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September 18, 2019

Karen Brinson Bell  
State Board of Elections  
430 N. Salisbury St., 3<sup>rd</sup> Floor, Dobbs Building  
Raleigh, NC 27603

Dear Ms. Bell,

This complaint requests an investigation and accountability regarding false reporting by the Duke Energy Corporation PAC of eight illegal campaign contributions totaling \$41,600 to eight leaders of the NC General Assembly, including the chief backers of a bill (Senate Bill 559) now under debate that would benefit the company in the complex process used to determine the price of electricity.

The legislative leaders who each received \$5,200 are: Senate President Pro Tem Phil Berger, Senate Rules Chair Bill Rabon, Senate Majority Leader Harry Brown, Senate Democratic Leader Dan Blue, House Speaker Tim Moore, House Rules Chair David Lewis, House Majority Leader John Bell, and House Appropriations Senior Chair Jason Saine.

The eight contributions were identified on the Duke Energy PAC's state and federal disclosure reports as being made on January 2, 2019, shortly before the opening of the General Assembly session. This timing is noteworthy because it was the first time in a decade that Duke Energy's PAC has donated to more than two legislators in the weeks immediately prior to the January opening of a biennium General Assembly session. Duke is prohibited from making PAC donations once the regular session begins, except during recesses of more than 10 days.

The contributions are also noteworthy because all eight legislators logged in the \$5,200 donations in January, but in the weeks that followed, all eight returned the checks or sent refunds in the same amount to Duke's PAC.

Why? It turns out that Duke Energy now admits the eight contributions were illegal and asked the legislators to return the money. When I alerted WRAL reporter Travis Fain about the strange pattern of large donations and refunds, he queried the company and was told that (1) Duke's PAC actually "printed" the checks in December 2018, (2) while the General Assembly was in session, (3) but it wanted the contributions to count toward the 2019-2020 election cycle, not 2017-2018, (4) so it mailed them in January 2019 and reported them as donations for the 2019-2020 cycle.

Here's the Duke spokesman's explanation in full: *Contributions were approved by the DukePAC Board of Trustees and printed in December 2018. But because the PAC had funded the 2018 cycle and these funds were for the 2020 cycle, and the General Assembly was in a special session we did not distribute them. The GA adjourned December 31, the checks were mailed on January 2, 2019 and reflected in our FEC reporting as the contribution date. To eliminate any signs of impropriety*

*by either party, we contacted each campaign and requested that the checks be returned or refunded. All contributions were refunded. We should have voided the 2018 checks and reissued them with 2019.*

I emphasize the four parts of the company's response because rather than "eliminate any signs of impropriety," the statement reveals several apparent violations of North Carolina law:

- The PAC's contributions were "printed" while the General Assembly was in session, which violates NC General Statute 163A-1426, i.e., the prohibition against PACs with lobbyists making contributions to legislators that are "dated" while the General Assembly is in session.
- Because the PAC had already contributed so much money to each of the eight legislators for the 2017-2018 cycle, the \$5,200 contributions made in December 2018 violate NCGS 163A-1425, i.e., the prohibition against making contributions to any candidate in excess of \$5,200 per election for the 2017-2018 cycle.
- By reporting that the eight contributions totaling \$41,600 were made in January 2019 instead of December 2018, the PAC violates NCGS 163A-1418, which mandates that disclosure statements be "true and correct," as well as NCGS 163A-1422, which requires full and accurate disclosure of the PAC's contributions to candidates, including "the date such payment was made."

To its credit, Duke tried to rectify its mistake by asking the legislators to refund the excess contributions for 2018, but it has not filed a new disclosure report with either the State Board of Elections or the Federal Elections Commission that reveals it made, and then recovered, the eight illegal contributions. In fact, what has been reported amounts to a cover up to "eliminate any signs of impropriety," to use Duke's words. And that's a major problem which must be addressed.

Duke's PAC (officially the Duke Energy Corporation PAC) is a federal political action committee and in three different reports\* to the Federal Elections Commission, it mislabeled the refunds it received from legislators as contributions made for the "2020 primary," which is false. It should have checked a box on the form for "Other" and indicated the refunds were for excessive 2018 contributions. But that admission would have revealed Duke's illegal activity to the public.

More important for the State Board of Elections, the disclosure report that Duke's PAC filed with this state agency about the illegal January 2019 contributions is incomplete, incorrect and false. (Duke's federal PAC must file state reports in accordance with NCGS 163A-1413.) The state report covering the January contributions was filed on July 2019 – long after Duke realized the donations were illegal and then sought and received their return. But rather than correctly disclose the contributions and refunds, the July report wrongly stated that each contribution was made on January 2, 2019, and it also failed to disclose that any of the eight contributions were refunded (although the report disclosed other refunds).

Importantly, Mr. Larry Valenti, treasurer of the Duke Energy Corporation PAC, signed a certification statement for the state report on July 23, 2019. He certified that the PAC complies with state law and "that this report is complete, true and correct." The report is plainly incomplete, untrue and incorrect, and it is difficult to believe the PAC treasurer did not know that when the report was submitted.

