form 870-AD-c (Rev. 4/1992)

Form 870-AD (rev. 04/1992)	Department of the Treasury-Internal Revenue Service Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment	
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Symbols: AP LMSB GBO TM	Name of Taxpayer: Duke Energy Corporation and Affiliates: Formerly, Duke Power Company and Affiliates	SSN or EIN: 56-0205520
----------------------------	--	---------------------------

Under the provisions of section 6213(d) of the Internal Revenue code of 1986 (the Code), or corresponding provisions of prior internal revenue laws, the undersigned offers to waive the restrictions provided in section 6213(a) of the Code or corresponding provisions of prior internal revenue laws, and to consent to the assessment and collection of the following deficiencies and additions to tax, if any, with interest as provided by law. The undersigned offers also to accept the following overassessments, if any, as correct. Any waiver or acceptance of an overassessment is subject to any terms and conditions stated below and on the reverse side of this form.

Deficiencies (Overassessments) and Additions to Tax			
Year Ended	Kind of Tax	Tax	
December 31, 1988	Income	(\$2,547,134.00)	
December 31, 1989	Income	\$14,865,852.00	
December 31, 1990	Income	(\$19,042,352.00)	
December 31, 1991	Income	(\$2,864,975.00)	

Accepted as of the date the Joint-Committee on Taxation completes its review without objection or the date accepted for the Commissioner, whichever is later.

This offer must be accepted for the Commissioner of Internal Revenue and will take effect on the date it is accepted. Unless and until it is accepted, it will have no force or effect.

If this offer is accepted, the case will not be reopened by the Commissioner unless there was:

- fraud, malfeasance, concealment or misrepresentation of a material fact
- an important mistake in mathematical calculation
- a deficiency or overassessment resulting from adjustments made under Subchapters C and D of Chapter 63 concerning the tax treatment of partnership and subchapter S items determined at the partnership and corporate level
- an excessive tentative allowance of a carryback provided by law

No claim for refund or credit will be filed or prosecuted by the taxpayer for the years stated on this form, other than for amounts attributed to carrybacks provided by law. See exceptions on back.

The proper filing of this offer, when accepted, will expedite assessment and billing (or overassessment, credit or refund) by adjusting the tax liability. This offer, when executed and timely submitted, will be considered a claim for refund for the above overassessment(s), if any.

Signature of Taxpayer:		Date:
Signature of Taxpayer:		Date:
Signature of Taxpayer's Representative:		Date:
Corporate Name: Duke Energy Corporation and Affiliates: Formerly, Duke Power Company and Affiliates		Date:
By Corporate Officer:	Title: Vice President	Date: 2/14/2001
For Internal Revenue Use Only	Date Accepted for Commissioner: May 11, 2001	Signature: Thomas Mc Custer
	Office: AP LMSB GBO TM	Title: Appeals Team Case Leader

(See second page for signature instructions)

Form 870-AD-c (Rev. 4/1992)

This offer may be executed by the taxpayer's attorney, certified public accountant, or agent provided this is specifically authorized by a power of attorney which, if not previously filed, must accompany this form. If this offer is signed by a person acting in a fiduciary capacity (for example: an executor, administrator, or a trustee) Form 56, Notice Concerning Fiduciary Relationship, must accompany this form, unless previously filed.

If this offer is executed for a year for which a joint return was filed, it must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

If this offer is executed by a corporation, it must be signed with the corporate name followed by the signature and title of the officer(s) authorized to sign. If the offer is accepted, as a condition of acceptance, any signature by or for a corporate officer will be considered a representation by that person and the corporation, to induce reliance, that such signature is binding under law for the corporation to be assessed the deficiencies or receive credit or refund under this agreement. If the corporation later contests the signature as being unauthorized on its behalf, the person who signed may be subject to criminal penalties for representing that he or she had authority to sign this agreement on behalf of the corporation.

Notwithstanding any of the preceding terms and conditions to which this offer is subject, the taxpayer reserves the right to timely file and prosecute a claim or claims for refund or credit for the years stated in this form, based solely upon any or all of the grounds specified in the subparagraphs immediately following this paragraph. This offer is not to be construed as a claim for refund or credit, formal or informal, concerning the matters for which the right to file a claim or claims is reserved.

(a) The entitlement of Duke Power Company to claim additional 1988 through 1991 research and experimentation credits and related adjustments made to reflect changes in depreciation expense, as well as any adjustments to section 174 deductions related to these additional claims for research and experimentation credits (specifically including the taxpayer's Form 1120-X for 1988 through 1991 filed on or about September 23, 1999).

(b) The entitlement of Duke Power Company to claim diesel fuel tax credits under the mobile machinery exception as defined in Treasury Regulations 48.4061(a)-1(d)(2)(i) for 1988 through 1991.



Form 870-AD
(rev. 04/1992)

Department of the Treasury-Internal Revenue Service

**Offer to Waive Restrictions on Assessment and Collection
of Tax Deficiency and to Accept Overassessment**

Symbols: AP LMSB GBO TM	Name of Taxpayer: Duke Energy Corporation and Affiliates: Formerly, Duke Power Company and Affiliates	SSN or EIN : 56-0205520
----------------------------	--	----------------------------

Under the provisions of section 6213(d) of the Internal Revenue code of 1986 (the Code), or corresponding provisions of prior internal revenue laws, the undersigned offers to waive the restrictions provided in section 6213(a) of the Code or corresponding provisions of prior internal revenue laws, and to consent to the assessment and collection of the following deficiencies and additions to tax, if any, with interest as provided by law. The undersigned offers also to accept the following overassessments, if any, as correct. Any waiver or acceptance of an overassessment is subject to any terms and conditions stated below and on the reverse side of this form.

**Deficiencies (Overassessments)
and Additions to Tax**

Year Ended	Kind of Tax	Tax				
December 31, 1992	Income	(\$12,158,532.00)				
December 31, 1993	Income	\$3,624,671.00				
December 31, 1994	Income	\$2,677,953.00				

Accepted as of the date the Joint Committee on Taxation completes its review without objection or the date accepted for the Commissioner, whichever is later.

This offer must be accepted for the Commissioner of Internal Revenue and will take effect on the date it is accepted. Unless and until it is accepted, it will have no force or effect.

If this offer is accepted, the case will not be reopened by the Commissioner unless there was:

- fraud, malfeasance, concealment or misrepresentation of a material fact
- an important mistake in mathematical calculation
- a deficiency or overassessment resulting from adjustments made under Subchapters C and D of Chapter 63 concerning the tax treatment of partnership and subchapter S items determined at the partnership and corporate level
- an excessive tentative allowance of a carryback provided by law

No claim for refund or credit will be filed or prosecuted by the taxpayer for the years stated on this form, other than for amounts attributed to carrybacks provided by law. See exceptions on back.

The proper filing of this offer, when accepted, will expedite assessment and billing (or overassessment, credit or refund) by adjusting the tax liability. This offer, when executed and timely submitted, will be considered a claim for refund for the above overassessment(s), if any.

Signature of Taxpayer:	Date:
Signature of Taxpayer:	Date:
Signature of Taxpayer's Representative:	Date:
Corporate Name: Duke Energy Corporation and Affiliates: Formerly, Duke Power Company and Affiliates	Date:
By Corporate Officer: <i>[Signature]</i>	Title: Vice President Date: 7/16/2001
For Internal Revenue Use Only	Date Accepted for Commissioner: July 17, 2001 Office: AP LMSB GBO TM
	Signature: <i>Thomas Mc Custer</i> Title: Appeals Team Case Leader

(See second page for signature instructions)

Form 870-AD-c (Rev. 4/1992)

**NEXSEN PRUET
JACOBS POLLARD & ROBINSON, LLC**
ATTORNEYS AND COUNSELORS AT LAW

Burnet R. Maybank
MEMBER

DIRECT DIAL
(803) 253-8228
(843) 726-1768
BMaybank@NJP.com

March 20, 2002

Mr. John A. Swearingen
Audit Supervisor
Department of Revenue
301 Gervais Street
Columbia, SC 29201

Jan Steensen Crangle, CPA
Manager, Office of Appeals
South Carolina Department of Revenue
Post Office Box 125
Columbia, SC 29214

Re: Selected Duke State and Local Tax Issues.

Dear John and Jan:

The Duke crowd and I met in Charleston (natch) to discuss the settlement proposals contained in your fax of March 18. We have the following counter-proposal.

First, Duke naturally needs to check your figures. (They had not seen your fax prior to the meeting.) I know there have been issues in the past regarding the calculation of interest, but assuming Duke confirms your figures, we offer the following:

SALES TAX

Duke would like to settle the sales tax liability through 2001, using the methodology and quarterly tax liability contained in your fax. (This has the effect of reducing the amount of our refund.) Duke proposes to execute a SC870AD regarding the sales and use tax liability through 2001.

LICENSE TAXES

Subject to verifying the figures, as stated above, Duke proposes accepting the DOR's proposal and executing a SC870AD for license taxes for the years contained in your proposal. (December 1984 to December 1994.)

INCOME TAXES

Subject to verifying the figures, as stated above, Duke proposes accepting the DOR's proposal except that it would agree to execute a SC870, rather than a SC870AD. This would have the effect of keeping the years open for both the DOR and the State until the end of this year, unless the DOR and Duke jointly agree to execute another waiver.

NPCHAR1:-() -

1441 MAIN STREET, SUITE 1500, COLUMBIA, SC (29201) • POST OFFICE DRAWER 2426, COLUMBIA, SC (29202)
803-771-8900 • FAX 803-253-8277
www.NJP.com

OFFICES ALSO IN:

CHARLESTON, SC

CHARLOTTE, NC

GREENVILLE, SC

HILTON HEAD, SC

MYRTLE BEACH, SC

SCDOR00021809

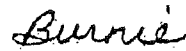
March 20, 2002
Page 2

Duke is examining the possibility of filing amended returns for the purposes of claiming tax incentives, as well as possibly other adjustments. In addition, the files are so stale and the number of years open are so large that Duke is reluctant to close out some 16 years without at least some due diligence, which they have not performed.

CONCLUSION

Duke is actively in the process of verifying the figures contained in your fax, which verification is expected to be completed in the next few days. Please let me know what you think about the other points.

Yours very truly,



Burnet R. Maybank

BRM(yinwi)

cc: Mr. Harley Priesmeyer/Duke Energy

NPCHAR1:181232.1-LT-(BRM) 011413-00041

SCDOR00021810

NEXSEN PRUET JACOBS & POLLARD, LLC
ATTORNEYS AND COUNSELORS AT LAW

BURNET R. MAYBANK III
MEMBER

DIRECT DIAL
803-253-8228
BMaybank@NPJP.com

July 2, 2002

Mr. John A. Swearingen
Audit Supervisor
Department of Revenue
301 Gervais Street
Columbia, South Carolina 29201

Jan Steensen Crangle, CPA
Manager, Office of Appeals
South Carolina Department of Revenue
Post Office Box 125
Columbia, South Carolina 29214

Re: Proposed Duke Settlement

Dear John and Jan:

Duke offers the following settlement proposal:

SALES TAX

Duke would like to settle the sales tax liability through 2001, using the methodology and quarterly tax liability contained in your fax. (See attached Exhibit 1.) This includes accepting the DOR's interest rate calculation. Duke proposes to execute a SC870AD regarding the sales and use tax liability through 2001. We understand this equals approximately (\$2,796,623) with interest calculated through April 5, 2002.

INCOME AND LICENSE TAXES

Duke proposes accepting the DOR's proposal except that it would agree to execute a SC870, rather than a SC870AD. We understand this would have the effect of keeping the years open for both the DOR and the State until the end of the waiver period (12/31/2002), unless the DOR and Duke jointly agree to execute another waiver. As previously indicated, Duke is examining the possibility of filing amended returns.

SCDOR00021667

John A. Swearingen
Jan Steensen Crangle, CPA
July 2, 2002
Page 2

We understand that this equals a refund of \$5,891,208 (with interest calculated through July 2, 2002.)

We would also like to accept your proposal that the DOR would issue a FAD (at our request) on the calculation of interest on the income and license taxes so that we could contest the interest rate calculations. (Duke may not contest the matter, but we would like to retain the option.)

