

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. M-100, SUB 145

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of )  
Rulemaking Proceeding to Consider ) REPLY COMMENTS  
Proposed Rule Establishing Procedures ) BY NC WARN  
For Settlements and Stipulated Agreements )

PURSUANT to the Order Requesting Comments Regarding Proposed Rule, August 1, 2016, now comes the NC Waste Awareness and Reduction Network, Inc. ("NC WARN"), by and through the undersigned attorney, with its reply to the Joint Comments of the utilities and those of the Public Staff, both filed in this docket on September 16, 2016.

1. The parties all agree the Commission has the authority to promulgate reasonable and necessary procedural rules in order to carry out its functions. G.S. 62-72 specifically authorizes the Commission to make rules of practice and procedures for its hearings. The question concerning the proposed rule is whether its provisions are reasonable and necessary.

2. As stated in its petition to establish the rules for settlements and stipulated agreements, NC WARN set forth its criticisms of the present practice by which the utilities and the Public Staff negotiate an agreement with little or no outside scrutiny. The petition unambiguously characterizes this process as unfair and nontransparent, especially when only a few parties are at the negotiating table. In NC WARN's experience in major electric cases, such as rate cases and

mergers, it and similar public advocacy groups have been shut out of these discussions. Without seats at the table, NC WARN and the others are then faced with the question of whether to uncritically accept a settlement or bear the expenses of a full evidentiary hearing.

3. At the same time, the Commission is presented with what is termed as a “settlement” or “stipulated agreement” but which is often only a partial settlement. The utilities believe the settlements reflecting the compromises made by some of the parties through negotiations should not be changed by the Commission, even after review of evidence. Joint Comments pp.13-14. As stated in its Petition, NC WARN believes too many of the settlements are presented to the Commission as “*fait accompli*” with “all or nothing” provisions demanding the Commission accept the settlement in its entirety or the parties who entered into it will no longer stand by it. The Commission should always make its own independent findings of fact and conclusions of law, rather than indiscriminately adopt a settlement agreement. NC WARN believes reliance on partial settlements in major cases limits the Commission’s informed decision-making.

4. In their Joint Comments, the utilities make an argument the proposed rule is unreasonable as it is contrary to the provisions of G.S. 62-69(a) authorizing the Commission to encourage the parties to enter into settlements.

Commission Rule R1-24(c) implements this statutory provision by stating:

Stipulations. — The parties to any proceeding or investigation before the Commission may, by stipulation in writing filed with the Commission or entered in the stenographic record at the time of the hearing, agree upon the facts or any portion thereof involved in the controversy, which stipulations shall be binding upon the parties thereto and may be regarded and used by

the Commission as evidence at the hearing. It is desirable that the facts be thus agreed upon whenever practical. The Commission may, however, require proof by evidence of the facts stipulated to, notwithstanding the stipulation of the parties.

The utilities believe this provides them the ability to settle with some of the other parties, rather than with all of the parties. In citing *State ex rel. Utilities Comm'n v. Carolina Util. Customers Ass'n*, 348 N.C. 452, 500 S.E.2d 693 (1998), the utilities again conflate the Court's recognition of the value of informal settlements and settlements with bilateral discussions when there are multiple parties with varied interests. The Court "encourages **all parties** to seek such resolution through open, honest and equitable negotiation." *Id.* 466 (emphasis added). While NC WARN believes the other parties are by and large honest in advocating their positions, the negotiations often are not open and equitable. NC WARN's proposed rule is not intended to eliminate or undermine the Commission's recognition of settlements; it is simply intended to improve the settlement process.

5. The utilities further attempt to impugn NC WARN's integrity by repeating isolated words from its press release announcing its Petition to establish the present rulemaking. Joint Comments, pp. 8-9. The purpose of a press release is to present to the public and the media, as simply and succinctly as possible, a description of the action and why it was undertaken. Attempting to conceal the real problems with the settlement practices by dismissing NC WARN's position as simply rhetoric is inexcusable. The purpose of the proposed rule is to clarify the settlement process to include all parties, and to encourage resolution through "open, honest and equitable negotiation."

6. Neither the Public Staff nor the utilities offer substantive arguments concerning the time constraints in the proposed rule, only that they are contrary to current practice. The goal of the proposed rule is both to encourage open and transparent negotiations, and to insure no parties are put in an unequitable position of having settlements and stipulated agreements filed before testimony is filed, or even worse, just a day or two before an evidentiary hearing. These goals reflect the Public Utility Act and case law encouraging settlement by all parties.

THEREFORE, NC WARN prays the Commission open a rulemaking and adopt its proposed rule for settlements and stipulated agreements.

Respectfully submitted, this the 14<sup>th</sup> day of October 2016.

*/s/ John D. Runkle*

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John D. Runkle  
Attorney at Law  
2121 Damascus Church Rd.  
Chapel Hill, N.C. 27516  
919-942-0600  
[jrunkle@pricecreek.com](mailto:jrunkle@pricecreek.com)

CERTIFICATE OF SERVICE

The undersigned certifies that on this day he served a copy of the foregoing REPLY COMMENTS BY 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 14th day of October 2016.

*/s/ John D. Runkle*

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Attorney at Law