



**Issue Date: 12 October 2016**

**OALJ Case No.: 2016-ERA-00001**

In the Matter of:

**JESSICA DVERGSTEN,**  
*Complainant,*

v.

**DUKE ENERGY CAROLINAS, LLC,**  
*Respondent.*

**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT**

This matter arises under the “whistleblower” employee protection provisions of the Energy Reorganization Act of 1974 (“the Act”), 42 U.S.C. § 5851, and its implementing regulations found at 29 C.F.R. Part 24. Per 29 C.F.R. § 24.107(a), all proceedings must be held in a manner consistent with the procedural rules and evidentiary rules set forth in federal regulations at 29 C.F.R. Part 18.

By Order issued on June 16, 2016, the above-captioned case is scheduled for hearing on November 29, 2016, in or near Anderson/Greenville, South Carolina. On September 30, 2016, the parties filed with this Court a *Joint Motion for Approval of Settlement Agreement, Dismissal with Prejudice, and Confidential Treatment of Settlement Agreement*, and a *Memorandum of Points and Authorities in Support of Joint Motion for Approval of Settlement Agreement, Dismissal with Prejudice, and Confidential Treatment of Settlement Agreement* (hereinafter “Memorandum in Support of Joint Motion”), and the *Confidential Settlement Agreement and General Release* (hereinafter “Settlement Agreement”), signed by Complainant and Respondent. The parties state that:

As set forth in the Settlement Agreement (“Agreement”), [Complainant] agrees to the dismissal with prejudice of the Complaint and the underlying claims brought against [Respondent] in Case No. 2016-ERA-00001. Further, the Agreement before the Presiding ALJ constitutes the entire and only agreement between the Parties arising from the allegations that formed the basis for [Complainant’s] claim under Section 211 of the ERA.

Indeed, the Parties – both of which are represented by counsel – agree without reservation that the waiver of future employment set forth in the Agreement is, in this case, in the best interests of the Parties, and lawful in all respects and consistent with the guidance provided in the Assistant Secretary’s memorandum.

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The Parties agree that the Agreement contains confidential commercial or financial information exempt from public disclosure under FOIA Exemption Four, 5 U.S.C. § 552 (b)(4), the disclosure of which would be prejudicial to [Respondent’s] ability to negotiate in potential future litigation with other persons or entities. The Parties also agree that the Agreement contains personal information exempt from public disclosure under FOIA Exemption Six, 5 U.S.C. § 552 (b)(6), the public release of which would constitute an unwarranted release of personal information about [Complainant], thereby compromising her legitimate expectations of personal privacy.

For the foregoing reasons, the Parties request that [the undersigned] issue a Decision and Order approving the Agreement and dismissing [Complainant’s] complaint with prejudice. Additionally, the Parties request that the Decision and Order find that the terms of the Agreement constitute confidential commercial information of [Respondent] and personal information of [Complainant], the disclosure of which would cause harm to [Respondent] and would constitute an unwarranted invasion of [Complainant’s] privacy.

*Memorandum in Support of Joint Motion at 1-4.*

The Implementing Federal regulations at 29 C.F.R. § 24.111(d)(2) provide that “[a]t any time after the filing of objections to the Assistant Secretary’s findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the judge, or the ARB if the ARB has accepted the case for review. A copy of the settlement must be filed with the administrative law judge or the ARB, as the case may be.”

After a thorough review of the *Settlement Agreement* and the administrative record, I find that the *Settlement Agreement* complies with the standards required under the Act and is approved.

### **ORDER**

Accordingly, it is hereby **ORDERED** that:

1. The Settlement Agreement in Case No.: 2016-ERA-00001 is **APPROVED**;
2. The hearing scheduled for November 29, 2016 is **CANCELLED**;

3. The Complainants' complaints are **DISMISSED WITH PREJUDICE**.
4. The Settlement Agreement in Case No.: 2016-ERA-00001 is to be sealed from public access and handled in a manner consistent with 29 C.F.R. § 18.85 and the procedures for disclosure of records under the Freedom of Information Act at 29 C.F.R. Part 70, Subpart B.

LARRY S. MERCK  
Administrative Law Judge