

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

KENNETH WALTON GEORGE, DENNIS)
REED BOWEN, CLYDE FREEMAN,)
GEORGE MOYERS, JIM MATTHEWS,)
and HENRY MILLER, on their own behalf and)
on behalf of a class of persons similarly situated,)

Case No.: 8:06-CV-00373-RBH

Plaintiffs,)

vs.)

DUKE ENERGY RETIREMENT CASH)
BALANCE PLAN and DUKE ENERGY)
CORPORATION,)

Defendants.)

**NOTICE OF FILING AFFIDAVIT OF JIM MATTHEWS IN SUPPORT OF
MOTION FOR RELIEF REGARDING IMPROPER CLASS COMMUNICATIONS
TO SHOW CAUSE WHY DUKE ENERGY CORPORATION SHOULD NOT BE HELD
IN CONTEMPT OF COURT**

I, Cheryl F. Perkins, do hereby file the Affidavit of Jim Matthews attached hereto.

Respectfully submitted this 29th day of January, 2010.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

KENNETH WALTON GEORGE, et al.,)	
)	
Plaintiffs,)	C/A No.: 8:06-CV-373-RBH
)	
vs.)	
)	
DUKE ENERGY RETIREMENT CASH)	
BALANCE PLAN, et al.,)	
)	
Defendants.)	
)	

DECLARATION OF JIM MATTHEWS

I, Jim Matthews, hereby declare as follows:

1. I have personal knowledge of the facts set forth below and, if called upon to do so, could and would testify competently to those facts.

2. I am one of the named Plaintiffs and a Class Representative in this case. I have been a named Plaintiff in this case since it was filed in February, 2006. I signed a retainer agreement hiring the counsel in this case to represent me prior to the case being filed. I have attended multiple hearings and have given two depositions in this case.

3. I am age 62 and this will be my 38th year working for Duke Energy at McGuire Nuclear Station in Mecklenburg County, North Carolina. I am employed as a Nuclear Planner.

4. On January 21, 2010, after I received the Court-approved Class Notice in this case in the mail, I received an email invitation on the company email system to attend a Duke Energy Voluntary Opportunity Plan ("VOP") meeting, to be held on January 25, 2010 at the facility.

5. On the day of the meeting, January 25, 2010, I received from my supervisor an email saying that VOP meeting attendance was mandatory.

6. The meeting was held in the Administration Building of McGuire Nuclear Station in Training Room 155. The audience consisted of members of the Work Control Department. At the meeting, our department superintendent said that we would be given a VOP package at the end of the meeting. We were told that we had to make our decision by February 24, 2010 to take advantage of this opportunity. We were also told that a Waiver and Release must be signed if we wanted to receive the VOP.

7. The package we received at the meeting included three documents: a Request Form (a true and accurate copy is attached as **Exhibit A**), Notice of Eligibility For Voluntary Window (a true and accurate copy is attached as **Exhibit B**), and instructions for accessing documents on the Duke "Portal" which is a website that employees can access.

8. I was not given a copy of the Waiver at the meeting, so I had to print it from the Portal. A true and accurate copy of the Waiver form from the Portal is attached as **Exhibit C**.

9. The Request Form (**Ex. A**) states that "I understand that I must also execute and not revoke the Waiver and Release provided by the Company in order to receive any Plan benefits and that if I fail to execute the Waiver and Release in the required time frame or if I revoke it, I will not receive the Plan benefits and my employment will be terminated on or about the Separation Date."

10. The Notice of Eligibility (**Ex. B**) states that "[a] sample Waiver and Release is posted on the Portal for your review." (Emphasis added). The Notice of Eligibility also states that "[a] final Waiver and Release will be provided following your separation date..." (Emphasis added). The Waiver from the Portal itself (**Ex. C**) states, "DRAFT / 1/11/10" and is watermarked, "SAMPLE." The Notice of Eligibility (**Ex. B**) also states that the deadline to apply for the VOP is February 24, 2010. Accordingly, the company has instructed employees that they must apply for the VOP by February 24, 2010 without even being able to see whatever the "final" Waiver may be.

