

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,)

Plaintiffs,)

vs.)

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

Defendants.

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

**NOTICE OF FILING DECLARATION OF JAMES O'CONNOR IN
SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION
FOR RULE TO SHOW CAUSE**

I, Robert O. King, do hereby file the Declaration of James O'Connor attached hereto.

Respectfully submitted this 5th day of February, 2010.

/s/ Robert O. King

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DECLARATION OF JAMES O'CONNOR

I, James O'Connor, 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 as to those facts.

2. I am Vice President of Employee Relations at Duke Energy Corporation ("Duke").

3. Duke has recently announced a Voluntary Opportunity Plan ("VOP") designed to achieve a significant voluntary reduction in force needed to secure long term, sustainable cost savings and posture Duke as a more efficient organization moving forward.

4. The VOP was offered concurrently with another cost savings initiative: a plan to consolidate corporate work and other support functions in Charlotte (the "Office Consolidation"). These initiatives have been implemented concurrently so that employees who

will be impacted by the Office Consolidation can make an informed decision about their participation in the VOP.

5. The VOP was first identified as a possibility to Duke's employees on October 8, 2009 in an e-mail from Jim Rogers entitled, "Repositioning Duke Energy for the New Business Environment" (a true and correct copy is attached as Exhibit 1). The e-mail informed employees that an official announcement regarding the voluntary opportunity would be made in early 2010.

6. On October 30, 2009, at Duke's regularly-held post-earnings report open forum, Mr. Rogers again addressed the possibility of a voluntary program (a true and correct copy of a report of that forum is attached as Exhibit 2).

7. On January 18, 2010, Mr. Rogers sent an e-mail to Duke employees entitled "Voluntary Opportunity Plan and Office Consolidation," (a true and correct copy is attached as Exhibit 3) announcing the official information about the VOP.

8. Following the January 18 e-mail, between January 25 and February 3, Duke individual managers and human resources business partners held face-to-face meetings with Duke employees to communicate information about the VOP. The meetings were mandatory for eligible employees, because individualized packets were distributed and because it was imperative for the success of the VOP that employees understand the program and its terms. Managers were instructed to emphasize the voluntary nature of the program at the meetings.

9. Where possible, managers also hand-delivered separation agreement packages to employees during the face-to-face meetings. These packages included, among other things, individualized, estimated calculations of benefits and instructions to visit the Duke intranet

Portal for more information, including a sample release that would be required from any employee who wished to participate in the VOP.

10. The VOP was offered to regular, non-unionized, U.S.-based employees with greater than five years of service at Duke, subject to Duke's business needs. The VOP was also offered to those employees with less than five years of service at Duke who are affected by the Office Consolidation.

11. Of Duke's approximately 19,000 employees, 8,756 employees were offered the VOP package. Of those, about 5,751 are potential class members in what is referred to as the "interest rate class" in the above captioned class action litigation.

12. Duke's individual department heads were responsible for determining which groups of employees were eligible for the VOP. Duke specified certain criteria that the department heads should and should not use to make those determinations. Examples of acceptable criteria include: "organizational restructuring," "consolidation of function," and "new technology being implemented." Participation in litigation against Duke is not an acceptable criteria.

13. The window for eligible employees to request to participate in the VOP opened on February 3, 2010 and will close, for most employees, on February 24, 2010. For those employees impacted by the Office Consolidation, their window will remain open until March 31, 2010.

14. If too many eligible employees request to participate in the VOP for Duke's business needs, then management will generally use length of service to determine which employees' requests to approve.

15. Human resources and management will work together to communicate to employees that their requests to participate in the VOP have been approved or denied. Human resources and management will also work together to establish individual release dates for each approved employee. Those employees who are approved will leave the company between March 31, 2010 and March 31, 2011, based on Duke business needs.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 5th of February, 2010.


James O'Connor

CERTIFICATE OF SERVICE

Robert O. King, an attorney, certifies that he caused copies of the foregoing
**NOTICE OF FILING DECLARATION OF JAMES O'CONNOR IN SUPPORT OF
DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR RULE TO SHOW
CAUSE** to be served on all counsel through the court's ECF System on this 5th day of February,
2010.

/s/ Robert O. King