Duke's actions to "eliminate any sign of impropriety" created more problems because it caused legislators to knowingly or unknowingly mask the fact that they were returning excessive and illegal 2018 contributions. For example, Sen. Bill Rabon's disclosure report described his refund as "return of donation recvd during session," even though he received his check when the General Assembly was in a recess that lasted more than 10 days.

Duke's lack of honest campaign reporting is all the more important because its substantial political contributions to Sen. Rabon and other legislators have become a major focus of opponents of Senate Bill 559, the bill to change the rate-making process. Environmental Justice NC has produced [two reports](#) about campaign donations from energy companies. NC WARN's media campaign has included numerous full-page [newspaper ads](#) with pictures of four legislative leaders and the amounts they have received from energy companies and their top executives. "Electric monopolies pay our politicians," the ads begin. "We get stuck with the bill."

All four legislators featured in those ads received \$5,200 in January from Duke – Senate President Pro Tem Phil Berger, House Speaker Tim Moore, House Rules Chair David Lewis, and Senate Democratic Leader Dan Blue. Sen. Bill Rabon is one of the three prime sponsors of SB-559. For whatever reason, Sen. Harry Brown didn't return his money until April 1, 2019. Also, mysteriously, Duke PAC's July report says a second \$5,200 check was written to House Speaker Tim Moore in late January, after his first one was refunded. But that second check was returned or never sent; Rep. Moore's disclosure report doesn't even record it. Perhaps Duke Energy had second thoughts about making such large contributions in early 2020, on the eve of the session destined to consider its controversial proposal to change the rate-making process for electric utilities. No other Duke PAC donations have been sent to legislators since January 2019, according to the PAC's report.

Here is a list compiled from the disclosure reports of the eight legislators who received \$5,200 contributions from the Duke Energy PAC in January, with the month and day the money was reported received and then reported refunded, according to the legislators' campaigns:

Rep. John Bell rec'd 1/14 – refunded 2/5  
Sen. Phil Berger rec'd 1/8 – refunded 1/17  
Sen. Dan Blue rec'd 1/5 – refunded 2/11  
Sen. Harry Brown rec'd 1/8 – refunded 4/1  
Rep. David Lewis rec'd 1/23 – refunded 1/24  
Rep. Tim Moore rec'd 1/8 – refunded 1/10  
Sen. Bill Rabon rec'd 1/22 – refunded 2/20  
Rep. Jason Saine rec'd 1/10 – refunded 1/25

Duke Energy's quick actions to retrieve the \$41,600 may save it from being penalized for making illegal contributions, but it must be held accountable for its false, incomplete and incorrect reporting. The public relies on timely, honest, and full disclosure of the movement of campaign money through our elections process. Duke had multiple opportunities to correct the record *before* it was caught. It could have simply reported the truth about these donations to the State Board and the North Carolina public in its July 2019 report, but it chose not to. Months later, it has still not filed an accurate disclosure report with this agency.

Upon information and belief, this failure to provide timely and truthful disclosure "constitutes a willful attempt to conceal contributions or expenditures" under NCGS 163A-1451, and therefore the

State Board should assess a civil penalty against the Duke Energy PAC of at least \$124,800 (three times \$41,600) for deposit in the Civil Penalty and Forfeiture Fund to benefit public schools.

Your investigation may discover useful details about how Duke described these contributions to legislators, what directions Duke gave legislators for handling the funds, and whether the company or its agents made any promises to legislators about the contributions being “reissued” (the Duke spokesperson’s term) later in the year, which could raise additional legal issues. Perhaps a larger fine or another penalty is appropriate under NCGS 163A-1451.

Please let me know if I can be of assistance in your investigation and please notify me about actions the Board will be taking regarding this complaint.

Sincerely,

Bob Hall

\* The three reports from the Duke Energy Corporation PAC to the Federal Elections Commission are: For the refunds of “2020 primary” contributions to Speaker Moore and Sen. Berger, see its February 2019 disclosure report, page 21:

<https://docquery.fec.gov/pdf/068/201902139145509068/201902139145509068.pdf>

For refunds of “2020 primary” contributions to Rep. Bell, Sen. Blue, Rep. Lewis, Sen. Rabon and Rep. Saine, see its March 2019 disclosure report, pages 46-47:

<https://docquery.fec.gov/pdf/822/201903169145712822/201903169145712822.pdf>

For refunds of “2020 primary” contributions to Sen. Harry Brown, see its May 2019 report, page 137: <https://docquery.fec.gov/pdf/043/201905179149735043/201905179149735043.pdf>

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STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

The undersigned, being first duly sworn, hereby certifies that he is a registered voter in North Carolina and that the information in this letter is true and correct to the best of his knowledge and belief.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Sworn to (or affirmed) and subscribed before me, this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

(NOTARY STAMP OR SEAL)

My commission expires: \_\_\_\_\_