

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. E-7, SUB 986  
DOCKET NO. E-2, SUB 998

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Application of Duke Energy Corporation and	)	
Progress Energy, Inc., to Engage in a	)	NC WARN'S MOTION
Business Combination Transaction and to	)	FOR RECONSIDERATION
Address Regulatory Conditions and Codes	)	
of Conduct	)	

PURSUANT TO G.S. 62-80, now comes the N.C. Waste Awareness and Reduction Network ("NC WARN"), through the undersigned attorney, with a motion for reconsideration of the Commission's Order Scheduling Hearing (the "Order") issued June 19, 2012, to expand the issues on which NC WARN is able to cross-examine witnesses at the hearing scheduled for June 25, 2012. This motion adopts by reference the Position of NC WARN (the "Position"), filed June 18, 2012.

In further support of the motion is the following:

I. The Position filed earlier this week was meant to show the Commission the issues and allegations that NC WARN intended to raise at the hearing through cross-examination and the introduction of exhibits rather than as the evidence itself. In its Order, the Commission refers to the Position of NC WARN as "unverified." If the lack of verification provided a rationale for limiting the areas on which NC WARN can cross-examine, NC WARN is rectifying that by attaching a verification for both the Position and the present motion.

2. As shown in the Position, the substance of the merger has changed significantly from the initial filing of the application on April 4, 2011. These changes are directly relevant to core findings and determinations the Commission is required to make in balancing the costs and benefits of the merger and whether it is in the public interest. In addition to the changed circumstances raised in the Position – the escalating repair costs at the Crystal River Plant, the imprudent purchase of the V.C. Summer Plant and the significant cost increases at the Levy County Plant – there have been at least seventeen settlement agreements. Only two of these settlements, the ones between the utilities and the Public Staff, have been openly filed in the record. NC WARN has reason to believe the settlement agreements have altered the costs and benefits of the merger, both prior to and subsequent to the September 2011 hearing.

3. In the second stipulation agreement, filed on May 8, 2012, and supported by the testimony of Mr. Weintraub by the utilities and the testimony of Mr. Hoard by the Public Staff on May 15, 2012, the utilities and the Public Staff recognized that changed circumstances required modifications to the initial stipulation agreement in at least two areas. The first involved the multiple FERC applications filed by the utilities and the expected conditions in the FERC Order, even though the FERC Order was not actually entered into until June 8, 2012. The parties to the stipulation agreement agreed that the changed circumstances arising from the FERC Order required a reassessment of the initial stipulation agreement and as a result, made changes to their agreement. NC WARN has reason to believe that a third stipulation agreement was being negotiated, again based on the changed circumstance from potential conditions on the merger in the FERC Order. At the same time, the stipulation retained provisions that would

terminate the entire agreement if FERC did something unexpected that directly impacted other jurisdictional considerations or those impacting costs and benefits.

4. A second changed circumstance causing a renegotiation of the stipulation agreement by the utilities and the Public Staff centered on new forecasts of fuel savings from the merger. The timeline for passing these savings to the various retail and wholesale customers was extended, partially because of the delays in the FERC Order, and partially from falling natural gas prices, rendering fuel savings from coal blending methods less consequential as less coal would be used as fuel.

5. Without getting into confidential matters, many of the settlement agreements with individual customers or groups of customers were apparently renegotiated to reflect the changed circumstances stemming from the FERC Order and forecasted changes in fuel savings.

6. In its Order, the Commission did not adequately address NC WARN's argument that changed circumstances, especially those occurring since the September 2011 hearings, should require the Commission to allow cross-examination and cross-examination exhibits. As an example, the Duke Energy testimony at the hearing regarding the insurance recovery for the mismanaged repairs at the Crystal River plant remains in the record even though it is no longer correct. This is a material and significant difference due to changing circumstances. Potential cross-examination exhibits, such as one that could prove the initial testimony was erroneous, have never needed to be disclosed prior to a Commission hearing.

7. It should be noted that the utilities' filing of June 19, 2012, did not deny any of the allegations raised in the Position or even question their relevance to the merger; the

utilities' argument was simply that NC WARN should not be allowed to raise the changed circumstances at any subsequent hearing on the merger.

8. In its Order, the Commission additionally accepted the argument by the utilities that NC WARN would have the ability to challenge any of the issues raised in the Position "to the extent these issues materialize in the future they will be addressed by the Commission in other dockets." This begs the question of whether these future actions are part of the merger negotiations or not. The "let's hear it later" position is specious in that the issues raised by NC WARN go to the fundamental nature of the merger, its costs and benefits to the public, and issues that are part of the merger should be heard in the merger docket, not in subsequent dockets. Furthermore, in the first of the merger settlement provisions that have come to light, Duke Energy's proposed Economic Recovery Rider in Docket E-7, Sub 1013, Duke Energy is vigorously opposing NC WARN's motion to intervene. If certain customers or class of customers are receiving a discounted rate as part of settling the merger docket, then that is part of the merger and should be investigated at a hearing on the merger.

9. If the Commission reconsiders its Order and allows NC WARN to cross-examine the Duke Energy and Public Staff witnesses on the broader issues proposed, NC WARN would request that the utilities make available someone in upper management that is privy to the settlement agreements, including the proposed purchase of shares of the V.C. Summer plant, and the increase costs at Crystal River and Levy County, and related matters. If the utilities would not voluntarily make someone available, NC WARN would request the Commission to issue a subpoena pursuant to G.S. 62-62 and Rule R1-24(h).

THEREFORE, in light of the above, NC WARN prays that the Commission reconsider its Order Scheduling Hearing and allow NC WARN to more broadly cross-examine witnesses on the issues described above.

Respectfully submitted, this the 21<sup>st</sup> day of June 2012.

\_\_\_\_\_/s/jdr\_\_\_\_\_  
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In the Matter of	)	
Application of Duke Energy Corporation and	)	
Progress Energy, Inc., to Engage in a	)	VERIFICATION
Business Combination Transaction and to	)	
Address Regulatory Conditions and Codes	)	
of Conduct	)	

I, James Warren, Executive Director of the N.C. Waste Awareness and Reduction Network, verify that the contents of POSITION OF NC WARN, filed June 18, 2012, and NC WARN'S MOTION FOR RECONSIDERATION, filed June 21, 2012, in this docket are true to the best of my knowledge, except as to those matters stated on information and belief, and as to those matters, I believe them to be true.

\_\_\_\_\_/original signed & notarized 6/21/12 / \_\_\_\_\_  
James Warren

date \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF ORANGE

Sworn to and subscribed before me,  
this is the \_\_\_\_\_ day of \_\_\_\_\_ 201 2.

\_\_\_\_\_  
Notary Public

my commission expires: July 22, 2012

### CERTIFICATE OF SERVICE

I do hereby certify that I have this day served a copy of the foregoing NC WARN'S MOTION FOR RECONSIDERATION, upon each of the parties of record in this proceeding or their attorneys of record by emailing them an electronic copy or by causing a paper copy of the same to be hand-delivered or deposited in the United States Mail, postage prepaid, properly addressed to each.

This is the 21<sup>th</sup> day of June 2012.

\_\_\_\_\_/s/jdr\_\_\_\_\_  
Attorney at Law