

151 FERC ¶ 61,079
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

North Carolina Waste Awareness
and Reduction Network, Inc.

v.

Docket No. EL15-32-000

Duke Energy Carolinas, LLC
Duke Energy Progress, Inc.

ORDER ON COMPLAINT

(Issued April 30, 2015)

1. On December 16, 2014, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure,¹ the North Carolina Waste Awareness and Reduction Network, Inc. (NC WARN) filed a complaint and petition for investigation of the practices of Duke Energy Carolinas, LLC (Duke Energy Carolinas) and Duke Energy Progress, Inc. (Duke Energy Progress) (together, Duke Energy) that NC WARN alleges lead to "excess capacity and waste."² Specifically, NC WARN asks the Commission to hold an investigative hearing in Raleigh, North Carolina concerning the issues raised in the complaint, fund an independent study to evaluate the potential benefits of Duke Energy entering into a regional transmission organization (RTO), and require Duke Energy to purchase power from other utilities in lieu of constructing its own power plants. The Commission denies the complaint, as explained below.

¹ 18 C.F.R. § 385.206 (2014).

² Complaint at 1.

I. Background

A. The Parties

2. NC WARN states that it is a not-for-profit corporation under North Carolina law. According to NC WARN, it is comprised of approximately 1,000 individual members and families across North Carolina, most of which are Duke Energy customers in North Carolina.³ NC WARN states that its purpose is to “confront the accelerating crisis posed by climate change by challenging Duke Energy practices” and work for a swift transition to energy efficiency and clean power generation in North Carolina.⁴ NC WARN adds that it partners with other citizen groups and uses scientific research to inform the public about important energy matters.⁵

3. Duke Energy Carolinas and Duke Energy Progress are affiliated, vertically-integrated electric utilities operating generation, transmission, and distribution facilities in North Carolina and South Carolina service territories. They serve both retail and wholesale requirements customers in North Carolina and South Carolina.

B. Summary of Complaint and Response

4. NC WARN raises essentially three issues in its complaint. First, the core of NC WARN’s complaint is its allegation that there is excess generating capacity in the Southeast generally and that Duke Energy in particular has built and continues to seek authority to build “unnecessary” and “expensive” generation resources.⁶ NC WARN explains that Duke Energy Carolinas and Duke Energy Progress merged in 2012 and their holding company also has service territories in Florida, Ohio, Indiana, and Kentucky.⁷ NC WARN states that after the merger of Duke Energy and Progress Energy in 2012, the combined Duke Energy provides more than 95 percent of the electricity in North Carolina, either directly or through municipalities and electric cooperatives.⁸ NC WARN alleges that Duke Energy’s

³ *Id.* at 2-3.

⁴ *Id.* at 3.

⁵ *Id.*

⁶ *Id.* at 1-2.

⁷ *Id.* at 3.

⁸ *Id.* at 1.

failure to purchase power from neighboring utilities leads to unjust and unreasonable rates.⁹ Second, NC WARN alleges that Duke Energy manipulates the electricity market by constructing “costly and unneeded generation facilities above what is reasonable or necessary to meet demand,”¹⁰ resulting in unjust and unreasonable rates.¹¹ Third, NC WARN alleges that Duke Energy has failed to comply adequately with Order No. 1000¹² and related orders and policies by not effectively connecting its transmission system with neighboring utilities, such as Dominion Power, the Southern Company (Southern),¹³ and the Tennessee Valley Authority (TVA). These neighboring utilities, NC WARN alleges, also have capacity in excess of planned reserve margins.¹⁴

5. In response, Duke Energy contends that the complaint fails on procedural grounds and lacks substantive merit. Duke Energy states that NC WARN routinely intervenes and participates in retail rate cases in North Carolina, mainly to oppose Duke Energy’s use of nuclear power, natural gas, and coal to generate electricity.¹⁵ Duke Energy argues that the complaint raises issues that are not subject to the Commission’s jurisdiction. Duke Energy asserts that virtually all of the allegedly improper actions pertain to Duke Energy’s capacity procurement policies, retail load forecasting, and reserve margins. These matters, Duke Energy emphasizes, are directly regulated by the North Carolina Utilities Commission (North Carolina Commission) and the South Carolina Public Service Commission (South Carolina Commission). While Duke Energy acknowledges that the Commission may

⁹ *Id.* at 2, 4-5.

¹⁰ *Id.* at 1-2.

¹¹ *Id.* at 2.

¹² *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

¹³ While NC WARN refers to “Southern Company,” we note that Southern Company Services, Inc. intervened in this proceeding as agent on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Company Services, Inc., which are collectively generally referred to as “Southern Companies.”

¹⁴ Complaint at 2.

¹⁵ Answer at 1, 7 & n.11.

address matters involving resource adequacy and reserve margins when they directly affect wholesale rates,¹⁶ Duke Energy states that NC WARN does not identify any of Duke Energy's wholesale rates or rate schedules that have been rendered unjust and unreasonable by the alleged conduct.¹⁷

6. Next, Duke Energy asserts that NC WARN lacks standing to bring claims against Duke Energy's wholesale rates. Duke Energy states that NC WARN is not a wholesale requirements customer and, even if its members are retail customers, NC WARN has not alleged that there is a direct pass-through of wholesale rates approved by the Commission to retail rates.¹⁸ Additionally, Duke Energy argues that the complaint is deficient on its face because it does not meet the requirements of Rule 203 (Contents of pleadings and tariff and rate filings) and Rule 206 (Complaints) of the Commission's Rules of Practice and Procedure.¹⁹ Specifically, Duke Energy argues that NC WARN fails to: identify sufficiently how Duke Energy's alleged actions or inactions violate any applicable statute or regulation; make a good faith effort to quantify the financial impact of the alleged actions or inactions on NC WARN or its members; and discuss practical, operational, or any other non-financial impacts that would result from ruling in NC WARN's favor.²⁰

7. Duke Energy states that NC WARN requests what will be a "lengthy and costly" investigatory hearing into Duke Energy's procurement practices to determine if RTO membership would be beneficial and whether Duke Energy should be forced "to purchase power from other utilities rather than construct wasteful and redundant power plants."²¹ Duke Energy asserts that this relief is inappropriate or outside the Commission's jurisdiction. Duke Energy adds that NC WARN cites no case law demonstrating that the Commission has

¹⁶ *Id.* at 5-6 & nn.6-8 (citing *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,318, at P 40 (2007); *Conn. Dep't. of Pub. Util. Control v. FERC*, 569 F.3d 477 (D.C. Cir. 2009)).

¹⁷ *Id.* at 6.

¹⁸ Answer at 9-10 & nn.15-16 (citing *Potomac-Appalachian Transmission Highline, LLC*, 140 FERC ¶ 61,229, at P 106 (2012) (noting that the complainants were challenging a transmission rate that flowed directly to their retail bill) (*PATH*); *North Star Steel Co., LLC v. Arizona Public Serv. Co.*, 116 FERC ¶ 61,022 (2006) (dismissing complaint filed by retail customer of Arizona Electric Power Company that had purchased power from various entities named as respondent)).