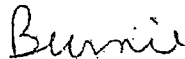
CONCLUSION

We have pretty well agreed to all of the DOR proposals, so I trust you find this satisfactory. Duke would like to have the attached schedule (Exhibit 2) re-calculated with interest brought forward to no later than July 15th. Additionally, Duke would like for all these matters to be combined for settlement purposes and the DOR issue a refund in a timely manner for the net amount.

If the attached accurately reflects your understanding, please execute a copy of this letter and return it to us. We look forward to receiving the 870 and the 870AD which we will execute and return to you.

With kind regards, I am

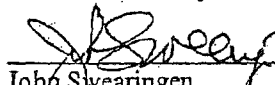
Yours very truly,



Burnet R. Maybank III

BRM/kc

cc: Mr. Harley Priesmeyer/Duke Energy



John Swearingen
DOR

July 8, 2002

----- Forwarded by Harley H Priesmeyer/Tax/PSC/PEC on 07/10/2002 11:02 AM

Harley H
Priesmeyer
07/09/2002
05:34 PM

To: cranall@sctax.org
cc: bmaybank@nplp.com
Subject: Form SC870

Jan - my lawyers would feel much more comfortable if we can add the following to the instructions on the back of the SC870 form:
"Executing this document does not prevent you from seeking a refund of State taxes paid. The refund claim must be filed within three years from the date the return was filed, (strikethrough: or)two years from the date of payment of the tax or anytime before the expiration of the waiver (12/31/2002), whichever is later.

I think this was the intention of both parties, but I wanted to run this by you before we make this change. Other than this small change, we are prepared to sign the forms and send over to you, probably by tomorrow, if I can find an officer to sign them.

Harley Priesmeyer
Director, State and Local Taxes
Duke Energy Corporation
P. O. Box 1642
Houston, Texas. 77251-1642

Office: 713-989-3285
Fax: 713-989-3280
Cell: 713-501-0725
email: hhpriesmeyer@duke-energy.com

CC: bmaybank@NPJP.com; SWEARINGEN, JOHN

SCDOR00021662

From: "Harley H Priesmeyer" <hhpriesmeyer@duke-energy.com>
To: <cranglj@sctax.org>
Date: 7/10/02 4:16PM
Subject: Form SC870

Jan - alternatively, we could do without the SC870 for income/license fee if you guys are agreeable to pay us the net amount of approximately \$3 million and we get a FAD for the interest calculation. If you are in agreement with this arrangement, let me know and we'll revise the settlement letter.

Harley Priesmeyer
Director, State and Local Taxes
Duke Energy Corporation
P. O. Box 1642
Houston, Texas 77251-1642

Office: 713-989-3285
Fax: 713-989-3280
Cell: 713-601-0725
email: hhpriesmeyer@duke-energy.com

----- Forwarded by Harley H Priesmeyer/Tax/PSC/PEC on 07/10/2002 12:04 PM -----

Harley H
Priesmeyer To: cranglj@sctax.org
 cc: bmaybank@njlp.com
07/10/2002 Subject: Form SC870
11:06 AM

Jan - I received your voice mail re why we needed to do a SC870 instead of a SCAD870 form. There are two reasons for it. One, Duke wants to reserve the right to contest the interest computation on the income/license fee and secondly, Duke is planning on filing amended returns for some credits and other deductions/adjustments that were previously not taken for these years.

Hopefully, this will aid you re this matter. I remember seeing some previous correspondence from Burney in which you were ok with Duke signing an 870 form.

If you need anything else on this, please let me know.

Harley Priesmeyer
Director, State and Local Taxes
Duke Energy Corporation
P. O. Box 1642
Houston, Texas 77251-1642

SCDOR00021663

Office: 713-989-3285
Fax: 713-989-3280
Cell: 713-501-0725
email: hhpriesmeyer@duke-energy.com

----- Forwarded by Harley H Priesmeyer/Tax/PSC/PEC on 07/10/2002 11:02 AM -----

Harley H
Priesmeyer To: cranglj@sctax.org
cc: bmaybank@npj.com
07/09/2002 Subject: Form SC870
05:34 PM

Jan - my lawyers would feel much more comfortable if we can add the following to the instructions on the back of the SC870 form:
"Executing this document does not prevent you from seeking a refund of State taxes paid. The refund claim must be filed within three years from the date the return was filed, (strike through: or)two years from the date of payment of the tax or anytime before the expiration of the waiver (12/31/2002), whichever is later.

I think this was the intention of both parties, but I wanted to run this by you before we make this change. Other than this small change, we are prepared to sign the forms and send over to you, probably by tomorrow, if I can find an officer to sign them.

Harley Priesmeyer
Director, State and Local Taxes
Duke Energy Corporation
P. O. Box 1642
Houston, Texas 77251-1642

Office: 713-989-3285
Fax: 713-989-3280
Cell: 713-501-0725
email: hhpriesmeyer@duke-energy.com

CC: <bmaybank@npj.com>

SCDOR00021664

From: JAN CRANGLE
To: URBAN, RON
Date: 7/11/02 11:34AM
Subject: Duke settlement proposal

Would you have some time to discuss this with John and I. The taxpayer is in full agreement with the sales and use tax audit with a balance due of \$2.7 million. They want to net this against the refund due on the income and license fee audit, however the tp disagrees with our interest calculations on the income and license audit. The question involves whether simple interest and tax are combined on 9/1/85 (when we adopted compounded interest) and the compounded interest computed on the total. We feel strongly that the DORs administrative practice of compounding only on the outstanding tax balance as of 9/1/85 is proper; however, the taxpayer would like to preserve their right to protest this issue.

The taxpayer also wants preserve their right to file a claim for refund for other deductions and credits. We wanted to close up these years and have them execute an SC870AD so we don't see them again. Since the periods involved date back to 1978 as the result of outstanding IRS RAR adjustments, and most of the early years involve refunds, I want to make sure we are in agreement on how the statute of limitations on refund claims will apply if they don't execute an 870AD.

Thanks.

CC: ANDERSON, ROBERT; COMER, JOHN; SWEARINGEN, JOHN

SCDOR00021660

1/14/92

From: JOHN COMER
To: CRANGLE, JAN
Subject: Duke

Good morning! Any word yet on the 870AD for the sales tax audit? Bill Perry and Carol Solomons are sort of dangling.

I'm also working with Duke on a Special 19 audit for a current construction project. Some of the positions they are suggesting would further widen the strike zone. That makes me a little nervous about the 91-98(01) audit. We really would like to get that one wrapped up. Thanks!

From: JAN CRANGLE
To: COMER, JOHN
Date: 7/12/02 7:40AM
Subject: Re: Duke settlement proposal

It's still in limbo. They are willing to sign the SC870AD on the sales tax, but they don't want to cut the check. I think we'd be OK just having the 870AD executed with the caveat that the payment would be made at the time the income tax matter is resolved. That way it's closed and we are just waiting for payment. What are your thoughts?

>>> JOHN COMER 07/11/02 01:34PM >>>

Jan: Did we get the 870AD signed on the sales tax audit yet, or is it still in limbo depending on the income tax situation?

CC: ANDERSON, ROBERT; SWEARINGEN, JOHN

FS-54

SOUTH CAROLINA DEPARTMENT OF REVENUE
 REPORT OF FIELD AUDIT: INCOME TAX & LICENSE FEE

TAXPAYER: DUKE POWER COMPANY
 ADDRESS: 422 S. CHURCH ST.
 CHARLOTTE, NC 28242-001

FEI #: 56-0205520
 FILE #: 20090024-9
 PERIOD: 12/78-12/94
 DATE: 8/8/02

INTEREST COMPUTED TO: 8/14/02

<u>INCOME TAX:</u>				
<u>PERIOD ENDED:</u>	<u>INCOME TAX</u>	<u>INTEREST</u>	<u>PENALTY</u>	<u>TOTALS</u>
12/78-94	(1,951,189)	(7,434,600)	0	(9,385,789)
<u>LICENSE TAX:</u>				
12/84-94	\$835,685	\$2,757,796		\$3,593,481
<u>SUBTOTAL THRU 3/29/02</u>	<u>-\$1,115,504</u>	<u>-\$4,676,804</u>	<u>\$0</u>	<u>-\$5,792,308</u>
UPDATE INTEREST: 3/29 TO 8/14		-\$132,889		-\$132,889
<u>SUBTOTAL THRU 8/14/02</u>	<u>-\$1,115,504</u>	<u>-\$4,809,693</u>	<u>\$0</u>	<u>-\$5,925,197</u>
<u>SALES & USE TAX:</u>				
TAX & INTEREST THRU 4/05/02	\$1,725,966	\$1,070,657		\$2,796,623
UPDATE INTEREST: 4/5-8/14		\$60,871		\$60,871
<u>SUBTOTAL THRU 8/14/02</u>	<u>\$1,725,966</u>	<u>\$1,131,528</u>		<u>\$2,857,494</u>
<u>INCOME & LICENSE NETTED AGAINST SALES & USE TAX:</u>				<u>-\$3,067,703</u>

SC 20003100



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
**OFFER OF WAIVER OF RESTRICTIONS ON
ASSESSMENT AND COLLECTION OF ADDITIONAL
TAX OR ACCEPTANCE OF OVERASSESSMENT**

SC870AD
(Rev. 7/97)
2310

Taxpayer Name(s) Duke Energy Corporation
(Please type or print)
Doing Business As _____
Street Address PO Box 1642
City HOUSTON State TEXAS ZIP Code 77251-1642
Identification Number (SSN, FEI, etc.) 56-0205520

Increase (Decrease) in Tax, Interest and Penalties (Use separate section for each type of tax)	
Type of Tax	<u>Sales & Use</u>
Period Covered	<u>1/1/1997 through 12/31/2001</u>
Tax \$	<u>\$1,725,966.09</u>
Penalties \$	_____
Type of Tax	_____
Period Covered	_____
Tax \$	_____
Penalties \$	_____

Total due \$ 2,857,494 if paid by August 14, 2002 including interest.

This information was prepared by Jan Steensen Crangla, CPA Telephone Number 803 898 5616

**Consent To Assessment and Collection of Additional Tax
or Acceptance of Refund Determination**

The undersigned consents to the assessment and collection of any additional tax and penalties or accepts any decrease in tax and penalties shown above, plus any interest provided by law. This offer is subject to acceptance by the Department of Revenue. If this offer is accepted, no claim for refund can be filed or pursued and it will not be reopened in the absence of conditions stated in the general information and instructions.

Taxpayer's Signature _____ Date _____

Spouse's Signature _____ Date _____

Corporation Name (if applicable) Duke Energy Corporation

By [Signature] Title Sr. Vice President Date August 13, 2002
Signature

Commission Approval of Waiver by [Signature]

(See reverse side)

NEXSEN | PRUET

Burnet R. Maybank, III
Member
Admitted in SC

April 18, 2008

Mr. Tim Donovan
South Carolina Department of Revenue
301 Gervais Street
Columbia, South Carolina 29214

Re: Duke Energy

Dear Tim:

You will please find attached Duke's appeal to the Department of Revenue's proposed assessment. The proposed assessment was sent to an incorrect zip code and was not received by Duke until February 4 (see attached date stamp.) Accordingly, the appeal is within 90 days of receipt of the proposed assessment. The correct zip code is 28285.

The Form 2848 Power of Attorney authorizing our representation will be forthcoming.

Very truly yours,



Burnet R. Maybank, III

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach

BRM/shp

Enclosures

cc: Mr. Thomas C. Monroe III
Mr. John Lechko
Mr. Rick Reames III, Esquire

1230 Main Street
Suite 700 (29201)
PO Drawer 2426
Columbia, SC 29202
www.nexsenpruet.com

T 803.540.2048
F 803.727.1472
E BMaybank@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

NPCOL1:1346532.1-DOC-(RR) 011413-00041



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
APPLICATION FOR APPEAL
(Protest Pursuant to Revenue Procedures Act)

C-245
(Rev. 1/27/05)
6177

Section I: Taxpayer Identification

Taxpayer Name (s) Duke Energy Corporation (f/k/a Duke Power Company)
(Please type or print)

Address 400 S. Tryon Street, ST22M

City Charlotte State NC Zip Code 28285

Telephone 704/382-1669

Period (s) Covered Periods ending December 31, 1986 to December 31, 1998

Type (s) of Tax (es) Income Tax

Identification Number (Social Security Number, License Number, etc.) 56-0205520

Section II: Department of Revenue Document to be Attached

Please attach a copy of the Department of Revenue document or notice you received which led to the filing of this protest.

