

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. E-7, SUB 1017

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Investigation Regarding the Approval and	)	NC WARN'S PROPOSED
Closing of the Business Combination of	)	DETERMINATION AND
Duke Energy Corporation and Progress	)	ADDITIONAL COMMENTS
Energy, Inc.	)	

NOW COMES the North Carolina Waste Awareness and Reduction Network, Inc. ("NC WARN"), through the undersigned attorney, with a proposed determination for the outcome for the investigation in this docket and a third set of additional comments relevant to the Commission's investigation into the closing of the merger between Duke Energy and Progress Energy. The present filing adopts by reference the concurrent motions NC WARN is filing in the merger dockets, Dockets E-7, Sub 986 and E-2, Sub 998, a motion for reconsideration and a motion for an extension of time to file a notice of appeal and exceptions.

Proposed determination.

1. The first phase of the investigation in this docket developed enough information to provide the basis needed for the Commission to conduct a formal hearing on the approval and closing of the business combination of the two utilities. As an investigation pursuant to its supervisory powers under Article 3 of

Chapter 62, the preliminary investigation is one of fact-finding and the Commission cannot then use the record in the investigation to reexamine and modify the evidentiary findings and conclusions of law in its merger order, Order Approving Merger Subject to Regulatory Conditions and Code of Conduct, issued June 29, 2012. The non-evidentiary phase of the investigation is complete, and has provided the basis for continued formal investigations.

2. As a result of the investigation, NC WARN proposes the following determination to be adopted by the Commission:

WHEREAS the Commission has held investigatory hearings on July 10, 19 and 20, 2012 into the approval and closing of the business combination of Duke Energy Corporation and Progress Energy, Inc. and has requested information and company records to assist in its investigation; and

WHEREAS the Commission finds the testimony of the Duke Energy witnesses, Jim Rogers, Ann Gray and Michael G. Browning, contradicts the testimony of William D. Johnson, E. Marie McKee and James B. Hughes, Jr., concerning the events beginning with the first overtures between the two companies through the hearings before this Commission in the merger dockets, Dockets E-7, Sub 986 and E-2, Sub 998, and the closure of the merger and removal of Mr. Johnson as CEO of the newly formed corporation; and

WHEREAS Mr. Rogers and Ms. Gray testified about actions and inactions leading to the Duke Energy board's decision to replace Mr.

Johnson as CEO because of the expressed "lack of confidence" in his leadership, including Mr. Johnson's autocratic management style, the lack of transparency and flow of information, the safety and reliability of Progress Energy's nuclear fleet, the lack of a realistic assessment of the options at Crystal River, and generally the financial performance of Progress Energy was not what was expected; and

WHEREAS the Commission finds that Duke Energy failed to disclose significant material adverse matters to the Commission subsequent to the September 20 -21, 2011 hearings and before the Commission issued its Order conditionally approving the merger on June 29, 2012, and when the merger closed on July 2, 2012; and

WHEREAS the Commission finds that some of these factors may have a significant and material effect on the Commission's findings and conclusions in its merger order, including whether the merger is justified by the public convenience and necessity.

THEREFORE the Commission terminates its preliminary investigation in this docket and reopens the evidentiary hearing in the merger docket and allows all parties in that docket to participate in the evidentiary hearing; and

THEREFORE, the Commission issues a "show cause" order to Duke Energy to show why the Merger Order should not be rescinded *in toto* or otherwise amended or modified.

Additional comments.

3. As noted in NC WARN's comments July 13, 2012, the cost-saving shortcuts at the Crystal River 3 approved by Mr. Johnson led to the plant's extensive damage. Contrary to Mr. Johnson's testimony in September 2011, it is uncertain whether or to what extent the Nuclear Energy Insurance Ltd. ("NEIL") will recompense Duke Energy for the repairs, even after the current mediation. Duke Energy's estimated costs of the repairs is in the \$3 billion range with no clear estimate on the cost of decommissioning the plant.

4. However, on top of the situation at Crystal River, Duke Energy recently disclosed cost information showing its plans to spend a minimum of \$2.2 billion on the legacy Progress Energy nuclear fleet over the next 30 months. An article in the Triangle Business Journal, "Progress nuke cost to Duke: at least \$2.2B," July 2012, reported Duke provided a list of uprate and safety projects that includes projects at the other three legacy Progress Energy plants and corporate fleet projects. ATTACHMENTS A and B.

