

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 1089

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Application of Duke Energy Progress, LLC for a)	MOTIONS TO COMPEL
Certificate of Public Convenience and Necessity)	BY NC WARN AND THE
to Construct a 752 Megawatt Natural Gas-Fueled)	CLIMATE TIMES
Electric Generation Facility in Buncombe County)	
Near the City of Asheville)	

NOW COMES NC WARN and The Climate Times, by and through the undersigned attorney, with motions to compel Duke Energy Progress (“DEP”) to respond to data requests and to disclose information now declared to be confidential in its application for the certificate of public convenience and necessity (the “certificate”) it is seeking in this docket for the Asheville project. Because the certificate process is expedited, the movants request these motions are resolved expeditiously, OR IN THE ALTERNATIVE, stop the review clock until the matters are resolved.

In support of the motions is the following:

1. Although procedurally the two motions are distinct, the end result – a transparent justification of the costs of the proposed project and its need – is the same. The motion to compel discovery is pursuant to G.S. 1A-1, Rule 37, and the Commission’s practices regarding data requests. The motion to make public various documents designated as confidential in the record are resolved through the G.S. Chapter 132, the Public Record Act. Without an opportunity for the

public to fully review the application, the process lacks transparency and too much can be hidden from the public by DEP.

2. On December 16, 2015, DEP filed notice of its intent to file the application for the certificate for a 752 MW natural gas-fueled generation facility near Asheville, consisting of two 280 MW combined cycle units and a 192 MW combustion turbine unit. At the same time, DEP would close its two existing coal plants. On January 15, 2016, DEP filed its application for the certificate. The application did not include a request for approval of a solar facility at the site, nor did it reference the fate of the diesel-fueled peaking units at the site. The DEP project would result in 1,116 MW of capacity at the Asheville site – six times the power generated there in 2014. On its face, this is far more than is required in Asheville.

3. On December 21, 2015, NC WARN and The Climate Times filed a motion to intervene (along with a motion for evidentiary hearing subsequently denied by the Commission). On December 21, 2015, NC WARN and The Climate Times submitted data requests to DEP on the costs of the project, its alternatives, and the advisability of relying on natural gas as a fuel. DEP's responses to date are attached to this document. ATTACHMENT.

4. When notified by DEP counsel some of the data requests would likely be confidential in nature, counsel for NC WARN and The Climate Times stated they would not sign the regular DEP confidentiality agreement, and requested as complete a response as DEP could make. As a matter of practice, NC WARN and The Climate Times do not sign confidentiality agreements as the purpose of

both of the organizations is to provide their members, and the public, with as much relevant information as possible. The organizations believe only well-informed ratepayers are able to review the merits of a billion dollar-plus project like this one. Knowing crucial information in-house, or only allowing to be shared with experts, defeats the very purpose of public education.

5. Based on what is available in the application and discovery replies from DEP, NC WARN and The Climate times are convinced the new plants are not needed, in large part due to a glut of regional generation available, readily available hydropower, and under-utilized renewable energy and energy efficiency. The application actually states the new plant would serve both Carolinas, not just the Asheville area. The proposed project is not about “replacing coal,” it is about the construction of new power plants.

6. Moreover, the reliance by DEP, and Duke Energy as a whole, on natural gas would speed global warming due to methane’s global warming potential (100 times that of CO2 over the next decade) from large methane leakage throughout the natural gas industry. The natural gas plants would cause rate spikes for all DEP customers due to the extreme price and supply volatility of natural gas.

Discussion of data requests.

7. The responses to NC WARN and The Climate Times data requests are attached. Specific data requests marked confidential:

a. DR 1-1 (Cost estimate of the proposed project broken out beyond the full \$1.1 billion figure). If approved, this would be a complicated, multi-pronged construction project built atop mountainous land that is now in large part a coal ash disposal site. The \$1.1 billion costs are for the entire project as presented and do not allow members of NC WARN and The Climate Times to debate whether a different project, such as just one combined cycle plant or elimination of the diesel generators or robust renewable energy and energy efficiency programs, can meet the area's needs at a reasonable cost. The request seeks to examine the various components of the proposed project, such as the cost of decommissioning the existing coal units, the cost of remediating the coal ash sites, or broadly the cost of each of the three units DEP has proposed to build. The data request is not seeking specific commercial data, such as the estimated cost of a Westinghouse turbine, but a breakdown of the various components of the project.

b. DR 1-5 (A list of all planned and unplanned outages at the existing Asheville coal units and their durations from 2000-2015). This data is historic in nature, and therefore it is difficult to see how disclosure of such information could have a negative impact on DEP. The data is relevant to analysis of whether power produced by the coal plants played a role in providing power for the area.

c. DR 1-8 (Projected prices of natural gas for the plant). The future price of natural gas appears to be extremely volatile and reliance on natural gas as a fuel is risky because of supply. The future cost of natural gas can easily outweigh the cost of the proposed units.

d. DR 1-10 (Estimated v actual costs of natural gas from 2007 – 2014).