Section III: Reason for Protest

State all the reasons you disagree, including a statement of facts supporting your position and the law or other authority upon which you rely. (If the amount of proposed assessment is less than \$2,500 you need not provide your legal authority unless you are a partnership, "S" corporation, an exempt organization or an employee plan and the proposed tax is imposed by Chapters 6, 11, or 13 of Title 12.) Add additional sheets if necessary.

See attached.

(over)

Lined area for writing or notes.

Taxpayer's Signature _____ Date _____

Spouse's Signature _____ Date _____

Corporation's Name (if applicable) Duke Energy Corporation

By [Signature] Title Attorney for the Taxpayer

Signature of Owner/Partner/Officer/LLC Member

_____ Date _____
Print Name

INSTRUCTIONS

The purpose of this form is to reduce to writing those facts and issues with which you disagree. If more space is needed, additional sheets may accompany this form. A protest may be filed by letter rather than using this form; however, all of the information required by this form must be included in the letter and you must comply with the requirements concerning signatures. If you file a joint income tax return, both you and your spouse must sign. If the protest is for a corporation, it must include the corporation's name followed by the signature and title of the corporate officer authorized to sign. If you have any questions concerning this matter, please call the telephone number on the notice or document with which you disagree. Please return document to the Department of Revenue address shown on the notice or document with which you disagree.

Social Security Privacy Act Disclosure

It is mandatory that you provide your social security number on this tax form. 42 U.S.C 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration of any tax. SC Regulation 117-201 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

ATTACHMENT TO APPLICATION FOR APPEAL – FORM C-245

Duke Energy Corporation – f/k/a Duke Power Company
File: 20090024-9
Corporate Income Tax
Taxable Periods Ending 12/31/1986 through 12/31/1998

Duke Energy Corporation (“Duke”), formerly known as Duke Power Company files this Application for Appeal in response to the Report of Field Audit (“Report”), dated January 9, 2008 by the South Carolina Department of Revenue (“Department”) for the taxable periods ending December 31, 1986 through December 31, 1998 (“Taxable Periods”) for corporate income tax. The Duke Tax Department did not receive the Report until February 4, 2008 as evidenced by its date stamp on the attached Report. The Department’s Report is attached as Exhibit A.

Facts

Duke is a multistate energy services corporation with operations in South Carolina. In December, 2002, Duke timely filed amended corporate income tax returns for the periods ending December 31, 1986 through December 3, 2001.

The refund claims result from: (a) the filing on a single-factor receipts formula pursuant to South Carolina Code Section 12-6-2290, and (b) the inclusion of gross receipts from the sale of short-term financial instruments in the denominator of its gross receipts factor.

In its original returns, Duke employed the three-factor apportionment formula provided for in Section 12-6-2250. However, the corporation is not among the types of specifically enumerated corporations required to employ the three-factor apportionment formula. Consequently, Duke’s amended returns properly employ the single-factor gross receipts formula provided for in Section 12-6-2290.

The amended returns include in the denominator of Duke’s single-factor gross receipts formula the corporations’ gross receipts from the sale of short-term financial instruments. Duke’s day-to-day operations generated excess cash which it desired to keep available as working capital for its business. Consequently, in order to keep the funds as liquid as possible and earn a return, Duke purchased and sold short-term financial instruments. Duke’s activities concerning these financial instruments occurred outside of South Carolina. Moreover, the dealer’s that assisted Duke with its purchases and sales of the financial instruments were domiciled outside of South Carolina.

In 2007, Duke timely filed amended returns to report changes to its federal taxable income, resulting from the settlement of audit issues with the Internal Revenue Service (“IRS”) in December 2006. The changes were reported against the last filed returns filed by Duke, which are currently under appeal with the Department. Those returns claiming refunds for changes to its apportionment factors, as described above, were denied by the

Department and subsequently appealed in March 2003. Such appeals are still pending. The Department ignored the income tax appeals currently pending and adjusted the amended returns filed in 2007 to reflect the apportionment factors on Duke's originally filed income tax returns, not those on its last filed returns.

Reasons for the Appeal

Duke objects to the following determinations of the Department.

1. The Department failed to accept the changes to taxable income resulting from the settlement of federal income tax audits.
2. The Department erred by changing the apportionment factors. Only issues related to the federal income tax changes were subject to change.
3. The Department should have used the apportionment factors from the last filed returns.
4. The denial of Duke's employment of the single-factor gross receipts apportionment formula even though Duke did not satisfy the requirements for using the three-factor apportionment formula under Sections 12-6-2250 or any apportionment formula under Section 12-6-2310.
5. The exclusion of Duke's gross receipts from the sales of the short-term financial instruments from the denominator of Duke's gross receipts factor, notwithstanding that such gross receipts are required to be so included.
6. All other adverse determinations that resulted in the denial of the refund claims.

1. Changes Due to Federal Income Tax Changes

Duke received notices of settlement of numerous changes to its federal taxable income in December 2006. This settlement of issues for the taxable periods was approved by the Joint Committee on Taxation ("Joint Committee") in December 2006. These changes to taxable income were the result of refund claims made while Duke was under audit by the IRS, not by the filing of amended returns with the IRS for which corresponding South Carolina returns were not filed. These changes were not final until approved by the Joint Committee.

2. Change in Apportionment Factors

Duke filed its amended returns for the taxable periods to report the changes to its federal taxable income. It made no changes to the apportionment factors as reported on its last filed returns. As such, the Department is only permitted to audit and make changes to those changes reported by the taxpayer.

3. Last Filed Returns

Duke is required to file amended income tax returns in South Carolina when its taxable income changes due to federal income tax audits. Such changes are required to be made to the last filed returns with the State. Duke filed its amended returns for the applicable tax periods in 2007 using its last filed returns as its starting point. The Department erred in not acknowledging that those returns were still subject to an ongoing appeal and should have postponed any further work on these amended returns until such appeals were exhausted.

4. Single-Factor Gross Receipts Formula

Duke is required to compute its South Carolina corporate income tax liability using a single-factor gross receipts formula to apportion its income. Pursuant to Sections 12-6-2290, if the taxpayer does not derive its principal profits in the manner described in Sections 12-6-2250 or 12-6-2310, the taxpayer must apportion its income utilizing the single-factor gross receipts formula. Duke's business is not among those enumerated in Section 12-6-2310, and it does not satisfy the requirements of Section 12-6-2250. Consequently, Duke is required to compute its South Carolina tax liability using a single-factor gross receipts apportionment formula.

Duke's principal business in South Carolina is not "(a) manufacturing or any form of collecting, buying, or assembling, or processing goods and materials within [South Carolina], or (b) selling, distributing, or dealing in tangible personal property within [South Carolina]." Section 12-6-2250. Duke's principal business in South Carolina was not manufacturing or any form of collecting, buying, assembling or processing goods and materials within South Carolina, as Duke is not a manufacturer, and electricity is neither a good or material. Moreover, Duke was not engaged in selling, distributing or dealing in tangible personal property within South Carolina because electricity is not tangible personal property. See Consolidated Hydro Southeast, Inc. v. South Carolina Dep't of Revenue & Taxation, No. 95-ALJ-17-0634-CC, 1996 WL 909155 (S.C. Admin. Law Judge Div. May 13, 1996) (the sale of electricity constitutes the sale of services and is therefore subject to the additional license fee of Section 12-19-110); Section 12-36-60 (while electricity is included in the sales tax statute discussing the application of the tax on sales of tangible personal property, the sale of electricity is specifically recognized and defined as a service); Section 12-36-910 (subsection A imposes the sales tax on sales of tangible personal property at retail and subsection B imposes the sales tax on sales of various services, including sales of electricity): In re PacifiCorp, 2002-SBE-005-A, 2002 Cal. Tax LEXIS 469 (Cal. S.B.O.E. Sept. 12, 2002), reh'g denied, 2002 Cal. Tax LEXIS 684 (Cal. S.B.O.E. Dec. 19, 2002) (sales of electricity are sales of services and not sales of tangible personal property).

In the letter denying Duke's refund claims, the Department states that its policy on applying the three-factor apportionment formula to power companies as manufacturers should be upheld because it has allegedly been applied for a long period of time. "Such administrative construction however affords no basis for the perpetuation of a patently

erroneous application of the statute.” Monroe v. Livingston, 251 S.C. 214,217,161 S.E.2d 243, 244 (1968).

In addition, Duke’s filing of amended returns utilizing the single-factor gross receipts apportionment formula does not constitute a change in accounting method that requires the consent of the Department. In the first place, an apportionment formula is not an accounting method. See Section 12-6-4420 (providing that [a] taxpayer’s method of accounting. . . must be the same as for federal income tax purposes” and apportionment formulas are not accounting methods for federal income tax purposes).

Moreover, Internal Revenue Service Code Section 446 addresses methods of accounting used in computing taxable income. Under the South Carolina Code, the apportionment methodology is applied after taxable income has been determined. Therefore, the utilization of a statutorily mandated apportionment method after taxable income has been computed is not a change in accounting method as provided in Internal Revenue Code Section 446.

5. Computation of the Gross Receipts Factor

Duke’s receipts from the sale of financial instruments are properly included in the denominator of the gross receipts factor for the taxable periods.

First, Duke’s receipts from the sale of the financial instruments are business receipts that must be apportioned and not allocated. South Carolina law allocates “[g]ains and losses from the sales of intangible personal property *not connected with the business of the taxpayer* and not held for sale to customers in the regular course of business, less all related expenses” to the corporation’s principal place of business. Section 12-6-2250(5) (emphasis added). All items remaining after allocation are apportioned. Section 12-6-2240.

Duke’s purchases and sales of financial instruments allow it to maintain its working capital and to increase cash flow for its business. Therefore, the gross receipts from their sale are apportionable. See Eastman Kodak Co. v. South Carolina Tax Comm’n. 308 S.C. 415,418 S.E.2d 542 (1992). The principal used to purchase the financial instruments was generated by Duke’s business income, the income produced from the sale of the financial instruments was used in Duke’s normal business operations and the instruments were continuously monitored. See M. Lowenstein Corp. v. South Carolina Tax Comm’n. 298 S.C.93, 378 S.E.2d 272 (1989).

Second, the gross receipts formula is calculated by dividing a corporation’s gross receipts from within South Carolina by the corporation’s gross receipts from everywhere. Section 12-6-2290. The source of the gross receipts is the location where the income-producing activity occurs. Lockwood Greene Eng’rs. v. South Carolina Tax Comm’n. 293 S.C. 447,361 S.E.2d 346 (1987). The income producing activity underlying the sale of Duke’s financial instruments occurred outside of South Carolina, as all of the corporation’s activities regarding the purchases and sales of the financial instruments occurred outside

of South Carolina and the investment dealers that assisted Duke engaged in the buying and selling of the financial instruments outside of South Carolina. Therefore, the gross receipts from the sale of the financial instruments should be included in the denominator, and not the numerator, of the gross receipts formula.

Finally, the denominator of the gross receipts factor includes all receipts from the sale of the financial instruments. The term “gross” is defined, in relevant part, as: “[b]efore or without diminution or deduction. Whole; entire; total; as the gross sum, amount, weight –opposed to net.” Black’s Law Dictionary 702 (6th ed. 1990) (‘Black’s’). The term “receipt” is defined, in relevant part as “[t]hat which comes in, in distinction from what is expended, paid out, sent away, and the like.” Id at 1260. Given these clear definitions of the controlling language at issue, the amounts received from the sales of the financial instruments constitute gross receipts.

In the alternative, if it is ultimately determined that the three-factor apportionment formula should be used, the gross receipts from the sale of the financial instruments should be included in the denominator, and not the numerator, of Duke’s sales factor. Section 12-6-2280(A) provides that the sales factor is comprised of “total sales.” Such sales include “sales of intangible personal property and receipts” based on “the entire income-producing activity.” Section 12-6-2280(C)(2). As discussed above, all of the income producing activity of Duke’s purchases and sales of the financial instruments occurred outside of South Carolina. Therefore, the gross receipts from the sales must be included in the denominator, and not the numerator, of the sales factor.

