

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

KENNETH WALTON GEORGE, DENNIS REED	)	
BOWEN, CLYDE FREEMAN, GEORGE MOYERS,	)	
JIM MATTHEWS, and HENRY MILLER, on their	)	C/A No: 8:06-CV-373-RBH
own behalf and on behalf of a class of persons	)	
similarly situated,	)	
	)	
Plaintiffs,	)	The Honorable R. Bryan Harwell,
	)	U.S. District Judge
	)	
vs.	)	
	)	
DUKE ENERGY RETIREMENT CASH BALANCE	)	
PLAN and DUKE ENERGY CORPORATION,	)	
	)	
Defendants.	)	

**NOTICE OF CLASS ACTION**

**If you are a present or former employee who was a participant in the Duke Energy Cash Balance Plan, this class action lawsuit may affect your rights.**

*The United States District Court authorized this Notice to be sent to you.*

**BASIC INFORMATION**

**1. What is this lawsuit about?**

This lawsuit is about Duke Energy Corporation’s (“Duke Energy”) Retirement Cash Balance Plan (the “Plan”), and its administration and calculation of retirement benefits under that Plan. Plaintiffs claim that Duke acted in violation of the Employment Retirement Income Security Act of 1974 (“ERISA”) in how it has administered and calculated benefits under the Plan and that it violated fiduciary duties owed to the participants. Duke Energy denies that it did anything wrong. At this time, the Court has not decided whether the Plaintiffs or Duke Energy are correct. The Plaintiffs will be required to prove their claims at a trial.

**2. What is a class action and who is involved?**

In a class action lawsuit, one or more individuals called “Class Representatives” (in this case, Mr. George, Mr. Bowen, Mr. Moyers, Mr. Matthews and Mr. Miller) bring an action to represent a class, on behalf of other people who have similar claims. The individuals together are the “Class” or “Class Members.”

The Court has certified a Class for Counts 3 and 4 of the Amended Complaint. The definition for each Class is found in Section 7 below.

**Questions? Contact Class Co-Counsel, Wallace and Graham, P.A., at 1-800-849-5291, 1  
or email [info@wallacegraham.com](mailto:info@wallacegraham.com)**

### **3. Why is this lawsuit a class action?**

The Court decided that this lawsuit could be a class action because it met the requirements of Federal Rule of Civil Procedure 23, which governs class actions in federal courts. Specifically, the Court found that: There are numerous individuals who are members of the Plan and impacted by the claims stated by the Plaintiffs; there are legal questions and facts that are common to each of the Class Members; the Class Representatives' claims are typical of the claims of the rest of the Class; the Class Representatives and the lawyers representing the Class will fairly and adequately represent the interests of the Class; and common issues predominate and a class action is a superior form of relief.

### **4. What does the lawsuit complain about?**

The Plaintiff Class Representatives, on behalf of themselves and all others similarly situated, have brought an Amended Complaint against the Defendants. The Plaintiffs are current and former employees of Defendant Duke Energy. Defendant Duke Energy Retirement Cash Balance Plan is a plan sponsored by Duke Energy. Several of the claims initially alleged in the action were dismissed by the Court and/or withdrawn by the Plaintiffs. Plaintiffs' Amended Complaint asserts the surviving three claims, which allege as follows:

Plaintiffs claim in Count 3 of their Amended Complaint that Duke Energy failed, throughout the existence of the Plan, to perform calculations known as "whipsaw" calculations for retiring Plan participants who elected a lump sum payment instead of a monthly annuity. Plaintiffs claim that ERISA required this calculation and that a whipsaw calculation would have resulted in a larger lump sum payout to many participants.

Plaintiffs claim in Count 4 that Duke Energy violated the stated terms of the Plan by applying incorrect interest rates in determining interest credits to participants' accounts during the eight consecutive quarters that make up the years 1997 and 1998. The Court certified these claims.

Plaintiffs claim in Count 7 that Duke Energy breached its fiduciary duties under ERISA by misleading employees about the manner and effect of the opening balance calculations, by setting opening balances in an arbitrary manner, and by administering the Plan outside the four corners of the Plan for a relevant time period. The Court did not certify this claim.

Defendants deny each of these claims.

### **5. Has the Court decided who is right?**

The Court has not decided whether the Plaintiffs or the Defendants are correct. By establishing the Class and issuing this Notice, the Court is not suggesting that the Plaintiffs will win or lose this case. The Plaintiffs must prove their claims at trial.