11. As described in the Request Form, my offer includes \$123,909.56 to sign the Waiver and leave the company. (**Exhibit A**).

12. The Waiver if signed would forfeit a host of rights. Specifically waived would be the right to any cash balance plan lawsuit settlement or award: "Employee recognizes and acknowledges that this Agreement completely releases Employee's rights in the Cash Balance Litigation. In the event that a court in the Cash Balance Litigation should rule that, despite this Agreement, Employee is entitled to some recovery of benefits under the terms of the Duke Energy Retirement Cash Balance Plan, Employee agrees that he or she will receive only the shortfall between the Plan benefit described above in Paragraph 1(a) and what he or she would get under that ruling, if any." (**Exhibit C**, p. 3, ¶ 4(e)). The Whipsaw Class and the Interest Rate Class are specifically mentioned at the last page of the Waiver which is entitled, "IMPORTANT NOTICE." (**Exhibit C**, p. 8).

13. A true and accurate copy of a "Questions/Answers for Employees" form from the Portal is attached as **Exhibit D**. It alludes to future involuntary departures. It also states that any future severance benefits offered to employees would likely be less lucrative: "While we are hopeful that the VOP offering and other ongoing efforts will allow us to minimize the possibility of future involuntary departures, we can never rule out that possibility, especially in this challenging economic climate. In addition, while we always work hard to provide impacted employees with options, and we will continue to

do so, it is likely that any severance benefits available to employees after the VOP will be less lucrative than those benefits being offered under the VOP.” (**Exhibit D**, p. 2, ¶ 5).

14. The offer of cash to leave the company and drop out of the lawsuit came approximately two weeks after I received the Duke Energy Cash Balance Class Action Notice. The deadline of February 24, 2010 for employees to accept the VOP falls prior to the “opt-out” deadline in the Notice which is March 17, 2010. In other words, I and other employees received the VOP after the opt-out period began and the VOP has a time window for employees to accept it that expires before the opt-out period ends. “The window will open on February 3, 2010 and close at 5:00 p.m. EST on February 24, 2010.” (**Exhibit D**, p. 2, ¶ 8).

15. When I accepted the duties of a class representative, I agreed to not take any action that would be detrimental to the class members. If I were to accept money to effectively opt out of the cash balance lawsuit, I would be selling out thousands of employees, who are depending on me to represent their interests in the suit.

16. On January 28, Plaintiff Henry Miller told me that he was also offered money to relinquish his right to any cash balance settlement or award. If Duke Energy were successful in “buying off” the only two class representatives currently still working for the company, it could seriously cripple a lawsuit that we have been working on for over a decade.

17. The Q&A document states how the VOP payment was calculated and does not state that the calculation is different for employees in the Class as opposed to employees not in the Class. (**Exhibit D**, p. 1, ¶ 3). Stated differently, there is no additional compensation offered in the VOP for giving up the claims in the class action; the formula that determined the offer is the same for those with class claims as those without class claims to release.

18. Many employees have expressed concern to me about being forced to give up their chance in this lawsuit to recover a portion of their lost retirement benefits in order to participate in the VOP. They have gone through much turmoil since their pensions were reduced in 1997. I believe that, as a minimum, the release of claims in this lawsuit should be stricken from the waiver. Also, Duke Energy should not be allowed to reduce any cash balance settlement or award in any way for any class member who agrees to the VOP. I believe after working for years at the company, employees are entitled to receive any VOP “buyout” amount and any award they are entitled to as Class Members in this lawsuit.

19. A true and accurate copy of a document entitled “2010 Voluntary Opportunity Plan Highlights” from the Portal related to the VOP is attached at **Exhibit E**.

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

EXECUTED this 29th day of January, 2010 in Denver, North Carolina.


Jim Matthews