The amount that should be included in the denominator of Duke’s sales factor should be the gross receipts from the sale of the financial instruments. The sales factor includes “total sales.” Section 12-6-2280(A). “Total” is defined as “[w]hole, not divided, lacking no part, entire, full, complete, the whole amount.” Black’s at 1490. Therefore, Duke’s gross receipts from its sales of financial instruments should be included in the denominator of the sales factor.

6. General Objection

Duke objects to all other adverse determinations resulting in denial of the refund claims and reserves the right to raise more detailed objections at the conference on this matter.

In addition, Duke objects to the Department’s determination on Constitutional grounds. The Department’s change to Duke’s apportionment factors violates the Due Process and Commerce Clauses of the United States Constitution, as it taxes activity that does not have a substantial nexus with South Carolina, is not fairly apportioned, discriminates against interstate commerce and is not fairly related to the services provided by South Carolina. Moreover, the Department’s changes result in a tax due to South Carolina that is distortive, out of all appropriate proportion to Duke’s activities in South Carolina and results in the taxation of income by South Carolina that is not properly attributable to South Carolina. E.g., Allied Signal, Inc. v. Director, Div. of Taxation, 504 U.S. 768

(1992); Complete Auto Transit, Inc. v. Brady, 430 US. 274, 279(1977); Hans Rees' Sons v. North Carolina ex. rel. Maxwell, 283 U.S. 123 (1931).

Conclusion

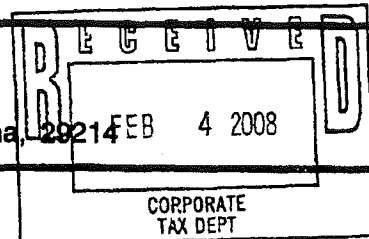
The Department erred by (1) not allowing the changes to taxable income resulting from the settlement of federal income tax audits; (2) changing the apportionment factors on the amended returns; (3) not allowing Duke to employ the single-factor gross receipts formula in computing its corporate income tax liability; (4) not allowing Duke to include the gross receipts from the sale of financial instruments in the denominator of the gross receipts factor; and (5) ignoring the appeals currently pending before the Department, for the same years and for these same issues. The Department has deprived Duke of its constitutional rights.

Duke reserves the right to present further information and raise further arguments concerning its appeal of the Department's audit findings.

Based on the foregoing, Duke respectfully requests a redetermination of the amended returns to reflect the proper federal taxable income, as determined by the Internal Revenue Service, and the proper apportionment factors based on Duke's last filed returns. In the alternative, Duke would request that this redetermination be held in abeyance pending the outcome of the pending appeals.

State of South Carolina
Department of Revenue

301 Gervais Street, P.O. Box 125, Columbia, South Carolina, 29214



January 9, 2008

Duke Power Co.
400 South Tryon St.
Charlotte, NC 28242

Attn: John Lechko
Tax Director

Tax Type :Corp. Income
Periods :12-31-86/98
File # :20090024-9
Response Date :April 9, 2008
Audit # :00/36/6361

Gentlemen:

The audit of the above referenced tax return(s) has been completed by the Field Services Division of the South Carolina Department of Revenue. Enclosed is a "Report of Field Audit" (AS-54) which explains our "Proposed Assessment".

If you agree with the changes detailed in the enclosed report, the balance shown to be due on Form AS-54 should be remitted to this office within thirty (30) days from the date of this letter, to avoid additional interest and penalties, if applicable. Please include a copy of the AS-54 with your check to insure proper processing.

If you agree with the Division's adjustments but are unable to make full payment at this time, please complete the enclosed Waiver of Restriction on Assessment (SC 870) and return it to this office within thirty (30) days from the date of this letter. Upon receipt of this document, a "Final Assessment" will be issued.

If you disagree with any of the adjustments of tax, interest, or penalties that have been proposed by the Division, a written protest must be submitted to this office by the response date stated above.

If you do not respond to this letter by the response date stated above, the Division will issue the "Final Assessment" and begin collection action.

Should you have any questions, please do not hesitate to call me at the number listed below.

Yours very truly,

S.C. DEPARTMENT OF REVENUE
LAW & COMPLIANCE

A handwritten signature in black ink that reads "Tim Donovan".

Tim Donovan – Supervisor Non Resident Auditors
(803)898-5619
(803)898-5825 (fax)

/ds
Enclosure

Form Letter AS-54-PA (Rev. 8/95)

**SOUTH CAROLINA DEPARTMENT OF REVENUE
REPORT OF FIELD AUDIT: INCOME TAX & LICENSE FEE**

TAXPAYER: Duke Power Company
ADDRESS: 400 South Tryon Street
Charlotte, NC 28242

FEI #: 56-0205520
FILE #: 20090024-9
PERIOD: 12/86-12/98
DATE: 1/7/08
AUDITOR: SOUTHARD

INTEREST COMPUTED TO: FEBRUARY 15, 2008

INCOME TAX:				
PERIOD ENDED:	INCOME TAX	INTEREST	PENALTY	TOTALS
12/31/86	\$0		\$0	\$0
12/31/87	3,984	15,919	0	19,903
12/31/88	0		0	0
12/31/89	0		0	0
12/31/90	0		0	0
12/31/91	(4,915)	(6,722)	0	(11,637)
12/31/92	0		0	0
12/31/93	0		0	0
12/31/94	(5,647)	(5,663)	0	(11,310)
12/31/95	4,202	5,731	0	9,933
12/31/96	(189,637)	(140,556)	0	(330,193)
12/31/97	(34,780)	(21,685)	0	(56,465)
12/31/98	359,941	298,935	0	658,876
TOTALS	\$133,148	\$145,959	\$0	\$279,107

LICENSE FEE:				
PERIOD ENDED:	LICENSE FEE	INTEREST	PENALTY	TOTALS
				\$0
				0
				0
				0
				0
				0
TOTALS	\$0	\$0	\$0	\$0

SUMMARY:	TAX	INTEREST	PENALTY	TOTALS
INCOME TAX	\$133,148	\$145,959	\$0	\$279,107
LICENSE FEE	0	0	0	0
TOTALS	\$133,148	\$145,959	\$0	\$279,107

**SOUTH CAROLINA DEPARTMENT OF REVENUE
RECOMPUTATION OF NET INCOME & TAX**

Taxpayer: Duke Power Company
 File#: 2000024-8
 Period: 12/86-12/88

Schedule: A1
 Auditor: SOUTHARD
 Date: 1/7/08

Period Ended: 12/88

	Duke Power Company	Crescent Resources	CLT Develop Corp	DE&E	GT&W Gastonia	DukeNet	DE&S Resources	Intera	M-P Supply	Duke Water Systems	Duke Merch	Crescent Coma	Combined
Apportionable Income Per T/P Workpaper:	1,160,104,661	46,181,379	18,328,866	13,605,432	-343,946	-28,327,686	1,272,357	5,678,128	314,778	0	0	0	
Adjustments:													
RAR 6/14/07	-5,123,827	0	0	0	0	0	0	-3,846,840	0	0	0	0	-8,969,667
INTENDED RET FILED FOR R&D CREDIT & SEC 174	20,799,190												
INTENDED RET FILED FOR R&D CREDIT & SEC 174	-20,799,190												

Apportionable Income As Adjusted:	1,154,980,834	46,181,379	18,328,866	13,605,432	-343,946	-28,327,686	1,272,357	1,829,288	314,778	0	0	0	1,208,742,296
Less: Allocable Income Per Original Return	-1,398,718	-48,472,487	-12,748,958	0	71,905	7,686,276	0	0	0	0	0	0	0
Total Net Income Subject To Apportionment	1,153,581,116	-3,291,108	3,580,908	13,605,432	-272,041	-17,732,410	1,272,357	1,829,288	314,778	0	0	0	12,292,211
SC Ratio-Per Original Return a)	30.8249%	45.7267%	4.2228%	7.2983%	26.6401%	35.7039%	4.2482%	0.0000%	0.0000%	0.0000%	0.0000%	0.0000%	
SC Proportion	366,990,226	-1,604,582	161,215	985,667	-69,762	-6,331,091	54,062	0	0	0	0	0	348,875,435
Allocable to SC-Per Original Return	-234,619	12,785,808	-201,848	0	-78,719	21,558	0	0	0	0	0	0	12,292,211
SC Net Income	366,355,607	11,280,227	-60,633	985,667	-148,471	-6,309,533	54,062	0	0	0	0	0	361,167,646
SC NOL	0	0	0	0	0	-296,945	0	0	-272,584	0	0	0	-669,529
SC Taxable Net Income													360,698,117
Tax Rate													0.06
Tax Due													15,029,908
Non-Refundable Credits-Per T/P Workpapers													-396,518
Disallow Non-Refundable Credits a)													396,518
Credits per Original Return													-25,000
Balance													18,004,608
Tax Previously Paid-Per Original Return													-18,063,877
Underpayment(Overpayment)													-78,971

EXPLANATIONS:

a) Taxpayer cannot adjust credits claimed on an original return that was out of statute due to an RAR.

b) Taxpayer cannot adjust any apportionment ratio on an original return that was out of statute due to an RAR. This ratio adjustment refers to Duke Power Company. The ratio for Duke Power Company was adjusted back to the original return. All other ratios from the other entities are in agreement to the original return.

c) Taxpayer seems to be taking advantage of amended returns that have been filed with the IRS, but have not been filed with South Carolina and therefore the adjustment would be out of statute.

d) Remove amended return adjustment due to being out of statute.

**SOUTH CAROLINA DEPARTMENT OF REVENUE
RECOMPUTATION OF NET INCOME & TAX**

Taxpayer: Duke Power Company
File#: 20060024-9
Period: 12/66-12/96

Schedule: A2
Auditor: SOUTHWARD
Date: 1/7/06

Period Ended: 12/97

	Duke Power Company	Crescent Resources	CLT Develop Corp	DE&S	GT&W Gastonia	DukeNet	DE&S Resource	Intera	M-P Supply	Duke Water Systems	Duke Merch	Crescent Comm	Duke Solutions	Combined
Apportionable Income Per Amended Ret 6A/96:	913,949,040	66,963,675	3,244,564	20,693,063	606,569	-41,063,709	747,010	4,272,362	331,915	0	0	0	-5,031,213	961,863,318
Adjustments:														
RAR 6/14/07	31,802	0	0	-7,106,438	0	0	0	0	938,718	0	0	0	0	-6,136,028
b) AMENDED RET FILED FOR R&D CREDIT & SEC 174	3,746,058													
c) AMENDED RET FILED FOR R&D CREDIT & SEC 174	-3,746,058													

Apportionable Income As Adjusted:	913,980,732	66,963,675	3,244,564	13,587,625	606,569	-41,063,709	747,010	4,272,362	1,270,633	0	0	0	-5,031,213	955,948,288
Less: Allocable Income Amended Ret 6A/96	2,099,826	0	0	0	-603,841	41,066,071	0	0	0	0	0	0	0	42,686,056
Total Net Income Subject To Apportionment	916,080,560	66,963,675	3,244,564	13,587,625	2,748	-4,638	747,010	4,272,362	1,270,633	0	0	0	-5,031,213	998,133,340
SC Ratio-Per Original Return a)	29.9564%	15.3112%	0.0000%	2.3666%	18.3911%	25.0537%	2.5183%	0.1022%	0.0000%	0.0000%	0.0000%	0.0000%	14.0911%	
SC Proportion	274,452,239	10,252,942	0	321,551	606	-1,162	18,812	4,366	0	0	0	0	-1,131,586	263,917,668
Allocable to SC-Per Amended Ret 6A/96	-4,406,846	0	0	0	-83,618	-13,450,472	0	0	0	0	0	0	0	-17,943,836
SC Net Income	270,042,394	10,252,942	0	321,551	-83,113	-13,451,634	18,812	4,366	0	0	0	0	-1,131,586	266,973,833
SC NOL	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SC Taxable Net Income														266,973,833
Tax Rate														0.00
Tax Due														13,286,582
Tax Previously Paid-Per Amended Ret 6A/96														-13,308,514
Underpayment(Overpayment)														-7,932

EXPLANATIONS:

a) Taxpayer cannot adjust any apportionment ratio on an original return that was out of statute due to an RAR. This ratio adjustment refers to Duke Power Company. The ratio for Duke Power Company was adjusted back to the original return. All other ratios from the other entities are in agreement to the original return.

b) Taxpayer seems to be taking advantage of amended returns that have been filed with the IRS, but have not been filed with South Carolina and therefore the adjustment would be out of statute.

c) Remove amended return adjustment due to being out of statute.



