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Clerk's Office
N.C. Utilities Commission

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. SP-100, SUB 31

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Petition by North Carolina Waste Awareness)
and Reduction Network for a Declaratory) NC WARN'S
Ruling Regarding Solar Facility Financing) NOTICE OF APPEAL
Arrangements and Status as a Public Utility) AND EXCEPTIONS

NOW COMES NC WARN, by and through undersigned counsel, pursuant to N.C. Gen. Stat. § 62-90 and Rule 18 of the North Carolina Rules of Appellate Procedure, and gives Notice of Appeal to the North Carolina Court of Appeals from the N.C. Utilities Commission's ("Commission") Order Issuing Declaratory Ruling ("Order") in the above-referenced docket, issued on April 15, 2016.

The Commission in its Order declares that NC WARN's solar facility financing arrangement with Faith Community Church, as described in NC WARN's Request for Declaratory Ruling, violates the prohibition on third-party sales of electricity to or for the public under N.C. Gen. Stat. § 62-3(23)(a)(1). For the reasons described below, the Commission's Order is unlawful, unjust, unreasonable and unwarranted, because the Commission's Order is in excess of statutory authority, affected by errors of law, unsupported by competent, material and substantial evidence, and is arbitrary and capricious.

EXCEPTION NO. 1:

The Commission erred in making its Conclusions of Law, pages 30-31 of the Order, and supporting findings of fact, pages 17-22, that NC WARN is

engaged in a "third-party sale" of electricity. Instead, the evidence in this docket shows that NC WARN is engaged in an arrangement to use charges for power to defray the cost of purchasing, installing and maintaining a solar photovoltaic system on a non-profit church's roof as a means of encouraging more widespread use of solar power in the State, not as a means of profit for NC WARN. The legal authorities on the "third-party sales" allow for a nuanced consideration of various factors that the Commission failed to properly examine. The record is devoid of evidence or legal authorities to support that NC WARN is engaged in a third-party sale of electricity and is therefore a public utility as defined under N.C. Gen. Stat. § 62-3(23). As to this error, the Commission's Order is in excess of statutory authority, affected by errors of law, unsupported by competent, materials and substantial evidence, and is arbitrary and capricious.

EXCEPTION NO. 2:

The Commission erred in making its Conclusions of Law, pages 30-31 of the Order, and supporting findings of fact, pages 17-22, that NC WARN is engaged in unregulated sales of electricity "to or for the public" in violation of N.C. Gen. Stat. § 62-3(23). Instead, the evidence in this docket shows that NC WARN has entered into a purchased power agreement to provide a financing service to a single, specific non-profit entity, Faith Community Church. The record is devoid of evidence to support that NC WARN is selling electricity "to or for the public," and the Commission wrongly concluded, without any evidence, that NC WARN holds itself out as intending to provide electricity to persons or

entities other than the Faith Community Church. Furthermore, all legal precedents relied upon by the Commission, including but not limited to *State ex re. Utils. Comm'n v. Simpson*, 295 N.C. 519, 246 S.E.2d 753 (1978) and Commission dockets in *National Spinning*, SP-100, Sub 7 (1996) and *Progress Solar*, SP-100, Sub 24 (2009), are either highly distinguishable from the present case or in fact support NC WARN's request for a Declaratory Ruling. As to this error, the Commission's Order is in excess of statutory authority, affected by errors of law, unsupported by competent, materials and substantial evidence, and is arbitrary and capricious.

EXCEPTION NO. 3:

The Commission erred in making its Conclusions of Law, page 31 of the Order, and supporting findings of fact, pages 17-29, that the Faith Community Church has legal ways to finance the installation of solar on its premises. Instead, all evidence in the docket shows that the largest obstacle to non-profits, such as the Faith Community Church, is the need to obtain financing for the large upfront investment in solar. Long-term financing is typically not an option for non-profits, and the most practical alternative is that proposed by NC WARN in its Request for Declaratory Ruling. As to this error, the Commission's Order is in excess of statutory authority, affected by errors of law, unsupported by competent, materials and substantial evidence, and is arbitrary and capricious.

EXCEPTION NO. 4:

The Commission erred in making its Conclusions of Law, page 31 of the Order, and supporting findings of fact, pages 27-28, that North Carolina is a

nationwide leader in adding renewable generation. Although North Carolina ranks high among other states for utility scale solar installations, the state lags behind in residential and business scale rooftop solar installations. All evidence and legal authority cited in this docket show that North Carolina is among the most restrictive states on policies that have proven to advance the proliferation of residential and business scale rooftop solar installations. As to this error, the Commission's Order is in excess of statutory authority, affected by errors of law, unsupported by competent, materials and substantial evidence, and is arbitrary and capricious.

EXCEPTION NO. 5:

The Commission erred in making its Conclusions of Law, page 31 of the Order, and supporting findings of fact, pages 28-29, that NC WARN's arrangement with Faith Community Church competes with Duke Energy in its exclusive franchise territory. The evidence in the docket shows that NC WARN is offering a service of solar system financing to the church that is not offered by Duke Energy, and therefore is not in direct competition with the company. Since Duke has failed to provide any similar offerings to its customers, the Commission's finding that such an arrangement executed by any other party is prohibited effectively denies Faith Community Church or any other customer access to such an avenue for financing a solar system. As to this error, the Commission's Order is in excess of statutory authority, affected by errors of law, unsupported by competent, materials and substantial evidence, and is arbitrary and capricious.

EXCEPTION NO. 6:

The Commission erred in making its Conclusions of Law, page 31 of the Order, and supporting findings of fact, pages 28-29, that NC WARN knowingly entered into a power purchase agreement to sell electricity to a third-party in violation of the General Statutes and is therefore subject to sanctions. Instead, the evidence in the docket shows, for the reasons described above and others, that NC WARN is not in violation of the ban on third-party sales. Further, the evidence in the docket shows that NC WARN brought this arrangement to the Commission as a "test case" in an effort to clarify the limitations against third party solar financing arrangements, and that NC WARN's arguments were well-supported in evidence and law, and that NC WARN committed no violation whatsoever, much less knowingly. NC WARN should not be subject to any sanctions and violated no rules or law. As to this error, the Commission's Order is in excess of statutory authority, affected by errors of law, unsupported by competent, materials and substantial evidence, and is arbitrary and capricious.

CONCLUSION

For the reasons set forth above, the Order is arbitrary and capricious; is affected by errors of law; is unsupported by competent, material, and substantial evidence in light of the entire record; and is beyond the Commission's statutory power and jurisdiction.

Respectfully submitted, this the 16 day of May, 2016.

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CERTIFICATE OF SERVICE

The undersigned certifies that on this day he served a copy of the foregoing NOTICE OF APPEAL AND EXCEPTIONS OF NC WARN upon each of the parties of record in this proceeding or their attorneys of record by electronic mail, or by hand delivery, or by depositing a copy of the same in the United States Mail, postage prepaid.

This the 16 day of May, 2016.

LAW OFFICES OF F. BRYAN BRICE, JR.

By: Matthew D. Quinn / ewk
Matthew D. Quinn