¹⁹ *Id.* at 19 (citing 18 C.F.R. §§ 385.203 and 385.206 (2014)).

²⁰ *Id.* at 11-21.

²¹ *Id.* at 39 & n.79 (quoting Complaint at 2).

the power to force Duke Energy to purchase power from other utilities.²² Duke Energy asks the Commission to dismiss the complaint.

II. Notice of Filing and Responsive Pleadings

8. Notice of the complaint was published in the *Federal Register*, 79 Fed. Reg. 76,996 (2014), with interventions and protests due on or before January 5, 2015.

9. On December 18, 2014, Duke Energy filed a motion for extension of time and waiver of period for responses. The same day, NC WARN filed a response to the motion, stating that it did not object to the extension of time. On December 19, 2014, a notice issued granting Duke Energy an extension of time until January 26, 2015 to file an answer to the complaint. On January 26, 2015, Duke Energy timely filed its answer.

10. A timely notice of intervention was filed by the North Carolina Commission. Timely motions to intervene were filed by the American Public Power Association; Blue Ridge Electric Membership Corporation, Haywood Electric Membership Corporation, Piedmont Electric Membership Corporation, and Rutherford Electric Membership Corporation; Brookfield Energy Marketing LP; Energy United Electric Membership Corporation; Fayetteville Public Works Commission; Louisville Gas and Electric Co./Kentucky Utilities Co.; North Carolina Eastern Municipal Power Agency; North Carolina Electric Membership Corporation; North Carolina Municipal Power Agency Number 1; Southern Company Services, Inc.; and TVA.

11. Motions to intervene-out-of time were filed by the Alabama Municipal Electric Authority; Central Electric Power Cooperative, Inc.; South Carolina Electric & Gas Company; and the South Carolina Office of Regulatory Staff.

12. On February 9, 2015, NC WARN filed a motion for leave to reply to Duke Energy and reply. On February 19, 2015, North Carolina Eastern Municipal Power Agency and North Carolina Municipal Power Agency Number 1 (North Carolina Eastern Municipal Power Agency/North Carolina Municipal Power Agency Number 1) filed a motion to respond and limited response to NC WARN's reply.

²² *Id.* at 40.

III. Discussion

A. Procedural Matters

1. General

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), we will grant the late-filed motions to intervene of Alabama Municipal Electric Authority, Central Electric Power Cooperative, Inc., South Carolina Electric & Gas Company, and the South Carolina Office of Regulatory Staff, given their interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers filed by NC WARN and North Carolina Eastern Municipal Power Agency/North Carolina Municipal Power Agency Number 1 and will, therefore, reject them.

2. Other Matters

15. We first address Duke Energy's contention that the complaint raises issues that are not within the Commission's jurisdiction and that NC WARN lacks standing to bring the complaint because it does not mention wholesale rates and it has not adequately shown how NC WARN or its members will be adversely affected by the actions underlying the complaint. We disagree. Contrary to Duke Energy's interpretation of our precedent, the Commission does not require a complainant to allege a direct pass-through of wholesale rates to retail rates as a prerequisite for standing. A complaint "can be filed by any person, including an end-use customer that will pay . . . some portion of that rate when flowed through its retail bill."²³ NC WARN states that most of its members and families are customers of Duke Energy in North Carolina.²⁴ Duke Energy does not dispute that some portion of Duke Energy's

²³ *PATH*, 140 FERC ¶ 61,229 at P 106.

²⁴ Complaint at 2-3.

wholesale rates are flowed back into NC WARN members' rates.²⁵ Thus, NC WARN has standing sufficient to comply with Rule 206.²⁶

16. We also find, contrary to Duke Energy's assertions, that NC WARN's complaint meets the threshold filing requirements of the Commission's Rules of Practice and Procedure for complaints.²⁷ NC WARN has met the threshold requirements of Rules 203 and 206 by: (1) arguing that Duke Energy has "failed to adequately comply with the Commission's Order No. 1000 and related Commission orders and policies by not effectively connecting its transmission system with neighboring utilities[;]"²⁸ (2) asserting that the "ongoing failure to reduce excess capacity through transmission and generation planning and cost allocations leads to waste and unreasonable and unjust rates[;]"²⁹ and (3) making "a good faith effort to quantify the financial impact or burden (if any) created for the complainant as a result of the action or inaction."³⁰

²⁵ Answer at 10 (arguing that *NC WARN has not alleged* that there is a direct pass-through of wholesale rates approved by the Commission to retail rates) (emphasis added).

²⁶ Rule 206(a) provides that "*any person* may file a complaint seeking Commission action against any other person alleged to be in contravention or violation of any statute, rule, order, or other law administered by the Commission or for any other alleged wrong over which the Commission may have jurisdiction." 18 C.F.R. § 385.206(a) (2014) (emphasis added).

²⁷ Rule 203 requires a complaint to contain "the relevant facts" and "the position taken by the participant . . . and the basis in fact and law for such position." 18 C.F.R. § 385.203(b)(6), (7) (2014); Rule 206 requires the complaint to, among other things, "[c]learly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements." 18 C.F.R. § 385.206(b)(1) (2014).

²⁸ Complaint at 2.

²⁹ *Id.* at 4.

³⁰ 18 C.F.R. § 385.206(b)(4) (2014). *See* Complaint at 15 & n.4 (alleging that Duke Energy's failure to join an RTO or make other annual purchase arrangements results in excess capacity that could save Duke Energy customers \$2-5 billion, or more). NC WARN's explanation of how customers could benefit from Duke Energy joining an RTO, *see* Complaint at 10, also complies with Rule 206(b)(3), 18 C.F.R. § 385.206(b)(3) (2014), by discussing the practical and operational benefits that would flow from ruling in NC WARN's favor.

B. Substantive Matters

17. While the Commission has jurisdiction to consider the issues raised in the complaint and the complaint meets the threshold requirements of the Commission's Rules of Practice and Procedure, we find that NC WARN has not shown that Duke Energy's generation construction or other practices have led to unjust and unreasonable wholesale energy or transmission rates. We also find that NC WARN has not made a viable claim of manipulation, nor has NC WARN shown that Duke Energy has failed to comply with Order No. 1000 and related orders and policies. Accordingly, we are not persuaded to grant the relief that NC WARN seeks, and the complaint is denied, as discussed below.

