

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. )

MOTION FOR STAY OR IN THE ALTERNATIVE,  
FOR AN EXTENSION OF TIME

On April 13, 2006, plaintiffs in the above-captioned matter filed a motion seeking class certification. Defendants' response to this motion is due on or before May 15, 2006. On May 5, 2006, defendants filed a motion to transfer venue in this matter to the Western District of North Carolina.

Defendants now move this court for a stay of defendants' obligation to brief the class certification issue pending the court's resolution of the motion to transfer venue. Defendants maintain that the venue issue is a threshold matter that should be resolved before the substantive issue of class certification, which

many courts have held, is inextricably intertwined with the merits. More importantly, in its present posture, this case is under the court's Specialized Case Management Order for ERISA cases. This Order, which does not contemplate a motion for class certification, also precludes discovery and thereby prevents defendants from engaging in the discovery necessary to respond appropriately to the class certification motion.

Because the venue issue logically should be decided first and because defendants are precluded from conducting needed discovery on the class certification issue, defendants respectfully request that the class certification motion be held in abeyance until such time as the court rules on defendants' transfer of venue motion and that defendants be given sixty days following the court's ruling on the transfer of venue motion in which to conduct discovery and brief the class certification issue.

In the event the court decides not to grant a stay on the class certification issue, defendants request a sixty day extension of time and permission to conduct discovery on the class certification issue in order to brief appropriately this issue.

Defense counsel has consulted with plaintiffs' counsel regarding this motion and plaintiffs do not consent to a stay or to defendants' position that the transfer of venue motion should be decided before the class certification

motion. Plaintiffs also do not consent to a sixty-day extension of time for defendants to respond to the class certification motion.

Date this 5<sup>th</sup> day of May, 2006.

Respectfully submitted,

s/Kristofer K. Strasser-----

Robert O. King  
Federal Bar No. 2349  
Kristofer K. Strasser  
Federal Bar No. 4191

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

The Ogletree Building  
300 North Main Street  
Greenville, SC 29601  
Telephone: (864) 271-1300  
Facsimile: (864) 235-8806

Margaret H. Campbell  
Georgia Bar No. 105978  
(*Admitted Pro Hac Vice*)

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.  
600 Peachtree Street, N.E., Suite 2100  
Atlanta, GA 30308  
Telephone: (404) 881-1300  
Facsimile: (404) 870-1732

Gregory C. Braden  
Peter M. Varney  
Sean K. McMahon  
*(Admitted Pro Hac Vice)*  
ALSTON & BIRD LLP  
1201 W. Peachtree Street  
Atlanta, GA 30309-3424  
Telephone: (404) 881-7497  
Facsimile: (404) 881-7777

David R. Godofsky  
*(Admitted Pro Hac Vice)*  
ALSTON & BIRD LLP  
601 Pennsylvania Avenue, NW  
North Building, 10<sup>th</sup> Floor  
Washington, DC 20004-2601  
Telephone: 202-756-3303  
Facsimile: 202-756-3333

Attorneys for Defendants