**South Carolina
Department of Revenue**

P.O. Box 125, Columbia, SC 29214

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JOHN LECHKO
TAX DIRECTOR
DUKE POWER CO
400 SOUTH TRYON ST
CHARLOTTE NC 28242



8193

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Duke Energy Corporation,)	Docket No. 10-ALJ-17-0270-CC
)	
Petitioner,)	DUKE ENERGY CORPORATION
)	PREHEARING STATEMENT
vs.)	
)	
South Carolina Department of Revenue,)	
)	
Respondent.)	

Petitioner, Duke Energy Corporation (f/k/a Duke Power Company) ("Petitioner") respectfully submits the following Prehearing Statement:

1. The nature of this proceeding:

This proceeding arises out of the denial by the South Carolina Department of Revenue ("Respondent") of certain income tax and license fee refunds owed to Duke Energy for the tax years 1978-2001. The specific facts preceding this matter are outlined under paragraph 5 below.

2. Statutory provision(s) conferring subject matter jurisdiction to the agency and other applicable statutes and regulations:

- A. Jurisdiction: S.C. Code Ann. §12-60-10 (Supp. 2009), *et. seq.* which establishes the appeal process for tax protests; S.C. Code §§1-23-310 – 600 (Supp. 2009) which confers subject matter jurisdiction to the Administrative Law Court.
- B. Three factor apportionment for manufacturers: S.C. Code §§ 12-6-2220 – 90 (Post 1996); Sections 12-7-1140 – 90 (Pre 1996).
- C. Single Factor Apportionment: S.C. Code § 12-6-2290 (Post 1996); S.C. Code §12-7-1190 (Pre 1997).
- D. Definition of "gross receipts": S. C. Code § 12-7-2295.
- E. Statute of Limitations: S.C. Code § 12-54-85.
- F. 1995 SC Acts 60
1995 SC Acts 76

FILED

APR 01 2010

SC ADMIN. LAW COURT

G. Allocation of Interest and expenses relating to Crescent Resources Corporation: S.C. Code § 12-6-2220; S.C. Code of Regulations 117-700.

3. The issues presented for determination:

- A. Is Petitioner required to include the gross receipts from the sale of securities in its South Carolina gross receipts apportionment formula?
- B. Is Petitioner required to use the single factor gross receipts apportionment formula in the calculation of its South Carolina corporate income tax?
- C. Are Petitioner's claims for refund timely filed?
- D. Did the Petitioner properly allocate interest and expenses related to Crescent Resources Corporation?

4. The action requested of the Court, if any;

Petitioner respectfully requests that the Court find that Petitioner is required to include the gross receipts from the sale of securities in its gross receipts apportionment formula, that Petitioner is required to use the single factor gross receipts apportionment formula, and that Petitioner's refund claims are timely filed. With reference to Crescent, petitioner requests that the Court find that the Petitioner correctly allocated interest and expenses related to Crescent Resources Corp. Petitioner respectfully requests that, as a result of the above findings, the Court order Respondent to issue Petitioner a tax refund in the amount of \$126,240,645, plus applicable interest.

5. A brief summary of the facts to be presented at the hearing;

A. Duke Energy Corporation

Petitioner is, and was during all relevant tax periods, a multi-state energy services enterprise with operations in South Carolina. Petitioner's primary operations in South Carolina consisted of its franchise electric service business, real estate business, and fiber optics and telecommunications business. As part of its business, Petitioner purchased and sold securities including municipal bonds and commercial paper. Petitioner invested its capital in the ordinary course of its business and often earned income on its investments. Petitioner included income from these investments in its South Carolina corporate income tax base. All of Petitioner's investment accounts were maintained in New York or Georgia

Petitioner timely filed its South Carolina corporate income tax returns (including license fee returns) for the tax years 1978-2001 ("1978-2001 tax periods"). On its original South Carolina corporate income tax returns for the 1978-2001 tax periods, Petitioner erroneously computed its South Carolina income tax liability

by incorrectly apportioning business income to South Carolina using a three-factor apportionment formula and not including gross receipts from the sale of securities in its gross receipts factor denominator. Petitioner also improperly allocated expenses related to an affiliated entity, Crescent Resources Corporation ("Crescent").

On December 30, 1991, Petitioner timely filed South Carolina amended corporate income tax returns for the tax periods 1978 through 1983 reflecting federal audit adjustments for the tax years 1978-1983 as required under South Carolina law.

On December 12, 2002, Petitioner timely filed South Carolina amended corporate income tax returns for the 1978-2001 tax periods correcting its original tax returns for those periods and seeking a refund of corporate income taxes and license fees plus applicable interest. The amended corporate income tax returns reflected the use of a single gross receipts factor apportionment formula and the adjustment of Petitioner's gross receipts factor denominator to include the gross receipts from its sales of securities as is required by law. The refund claims also included the proper allocation of income and expenses for Crescent for tax years 1998 and 1999.

On February 12, 2003, Respondent denied Petitioner's adjustments (refund claims) for the 1978-2001 tax periods claiming that Duke Energy was a "manufacturer" and was required to use a three-factor apportionment formula. Respondent further asserted that Petitioner may not include the gross proceeds from the sale of securities in its apportionment formula because inclusion of the gross receipts from Petitioner's sale of securities constitutes an unauthorized change in its method of apportioning income. On March 13, 2003, Petitioner timely appealed from the denial of its refund claims for the 1978-2001 tax periods.

On June 15, 2007, Petitioner filed additional amended South Carolina corporate income tax returns reflecting federal audit adjustments for the tax years 1986-1998 ("1986-1998 tax periods") and, consistent with its previously filed amended returns for the 1978-2001 tax periods, Petitioner apportioned its income using a single factor gross receipts apportionment formula. Petitioner's amended corporate income tax returns for the 1986-1998 tax periods sought a refund of corporate income taxes plus applicable interest.

On February 4, 2008, Petitioner received Respondent's denial of Petitioner's adjustments (refund claims) for the 1986-1998 tax periods rejecting Petitioner's use of the single factor gross receipts apportionment method and inclusion of the gross receipts from its sales of securities in sales factor.

On April 18, 2008, Petitioner timely appealed the Respondent's denial of its refund claims for the 1986-1998 tax periods. Respondent has not acted on

Petitioner's appeal for the amended returns for 1986-1998 tax period and those returns are not before the Court in this proceeding.

On February 4, 2010, Respondent issued a Determination denying Petitioner's refund claims for the 1978-2001 tax periods on the grounds that Petitioner was not entitled to use a single factor gross receipts apportionment formula; that Petitioner was not permitted to include the gross receipts from the sale of securities in its sales factor apportionment; and that Petitioner's claims for refund were untimely for some of the 1978-2001 tax periods in question.

For each of the 1978-2001 tax periods, Petitioner and Respondent executed several Consent to Extend the Time to Assess Tax ("Waivers") thereby extending the original statute of limitations for each tax period. These waivers were largely requested by the Respondent and agreed to by the Petitioner as an accommodation to the Respondent. The final Waiver, which covered the South Carolina corporate income tax period 1978-1999 and South Carolina license fee period 1984-2000, expired on December 31, 2002. Petitioner's amended South Carolina corporate income tax returns for the 1978-2001 tax periods were filed prior to December 31, 2002. In addition to being open as a result of the Waivers, the statutes of limitations had not expired for several of the years within the 1978-2001 tax periods as a result of Federal Revenue Agent Reports and the requisite South Carolina reports reflecting those changes to federal taxable income.

B. Crescent Resources Corporation

Under South Carolina law, expenses incurred in earning income allocable outside of South Carolina are not deductible against South Carolina taxable income. S.C. Code Ann. § 12-6-2220; S.C. Code Regs. 117-700. In preparing Crescent's 1998-1999 South Carolina income tax returns, Petitioner first determined Crescent's net gains allocable to South Carolina and outside of the state. Petitioner then allocated related interest and expenses attributable to Crescent's income allocated outside of South Carolina. Petitioner's methodology for allocating expenses and interest associated with its income allocated outside of South Carolina as reflected on Petitioner's amended South Carolina corporate income tax returns was proper and accurately reflected its operations in South Carolina.

6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion:

The Petitioner and the Department anticipate submitting a scheduling order to the Court which will provide that the parties have a designated time period to enter into a Stipulation of facts and legal issues.

7. A list of proposed witnesses and exhibits:

Petitioner and Respondent are working on stipulations of facts. Petitioner's list of witnesses and exhibits is dependent on the degree to which Petitioner and Respondent can agree on stipulations.

Petitioner will supplement this Prehearing Statement with additional witnesses and exhibits based on the sufficiency of the parties' stipulation of facts and discovery.

8. A statement regarding the necessity for discovery, if any:

Petitioner and Respondent are working on stipulations of facts. The amount of discovery will be dependent on the degree to which Petitioner and Respondent can agree on stipulations.

If stipulations acceptable to the parties cannot be reached, Petitioner anticipates serving interrogatories, requests for production of documents, and may serve requests for admission. Petitioner anticipates deposing witnesses during discovery.

9. The estimated length of the hearing:

The time required for the hearing will depend in large part on the above referenced stipulations and how the issues and parties are aligned for purposes of trial. Petitioner anticipates 3-5 days of trial time.

10. Any dates in the next one hundred twenty (120) days when you will not be available for a hearing:

Petitioner is not aware of any such dates at this time. A motion for protection will be filed well in advance of any date conflicts.

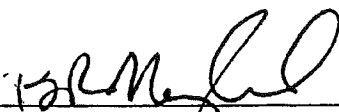
11. An e-mail address where you can be reached:

Email addresses for counsel of record are indicated below:

Burnet R. Maybank III: bmaybank@nexsenpruet.com

James Frederick Reames III: rreames@nexsenpruet.com

RESPECTFULLY SUBMITTED,



Burnet R. Maybank III
James Frederick Reames III
NEXSEN PRUET, LLC
1230 Main Street, Suite 700
PO Drawer 2426 (29202)
Columbia, SC 29202
803.771.8900

Eric S. Tresh, Esquire
Sutherland Asbill & Brennan, LLP
(Pro Hac Vice Admission pending)
999 Peachtree Street, NE
Atlanta, GA 30309

Jeffrey A. Friedman, Esquire
Sutherland Asbill & Brennan, LLP
(Pro Hac Vice Admission pending)
1275 Pennsylvania Avenue, NW
Washington, DC 20004-2415

Attorneys for Petitioner
Duke Energy Corporation

April 1, 2010
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Duke Energy Corporation,)
)
 Petitioner,)
)
 vs.)
)
 South Carolina Department of Revenue,)
)
 Respondent.)
_____)

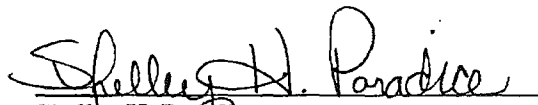
Docket No. 10-ALJ-17-0270-CC

CERTIFICATE OF SERVICE

This is to certify that a copy of Duke Energy Corporation's Prehearing Statement has been served upon the following, via U.S. Mail, first class postage affixed, as shown below this 1 day of April, 2010.

Michael S. Traynham, Esquire
South Carolina Department of Revenue
301 Gervais Street
Columbia, SC 29201

Lynn Baker, Esquire
South Carolina Department of Revenue
301 Gervais Street
Columbia, SC 29201



Shelley H. Paradise
Legal Assistant to James Frederick Reames III
NEXSEN PRUET, LLC
1230 Main Street, Suite 700
PO Drawer 2426 (29202)
Columbia, SC 29201

FILED

APR 01 2010

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Duke Energy Corporation,)	Docket No. 10-ALJ-17-0270-CC
)	
Petitioner,)	
)	
vs.)	RESPONDENT'S RESPONSES TO
)	PETITIONER'S REQUESTS FOR
)	PRODUCTION OF DOCUMENTS
South Carolina Department)	
of Revenue,)	
)	
Respondent.)	
<hr/>		

TO: J. FREDERICK REAMES, III, ESQUIRE, AND BURNET R. MAYBANK, III,
ESQUIRE, ATTORNEYS FOR PETITIONER

COMES NOW, the Respondent, South Carolina Department of Revenue,
(SCDOR) and hereby submits the following answers to request to produce pursuant to
and in accordance with ALC Rule 21, and Rule 33, SCRCP. Respondent reserves the
right to supplement its responses hereto as appropriate and necessary.