1. Capacity Construction and Resource Procurement

a. Complaint

18. NC WARN asserts that there is excess capacity in the Southeast and utilities can and should use this alleged excess capacity to supplement each other's generation requirements, rather than construct "unneeded or underutilized generation."³¹ Contending that Duke Energy's plan for "unrealistic future growth" leads to unnecessary, expensive generating plants, and even more excess capacity,³² NC WARN asks the Commission "to force Duke Energy to purchase power from other utilities rather than construct wasteful and redundant power plants."³³

19. Citing the *North American Electric Reliability Corporation's (NERC) 2014 Summer Reliability Assessment*, NC WARN states that this assessment shows excess capacity throughout the SERC Reliability Corporation region.³⁴ In particular, NC WARN states that the study shows that during peak periods SERC-East (the Carolinas) had reserve capacity of 24 percent; SERC-North (primarily TVA), 26 percent; SERC-Southeast (primarily Georgia

³¹ Complaint at 2. NC WARN also states that Duke Energy's excess capacity in the Carolinas is not an anomaly, but is apparent in Duke Energy's other state jurisdictions, particularly Florida. *Id.*

³² *Id.*

³³ *Id.*

³⁴ The SERC Reliability Corporation is a non-profit corporation that serves as a regional entity with delegated authority from NERC to propose and enforce reliability standards within the SERC region, which is basically the Southeast, excluding the Florida peninsula. *See generally* <http://www.serc1.org/Application/HomePageView.aspx>.

and Alabama), 37 percent; and the Florida Reliability Coordinating Council, 29 percent.³⁵ Thus, according to NC WARN, the resulting total reserve capacity for the Southeast is “much greater” than the NERC reference margin of 14.8 percent.³⁶

20. NC WARN states that the ongoing failure to reduce excess capacity through transmission and generation planning and cost allocation leads to waste and unreasonable and unjust rates, “most of which is caused directly by new plant construction.”³⁷ NC WARN highlights the following: the South Carolina Commission has authorized Duke Energy to construct a 750 MW combined cycle generating plant; Duke Energy intends to construct 2,234 MW of new nuclear units in 2024 and 2028, and begin constructing an additional 5,048 MW of natural gas plants in 2020; plus, a 475 MW merchant natural gas plant was recently granted a certificate of public convenience and necessity in Duke Energy’s North Carolina jurisdiction.³⁸ NC WARN adds that surrounding utilities also have new units planned or currently under construction, including Southern’s Plant Vogtle in Georgia and South Carolina Electric & Gas Company’s Sumner Nuclear Generating Station.

21. NC WARN argues that there is “no compelling reason why each utility should continue to construct new generation without looking at mutual purchasing agreements.”³⁹ NC WARN asserts that Duke Energy is only able to implement such wasteful practices in North Carolina because it has a monopoly service area covering almost all of the state.

22. NC WARN contends that Duke Energy’s reserve margins are far in excess of what is required, given the utility’s present construction plans.⁴⁰ Noting that Duke Energy and other Southeast utilities are traditionally summer peaking utilities and most of their planning is for generating capacity to meet summer peak, NC WARN asserts that review of Duke Energy’s projected reserve margins shows excess reserve capacity for both Duke Energy Carolinas and Duke Energy Progress. NC WARN states that Duke Energy forecasts 1.5 percent annual growth for both utilities and, given the additional planned generating facilities planned, reserve margins for Duke Energy Carolinas range from 15 percent to 22.7 percent for summer peak (and 19.4 to 25.7 percent for winter peak), with margins for Duke Energy Progress ranging

³⁵ Complaint at 4.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 4-5.

³⁹ *Id.* at 5.

⁴⁰ *Id.* at 5-6 & n.3.

from 15.2 percent to 21.1 percent for summer peak (and 22.1 to 31.7 percent for winter peak).⁴¹ NC WARN asserts that for shoulder months (April, May, October and November), average reserve capacity during peak is 40.6 percent for Duke Energy Carolinas and 36 percent for Duke Energy Progress, adding that more than 50 percent of capacity is not needed for several of these shoulder months. Citing recent growth projections by the United States Energy Information Administration and the American Council for an Energy-Efficient Economy, NC WARN argues that Duke Energy's use of a 1.5 percent annual growth rate is excessive.⁴²

23. NC WARN adds that Duke Energy's use in recent rate cases of its summer peak load to allocate costs further compounds the problem of unreasonable rates in North Carolina.⁴³ According to NC WARN, the method results in the costs of peaking plants being shouldered by residential and small business customers who have high peak demand but do not need the high load during the year. Finally, NC WARN notes that solar energy is another viable and cost effective alternative to building new generating plants.⁴⁴

b. Answer

24. Duke Energy states that NC WARN's core contention is that Duke Energy has built and continues to build generating facilities that NC WARN believes are unnecessary, despite the fact that the North Carolina and South Carolina Commissions have approved these resource additions as "cost-effective and reliable generation resources that are needed to serve [Duke Energy's] retail customers."⁴⁵ Duke Energy argues that NC WARN's complaint here, like similar challenges before the state commissions, is "utterly devoid of any analysis or consideration of real-world facts, and instead relies upon snippets of information that either are irrelevant or taken out of context."⁴⁶ Duke Energy states that when cold temperatures pushed utility systems to their limits during the past two winters, Duke Energy was able to serve its retail customers, including NC WARN's members, because Duke Energy's generators were built to meet the peak demand of its system. Duke Energy contends that if it had not been able

⁴¹ *Id.* at 6 (citing *id.*, Attachment C).

⁴² *Id.* at 6-7 & nn.5-6.

⁴³ *Id.* at 7-8 (citing North Carolina Commission Docket Nos. E-7, Sub 1026 (Duke Energy Carolinas) and E-2, Sub 1023 (Duke Energy Progress)).

⁴⁴ *Id.* at 7.

⁴⁵ Answer at 2.

⁴⁶ *Id.*

to access its full portfolio of resources at the current planning reserve margin on January 8, 2015, for example, there could have been rolling blackouts or much higher electricity prices. Duke Energy adds that other neighboring utilities experienced the same frigid temperature and peak conditions that day, disproving NC WARN's assertion that Duke Energy could simply rely on excess capacity in the Southeast region.⁴⁷

25. Duke Energy also argues that NC WARN has not shown that Duke Energy has inappropriately procured generating capacity and that such capacity has resulted in unjust and unreasonable rates.⁴⁸ Duke Energy states that NC WARN has not identified a single power plant, nor a single cost, that has been imprudently included in the wholesale rate or provided any analysis of potential capacity sales that Duke Energy imprudently passed up in order to build its own plants.

26. According to Duke Energy, NC WARN's allegations focus on a series of actions or inactions that it claims have adversely affected retail ratepayers, and even if the alleged facts were true, NC WARN fails to show any connection between the facts alleged and a statutory or regulatory violation over which the Commission has jurisdiction. Duke Energy adds that NC WARN neglects to mention that Duke Energy goes through a rigorous request-for-proposal process before any new resource is purchased or constructed.

