

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,)

v.)

CASE NO.: 8:06-cv-00373-RBH

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

Defendants.)

**DEFENDANTS' RESPONSE TO
LOCAL RULE 26.01 INTERROGATORIES**

Pursuant to Local Rule 26.01, defendant makes these responses to the court designated interrogatories.

(A) State the full name, address and telephone number of all persons or legal entities who may have a subrogation interest in each claim and state the basis and extent of said interest.

RESPONSE: None are known to the defendants.

(B) As to each claim, state whether it should be tried jury or nonjury and why.

RESPONSE: Plaintiffs have requested a jury trial. The defendants believe that all ERISA claims must be tried non-jury. The defendants believe that it is unclear whether plaintiffs are entitled to a jury trial for disparate impact claims under the ADEA, and will brief that issue to the Court at the appropriate time.

(C) State whether the party submitting these responses is a publicly owned company and separately identify: (1) each publicly owned company of which it is a parent, subsidiary,

partner, or affiliate; (2) each publicly owned company which owns ten percent or more of the outstanding shares or other indicia of ownership of the party; and (3) each publicly owned company in which the party owns ten percent or more of the outstanding shares.

RESPONSE: The Defendant Duke Energy Corporation is a publicly held company. It has no publicly held parent, subsidiary, partner, or affiliate; no publicly held company owns ten percent or more of its outstanding shares; and it does not own ten percent or more of any publicly held company. The Defendant Duke Energy Retirement Cash Balance Plan is not a publicly owned company.

(D) State the basis for asserting the claim in the division in which it was filed (or the basis of any challenge to the appropriateness of the division).

RESPONSE: This division is not, as a matter of law, inappropriate; however, the Defendants take the position that the United States District Court for the Western District of North Carolina – Charlotte Division is a more appropriate venue for this matter because of the location of documents witnesses, and the vast majority of parties and putative parties to this action, and the Defendants will file a Motion to Transfer Venue to that effect.

(E) Is this action related in whole or in part to any other matter filed in this District, whether civil or criminal? If so, provide: (1) a short caption and the full case number of the related action; (2) an explanation of how the matters are related; and (3) a statement of the status of the related action. Counsel should disclose any cases which may be related regardless of whether they are still pending. Whether cases are related such that they should be assigned to a single judge will be determined by the Clerk of Court based on a determination of whether the cases: arise from the same or identical transactions, happenings or events; involve the identical parties or property; or for any other reason would entail substantial duplication of labor if heard by different judges.

RESPONSE: No.

(F) If the defendant is improperly identified, give the proper identification and state whether counsel will accept service or an amended summons and pleading reflecting the correct identification.

RESPONSE: Defendants are properly identified.

(G) If you contend that some other person or legal entity is, in whole or in part, liable to you or the party asserting a claim against you in this matter, identify such person or entity and describe the basis of said liability.

RESPONSE: The Plaintiffs have alleged that misrepresentations were made and those alleged misrepresentations are the basis for some of the claims in the lawsuit, but they have not identified the persons who are alleged to have made those misrepresentations. The Defendants will investigate those allegations through discovery and supplement this response as necessary with the identities of such persons, if any.

Dated this 23rd day of March, 2006.

Respectfully submitted,

s/Kristofer K. Strasser

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