5. At the evidentiary hearing, Mr. Rogers's testified "there was a concern about the lack of sufficient improvement in the operating results of Progress' nuclear fleet. Three out of the five are on increased NRC oversight." Tr. Vol.1 p. 33. Subsequently, he said Duke Energy would "pour money and effort into bringing those plants back to excellence." Tr. Vol. 1 p. 38. Duke provided these conclusions very soon after the merger, which indicates that the Duke Energy Board and/or Mr. Rogers clearly had an idea of the costs associated with bringing these nuclear plants up to a level of operating effectiveness before the

Commission's approval of the merger. As a matter of due diligence, Duke Energy must have conducted an analysis of what Duke Energy would do at those plants, yet did not include this study in its merger application or supplementary filings with the Commission. At a minimum, these anticipated costs should have been disclosed to the Commission as soon as Duke Energy became aware of them, or at least before the Commission ruled, so that the Commission could consider all relevant facts in determining whether the merger, in the Commission's opinion, was in the public convenience and necessity.

6. Although NC WARN believes that some of the safety-related projects are long overdue, there appears to be a very strong discrepancy between the two utilities as to which nuclear investments are required. Apparently Mr. Rogers and Mr. Johnson disagreed. Duke Energy treats power plant construction and other capital expenditures as profit opportunities in an aggressive way that Progress Energy did not, so these expenditures and resulting rate hikes might not have occurred but for the merger. Even if the repairs are needed, it is possible Progress Energy could and would have fixed the problems for much less money than Duke Energy intends to spend. Apparently Duke Energy planned for these additional costs for ratepayers to flow from the merger, and Duke Energy should have disclosed these anticipated expenditures and rate increases in the merger proceedings. The Commission should investigate why Duke Energy did not disclose the planned expenditures to the Commission and should reconsider the costs and benefits of the merger in light of this new information that should have been disclosed..

7. The multibillion dollar cost of the repairs or decommissioning the Crystal River 3 reactor ( and the resulting risk of more expensive borrowing for capital projects in the Carolinas) and major investments in the legacy fleet are central to the Commission's ultimate determination of whether the merger is justified by the public convenience and necessity. At least part of the \$650 million in fuel savings promised by Duke Energy may occur regardless of the merger because of lower natural gas prices while a significant part of it could be caused by the effects of the Joint Dispatch Agreement ("JDA") alone. The savings for residential customers will likely be less than \$1.00/month, and the additional borrowing costs stemming from Crystal River and the \$2.2 billion in investments in the legacy Progress Energy nuclear fleet eliminate the savings to the ratepayers. In North Carolina, the nuclear fleet investments could cause a substantial rate increase.

8. Over the past month, NC WARN has attempted to open the merger settlement agreements to public scrutiny as part of the debate on the merger. Last week, NC WARN attempted to discover cost information about the repairs at Crystal River and the investments in the legacy Progress Energy fleet and filed the request with the Commission in this docket. This request was summarily dismissed by Duke Energy but remains relevant to the unresolved merger questions. ATTACHMENT C. Many of the questions about the costs of the merger remain largely unanswered, but deserve to have a full and public airing.

Respectfully submitted, this the 26<sup>th</sup> day of July 2012.

*/s/ John D. Runkle*

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#### CERTIFICATE OF SERVICE

I do hereby certify that I have this day served a copy of the foregoing NC WARN'S PROPOSED DETERMINATION AND ADDITIONAL COMMENTS 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 26<sup>th</sup> day of July 2012.

*/s/ John D. Runkle*

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Attorney at Law

Triangle Business Journal

## Progress nuke cost to Duke: at least \$2.2B

By Chris Bagley

July 20, 2012

RALEIGH – Duke Energy Corp. faces spending more than \$2 billion to upgrade, repair and maintain nuclear plants that it gained in its July 2 acquisition of Progress Energy – a total that's likely to grow substantially as the merged company decides what to do with a crippled plant in Florida.

The spending would be for Progress' four nuclear plants in 2012, 2013 and 2014, according to figures provided by Duke.

Of the total, more than \$900 million would be spent on plants in North Carolina, creating opportunities for construction companies, especially those specializing in the nuclear energy industry.

The company estimates that about \$347 million needs to be spent on the Shearon Harris plant about 20 miles southwest of Raleigh, and that includes an expansion of the plant's capacity earlier this year, from 870 megawatts to 900 megawatts.

That upgrade brought in 1,600 engineers, electricians, welders and other workers in the months leading up to its completion, a Duke spokeswoman says. Some stayed for a day or two; a few stayed for as much as a full year. Much of the coming work will be similar in scope, she says.