27. Duke Energy asserts that, even if the complaint could be considered a challenge to Duke Energy's wholesale rates based on prudence allegations, NC WARN has failed to present the facts necessary to support even a *prima facie* showing of imprudence. Duke Energy states that, under its longstanding prudence precedent, the Commission considers whether a disputed cost is one that "a reasonable utility management (or that of another jurisdictional entity) would have made, in good faith, under the same circumstances, and at the relevant point in time."⁴⁹ Duke Energy argues that merely claiming that a particular cost is imprudent is not sufficient; the complaint must present specific evidence. Duke Energy argues that NC WARN has not provided any evidence that would raise any doubts as to whether a reasonable manager would have built or acquired the same type and amount of capacity within Duke Energy's current generation resource portfolios. Duke Energy adds that NC WARN does not acknowledge that Duke Energy's Integrated Resource Plans and applications to construct additional generation have been thoroughly reviewed and ultimately approved by the

⁴⁷ *Id.* at 3.

⁴⁸ *Id.* at 24.

⁴⁹ *Id.* at 25 & n.46 (quoting *San Diego Gas & Elec. Co.*, 146 FERC ¶ 63,017, at P 56 (2014) (quoting *New England Power Co.*, 31 FERC ¶ 61,047, at 61,084 (1985))).

relevant state commissions,⁵⁰ or that issues raised by NC WARN in this proceeding previously were considered and rejected in the state proceeding.⁵¹

28. Duke Energy states that to support the claim that Duke Energy maintains excess capacity, NC WARN points to Duke Energy's reserve margins, which NC WARN contends are too high.⁵² Duke Energy argues that the *NERC 2014 Summer Reliability Assessment*, which NC WARN relies on, shows that summer capacity margins in the region served by Duke Energy are below all but three of the thirteen regions assessed nationally and thus fall well below the national average.⁵³ Duke Energy states that the assessment does not indicate that Duke Energy's margins are excessive or outside of normal parameters, nor does it support a claim of imprudence. Duke Energy adds that, as to other utilities in the Southeast, Duke Energy has no authority over how much or how little generation capacity its neighboring utilities carry or the resource procurement decisions they make. Duke Energy states that those matters are left in the hands of state regulators, just as the North Carolina and the South Carolina Commissions oversee Duke Energy's resource planning activities. Duke Energy states that NC WARN does not acknowledge that the North Carolina Commission reviews Duke Energy's target reserve margins every year and consistently approves them.

29. As to NC WARN's argument that reserve margins are higher in winter and highest in the shoulder seasons, Duke Energy contends that NC WARN ignores the fact that a utility system that historically experiences its highest demands in the summer typically will have higher reserve margins in the other seasons. Duke Energy states that NC WARN fails to take into account the fact that routine maintenance typically is performed during shoulder seasons, and, during those periods, some of the capacity included in the reserve margin calculation will not be available to generate power. Duke Energy states that these facts are not unique to Duke Energy, but rather reflect how prudent utilities plan and operate their systems. Duke Energy further asserts that the reserve margin data NC WARN relies on does not show that Duke Energy is operating with too much capacity; rather, the information reflects the fact that utilities maintain generation resources in order to meet their highest projected peak demand, knowing that loads will be well below that level during other times of the year.

⁵⁰ *Id.* at 27 & n.50 (citing Brattle Group, *Resource Adequacy Requirements: Reliability and Economic Implications*, Appendix A-1 (Sept. 2013) (indicating that resource adequacy targets in SERC are "set by individual load serving members subject to regulatory review.")).

⁵¹ *Id.* at 25-26.

⁵² *Id.* at 26 & n.49 (citing Complaint at 4).

⁵³ *Id.* at 26.

Duke Energy adds that, even with higher winter reserve margins, unusual weather conditions can still put severe strain on summer-peaking systems, as shown by recent events in January 2014 and January 2015.⁵⁴

30. As to NC WARN's allegations that Duke Energy's projected 1.5 percent retail load growth is excessive, Duke Energy contends that NC WARN improperly substitutes aggregated nationwide data for the type of company-specific analysis needed to support its allegations.⁵⁵

31. Duke Energy also disputes the examples of new plant construction that NC WARN alleges support its arguments. First, regarding the South Carolina Commission's issuance of a certificate of public convenience and necessity for a new power plant, Duke Energy argues that a certificate of convenience and necessity "hardly proves that there was no need for the plant."⁵⁶ Next, concerning its plans for potentially adding new plants in the future, Duke Energy states that those plants are identified in the planning process at the time the Integrated Resource Plan is prepared, but their costs are not currently reflected in retail or wholesale rates, so they cannot form the basis of a claim that Duke Energy's rates are unjust and unreasonable. In addition, Duke Energy argues that NC WARN's assertions about a third-party merchant plant and neighboring utilities' nuclear plant development are irrelevant because NC WARN does not allege that Duke Energy intends to include the costs or purchases from those plants in its wholesale rates.⁵⁷ Duke Energy states that NC WARN does not consider retirements that occurred during the same time period or compare the level of retirements with new generation planned during the same period.

32. Concerning NC WARN's claim that purchasing or sharing capacity would lower costs, Duke Energy states that NC WARN provides no evidence that Duke Energy does not evaluate power purchase options as part of its decision whether to construct new generation. Disputing NC WARN's allegation that Duke Energy's monopoly service areas enable it to avoid examining purchase options, Duke Energy states that there is no relation between the nature of competition in the utility service area and the degree to which a utility relies on purchased versus owner resources.⁵⁸ Duke Energy states that state commissions consider whether reasonably-priced and otherwise viable purchased power options are available when reviewing applications to construct new generation.

⁵⁴ *Id.* at 29-30.

⁵⁵ *Id.* at 30-31.

⁵⁶ *Id.* at 32 & n.59 (citing Complaint at 4-5).

⁵⁷ *Id.* at 32-33.

⁵⁸ *Id.* at 34.

33. Duke Energy also argues that NC WARN's claim that Duke Energy is planning to purchase only 0.2 percent of its capacity needs in 2029 is misleading.⁵⁹ Duke Energy explains that its Integrated Resource Plans include as capacity resources only those contracts that are in effect or that have been executed, not those that Duke Energy is planning to execute if it can negotiate favorable terms.