### **6. Am I a member of the Class?**

If you fit the definition of either of the groups defined in Section 7 below, you are a member of the Class.

## 7. How is the Class defined?

Whipsaw Class -- The Court has defined the Class for Count 3 as:

**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.**

Interest Rate Class -- The Court has defined the Class for Count 4 against Duke as:

**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.**

The Court appointed Plaintiffs Bowen and George as class representatives of the whipsaw class, and Plaintiffs Matthews, Miller, Moyers, Bowen and George as class representatives of the interest rate class.

## 8. Do I have a lawyer in this case?

The Court has decided that the law firms representing the Plaintiffs are qualified to represent you and all the Class Members. Together, the law firms are called "Class Counsel." They are experienced in handling similar cases. Class Co-Counsel, Wallace and Graham, has assigned personnel to their toll-free number, 800-849-5291, to provide further information, or you can seek further information by sending an email to [info@wallacegraham.com](mailto:info@wallacegraham.com). Lead Class Counsel's contact information is as follows:

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## 9. Should I get my own attorney?

You are not required to hire your own lawyer because Class Counsel is working on your behalf. You will not be personally charged for the services of Class Counsel. Any fees or costs ultimately paid to them will be paid out of any recovery in the action and must be approved by the Court. If you want your own lawyer, you will have to retain and pay for that lawyer.

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## 10. Can I exclude myself from the Class?

In some class actions, class members have the opportunity to exclude themselves from the class. This is sometimes referred to as “opting-out” of the class. In this case, you have the right to exclude yourself from the Interest Rate Class and/or the Whipsaw Class in the case.

(a) To Remain a Class Member. If you are a member of the Interest Rate or Whipsaw Class and do not request exclusion from them, you will remain a Class Member. Your interests in connection with those claims will be represented by the Class Representatives and Class Counsel. You do not need to take any action to remain a Class Member.

(b) To Opt Out of the Class. You have the right to opt out of the Interest Rate Class, the Whipsaw Class, or both of them. If you opt out of one or both of those Classes, you will not be bound by or subject to any judgment or settlement of the litigation. If you opt out, however, you will also not be entitled to receive any money or other benefit that those Classes may receive in a settlement or in a judgment. If you wish to opt out, you must submit a written, signed request to opt out, stating (1) your name, address, and telephone number, (2) a reference to this lawsuit (i.e., George v. Duke Energy Retirement Cash Balance Plan, Case No. 8:06-CV-373-RBH), (3) the date of your first employment and, if applicable, the date you left your employment with Duke, and (4) your desire to opt out of the Classes. Requests to opt out must be sent by first class mail, postage pre-paid, to Wallace and Graham, P.A., 525 North Main Street, Salisbury, NC 28144, ATTN: Duke Cash Balance Opt-Out, and post-marked no later than March 17, 2010. If you do not submit a timely opt-out request that complies with these requirements, your opt-out request will be deemed invalid and you will not be excluded from the Classes.

### ADDITIONAL INFORMATION

This Notice should not be regarded as an expression of any opinion by the Court on the merits of any claims or defenses of the parties, because the trial has not yet occurred. There has been no finding or determination by the Court that Defendants have violated any law or obligation. This Notice contains only a summary of the various claims, defenses and rulings in the case. The Court’s relevant Orders and other documents connected with the case are available for review and/or downloading on Class Co-Counsel’s website at [www.wallacegraham.com](http://www.wallacegraham.com). In addition, the entire public case file can be viewed at the Office of the Clerk of the United States District Court, Clement F. Haynsworth Federal Building and U.S. Courthouse, 300 East Washington Street, Greenville, SC 29601, or on the Court’s electronic filing website, Pacer, at <http://pacer.psc.uscourts.gov> (to use Pacer, you must first set up an account and pay an amount per page for downloading court documents).

**PLEASE DO NOT CALL OR CONTACT THE COURT OR THE OFFICE OF THE CLERK OF COURT WITH QUESTIONS REGARDING THIS NOTICE. THEY WILL NOT ANSWER SUCH QUESTIONS. IF YOU HAVE QUESTIONS, PLEASE DIRECT THEM TO CLASS COUNSEL.**

Dated: September 24, 2009

Approved by the Honorable R. Bryan Harwell

United States District Judge

By Order dated November 13, 2009

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