**RESPONDENT'S RESPONSES TO PETITIONER'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS**

1. Any and all documents identified, requested, referenced, reviewed, or
relied upon in any manner in answering the Petitioner's First Set of Interrogatories to
Respondent, designating to which Interrogatory each document is responsive.

ANSWER:

Petitioner's Application for Appeal dated March 12, 2003
Final Agency Determination, dated February 4, 2010
Petitioner's Request for a Contested Case Hearing, dated March 3, 2010
SCDOR Audit Report

2. Any and all documents that evidence, indicate, constitute, support, refute or otherwise refer or relate in any way to Petitioner's Refund Claims.

ANSWER:

The Department objects to this request to the extent it seeks information protected by the attorney client and/or attorney work product privilege. Additionally, the Department objects to this request as being unduly broad and overly burdensome, as set forth in Rule 26(a), SCRCP. Subject to and without waiving said objection, to the extent documents responsive to this request exist, such are included within the documents produced in response to Request No. 1¹

3. Any and all documents reflecting any consideration, discussion, assessment, or communication concerning Petitioner's Refund Claims.

ANSWER:

The Department objects to this request to the extent it seeks information protected by the attorney client and/or attorney work product privileges. The Department objects to producing any remaining documents within the request because the request does not describe the items or categories of items with reasonable particularity. Additionally, the information sought is more easily obtainable from some more convenient and easily obtainable source. Subject to and without waiving said objection, to the extent documents responsive to this request exist, such are included within the documents produced in response to Request No. 1.

4. Any and all books, manuals, policies, procedures, articles, documents, or other materials, whether or not prepared by you, referenced, reviewed, consulted, or referred to in denying Petitioner's Refund Claims.

ANSWER:

The Department has already provided this information in the Department Determination. Subject to and without waiving said objection, to the extent documents responsive to this request exist, such are included within the documents produced in response to Request No. 1. This request will be supplemented by an amended prehearing statement.

¹Oncology and Hematology Associates of SC, LLC. V. South Carolina Dept. of Health and Environmental Control, 387 S.C. 380 (2010).

5. Any and all notes from any meetings, telephone calls, or other conversations between or among any persons relating to Respondent's consideration, review and/or denial of Petitioner's Refund Claims.

ANSWER:

The Department has already provided this information in the Department Determination. Subject to and without waiving said objection, to the extent documents responsive to this request exist, such are included within the documents produced in response to Request No. 1.² This request will be supplemented by an amended prehearing statement.

6. All correspondence or other documents or other tangible things exchanged between you and any other person relating to Petitioner's Refund Claims, including but not limited to all correspondence, letters, or e-mails.

ANSWER:

None exist at this time.

7. Any and all documents and communications related in any way to the Audit, including the audit plans, audit workpapers, auditor notes, audit run sheets, internal or external memoranda and letters, communications between you and Petitioner related to the Audit or to issues in the Audit (including documents you provided to or received from Petitioner), lists of employees assigned to the Audit (including documents providing employee responsibilities in regard to the audit), documents relating to your determination to deny the Petitioner's Refund Claims, and all other documents or correspondence in your audit file, in whatever form, electronic or otherwise, related to the Audit.

²Id.

ANSWER:

To the extent documents responsive to this request exist and have not yet been provided, such are included within the documents produced in response to Request No. 1.

8. Any and all documents (redacted as necessary for confidentiality reasons or otherwise) from audits related to the imposition of or the allowance of Gross Receipts Apportionment on any of the following:

- (A) Electricity Producers;
- (B) Utilities;
- (C) Telephone Companies; and
- (D) Telecommunications Companies.

ANSWER:

The Department objects to Petitioner's requests for production of these documents pursuant to S.C. Code Ann. § 12-54-240 (2000). Disclosure of taxpayer information is prohibited according to this provision. Furthermore, it is unlawful for the Department or an employee of the Department to provide this information to third parties as specified in the statute. Subject to and without waiving said objection, to the extent documents responsive to this request exist which are not confidential, such are included within the documents produced in response to Request No. 1. Further, such request is not reasonably tailored to include only relevant matters.³

9. Any and all documents which evidence, reflect, or relate to your contracts or agreements with testifying or non-testifying experts with regard to the Lawsuit.

ANSWER:

The Department objects to this request to the extent it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, as described in Rule 26(b)(1), SCRCP.

³Id.

10. A copy of the curriculum vitae for each and every expert retained by you who is expected to testify at the hearing in this Lawsuit.

ANSWER

Vitae for Glenn Robinson has been previously provided.

11. For any witness you intend to call as an expert in this Lawsuit, please produce all documents provided to, reviewed by, prepared by, or prepared for the expert in anticipation of the expert's testimony, including any and all reports, notes, tables, charts, documents, spreadsheets, or other documents related to the expert opinions you intend to rely on at the hearing, and any and all communications between you and your expert.

ANSWER:

The Department objects to this request to the extent it seeks information protected by the attorney client and/or attorney work product privileges. Subject to and without waiving said objection, to the extent documents responsive to this request exist, such are included within the documents produced in response to Request No. 1.

12. Any and all correspondence, memoranda, or other writings relating to Petitioner's Refund Claims and/or the Lawsuit and sent by any expert identified by you in this case to any other expert identified by you in this case.

ANSWER:

None at this time.

13. All documents or tangible things which have been reviewed by, prepared by or provided or made available to any testifying or non-testifying experts with regard to the Lawsuit.

ANSWER:

The Department has provided its named expert with some of the documents provided under Request No. 1, specifically, the Department Determination and relevant South Carolina Code Sections. No other documents have been provided to date.

14. All written or recorded statements provided by any person to you concerning or relating to the Lawsuit.

ANSWER:

To the extent documents responsive to this request exist and have not yet been provided, such are included within the documents produced in response to Request No. 1.

15. Any and all documents which evidence, record, refer or relate to any oral statements provided by any person to you concerning or relating to the Lawsuit.

ANSWER:

To the extent documents responsive to this request exist and have not yet been provided, such are included within the documents produced in response to Request No. 1. Objection based upon the attorney-client and work product privileges, and this request is not reasonably tailored to seek non-privileged and relevant documentation.

16. Any and all documents you intend to use as an exhibit at hearing in this Lawsuit in your assertion of any claims, counterclaims, or defenses.

ANSWER:

The Department has not determined the exhibits it intends to utilize at trial. Exhibits will be provided to the Petitioner once a determination of such is made.

17. Any and all documents you intend to use as evidence or as an exhibit during discovery.

ANSWER:

The Department has not determined the exhibits it intends to utilize in discovery. Exhibits will be provided to the Petitioner once a determination of such is made.

18. Any and all briefs and other documents and communications related to the former South Carolina Tax Commission's and your determinations in S-D-176 (Aug. 22, 1986), I-D-384 (May 17, 1985), and I-D-352 (Feb. 13, 1984).

ANSWER:

The Department objects to the extent the request seeks materials protected as attorney work-product and communications protected by the attorney-client privilege. Both protections extend beyond the litigation for which the materials and communications were made to all subsequent litigation. The Department also objects to the request for briefs or other court filings because they do not constitute relevant evidence admissible at trial, and the request for the documents is not reasonably calculated to lead to the discovery of admissible evidence in this case. The Department objects to producing any remaining documents within the request because the request does not describe the items or categories of items with reasonable particularity. Notwithstanding these objections, the Department will produce decisions and determinations relating to these cases that are in its possession, custody, or control and are subject to inspection under the Freedom of Information Act. The Department's document retention policy requires that the Department keep documents for six years, therefore, it also appears that no information prior to 2004 is available. The Department does maintain a collection of appellate briefs and Department Determinations for most years, and any documents maintained will be produced, without waiving the objections stated.

19. Any and all documents relating in any way to the enactment, amendment, legislative intent behind, and/or repeal of S.C. Code § 12-6-2290 and the former S.C. Code § 12-7-1190.

ANSWER:

The Department objects to the extent that any such documents in the Department's possession, custody, or control are comprised of ordinary legal research that is obtainable from more convenient and less burdensome sources.

20. Any and all documents related to your policy, position, or analysis on the following terms or phrases used in S.C. Code § 12-6-2290 or former S.C. Code § 12-7-1190:

- (A) Taxpayers engaged in manufacturing of goods or materials; and
- (B) Sale of tangible personal property.

ANSWER:

The Department objects to the request because such documents do not constitute relevant evidence admissible at trial, and the request for the documents is not reasonably calculated to lead to the discovery of admissible evidence in this case. Notwithstanding this objection, the Department will produce documents related to its policies regarding the issues that are subject to inspection under the Freedom of Information Act and that are not already publicly available. Such documents that are already publicly available include regulations and official policy documents.

21. Any and all documents where you have previously ruled that an Electricity Producer or utility was entitled to apportion its income to South Carolina based on Gross Receipts Apportionment.

ANSWER:

The Department objects to the request because such documents do not constitute relevant evidence admissible at trial, and the request for the documents is not reasonably calculated to lead to the discovery of admissible evidence in this case. Notwithstanding this objection, the Department will produce such Department Determinations that are in the Department's possession, custody, or control, and that are subject to inspection under the Freedom of Information Act. However, because the Department cannot locate every such Determination, the Department will produce exemplars, if they exist, redacting information identifying taxpayers in compliance with S.C. Code Ann. § 12-54-220 (2000)

22. The entire file for the Waiver form, including any and all documents used or generated by you related to the promulgation, adoption, amendment (proposed or otherwise) or interpretation of the form, including but not limited to any positions, thoughts, suggestions and/or impressions.

ANSWER:

The Department objects to this request to the extent that it seeks information that is unreasonably cumulative or duplicative and is obtainable from some other source, as described in Rule 26(a)(i), SCRCP. The Department has addressed its interpretation of these provisions in the Final Agency Determination. If the Petitioner seeks further information regarding the Waiver form, the Petitioner can easily obtain such data from some other source that is more convenient and less burdensome.

23. Any policy documents or other document disseminated in any public forum in which you stated or otherwise took the position that a Waiver Document executed by you was ineffective, or otherwise did not toll or extend the statute of limitations, for refund claim purposes.

ANSWER:

The Department objects to this request to the extent it seeks information protected by the attorney client and/or attorney work product privileges. Additionally, the Department objects to this request to the extent that it seeks information that is unreasonably cumulative or duplicative and is obtainable from some other source, as described in Rule 26(a)(i), SCRCP. If the Petitioner seeks policy documents or other documents disseminated in any public forum, the Petitioner can easily obtain such data from some other source that is more convenient and less burdensome. The documents requested can be found at www.scstax.org.

24. All documents produced by you in *Southern Bell Tel. Co. v. South Carolina Tax Commission*, 297 S.C. 492, 377 S.E.2d 358 (S.C. Ct. App. 1989).

ANSWER:

The Department objects to this request to the extent it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, as described in Rule 26(b)(1), SCRCP. This request is not reasonably tailored to limit the production to relevant documents.⁴ However, the Department is providing a copy of its brief filed in this matter without waving its objection.

⁴Id.

25. All documents produced by you in *Consolidated Hydro Se., Inc. v. South Carolina Dep't of Revenue & Taxation*, 95-ALJ-17-0634-CC (Admin. L.J. Div. May 13, 1996).

ANSWER:

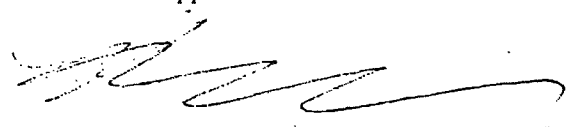
The Department objects to this request to the extent it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, as described in Rule 26(b)(1), SCRPC. Without waiving this objection, the Department is producing a copy of its Department Determination filed as a part of that case.

26. The complete personnel file for your former Auditor, Randy Wilson.

ANSWER:

The Department objects to the request because such documents do not constitute relevant evidence admissible at trial, and the request for the documents is not reasonably calculated to lead to the discovery of admissible evidence in this case.⁵

The Responses herein shall be supplemented as additional information becomes available.