34. Duke Energy argues that NC WARN provides no support for its contention that relying on third-party power purchases would be a cheaper, more efficient way for Duke Energy Carolinas and Duke Energy Progress to serve their respective customers. Duke Energy states that NC WARN provides no analysis showing that the generation it claims is available in the Southeast meets Duke Energy's resource needs (baseload versus peaking), provides sufficient fuel diversity, and can be purchased under terms favorable to Duke Energy's customers. Duke Energy states that it makes capacity purchases from other entities in the region whenever it is economical to do so⁶⁰ and that, for decades, Duke Energy Carolinas and Duke Energy Progress have had agreements in place with neighboring utilities that allow each party to purchase capacity and/or energy from the other on short notice in emergencies.⁶¹

35. Finally, Duke Energy argues that NC WARN provides no evidence to support a claim that increased reliance on solar power would lower Duke Energy Carolinas' and Duke Energy Progress' retail and wholesale rates.⁶² According to Duke Energy, NC WARN fails to address the following: (1) the cost of the solar installations would be borne by consumers or reflected in rates; (2) the need for sufficient capacity resources when the sun is not shining; and (3) the fact that solar power might not be available during peak daytime hours, as was the case during the extreme weather events in January 2014 and January 2015.

c. Commission Determination

36. NC WARN contends that Duke Energy has built and continues to seek authority to construct generating facilities that are not needed and that lead to unjust and unreasonable rates. We find NC WARN has not shown that Duke Energy's generation construction,

⁵⁹ *Id.* at 34 & n.66 (citing Complaint at 5).

⁶⁰ *Id.* at 36. Duke Energy states that long-term capacity purchases in effect total 220 MW for Duke Energy Carolinas and 1,692 MW for Duke Energy Progress. *Id.*

⁶¹ *Id.*

⁶² Notwithstanding these arguments, Duke Energy adds that North Carolina is a leader in solar installations and Duke Energy has committed \$500 million to expand its solar facilities in North Carolina, through which it will own and operate three new solar facilities and purchase the output of five additional ones. *Id.*

generation procurement, reserve margins, and related practices result in unjust and unreasonable rates.⁶³ We also find that NC WARN has failed to demonstrate that Duke Energy's projected reserve margins are excessive and inconsistent with reliable resource planning.

37. Central to NC WARN's argument is its assertion that Duke Energy has imprudently constructed largely unneeded power plants rather than purchase capacity from neighboring utilities. The Commission evaluates whether a cost challenged as imprudent is one which "a reasonable utility management . . . would have made, in good faith, under the same circumstances at the relevant point in time."⁶⁴ NC WARN does not provide any persuasive evidence to support its claim that a reasonable manager would not have built or acquired the same type and amount of generation capacity currently in Duke Energy's generation resource portfolio.

38. Duke Energy's Integrated Resource Plans, which NC WARN relies on, also fail to support NC WARN's claim that Duke Energy maintains excessive capacity. As Duke Energy points out, new generation that is planned but not certified is included in the Integrated Resource Plans. However, planned generation is not included in rates. Consequently, this planned capacity cannot support a claim that rates are unjust and unreasonable. Similarly, the third-party merchant plant NC WARN singles out also does not support the complaint. This plant, which has not been constructed yet, cannot affect rates unless and until Duke Energy purchases capacity from the plant. Additionally, NC WARN's claim that Duke Energy is planning to purchase only 0.2 percent of its capacity needs in 2029 may provide an incomplete figure that does not reflect the full extent of what Duke Energy plans to purchase 14 years into the future. The Integrated Resource Plan only includes contracts that are in effect or have been executed; it does not include what Duke Energy may purchase in the future, depending on the outcome of contract negotiations. We further agree with Duke Energy that NC WARN's analysis is flawed because, among other shortcomings, it does not take into account plant retirements that are planned for the same time period during which new generation is expected to come on line.

39. We also do not find a projected load growth of 1.5 percent to be unreasonable or lead to unjust and unreasonable rates. The North Carolina Commission staff reviewed the economic,

⁶³ 16 U.S.C. §§ 824d, 824e.; *see, e.g., PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,318, at P 40 (2007).

⁶⁴ *San Diego Gas & Elec. Co.*, 146 FERC ¶ 63,017, at P 56 (2014) (quoting *New England Power Co.*, 31 FERC ¶ 61,047, at 61,084 (1985)). We note that the "Commission's prudence standard is based on the principle that the Commission should not, using the benefit of hindsight, replace the business decisions of a utility with its own." *Indiana and Michigan Mun. Distributors Ass'n*, Opinion No. 382, 62 FERC ¶ 61,189, at 62,238 (1993).

weather-related, and demographic assumptions underlying Duke Energy's peak and energy forecasts, and found that Duke Energy employed accepted statistical and econometric forecasting practices, and that its load growth assumptions are reasonable for planning purposes.⁶⁵

40. Furthermore, and significantly, Duke Energy has no authority over how much or how little generation capacity neighboring utilities have or will have or the resource procurement decisions they make. Moreover, the record NC WARN provides does not show that neighboring utilities actually have available significant additional generation to sell to Duke Energy, whether any available generation would meet Duke Energy's needs (e.g., peaking, non-peaking, quick-start, etc.) or whether it would be deliverable.

41. Thus, we find that NC WARN has not shown that Duke Energy has excess capacity that results in unjust and unreasonable wholesale sales or transmission rates. Consequently, we decline to pursue these matters further at this time.

2. Market Manipulation

a. Complaint

42. Next, NC WARN contends that Duke Energy manipulates the electricity market by constructing costly and unneeded generating facilities. According to NC WARN, this leads to generating capacity "far above" what is reasonable to meet demand.⁶⁶ NC WARN states that the prevention of market manipulation is in the public interest, and claims that the Commission determined that "the creation of regional cooperation between utilities operating with transparency is the primary method to [prevent market manipulation]."⁶⁷

43. NC WARN states that the failure of Duke Energy and other utilities in the Southeast to enter into RTOs or other mutual purchase arrangements has created excess capacity and will continue to result in excess capacity.⁶⁸ NC WARN reiterates that this practice is wasteful and inefficient and that the "rates of Duke Energy's customers will continue to increase

⁶⁵ Duke Energy Answer at 31 & n.58 (citing *Order Approving Integrated Resource Plan Annual Update Reports and REPS Compliance Plan*, Docket No. E-100, Sub. 137 (North Carolina Commission 2014)).

⁶⁶ Complaint at 2-3.

⁶⁷ *Id.* at 8.

⁶⁸ *Id.* at 14.

significantly as Duke Energy constructs additional generating plants.”⁶⁹ NC WARN states that it “believes this practice is a direct manipulation of the electricity market”⁷⁰

b. Answer

44. Duke Energy argues that the manipulation claim is unfounded and illogical. Noting that NC WARN uses its concerns about Duke Energy’s resource procurement policies as the basis for asserting market manipulation,⁷¹ Duke Energy states that NC WARN fails to plead any of the three required elements of a market manipulation claim: (1) use of a fraudulent device, artifice, scheme, misrepresentation or omission; (2) with the requisite scienter; (3) in connection with the purchase or sale of natural gas or electricity or transportation of natural gas or transmission of electricity subject to the Commission’s jurisdiction.⁷² Duke Energy asserts that building or acquiring generation, even at an (allegedly) high cost, is not a “fraudulent device, artifice, or scheme.”⁷³ Duke Energy states that when it decides to build generation, that decision is made public years in advance of construction, in publicly-available documents, and projects cannot go forward without the scrutiny of the state commissions. Duke Energy adds that, as NC WARN notes in its complaint, the decision to build generation “is a very public process” involving the active participation of the state consumer advocate and intervenors, such as NC WARN.⁷⁴

45. Next, Duke Energy points out that NC WARN has failed to plead that Duke Energy has the requisite scienter. Additionally, Duke Energy asserts that the building of generation in accordance with state-approved procedures is not a “purchase or sale of electric energy . . . subject to the Commission’s jurisdiction,” the third element of a manipulation claim.⁷⁵

⁶⁹ *Id.*

⁷⁰ *Id.* at 15.

