

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, )

ORDER GRANTING  
JOINT REQUEST FOR

v. )

MODIFICATION OF CLASS DEFINITION

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

Defendants. )

ORDER GRANTING JOINT REQUEST  
FOR MODIFICATION OF CLASS DEFINITION

This matter coming before the Court on the joint request of the parties for entry of an Order modifying and correcting the class definition stated in the Court's Order dated September 4, 2009 (the "Order") (Docket Entry #251). The Court having found the request is well-taken, hereby orders that the class definition found at pages 27-28 of the Order be corrected, as follows:

**Existing "Whipsaw Class Definition":**

"(a) All former employees of Duke who were participants in Duke's Cash Balance Plan, between January 1, 1997 and December 31, 2002, who retired and took lump sum benefits prior to age 65, and whose lump sum benefits were calculated during a calendar quarter when the applicable interest crediting rate under the relevant Plan documents exceeded the applicable interest rate for discounting to present value under the Plan documents, and

(b) All present employees of Duke who were participants in the Cash Balance Plan on or before December 31, 2002 who may elect early retirement and lump sum benefits as an optional form of benefit."

**Corrected "Whipsaw Class Definition":**

"All former employees of Duke who were participants in Duke's Cash Balance Plan, between January 1, 1997 and December 31, 2002, who retired and took lump sum benefits on or before August 17, 2006, prior to age 65, and whose lump sum benefits were calculated during a calendar quarter when the Plaintiffs claim that the applicable interest crediting rate under the relevant Plan documents exceeded the applicable interest rate for discounting to present value under the Plan documents."

The Court further orders that Plaintiffs Bowen and George shall be the appointed class representatives of the whipsaw class.

In addition, this Court orders that the interest rate class definition be corrected to include the word "vested" with regard to the included employees as follows:

All present and/or former vested employees of Duke who were participants in Duke's Cash Balance Plan at any time between January 1, 1997 and December 31, 1998, excluding participants who had retired on or before December 31, 1996.

**AND IT IS SO ORDERED.**

s/ R. Bryan Harwell  
R. Bryan Harwell  
United States District Judge

Florence, South Carolina

September 28, 2009