The company foresees spending at least \$567 million at its Brunswick plant near Wilmington, and several hundred million at two plants in South Carolina and Florida.

The \$2.23 billion total does not include the sizeable costs of repairing or decommissioning the nuclear plant at Progress' Crystal River power station between Tampa and Ocala, Fla., that has remained shuttered for three years amid unsuccessful attempts to repair a cracked containment vessel.

Before the merger, Progress publicly estimated that it would cost \$1.3 billion to bring the Crystal River plant back online, part of which is likely to be covered by an industry insurance pool.

Outside observers have long warned that the eventual costs at Crystal River could be far

greater. They point to July 10 testimony that Duke Chairman and CEO Jim Rogers gave in a North Carolina Utilities Commission inquiry into the sudden ouster of short-time CEO Bill Johnson: Rogers said Duke's directors believed that Johnson, while chairman and CEO of Progress Energy, had not been fully transparent in disclosing the state of the repair efforts, a perception that led them to vote him out just after he joined the combined company. Johnson has declined interview requests, citing provisions of his severance agreement.

"Based on the indications, I would think it's going to be higher than the \$1.3 billion," says Andy Bischof, a financial analyst who covers Duke for Morningstar.

Bischof says it's conceivable that new revelations could lead him to cut his price target for Duke's publicly traded stock. Duke directors reviewed an internal study of the plant's condition in late June, as they were discussing how to handle their growing concerns about Johnson.

"There's definitely going to be a valuation impact, but it's too early to say whether that's going to be positive or negative," Bischof says.

Questions about Duke Energy's newly constituted corporate governance and its relationships with regulators have helped to drive its shares down by 4.6 percent in the two weeks since the merger. The stock closed at \$66.07 on July 18.

Rogers told regulators on July 10 that Duke hasn't decided whether to repair the Crystal River plant. The company aims to decide by the end of 2012; any repairs would be completed by the end of 2014, Duke spokeswoman Jessica Lambert says.

The company is in the process of determining the cost of a potential decommissioning, Lambert says. Such a move has little precedent in the United States, adding an element of uncertainty.

The \$2.23 billion cost figure comes from a list of capital projects that Progress kept and that Duke continues to keep, Lambert says. It hasn't changed substantially since the two companies announced their merger plans in January 2011, she says.

Outspoken nuclear critic Jim Warren, executive director of the N.C. Waste Awareness & Reduction Network in Durham, says the multibillion-dollar costs at Crystal River and elsewhere cast new doubts on the wisdom of the merger.

"All of the stuff with whether they're keeping a corporate presence in Raleigh, and about Johnson: Those are side issues," Warren says.

<http://www.bizjournals.com/triangle/print-edition/2012/07/20/progress-nuke-cost-to-duke-at-least.html?page=all>

Legacy Progress Energy Nuclear Fleet total dollars currently budgeted in the long-range plan for major projects

2012 - \$631M

2013 - \$761M

2014 - \$841M

Fleet Projects (Corporate)

2012 budget - \$23M (Significant Projects which will be performed at all sites - Turbine Controls, Plant Process Monitoring Computers, Fukushima Enhancements, NFPA 805 - Fire Protection Upgrades, Buried Pipe Upgrades)

2013 budget - \$62M

2014 budget - \$97M

Brunswick Nuclear Plant

2012 budget - \$157M (Significant Projects - 5th Safety Related Diesel Generator, Non-Safety Related Diesel Generator, New Turbine Building Chillers, Diversion Structure Replacement, Circulating Water Piping Upgrades)

2013 budget - \$189M

2014 budget - \$221M

Crystal River Nuclear Plant

2012 budget - \$196M (Significant Projects - Extended Power Uprate, New Reactor Coolant Pump Seals, Fire Protection Upgrades, New Main Control Room Chillers, New Radiation Monitors))

2013 budget - \$238M

2014 budget - \$177M

Harris Nuclear Plant

2012 budget - \$105M (Significant Projects - Extended Power Uprate, Fire Detection System Upgrade, Electrical Motor Control Center Replacements)

2013 budget - \$119M

2014 budget \$123M

Robinson Nuclear Plant

2012 budget - \$147M (Significant Projects - New Main Generator Stator, Low Pressure Turbine Replacement, Switchyard Upgrades)

2013 budget - \$151M

2014 budget - \$221M

**John Runkle**

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**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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