⁷¹ Answer at 23.

⁷² *Id.* at 15-16 & n.1 (citing 18 C.F.R. § 1c2 (2014)); *id.* at 16 & n.31 (citing *Nat’l Energy & Trade LP v. Texas Gas Trans., LLC*, 121 FERC ¶ 61,064, at P 60 (2007)).

⁷³ *Id.* at 17.

⁷⁴ *Id.*

⁷⁵ *Id.*

c. Commission Determination

46. We find that NC WARN has not made a viable claim of manipulation.⁷⁶ Its assertions about Duke Energy’s construction of generation do not meet any of the three required elements of a manipulation claim. When a claim is unsupported by facts and circumstances satisfying the elements of a manipulation claim as specified in Order No. 670,⁷⁷ we will, as here, deny the claim.

47. Under the Commission’s Anti-Manipulation Rule, a claim of manipulation must meet three elements: (1) show that an entity uses a fraudulent device, scheme or artifice, or makes a material misrepresentation or a material omission as to which there is a duty to speak under a Commission-filed tariff, Commission order, rule or regulation, or engages in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any entity; (2) with the requisite scienter; (3) in connection with the purchase, sale or transmission of electric energy subject to the jurisdiction of the Commission.⁷⁸

48. NC WARN has not made a viable claim of market manipulation.⁷⁹ As manipulative conduct, NC WARN asserts that Duke “constructed costly and unneeded generation facilities”⁸⁰ and Duke “fail[ed]... to enter into RTOs or other mutual purchase

⁷⁶ In reviewing the substance of NC WARN’s manipulation claim, we will treat that claim as made pursuant to section 306 of the FPA, 16 U.S.C. § 825e (2012), even though NC WARN did not plead the claim under that section of the Act. *Blumenthal v. ISO New England Inc. et al.*, 128 FERC ¶ 61,182, *order on reh’g*, 129 FERC ¶ 61,057 (2009).

⁷⁷ *Prohibition of Energy Market Manipulation*, Order No. 670, FERC Stats. & Regs. ¶ 31,202, at P 49, *reh’g denied*, 114 FERC ¶ 61,300 (2006).

⁷⁸ *Id.*; *see also* 18 C.F.R. § 1c.2 (2014). Contrary to Duke Energy’s assertion, the Anti-Manipulation Rule does not require a showing that the respondent violated, or intended to violate, a tariff provision or other market rule. *Lincoln Paper and Tissue, LLC*, Order Assessing Civil Penalty, 144 FERC ¶ 61,162, at P 36 (2013).

⁷⁹ “When a case is unsupported by facts and circumstances satisfying the elements of a bona fide manipulation claim . . . we will . . . dismiss the complaint.” Order No. 670, FERC Stats. & Regs. ¶ 31,202 at P 59. Although we find above that NC WARN’s allegations are sufficient to meet the Commission’s general pleading requirements under Rule 206, meeting those pleading requirements does not mean that a complainant has made the allegations necessary to support a claim of market manipulation.

⁸⁰ Complaint at 1-2, 3.

arrangements.”⁸¹ But, NC WARN does not explain how that conduct could constitute manipulation or explain how the conduct meets the three elements of a manipulation claim. Thus, NC WARN has not made a sufficient allegation of manipulation and, accordingly, we deny the manipulation claim.

3. Order No. 1000 and Related Orders and Policies

a. Complaint

49. NC WARN alleges that Duke Energy has failed to comply adequately with Order No. 1000 and related Commission orders and policies by not effectively connecting its transmission system with neighboring facilities, such as Dominion Power, Southern, and TVA. NC WARN states that, like Duke Energy, these neighboring facilities have capacity in excess of reserve margins.⁸² NC WARN reiterates that the utilities should share this excess capacity rather than continue to duplicate unneeded generation.⁸³ NC WARN states that Duke Energy’s Integrated Resource Plans indicate that Duke Energy is planning to purchase only 0.2 percent of its capacity needs in 2029 (down from the current 3 percent).⁸⁴ NC WARN argues that this is “directly counter to Commission directives in Order No. 1000 and other orders demonstrating the benefits of regional strategies and utility efforts.”⁸⁵ NC WARN argues that customers would save money if peak needs were met by interconnecting and sharing power instead of building power plants.⁸⁶

50. In addition, NC WARN states that section 202(a) of the Federal Power Act (FPA) mandates the Commission to promote and encourage regional strategies for the voluntary interconnection and coordination of transmission facilities to ensure abundant electricity supply with the greatest possible economy.⁸⁷ NC WARN states that this provision specifically authorizes the Commission to “divide the country into regional districts for the voluntary

⁸¹ *Id.* at 14.

⁸² *Id.* at 2, 4.

⁸³ *Id.* at 4.

⁸⁴ *Id.* at 5 (citing *id.*, Attachment B).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Complaint at 9.

interconnection and coordination of facilities for the generation, transmission, and sale of electric energy.”⁸⁸

51. NC WARN asserts that the Commission’s most recent order addressing RTOs is Order No. 1000.⁸⁹ The purpose of Order No. 1000, according to NC WARN, is “to reform electric transmission planning and cost allocation for public utility transmission providers.”⁹⁰ NC WARN states that Order No. 1000 builds on the Commission reforms of Order No. 890⁹¹ and corrects remaining deficiencies with respect to transmission planning processes and cost allocation methods.

52. NC WARN argues that in light of the overcapacity in the Duke Energy service area and the entire Southeast, an RTO may “significantly reduce costs, and mandatory participation in an RTO may be a necessary remedy for undue discrimination or anticompetitive effects.”⁹² NC WARN adds that, as evidenced by the excess capacity in the region, voluntary formation of RTOs in the Southeast region has failed, due to the fact that the utilities in the region are monopolies regulated by the state public service commissions or, in the case of TVA, by a governmental agency.

53. Noting that many of the issues in Order No. 1000 require state public service commission action, NC WARN states that the North Carolina Commission investigated some of the issues raised in Order No. 1000, but it did not address issues related to the mutual sharing of excess capacity and requiring “healthy interconnections” among utilities.⁹³

54. NC WARN asks the Commission to investigate Duke Energy’s practices and fund an independent study to examine the potential benefits of Duke Energy joining an RTO to

⁸⁸ *Id.* (citing 16 U.S.C. § 824a(a)).

⁸⁹ *Id.* at 12.