Harry A. Hancock (Bar No. 065233)
Counsel for Litigation
Ray N. Stevens (Bar No. 5342)
Director
Harry T. Cooper, Jr. (Bar No. 1383)
Chief of Staff
Milton G. Kimpson, (Bar No. 7917)
General Counsel for Litigation
PO Box 12265
Columbia, SC 29211
Phone: 803-898-5598
Fax: 803-898-5171
E-mail address: HancocH@sctax.org
Attorneys for South Carolina Department
of Revenue

Columbia, South Carolina
November 18, 2010

⁵Id.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

DUKE ENERGY CORPORATION,

Petitioner,

vs.

SOUTH CAROLINA
DEPARTMENT OF REVENUE,

Respondent.

Docket No.: 10-ALJ-17-0270-CC

AFFIDAVIT OF SHERWOOD L. LOVE

Appeared before the undersigned officer duly authorized to administer oaths, Sherwood L. Love, who deposed and stated as follows:

1.

My name is Sherwood L. Love. I am over the age of 18 years, and I am not under any disability that would impair my competency to provide an affidavit.

2.

This affidavit is given from my personal knowledge.

3.

During the period 1978-2001 ("Period at Issue"), Duke Energy

Corporation (“Duke Energy”) was a North Carolina corporation engaged principally in the business of selling electricity, with principal offices located at 526 S. Church Street, Charlotte, North Carolina 28285.

4.

From March 1989 until April 2006, I was the Assistant Treasurer - Cash Management of Duke Energy. In that role, I was responsible for the cash management function at Duke Energy. The cash management function covered basic commercial banking; providing daily corporate liquidity through short-term borrowing and investing; and, establishing short-term bank borrowing facilities (“credit facilities”).

5.

From April 2006 until the date of this affidavit, I was the General Manager Long Term Investments and Assistant Treasurer of Duke Energy. In that role, I am responsible for managing Duke Energy’s long term trust investments.

6.

During the Period at Issue, Duke Energy maintained a Treasury Department and a Cash Management Group at its headquarters in North Carolina, as part of its operations.

7.

During the Period at Issue, Duke Energy’s Cash Management Group

was engaged in investing Duke Energy's excess cash from its electricity sales to maximize its return, within approved investment guidelines, and providing for its short-term cash needs.

8.

The Cash Management Group maintained a daily interface with Central Cash Remittance, the department responsible for processing all direct payments from electric customers, and the daily consolidation of local branch deposits of electric customer payments across the Duke Energy service territory.

9.

The Cash Management Group received daily bank reports showing the value of checks being presented for payment on corporate disbursement accounts that needed to be funded that day. The Cash Management Group utilized reports from corporate financial models to forecast and fund maturing debt issues and all significant corporate payments, including quarterly dividends.

10.

The Cash Management Group was responsible for executing and funding all electronic payments, including all wire transfers.

11.

The Cash Management Group interfaced with various departments and subsidiaries to fund or manage cash from significant transaction settlements.

In addition, the Cash Management Group managed all short-term borrowing and investing, and the related cash settlements. Using corporate financial models, the Cash Management Group interfaced with Treasury, Finance and Corporate management to determine the sizing of short-term bank borrowing facilities that would provided required liquidity support for Duke Energy's commercial paper borrowing programs. Such programs were used for the short-term funding of additional electric generation, transmission and distribution facilities to serve our customers.

12.

The Cash Management Group was responsible for working with Duke Legal and our commercial and investment banks to negotiate and establish credit facilities.

13.

During the Period at Issue, the Treasury Department invested Duke Energy's excess operating cash in various short-term marketable securities including municipal bonds, loan repurchase agreements, and commercial paper.

14.

During the Period at Issue, all securities trading transactions were conducted, and all investment accounts were located, outside of South Carolina.

15.

During the Period at Issue, Duke Energy's Cash Management Group evolved into four subgroups: (1) Cash Operations; (2) Short-term Liquidity; (3) Credit Facilities; and (4) International Cash Management.

16.

An average of 10-12 employees were employed in the Cash Management Group.

17.

The Cash Management Group was located in Charlotte, North Carolina, and was responsible for funding Duke Energy's daily liquidity needs. The Cash Management Group provided funding for Duke Energy's operations, including purchasing fuel, payroll, acquiring and maintaining production, transmission and distribution equipment, and other capital expenditures.

18.

In addition, the Cash Management Group was responsible for forecasting cash needs and maximizing investment returns within approved investment guidelines.

19.

During the Period at Issue, the Cash Management Group maintained daily contact with investment dealers located outside of South Carolina in order to

maximize cash investment opportunities.

20.

During the Period at Issue, the Short-Term Liquidity Group generally consisted of an average of four employees located in Charlotte, North Carolina, and was responsible for gathering short-term borrowing and investment information, and for ensuring that short-term borrowings were minimized and that excess cash was appropriately invested, with a goal of minimizing cash in corporate bank accounts.

21.

Cash Management Group was responsible for setting commercial paper borrowing rates and selecting short-term investments, and, when market conditions allowed, negotiated investment rates.


22.

Cash Management Group makes investment decisions in accordance with established investment guidelines approved by the Duke Energy Board's Finance and Risk Management Committee, which defines the type, term and ratings of permitted investment securities.

23.

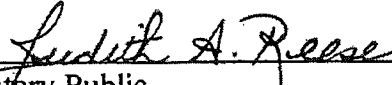
I declare under penalty of perjury that the foregoing is true and correct.

Further affiant sayeth not, this 31st day of December, 2010.



Sherwood L. Love

Subscribed before me this
31st day of December, 2010.



Notary Public

My commission expires: 02/20/12

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

DUKE ENERGY CORPORATION,

Petitioner,

vs.

SOUTH CAROLINA
DEPARTMENT OF REVENUE,

Respondent.

Docket No.: 10-ALJ-17-0270-CC

AFFIDAVIT OF RICKEY MCCARVER

Appeared before the undersigned officer duly authorized to administer oaths, Rickey McCarver, who deposed and stated as follows:

1.

My name is Rickey McCarver. I am over the age of 18 years, and I am not under any disability that would impair my competency to provide an affidavit.

2.

This affidavit is given from my personal knowledge.

3.

During the period 1978-2001 ("Period at Issue"), Duke Energy

Corporation (“Duke Energy”) was a North Carolina corporation engaged principally in the business of selling electricity, with principal offices located at 526 S. Church Street, Charlotte, North Carolina 28285.

4.

From July 2, 1984 until November 30, 2010, I was at various times the Assistant Tax Manager, Tax Manager, and Tax Director of Duke Energy. In those roles, I prepared Federal and state income tax returns, performed tax research and planning, and managing federal and state tax audits. Included in my responsibilities was the management of the South Carolina income tax audits.

5.

South Carolina first began auditing Duke Energy for South Carolina income tax purposes in 1978.

6.

Every year during the Period at Issue, South Carolina auditors would travel to, and spend a week at, the offices of Duke Energy in Charlotte, North Carolina, reviewing documentation relating to the income tax audit for that particular year.

7.

To the best of my knowledge, no South Carolina auditor ever provided Duke Energy with an audit report for any particular year during the

Period at Issue.

8.

To the best of my knowledge, every year during the Period at Issue, at the request of the South Carolina Department of Revenue (“Department”), the Department and Duke Energy agreed to sign a waiver extending the statute of limitations applicable to that particular year and including any previous year(s) that remained open under South Carolina law or by virtue of a previously executed waiver.

9.

To the best of my knowledge, both the Department and Duke Energy understood that all waivers extended the statute of limitations with respect to audits and refund claims.

10.

During the Period at Issue, the Department has never disputed or disagreed with Duke Energy’s classification of investment securities as taxable or exempt.

11.

I declare under penalty of perjury that the foregoing is true and correct.

Further affiant sayeth not, this 7th day of January, 2011.

Rickey A. McCarver
Rickey McCarver

Subscribed before me this
7th day of January, 2011.

Judith A. Reese
Notary Public

My commission expires: 02/26/2012

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Duke Energy Corporation)
)
 Petitioner,)
)
 vs.)
)
 South Carolina Department of Revenue,)
)
 Respondent.)
 _____)

Docket No. 10-ALJ-17-0270-CC

**AFFIDAVIT OF
MARVIN N. DAVANT**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

PERSONALLY APPEARED BEFORE ME, Marvin N. Davant, who first being
duly sworn, deposes and says as follows:

1. I am over the age of eighteen (18) years old.
2. I was employed by the South Carolina Department of Revenue (formerly known as the South Carolina Tax Commission) (hereinafter referred to as the "Department") for thirty-seven (37) years beginning in 1964 as an auditor with the Estate & Gift Division, an assistant director of the Estate & Gift Division and then the combined Estate & Gift and Income Tax Divisions, and as Director, Field Services Division, until my retirement in 2001. After I retired, I acted as a consultant to the Director of the Department.
3. The Department authorized the Director of its Field Services Division to fill out, execute and issue Form FS-43 to taxpayers.
4. In the performance of my services as Director, I was authorized to issue and execute, and did routinely issue and execute, the Department's Form FS-43, Consent to Extend the Time to Assess Tax.

5. Form FS-43 was a commonly utilized form, to such extent that I, with approval of the Department, allowed my audit deputy to sign the form in the interests of time.

6. It was common practice for the Department to seek an extension of time to make an assessment and request that taxpayer's sign Form FS-43. For example, if auditors were on a short time frame to audit a file, they would request that the taxpayers sign Form FS-43 as an agreement with the Department to extend the time for both assessments and refunds.

7. The Department promulgated and issued Form FS-43 as an official Department form document. To the best of my knowledge, information and belief, the Department has utilized this form since at least the 1960s, as the form was in use prior to the time I became employed with the Department.

8. Form FS-43 was an official form issued by the Department and provided to the Field Services Division for use in its operations.

9. To the best of my knowledge, information and belief, the Department did not issue forms that had not been properly reviewed or approved.

10. The Department's forms identified which division used the form by including the division's name or initial on the form.

11. To the best of my knowledge, information and belief, no individual division of the Department promulgated its own forms, and every form used by any division was an official form provided to it by the Department.

12. The Field Services Division did not review or question Form FS-43 because it was instructed to use the form by the Department.

13. To the best of my knowledge, information and belief, the use of Form FS-43 by the Department was never questioned.

14. To the best of my knowledge, information and belief, the Department historically intended, believed and understood that Form FS-43 not only extended the time to assess additional tax, but also authorized or extended the time for a taxpayer to file a claim for refund within the time stated in the Form FS-43.

15. Prior to enactment of the South Carolina Revenue Procedures Act in 1995, the Department believed that after the execution of the FS-43 by the DOR and the taxpayer that it was authorized and permitted to issue refunds of overpaid tax even if a claim for refund by the taxpayer would not otherwise be timely under the applicable statutory limitations period for filing a refund claim and regardless of whether the period of time initially prescribed for filing a claim for refund had expired.

16. Prior to enactment of the South Carolina Revenue Procedures Act, it was my intent, belief and understanding as Director of Field Services that an executed Form FS-43 constituted the Department's agreement to issue a refund -- whether resulting from a review of the taxpayer's records commenced by the Department's on its own initiative, upon consideration of a claim for refund filed by the taxpayer prior to the time stated in the Form FS-43, or otherwise -- pursuant to its authority to issue refunds of overpaid tax even if a claim for refund would otherwise be untimely.


17. After enactment of the South Carolina Revenue Procedures Act, there was no difference in how Form FS-43 was interpreted by Department, and the content of the form remained the same.

18. To the best of my knowledge, information and belief, I had the same authority to sign Form FS-43 before and after enactment of the South Carolina Revenue Procedures Act.

19. Both before and after enactment of the South Carolina Revenue Procedures Act, the purpose of Form FS-43 was to allow the Department and the taxpayer by agreement to extend the time for assessment or refund, whether discovered on audit or a refund claim filed by the taxpayer. The form was specifically used for purposes of recording the agreement to extend the time limitations for both the Department and the taxpayer.

20. It was my intent, belief and understanding as Director of Field Services that a refund claim filed after the statute of limitations had expired would be treated differently than a refund claim filed during the extended period of time agreed to by the Department and the taxpayer by executing Form FS-43. The Department would not consider a refund claim filed in the former situation, but would, in accordance with its agreement, in the latter.

FURTHER AFFIANT SAYETH NOT.