These costs are historic in nature and are relevant to Duke Energy's accuracy in determining the cost of natural gas, which constitutes a significant part of the gas plant's total operating costs.

e. DR 1-11 (Estimated future total natural gas spending). Similar to DR 1-8, the spending on natural gas is relevant because of volatility and risk.

f. DR 1-13 (Infrastructure requirements to supply natural gas to the plant i.e., compressing stations, pipelines). Similar to DR 1-1, the costs of supplying natural gas to the proposed units should be broken out of the total, in order to show the total cost of a significant portion of the proposal.

g. DR 1-20 (Energy requirements of the natural gas pipeline). A follow up question to DR 1-13, the net energy use of providing natural gas to the proposed units is relevant.

h. DR 1-24 (Amount of natural gas supply for the plant that will be hedging). A follow up question to the costs of future fuels, the amount of the natural gas supply that is hedged is a relevant cost over the lifetime of the proposed units.

i. DR 1-25 (How far into the future DEP will be hedging gas for Asheville). A follow up question to the costs of future fuels, the length of time the natural gas supply is hedged is a relevant cost over the lifetime of the proposed units.

j. DR 1-30 (Map of transmission infrastructure). The existing and planned transmission infrastructure required in the area is relevant in looking at other possible providers of power, especially through Duke Energy Carolinas ("DEC")

territory or using DEC resources to provide power. It is further relevant to a determination of whether the power generated by the proposed units are being built to serve the Asheville area or will be used for other purposes on the DEP / DEC service areas, such as providing power to Upcountry South Carolina or Winston-Salem. NC WARN and The Climate Times understand that a detailed map of transmission infrastructure may be confidential as a result of FERC rules, and in that case would request DEP provide a list of existing and proposed transmission infrastructure that connects to Western region, including its general routes and capacities.

j. Several additional responses to data requests are designated as “in progress” and may need to be included in this list. Other responses may need follow up to clarify or refine what was originally requested.

Discussion of application.

8. Similar to the response to the data requests, the public version of the application has several significant portions redacted. The most significant information relevant to the issuance of a certificate is totally excluded, the system operations and planning needs for the Asheville units. Exhibit 1B, Attachment A. DEP simply does not provide support for its claims that the Asheville area will run out of power without the three new gas units for which it is seeking approval. There is no foreseeable reason that disclosing the need for this specific project within DEP’s system rises to the level of confidential information that could be damaging to the company’s financial interest if made public. Similar to the

responses to the data requests, DEP refuses to provide any study or analysis to substantiate its claim that regional winter peak will grow by 17% in the next decade. How can NC WARN and The Climate Times members, and members of the public, have any meaningful input into the process of deciding on one specific alternative without having the basic operations and needs assessment made public?

9. Other crucial data on costs and construction information for the units is held to be confidential. Exhibit 3, page 1 *et seq.*, Exhibit 4, pages 3 – 9. Specific deficiencies in the application standing in the face of open records are in Exhibit 1A, DEP's 2015 Integrated Resource Plan ("IRP"). Wholesale contracts are a reasonable alternative to new plant construction, and information regarding wholesale contracts are redacted. Exhibit 1A, IRP, pages 50 and 64. Similarly information on renewable resource procurement contracts with third parties is redacted. Exhibit 1A, IRP, page 88 *et seq.* The exhibit also redacts avoided cost rates, a major input into planning for renewable energy sources. Exhibit 1A, IRP, page 86.

10. The Public Records Act, G.S. Chapter 132, allows certain documents to be marked "confidential" when submitted by parties in Commission proceedings. G.S. 132-1.2 protects certain confidential information:

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

(1) Meets all of the following conditions:

a. Constitutes a "trade secret" as defined in G.S. 66-152(3).

b. Is the property of a private "person" as defined in G.S. 66-152(2).

c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in

connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State.

d. Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.

In the present matter, the only analysis is whether the information DEP redacted from its application constitutes a "trade secret" as defined in G.S. 66-152(3):

(3) "Trade secret" means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:

a. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and

b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

For none of the examples above is there any commercial value to DEP beyond hiding from its ratepayers the costs and risks of DEP's decisions in constructing unneeded and financially risky power plants. As a monopoly utility, DEP does not compete with "other persons who can obtain economic value" from the public disclosure of costs, risks, alternatives and need.

11. Although the confidential nature of filings is not often challenged, the review by the Commission is not new. In the Duke Energy and Progress Energy merger proceedings, Dockets E-7, Sub 986, and E-2, Sub 998, and the subsequent investigation, Docket E-7, Sub 1017, certain documents regarding agreements between the utilities and other parties had been deemed secret and confidential. Requests for these documents were made by various news outlets and NC WARN through public record requests. The Commission reviewed the documents in question and issued its Final Order on Public Records Act Request

in Dockets E-7, Sub 986 and E-2, Sub 998, on August 14, 2012. In that order, the Commission reasonably balanced the need for the public review of public records versus the need to protect trade secrets.

12. The expedited review of the certificate may not allow for a timely and expeditious resolution of the motions before the Commission. As noted in the earlier motion and reply regarding the need for an evidentiary hearing, the Commission has the ability to pause the 45-day review clock until all relevant data is available and the application is complete.

13. DEP is withholding from public view large quantities of information critical to the Commission's review of the certificate and as a result, the utility does not make its case that it must build large gas-fired power plants in Asheville.

Respectfully submitted, this the 25th day of January 2016.

/s/ John D. Runkle

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing MOTIONS TO COMPEL BY NC WARN AND THE CLIMATE TIMES (E-2, Sub 1089) upon each of the parties of record in this proceeding or their attorneys of record by deposit in the U.S. Mail, postage prepaid, or by email transmission.

This is the 25th day of January 2016.

/s/ John D. Runkle