⁹⁰ *Id.*

⁹¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁹² Complaint at 13.

⁹³ *Id.* at 14.

purchase capacity as needed rather than “construct wasteful new generating plants.”⁹⁴ NC WARN states that, based on the results of the study, the Commission should determine whether to require Duke Energy to join an RTO.⁹⁵ NC WARN further requests, as part of this investigation, a hearing in Raleigh, North Carolina, to collect testimony and evidence.⁹⁶

b. Answer

55. Duke Energy argues that NC WARN never specifically identifies the “action or inaction” that allegedly violated Order No. 1000.⁹⁷ Duke Energy elaborates that NC WARN does not allege that Duke Energy Carolinas or Duke Energy Progress failed to submit an Order No. 1000 compliance filing or to meet any of the other requirements of the rule. Noting that both Duke Energy Carolinas and Duke Energy Progress are enrolled in the Southeast Regional Transmission Planning (SERTP) region and treated as a single transmission provider for Order No. 1000 purposes, Duke Energy states that the Order No. 1000 regional planning process began on June 1, 2014 and the interregional coordination process only just began on January 1, 2015. Duke Energy notes that Duke Energy Carolinas and Duke Energy Progress have jointly made three compliance filings in Docket No. ER13-1928-000 to implement the interregional requirements. Duke Energy avers that the companies will continue submitting compliance filings as needed. Duke Energy states that SERTP has held stakeholder meetings concerning the regional process, sought stakeholder input, and otherwise acted as required by the tariffs or its enrollees. Duke Energy asserts that there is no ground on which NC WARN could allege or the Commission could find that Duke Energy has not complied with Order No. 1000.

56. Duke Energy states that the only violation of Order No. 1000 that NC WARN specifically alleges is that Duke Energy has not effectively connected its transmission system with neighboring utilities.⁹⁸ In response to this allegation, Duke Energy argues that the Commission has stated that Order No. 1000 was “simply requiring that certain processes be instituted.”⁹⁹ Accordingly, Duke Energy contends that any claim arising under Order No. 1000 must pertain to a failure of the process, not the failure of particular projects to be pursued or built. Thus, Duke Energy argues that, even if NC WARN’s allegations were true

⁹⁴ *Id.* at 2, 15.

⁹⁵ *Id.* at 15.

⁹⁶ *Id.*

⁹⁷ Answer at 12.

⁹⁸ *Id.* at 13 & n.23 (citing Complaint at 2, 4).

⁹⁹ *Id.* at 13 & n.24 (quoting Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 107).

and Duke Energy Carolinas and Duke Energy Progress have insufficient interconnections with or failed to engage in transactions with neighboring utilities, these shortcomings do not indicate violations of Order No. 1000.

57. Duke Energy also argues that the complaint states, erroneously, that Order No. 1000 is the Commission's most recent order on RTOs, to suggest that because Duke Energy has not complied adequately with Order No. 1000, the Commission should consider ordering Duke Energy to join an RTO. Duke Energy asserts that Order No. 1000 has nothing to do with RTO formation. Duke Energy adds that review of the relevant Order No. 1000 dockets (Docket No. ER13-83-000 for the regional planning process and Docket No. ER13-1928-000 for the inter-regional planning process) confirms that Duke Energy Carolinas and Duke Energy Progress are complying with Order No. 1000. Duke Energy adds that NC WARN disregards the filings that have been made in those proceedings, fails to discuss which aspects of Order No. 1000 Duke Energy allegedly neglected, and does not present any analysis of how such alleged failures have adversely impacted wholesale power sales.

58. Duke Energy argues that NC WARN makes no attempt to demonstrate that the cost of strengthened interconnections would be offset by savings, despite the fact that both SERTP and the Southeast Inter-Regional Participation Process have posted the results of economic transmission studies that provide data on the estimated cost of strengthening various interconnections within the Southeast. Duke Energy adds that NC WARN does not provide evidence of meaningful price disparities between the various interconnected utilities, or evidence that such utilities have excess capacity (and energy) that they could sell to Duke Energy on a long-term, firm basis. Duke Energy argues that NC WARN contends that more transmission should be built to allow more sharing without presenting even a "scintilla" of evidence supporting its claim or proving how Duke Energy's alleged failure to build more transmission has adversely impacted rates for wholesale power sales.

59. Finally, Duke Energy points out that a finding of RTO benefits alone would not be grounds for Commission action in light of its policy that RTO membership is voluntary. Duke Energy adds that nothing meaningful would be gained from initiating a proceeding to explore the benefits of creating an RTO in the region, as the state commissions in the Southeast do not support the RTO structure.¹⁰⁰ Pointing to NC WARN's discussion of section 202(a) of the FPA in connection with its allegation that Duke Energy should be forced to join an RTO, Duke Energy states that NC WARN does not even acknowledge that section 202(a) explicitly authorizes only "voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy."¹⁰¹ Along the same

¹⁰⁰ *Id.* at 40.

¹⁰¹ *Id.* at 4 & n.28 (citations omitted).

lines, Duke Energy argues that NC WARN does not acknowledge that the Commission was clear in Order No. 2000¹⁰² that RTO participation is voluntary.

c. Commission Determination

60. We find NC WARN's allegation that Duke Energy has failed to comply with Order No. 1000 and related Commission orders and policies lacks merit. In Order No. 1000, the Commission adopted a package of reforms addressing transmission planning and cost allocation that, taken together, are designed to ensure that Commission-jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. In particular, Order No. 1000 amended the transmission planning requirements of Order No. 890¹⁰³ to require that each public utility transmission provider: (1) participate in a regional transmission planning process that produces a regional transmission plan; (2) amend its Open Access Transmission Tariff (OATT) to describe procedures for the consideration of transmission needs driven by public policy requirements established by local, state, or federal laws or regulations in the local and regional transmission planning processes; and (3) remove federal rights of first refusal from Commission-jurisdictional tariffs and agreements for certain new transmission facilities.¹⁰⁴ The regional cost allocation reforms in Order No. 1000 also required each public utility transmission provider to set forth in its OATT a method, or set of methods, adhering to six principles for allocating the costs of new regional transmission facilities selected in a regional transmission plan.¹⁰⁵

61. Additionally, in Order No. 1000, the Commission required each public utility transmission provider through its regional transmission planning process to coordinate with the public utility transmission providers in each of its neighboring transmission planning regions within its interconnection to implement the interregional transmission coordination and cost

¹⁰² *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999) (Order No. 2000), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000) (Order No. 2000-A), *aff'd sub nom.*, *Pub. Util. Dist. No. 1 of Snohomish, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001) (*Snohomish*).

¹⁰³ Order No. 890, FERC Stats. & Regs. ¶ 31,241.

¹⁰⁴ See Order No. 1000-A, 139 FERC ¶ 61,132 at P 1; see also *Duke Energy Carolinas, LLC*, 147 FERC ¶ 61,241, at P 6 (2014).

