

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	)	NC WARN'S MOTION
Progress Energy, Inc., to Engage in a	)	TO COMPEL RESPONSE
Business Combination Transaction and to	)	TO DATA REQUESTS
Address Regulatory Conditions and Codes	)	
of Conduct	)	

NOW COMES the N.C. Waste Awareness and Reduction Network (“NC WARN”), by and through the undersigned counsel, with a motion to compel Duke Energy to respond to the attached data request. To the extent this motion requires NC WARN to request leave from the Commission to conduct limited discovery at this stage of the proceeding, NC WARN makes that request. In support is the following:

1. On June 29, 2012 The Commission issued its Order Approving Merger Subject to Regulatory Conditions and Code of Conduct in the above-captioned matter. On July 2, 2012, the two utilities finalized the merger and soon thereafter, the Commission was notified of the immediate ouster of Mr. Johnson as CEO of the combined utility by the Duke Energy board. The Commission initiated an investigation in Docket E-7, Sub 1017, on the approval and closing of the merger and called Mr. Rogers, continuing as CEO of Duke Energy, Mr. Johnson and several Duke Energy and legacy Progress Energy board members, on July 10, 19 and 20, 2012.

2. In his testimony, Mr. Rogers provided a series of factors on the Duke Energy's removal of Mr. Johnson, and these factors were further discussed in the testimony of Ms. Gray, lead director of the Duke Energy board. The two factors with the greatest financial impacts on the merger, and the North Carolina ratepayers, were Mr. Johnson's involvement in the Crystal River 3 mismanaged repairs (and alleged withholding information on the project from Duke Energy) and the need for investments in the legacy Progress Energy nuclear fleet.

3. Prior to the issuance of the order approving the merger, NC WARN requested additional hearings in the merger docket on Crystal River and related cost matters, and made an offer of proof of its relevance. Offer of Proof, June 27, 2012. Subsequent to Mr. Rogers revealing the need for substantial investments in the nuclear fleet, NC WARN submitted several sets of comments about both of those factors in the investigation docket. See Docket E-7, Sub 1017, NC WARN's Proposed Determination and Additional Comments, July 26, 2012; Additional Comments (Second Set), July 19, 2012; and Additional Comments, June 17, 2012. NC WARN believes that both of these -- costs at Crystal River and the nuclear fleet investments -- are material facts that should have been disclosed prior to the closure of the merger because the cost of these factors might eliminate any fuel cost savings promised the North Carolina ratepayers as part of the merger. Certainly they were both material enough for the Duke Energy to remove Mr. Johnson as CEO.

4. In an attempt to get the latest financial information on the costs of the repairs at Crystal River 3 and newly disclosed need for investments in the

nuclear fleet, NC WARN submitted data requests to Duke Energy.

ATTACHMENT A. As stated in the request, the information was essential in NC WARN's decision whether it should file a motion for reconsideration of the merger order based on the undisclosed material information. The information sought in the data requests would also assist the Commission in getting to some of the core financial issues in its investigation. By email on July 18, 2012, Duke Energy replied that it would not respond to the data request. ATTACHMENT B.

5. The information requested from Duke Energy is new information, not previously disclosed or readily available. In following up on Mr. Rogers's testimony, NC WARN became aware of the engineering study Duke Energy undertook on Crystal River revealing expected repair costs and cost of decommissioning the plant. It is also our understanding that the report will be made public as part of the hearings before the Florida Public Services Commission in mid-August. The preliminary estimate of the cost of the Crystal River repairs and purchase power is roughly estimated at \$3 billion and it is increasingly likely that NEIL, the Nuclear Energy Insurance Ltd., will not compensate Progress Energy for the loss. Even if the costs are "ring fenced" away from North Carolina ratepayers, this affects our state because of the additional costs of borrowing.<sup>1</sup>

6. The investments in the nuclear fleet also came to light subsequent to Mr. Rogers's testimony on July 10, 2012. On July 20, 2012, the Triangle

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<sup>1</sup> Standard & Poor's gave the mismanagement of Crystal River as a primary reason for its downgrading Duke Energy's credit rating; "Duke Energy Corp. Rating Lowered To 'BBB+' From 'A-'; Progress Energy Inc. 'BBB+'

Business Journal reported that Duke Energy has disclosed its plan for \$2.2 billion in capital projects over the next 30 months, most of which are in the Carolinas. See Docket E-7, Sub 1017, NC WARN's Proposed Determination and Additional Comments. In response to the reporting, Duke Energy has failed to publicly disclose how long it has known of the need for these projects, any objections Progress Energy had made on the need and costs of the projects and their rate impact on the North Carolina ratepayers. NC WARN believes these considerations are material to the merger and may require the Commission to reconsider the merger order *in toto*.

