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ISSUE BRIEF

Has Duke Energy Been Cheating on Rate Hikes?

Watchdog Group Calls on Attorney General to Require Audit of Millions in Overcharges as Two More Rate Hikes Loom

Controversial rate hikes by Duke Energy Carolinas in 2009 and 2011 revealed a pattern of activity apparently designed to overcharge North Carolina electricity customers millions of dollars annually, energy watchdog group NC WARN said today. The group said Duke is either deliberately attempting to gouge ratepayers or suffers gross incompetence across its legal and accounting departments. It urged Attorney General Roy Cooper to take action.

In a letter to Cooper, the group cited “a systemic and multi-faceted problem”, saying regulators have caught Duke submitting long lists of improper charges worth hundreds of millions of dollars in 2009 and 2011. But the group said that, very likely, Duke still got away with widespread overstatement of operating expenses due to limited regulatory resources and corporate accounting practices that seemed designed to confound regulators and other parties.

NC WARN also told Cooper that because there is no penalty for getting caught overstating expenses, the “catch us if you can” pattern will almost certainly be repeated in two upcoming rate cases soon to be filed by Duke and subsidiary Progress Energy. They called on Cooper to seek a full, independent audit of total expenses filed during the two past rate hikes, to demand full audits during the upcoming rate cases, and to consider strict penalties for utilities who repeatedly overstate the expenses that make up the bulk of customer rates.

The improper expenses Duke got caught trying to charge NC customers include air travel for political and foreign junkets; salaries for executives of Duke Energy Indiana, Duke Energy Ohio, and Duke Energy Kentucky; explicitly prohibited expenses from a 2006 merger; lobbying expenses; property taxes Duke did not pay; Hurricane clean-up expenses Duke did not incur; and many others. Duke even wanted NC customers to pay for its costs in an Indiana investigation that led to felony indictments of the state’s top regulator for allegedly colluding with Duke officials to force customers to pay construction cost overruns.

Many of the kinds of expenses that were rejected in 2009 were submitted again in the 2011 rate case, NC WARN said. Furthermore, it appears that regulatory practices in other states in which Duke operates provide for little if any oversight to prevent Duke from charging ratepayers in those states for the very same expense items it is charging NC customers, according to the letter to Cooper.

“It seems clear that Duke Energy is gaming the regulatory system and gouging the public,” said NC WARN director Jim Warren today. ***“It’s hard to imagine the alternative explanation; the pattern seems too persistent and elaborate to blame incompetence.”***

NC WARN said that despite regulators catching many of the overcharges, resource constraints and time limitations have left the N.C. Utilities Commission and the Public Staff forced to agree to compromise settlements in rate cases instead of fully examining Duke’s byzantine accounting system.

The regulators cut hundreds of millions of “inappropriate” expense dollars from the 2009 and 2011 rate requests, but NC WARN says Duke effectively added back millions during a compromise agreement, and that

millions more in overcharges are very likely to be hidden in the huge majority of expenses that regulators were unable to review due to time and resource constraints.

NC WARN also told Cooper that Duke has refused Commission and Public Staff pressure to correct systemic accounting problems.

“While small businesses and families are struggling with soaring power rates during a rotten economy, Duke executives seem to be padding their pockets and those of other stockholders,” said Warren today. “Duke is able to do this only because it is a monopoly in this state – in a competitive market such abuses of customers would not survive.”

Warren added, ***“To be clear, we are sympathetic with the many dedicated people among the Public Staff and the Utilities Commission. They are badly outgunned by both Duke and the regulatory pressures that rig rate cases to the advantage of the big utilities.”***