Marvin N. Davant

SWORN and subscribed to before me
this 16th day of May, 2012.

Margie W. Rish (L.S.)
Notary Public for South Carolina
My Commission Expires: 11-4-2020

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Duke Energy Corporation)
)
 Petitioner,)
)
 vs.)
)
 South Carolina Department of Revenue,)
)
 Respondent.)
_____)

Docket No. 10-ALJ-17-0270-CC

**AFFIDAVIT OF
ROBERT K. ANDERSON**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

PERSONALLY APPEARED BEFORE ME, Robert K. Anderson, who first being duly sworn, deposes and says as follows:

1. I am over the age of eighteen (18) years old.
2. I was employed by the South Carolina Department of Revenue (formerly known as the South Carolina Tax Commission) (hereinafter referred to as the "Department") from 1975 until I retired in 2008.
3. While employed with the Department, I served in various positions beginning with an entry-level position with the Audit Division, then was promoted to Regional Manager, then Manager of Audits, then Administrator of Field and Office Operations, and finally was employed as Senior Administrator until the time of my retirement.
4. Since the time I served as Manager of Audits, I had the primary responsibility and authority for executing Form FS-43, Consent to Extend the Time to Assess Tax.
5. In many cases, the authority to issue and execute Form FS-43 was delegated to the auditors auditing a taxpayer's file.

6. Form FS-43 was regularly and commonly used during my employment with the Department, and the Department typically was the party who requested that the form be executed.

7. Form FS-43 is an official document issued by the Department when agreeing to extend the time to assess additional tax or issue a refund with a taxpayer. I do not know when Form FS-43 was first promulgated, but it was many years, if not decades, ago.

8. The use of Form FS-43 was common knowledge within all levels of the Department. To my knowledge, the Department had a process for approving all forms and I assume the Form FS-43 went through such approval process.

9. The Department issued Form FS-43 to obtain the taxpayer's written consent to extend the time to assess or refund additional tax.

10. To encourage a taxpayer's agreement to extend the time to assess additional tax, the Department intended that Form FS-43 similarly extend the time for a taxpayer to file a refund claim with the Department or for the Department to grant a refund.

11. The Department did not issue any other form document or other writing to obtain a taxpayer's consent to extend the statute of limitations.

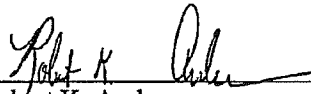
12. The Department had several revised versions of Form FS-43, all of which were intended to extend the time for the taxpayer to file a claim for refund during the waiver period.

13. By executing Form FS-43, the Department believed that it was exercising its discretionary authority to grant a refund upon examination of a taxpayer's return or otherwise, including the taxpayer's filing a refund claim with the Department within the period of time stated in the FS-43, in exchange for the taxpayer's consent to extend the period of time to assess additional tax.


14. I am not aware of any conflicts or controversy either within the Department or with taxpayers regarding the wording of Form FS-43. To my knowledge, the Department has never refused to honor a valid refund claim filed during the time period covered by Form FS-43.

15. The multiple execution of the Form FS-43s in the Duke Energy Corporation Audits over a long period of years was principally requested by the DOR auditor assigned to the file.

FURTHER AFFIANT SAYETH NOT.


Robert K. Anderson

SWORN and subscribed to before me
this 17th day of May, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 5/7/22

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

DUKE ENERGY CORPORATION,

Petitioner,

vs.

SOUTH CAROLINA
DEPARTMENT OF REVENUE,

Respondent.

Docket No.: 10-ALJ-17-0270-CC

AFFIDAVIT OF T. COOPER MONROE, III

Appeared before the undersigned officer duly authorized to administer oaths, T. Cooper Monroe, who deposed and stated as follows:

1.

My name is Thomas Cooper Monroe, III. I am over the age of 18 years, and I am not under any disability that would impair my competency to provide an affidavit.

2.

This affidavit is given from my personal knowledge.

3.

During the period 1978-2001 ("Period at Issue"), Duke Energy Corporation ("Duke Energy") was a North Carolina corporation engaged principally in the business of selling electric service, with principal offices located at 526 S. Church Street, Charlotte, North Carolina 28285.

4.

Since 1997, I have been at various times the Tax Manager and the Managing Director of State and Local Tax of Duke Energy. In those roles, I have had the opportunity to review and become familiar with Duke Energy's tax files and its correspondence related to its South Carolina and federal corporate income tax issues for the tax years 1978 through 2001.

5.

The Internal Revenue Service ("IRS") made certain adjustments to Duke Energy's federal corporate income tax returns for the tax years 1978 through 1983. The IRS made a final determination with regard to those adjustments on September 23, 1992.

6.

The Internal Revenue Service ("IRS") made certain adjustments to Duke Energy's federal corporate income tax returns for the tax years 1984 and 1986 through 1991. The IRS made a final determination with regard to those adjustments on May 11, 2001.

7.

The Internal Revenue Service ("IRS") made certain adjustments to Duke Energy's federal corporate income tax returns for the tax years 1992 through 1994. The IRS made a final determination with regard to those adjustments on July 17, 2001.

8.

On August 13, 2002, Duke Energy and the South Carolina Department of Revenue ("Department") agreed to offset certain assessments of additional South Carolina corporate income tax made by the Department for the tax years 1978 through 1994 against refunds of South Carolina corporate income tax owed to Duke Energy for the same tax years.

9.

On August 16, 2002, Duke Energy received a refund check for overpaid corporate income taxes from the Department attributable to the tax years 1978 through 1994.

Further affiant sayeth not, this 28th day of June, 2012.


T. Cooper Monroe, III

Subscribed before me this
28 day of June, 2012.

Natalie W Polk

Notary Public

My commission expires: 4-28-2013

17862938.2

Tax Year	Original Tax Return File Date	Federal Adjustment Final Determination
1978	9/14/1979	9/23/1992
1979	9/15/1980	9/24/1992
1980	9/15/1981	9/25/1992
1981	9/14/1982	9/26/1992
1982	9/15/1983	9/27/1992
1983	9/17/1984	9/28/1992
1984	9/15/1985	5/11/2001
1985	9/15/1986	
1986	9/15/1987	5/11/2001
1987	9/14/1988	5/11/2001
1988	9/15/1989	5/11/2001
1989	9/15/1990	5/11/2001
1990	9/15/1991	5/11/2001
1991	9/15/1992	7/17/2001
1992	9/14/1993	7/17/2001
1993	9/10/1994	7/17/2001
1994	9/15/1995	
1995	9/16/1996	
1996	9/15/1997	
1997	9/15/1998	
1998	9/14/1999	
1999	9/11/2000	
2000	9/17/2001	
2001	9/13/2002	

**DUKE ENERGY CORPORATION
SOUTH CAROLINA WAIVERS SCHEDULE
INCOME/ LICENSE TAX**

WAIVER EXPIRATION	WAIVER PERIODS
12/31/02	INCOME: 12/31/78 - 12/31/99 LICENSE: 12/31/84 - 12/31/00
06/30/02	INCOME: 12/31/78 - 12/31/98 LICENSE: 12/31/84 - 12/31/99
12/31/01	INCOME: 12/31/78 - 12/31/97 LICENSE: 12/31/84 - 12/31/98
12/31/00	INCOME: 12/31/78 - 12/31/96 LICENSE: 12/31/84 - 12/31/97
12/31/99	INCOME: 12/31/78 - 12/31/95 LICENSE: 12/31/84 - 12/31/96
12/31/98	INCOME: 12/31/78 - 12/31/94 LICENSE: 12/31/84 - 12/31/95
06/30/98	INCOME: 12/31/78 - 12/31/94 LICENSE: 12/31/84 - 12/31/95
12/31/97	INCOME: 12/31/78 - 12/31/93 LICENSE: 12/31/84 - 12/31/94
06/30/97	INCOME: 12/31/78 - 12/31/92 LICENSE: 12/31/84 - 12/31/93
06/30/96	INCOME: 12/31/83 - 12/31/91 LICENSE: 12/31/84 - 12/31/92
11/30/95	INCOME: 12/31/83 - 12/31/90 LICENSE: 12/31/84 - 12/31/91
05/30/95	INCOME: 12/31/83 - 12/31/90 LICENSE: 12/31/84 - 12/31/91
12/31/94	INCOME: 12/31/83 - 12/31/89 LICENSE: 12/31/84 - 12/31/90
12/31/93	INCOME: 12/31/83 - 12/31/89 LICENSE: 12/31/84 - 12/31/90
12/31/92	INCOME: 12/31/83 - 12/31/88 LICENSE: 12/31/84 - 12/31/89
12/31/91	INCOME: 12/31/83 - 12/31/87 LICENSE: 12/31/84 - 12/31/88
12/31/90	INCOME: 12/31/83 - 12/31/86 LICENSE: 12/31/84 - 12/31/87
12/31/89	INCOME: 12/31/83 - 12/31/85 LICENSE: 12/31/84 - 12/31/86
06/30/89	INCOME: 12/31/83 - 12/31/84 LICENSE: 12/31/84 - 12/31/85
03/31/89	INCOME: 12/31/83 - 12/31/84 LICENSE: 12/31/84 - 12/31/85
12/31/88	INCOME: 12/31/83 - 12/31/84 LICENSE: 12/31/84 - 12/31/85

DUKE POWER COMPANY
TAX DEPARTMENT
422 SOUTH CHURCH STREET
CHARLOTTE, N. C. 28242-0001

JOHN P. O'KEEFE
VICE PRESIDENT TAXES
(704) 373-6231

WILSON R. TAYLOR
MANAGER, INCOME TAXES
(704) 373-4206

JOE L. WALLACE
MANAGER, PROPERTY TAXES
(704) 373-4203

April 19, 1991

RICKEY A. MCCARVER
(704) 373-5706

H. LYNN BOYETTE
(704) 373-2761

LARRY C. AUTEN
(704) 373-6376

RICHARD L. ROGERS, JR.
(704) 373-3213

TELECOMER:
(704) 373-6964

Mr. Harold Ingram
Field Services Division
South Carolina Tax Commission
P. O. Box 125
Columbia, SC 29214

Dear Mr. Ingram:

In accordance with our verbal agreement that I would notify you when we had settled years 1978-1983 with the IRS, we received notification on March 12, 1991 that these years had been accepted by the Joint Committee. We have filed a protest for 1984 and 1985 on some issues.

Very truly yours,


Remi Taylor

RT/cj

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson III, Administrative Law Judge

Case No. 10-ALJ-17-0270-CC

Duke Energy Corporation..... Appellant,


v.

South Carolina Department of Revenue..... Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

July 3, 2013



Burnet R. Maybank III
James Frederick Reames III
Tanya A. Gee
NEXSEN PRUET, LLC
1230 Main Street, Suite 700
PO Drawer 2426 (29202)
Columbia, SC 29201
(803) 771-8900

Eric S. Tresh, *Pro Hac Vice*
Maria M. Todorova, *Pro Hac Vice*
SUTHERLAND ASBILL & BRENNAN LLP
999 Peachtree Street, NE
Atlanta, GA 30309
(404) 853-8806

Jeffrey A. Friedman, *Pro Hac Vice*
SUTHERLAND ASBILL & BRENNAN LLP
700 Sixth Street, NW, Suite 700
Washington, DC 20001
(202) 383-0718

Attorneys for Appellant Duke Energy Corporation

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson III, Administrative Law Judge

Case No. 10-ALJ-17-0270-CC

Duke Energy Corporation..... Appellant,

v.

South Carolina Department of Revenue..... Respondent.

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 17, 2013

Burnet R. Maybank III
James Frederick Reames III
Tanya A. Gee
NEXSEN PRUET, LLC
1230 Main Street, Suite 700
PO Drawer 2426 (29202)
Columbia, SC 29201
(803) 771-8900

Eric S. Tresh, *Pro Hac Vice*
Maria M. Todorova, *Pro Hac Vice*
SUTHERLAND ASBILL & BRENNAN LLP
999 Peachtree Street, NE
Atlanta, GA 30309
(404) 853-8806

Jeffrey A. Friedman, *Pro Hac Vice*
SUTHERLAND ASBILL & BRENNAN LLP
700 Sixth Street, NW, Suite 700
Washington, DC 20001
(202) 383-0718

Attorneys for Appellant Duke Energy Corporation