¹⁰⁵ See Order No. 1000-A, 139 FERC ¶ 61,132 at P 2.

allocation requirements adopted in Order No. 1000.¹⁰⁶ The Commission also required public utility transmission providers in each pair of neighboring transmission planning regions to develop the same language to be included in each public utility transmission provider's OATT that describes the interregional transmission coordination procedures for that particular pair of regions.¹⁰⁷ Alternatively, if the public utility transmission providers so choose, the Commission allowed these procedures to be reflected in an interregional transmission coordination agreement among the public utility transmission providers within neighboring transmission planning regions that is filed with the Commission.¹⁰⁸

62. NC WARN claims that Duke Energy has failed to comply with Order No. 1000 but does not point to any particular requirement of Order No. 1000 that Duke Energy allegedly violated. NC WARN does not cite, for example, any specific provision of Order No. 1000 that would require Duke Energy Carolinas and Duke Energy Progress to connect their utility systems with neighboring utilities. Indeed, there is no provision in Order No. 1000 requiring interconnection of neighboring transmission facilities. The Commission has emphasized that the focus of the Order No. 1000 is "ensuring there is a fair regional transmission planning process, not substantive outcomes of that process."¹⁰⁹

¹⁰⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 415. The Commission required each public utility transmission provider to establish procedures with each of its neighboring transmission planning regions for the purpose of: (1) coordinating and sharing the results of the respective regional transmission plans to identify possible interregional transmission facilities that could address regional transmission needs more efficiently or cost-effectively than separate regional transmission facilities; and (2) jointly evaluating those interregional transmission facilities that the pair of neighboring transmission planning regions identify, including those proposed by transmission developers and stakeholders. *Southwest Power Pool, Inc.*, 150 FERC ¶ 61,210, at P 4 & n.15 (2015) (citing Order No. 1000-A, 139 FERC Stats. & Regs. ¶ 61,132 at P 493 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 396)).

¹⁰⁷ *Id.* P 475; *see also id.* P 346; Order No. 1000-A, 139 FERC Stats. & Regs. ¶ 61,132 at P 223.

¹⁰⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 346, 475; Order No. 1000-A, 139 FERC ¶ 61,132 at P 223.

¹⁰⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 113; *see also S.C. Pub. Serv. Authority v. FERC*, 762 F.3d at 51 ("As the Commission explained on rehearing, 'Order No. 1000's transmission planning reforms are concerned with process' and 'are not intended to dictate substantive outcomes.'") (quoting Order No. 1000-A, 139 FERC ¶ 61,132 at P 188).

63. Furthermore, as Duke Energy points out, Duke Energy Carolinas and Duke Energy Progress have submitted the requisite Order No. 1000 compliance filings¹¹⁰ and Duke Energy Carolinas and Duke Energy Progress are participating in a regional transmission planning and cost allocation process as required by Order No. 1000.¹¹¹ In addition, as members of SERTP, Duke Energy Carolinas and Duke Energy Progress are also participating in an inter-regional coordination and cost allocation process as required by Order No. 1000.¹¹²

64. Nor do we find that Duke Energy has failed to comply with any Order No. 1000-related or other RTO-related Commission order or policy by not effectively connecting its transmission facilities with neighboring utilities. The Commission's longstanding policy is that RTO participation is voluntary,¹¹³ with the caveat that it "possesses authority to order RTO participation on a case-by-case basis, if necessary, to remedy undue discrimination or anticompetitive effects where supported by the record."¹¹⁴ The record in this case, however, does not support a finding of undue discrimination or anticompetitive effects. NC WARN has not explained how Duke Energy's generation construction or resource procurement is unduly discriminatory or anticompetitive. Simply stating that Duke Energy has excess capacity that

¹¹⁰ We note that Duke Energy's initial Order No. 1000 compliance filing in Docket No. ER13-83-000 was rejected because the Commission found that the region proposed by Duke-Progress and Alcoa Power Generating, Inc. failed to form an Order No. 1000-compliant transmission planning region. *Duke Energy Carolinas, LLC*, 142 FERC ¶ 61,130, at P 26 (2013). In response, however, Duke Energy submitted another compliance filing proposing to enroll in the SERTP region, which the Commission accepted as compliant with Order No. 1000. *Duke Energy Carolinas, LLC*, 145 FERC ¶ 61,252, at P 26 (2013).

¹¹¹ See *Duke Energy Carolinas, LLC*, 145 FERC ¶ 61,252.

¹¹² See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,045 (2015); *Southwest Power Pool, Inc.*, 150 FERC ¶ 61,210.

¹¹³ See Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092, at 31,357; see also *Snohomish*, 272 F.3d at 615 ("[T]he Commission adopted a matter of policy a voluntary approach to RTO formation"). The *Snohomish* court pointed out that the preambles to both Orders No. 2000 and 2000-A distinguish the Commission's authority to voluntarily encourage RTO participation under section 202(a) of the FPA, on the one hand, from the Commission's authority to mandate RTO participation to remedy undue discrimination or anti-competitive effects under section 206 of the FPA, on the other hand. *Id.* (citing Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,043; Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 at 31,360).

¹¹⁴ See Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,043.

leads to higher rates does not prove that rates are unjust and unreasonable or caused by or result in anticompetitive effects. Indeed, while NC WARN alleges that the Southeast (at least neighboring utilities Dominion Power, Southern, and TVA) has excess generating capacity, that fact, even if true, would not mean that excess capacity is available to Duke Energy such that additional construction would certainly be unnecessary. It is also unclear whether such capacity would be deliverable or meet Duke Energy's resource needs. Accordingly, we are not persuaded that we must investigate, fund a study or hold a hearing concerning whether it would be beneficial for Duke Energy to join an RTO. Moreover, as Duke Energy points out, even if, for sake of argument, an RTO would be beneficial to the region, the applicable standard in this case is not whether an RTO would be beneficial. Rather, the standard is whether an RTO is necessary to remedy undue discrimination or preference.¹¹⁵

65. As NC WARN has not shown Duke Energy's capacity construction or procurement practices are unjust and unreasonable or unduly discriminatory or preferential, we deny the relief NC WARN seeks.

IV. Conclusion

66. For the reasons discussed above, we find that NC WARN has not demonstrated that Duke Energy's capacity construction and procurement-related activities result in unjust and unreasonable wholesale energy or transmission rates. We also find that NC WARN has not made a viable claim of market manipulation, nor has NC WARN shown that Duke Energy violated Order No. 1000 or related orders or practices. Consequently, we decline to investigate, fund a study, or hold a hearing in Raleigh, North Carolina to evaluate whether it would be beneficial for Duke Energy to join an RTO; nor will we require Duke Energy to purchase capacity from neighboring utilities. The complaint is denied.

The Commission orders:

The complaint is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹¹⁵ *Snohomish*, 272 F.3d at 615.