7. In its reply to the data request, Duke Energy stated that the time for discovery "has long since passed," citing the Commission's Orders of April 27, 2011 and May 15, 2012. To the extent that discovery at this point in the proceeding requires NC WARN to ask leave of the Commission, NC WARN does so. It believes that the data requests directly seek undisclosed and material matters that go directly to the public convenience and necessity requirement for approval of the merger. The reasons why this information was not requested previously is obvious; the specific report on Crystal River did not come to light until recently, and the information about the nuclear fleet investments was not even vaguely disclosed until the testimony of Mr. Rogers and the Duke Energy board members in the investigation docket.

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Rating Affirmed; Outlook Is Negative," July 25 2012.

THEREFORE, NC WARN respectfully requests an order compelling Duke Energy to respond to the date requests in a timely fashion.

Respectfully submitted, this the 31<sup>st</sup> day of July 2012.

*/s/ John D. Runkle*

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#### CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing NC WARN'S MOTION TO COMPEL RESPONSE TO DATA REQUESTS upon each of the parties of record in this proceeding 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 the 31<sup>st</sup> day of July 2012.

*/s/ John D. Runkle*

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Attorney at Law

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VIA MAIL & EMAIL

July 18, 2012

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Len C. Anthony  
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Progress Energy  
PEB17A4  
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Raleigh, NC 27602

Re: Docket Nos. E-7, Sub 986 and E-2, Sub 998

Gentlemen:

NC WARN is submitting the attached Data Requests to assist in our determination whether to request a reconsideration of the Commission's order in the merger docket. A prompt response would be of assistance.

Sincerely,

*/s/ John D. Runkle*

John D. Runkle  
for NC WARN

cc. Robert Kaylor

DATA REQUEST by NC WARN -- July 18, 2012

To: Duke Energy Carolinas LLC

Re: Docket Nos. E-7, Sub 986 and E-2, Sub 998

Please send the responses to the following data request to:

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

## DATA REQUESTS

1-1. Please provide:

- a. Copies of all studies conducted by Zapata Engineering on behalf of Duke Energy on the uprates and repairs at the Crystal River Nuclear Power Plant, including but not limited, the contract between Zapata and Duke Energy, the scope of work, preliminary reports, final report, correspondence, memorandum, emails, cover letters and presentation materials.
- b. Copies of all studies conducted by any engineering or consulting firm (other than Zapata Engineering) on behalf of Duke Energy on the uprates and repairs at the Crystal River Nuclear Power Plant including but not limited, the contract between the firm and Duke Energy, the scope of work, preliminary reports, final report, correspondence, memorandum, emails, cover letters and presentation materials.

## NC WARN DATA REQUEST

1-2. Please provide:

- a. Copies of all studies conducted by any engineering or consulting firm on behalf of Duke Energy on the need for investments in the nuclear fleet previously owned by Progress Energy, including but not limited, the contract between the firm and Duke Energy, the scope of work, preliminary reports, final report, correspondence, memorandum, emails, cover letters and presentation materials.
- b. Copies of all studies conducted by employees of Duke Energy on the need for investments in the nuclear fleet previously owned by Progress Energy, including but not limited, the contract between the firm and Duke Energy, the scope of work, preliminary reports, final report, correspondence, memorandum, emails, cover letters and presentation materials.
- c. Copies of all studies conducted by employees of Progress Energy on the need for investments in the nuclear fleet previously owned by Progress Energy, including but not limited, the contract between the firm and Duke Energy, the scope of work, preliminary reports, final report, correspondence, memorandum, emails, cover letters and presentation materials.

1-3. Please provide

- a. Copies of all documents provided to the NC Utilities Commission in response to its requests in NCUC Docket E-7, Sub 1017.



**John Runkle**

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**From:** "Anthony, Len" <Len.S.Anthony@pgnmail.com>  
**To:** "John Runkle" <jrunkle@pricecreek.com>; "Ghartey-Tagoe, Kodwo" <Kodwo.Ghartey-Tagoe@duke-energy.com>; "Robert W Kaylor" <bkaylor@rwkaylorlaw.com>  
**Cc:** "sam watson" <swatson@ncuc.net>; "jim warren" <jim@ncwarn.org>  
**Sent:** Wednesday, July 18, 2012 1:48 PM  
**Subject:** RE: NCUC Docket Nos. E-7 Sub 986 and E-2 Sub 998  
Progress Energy, Duke Energy, Progress Energy Carolinas, and Duke Energy Carolinas will not respond to this data request. The time for discovery in this docket has long since passed. The Commission's orders of April 27, 2011 and May 15, 2012 established the process for discovery. No Commission rules or orders provide for discovery following the completion of the hearings and the issuance of the Commission's final order. Len

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**From:** John Runkle [jrunkle@pricecreek.com]  
**Sent:** Wednesday, July 18, 2012 12:43 PM  
**To:** Ghartey-Tagoe, Kodwo; Anthony, Len; Robert W Kaylor  
**Cc:** sam watson; jim warren  
**Subject:** NCUC Docket Nos. E-7 Sub 986 and E-2 Sub 998

Gentlemen: please find attached NC WARN's Data Request in these dockets.

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7/31/2012