

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

North Carolina Waste Awareness	)	
And Reduction Network, Inc.	)	
v.	)	Docket No. EL15-32-000
Duke Energy Carolinas, LLC and	)	
Duke Energy Progress, Inc.	)	

MOTION TO ALLOW REPLY AND REPLY BY NC WARN

NOW COMES the North Carolina Waste Awareness and Reduction Network, Inc. (“NC WARN”), through the undersigned attorney, with a motion to allow it to file a reply to the Answer of Respondents Duke Energy Carolinas, LLC and Duke Energy Progress, Inc., (together “Duke Energy”)(the “Answer”), filed in this docket on January 26, 2015. NC WARN further believes the Commission would benefit in allowing the intervening parties and other interested parties to submit replies to Duke Energy answer in order to develop a fuller record as it deliberates on the issues presented in NC WARN’s Complaint.

As demonstrated below, Duke Energy made factual misrepresentations concerning NC WARN and its members, grossly misrepresented NC WARN’s position as clearly evidenced in its complaint, misinterpreted the FERC rules and statutes governing jurisdiction over the subject matter and potential outcomes of this complaint proceeding, and made other misleading and unsupported allegations. In total, the Answer adds very little to a reasoned resolution of the issues presented in the NC WARN Complaint.

REPLY TO DUKE ENERGY’S ANSWER

Duke Energy grossly misrepresents NC WARN’s position on page 2 of its Answer, by stating that NC WARN is unrealistically arguing that Duke Energy “could meet their retail

customers' future energy needs through the exclusive use of renewable generation and energy efficiency measures." This is categorically false; as clearly shown in Attachment D of the Complaint, NC WARN demonstrates that increases in the use of renewable energy, energy efficiency and demand-side management ("DSM"), along with combined-heat-and-power, purchases from other sources and other strategies, could close down existing coal plants and preclude the construction of new generating units through the planning horizon of 2029 in Duke Energy's integrated resource plans ("IRPs"). Natural gas and nuclear power are still a part of the energy portfolio recommended by NC WARN, although in smaller proportions than in the utilities' proposals.

The NC WARN Complaint to FERC more narrowly looks at one aspect of this responsible energy future, the ability of Duke Energy to reduce rate increases caused by new plant construction through regional efficiencies, such as strategic purchases from the other utilities in the region, and proven tools, such as participation in a regional transmission organization ("RTO") or independent system operator ("ISO"). Summer and winter peaks can be met by purchases, or significantly reduced by energy efficiency and DSM strategies.

Contrary to Duke Energy's misstatement on page 2 of its Answer, the North Carolina Utilities Commission has in fact ruled in NC WARN's favor in a number of dockets directly relevant to long-term planning. In the North Carolina Utilities Commission ("NCUC") docket, E-7, Sub 790, NC WARN successfully argued against the certificate that would have allowed construction of two new coal units at its Cliffside plant, with the Commission ultimately reducing it to only one unit. Directly related, NC WARN successfully argued in NCUC Docket E-7, Sub 858, against Duke Energy's proposed electricity sales to Orangeburg, South Carolina, at native load priority. NC WARN also has been successful in NCUC Docket E-7, Sub 819,

limiting the pass through recovery of predevelopment costs for the proposed Lee Nuclear Station. Regardless of whether the NCUC adopts an order proposed by NC WARN, arguments that once failed may be ripe for reconsideration as market conditions change, such as the rapidly falling cost of solar and the unreasonable costs of new nuclear units.

Moreover, the jurisdictions of the NCUC and FERC overlap in purporting to seek fair and reasonable rates, so a failure to convince the NCUC of any given point does not preclude the FERC from exerting its own jurisdiction. Pursuant to section 205 of the Federal Power Act (“FPA”), the purpose of regulatory reform by FERC is to ensure that rates, terms and conditions of transmission and sales for resale in interstate commerce by public utilities are just, reasonable and not unduly discriminatory or preferential. 16 U.S.C. 824d. Sections 205 and 206 of the FPA allow the Commission to restructure the electricity industry to foster competition and reduce unfair and unreasonable rates. 16 U.S.C. 824d and 824e.

One of the policies FERC uses to foster fair and reasonable rates is RTO / ISO formation, and contrary to Duke Energy’s assertion on page 14 of its Answer, Order No. 2000 specifically states that “we conclude that the Commission possesses both general and specific authorities to advance voluntary RTO formation. We also conclude that the Commission possesses the 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.” Order No. 2000, p. 142.

Duke Energy’s assertion that the facts alleged in NC WARN’s Complaint “are utterly devoid of any analysis or consideration of real-world facts” is simply inaccurate. NC WARN has relied on the best evidence available to it, the North American Electric Reliability Corporation’s (“NERC”) “2014 Summer Reliability Assessment”, as well as data provided by the utilities in

FERC form 714. This information is relied upon by the US Energy Information Administration (“EIA”), and by FERC itself. As demonstrated in the Complaint, the utilities throughout the Southeast, and in Florida, have a reserve capacity during peak periods far in excess of their needs. The purpose of the study requested in the Complaint is to determine the accuracy of the conclusions of this study.

The most significant flaw in Duke Energy’s Answer is its repeated assertion NC WARN’s Complaint fails as a complaint in that a complaint can only be made to FERC based on policies and practices directly affecting wholesale rates, not the construction of what generation to build or where to locate it. NC WARN is not seeking from FERC a definitive order restricting new generation; the relief clearly requested is for FERC to examine the excess capacity caused by the failure of Duke Energy and the other utilities in the Southeast to develop regional strategies. This failure to even consider strategic wholesale sales, no matter what those rates would ultimately be, is well within the core of FERC jurisdiction. At this point, the failure to plan for purchases has a direct impact on NC WARN and its members; rates will go up without any consideration of regional strategies. There is a clear and strong nexus between Duke Energy’s plans and the rates affecting NC WARN and its members.

Throughout its Answer, Duke Energy criticizes NC WARN for not providing specific monetary figures on what could be gained from a regional strategy. To determine the benefits to Duke Energy and its customers, including NC WARN members, is very the reason for NC WARN’s request for a formal investigation. The best and most recent information available, the study of Entergy Utilities integration into the Midcontinent Independent System Operator (“MISO”), funded in part by FERC, found its consumers will save \$1.4 billion over 10 years by joining the ISO. As shown in the Complaint, the costs for joining an RTO / ISO are front-loaded,

so the net savings will continue and likely increase. It is reasonable to infer that this magnitude of likely savings would be available to Duke Energy, especially in the Carolinas, if it entered into a regional strategy, with additional savings available to customers when excess capacity is shared and construction of new generating plants is avoided. The potential benefits, although not specifically quantifiable at this time, should be considerable.

Duke Energy makes repeated objections in its Answer about the cost of the study and the potential changes Duke Energy may have to make if it joins a regional strategy, yet it does so without any credible basis for these statements. It further makes much of other possible problems, such as the need for approvals from all of the public service commissions, without discussing how these barriers could be overcome if it was shown, as it was in the Entergy MISO study, that customers could benefit from regional strategies. On page 24 of its Answer, Duke Energy references a “market perspective” but fails to recognize that for Duke Energy, and most of the utilities in the Southeast, there is no competitive wholesale market. As stated clearly in the Complaint, the market manipulation is, for Duke Energy, the failure to even consider regional strategies, and the exclusive reliance on new generation which will raise rates.

Duke Energy throughout its Answer criticizes NC WARN for not providing detailed studies for the allegations it makes, while at the same time Duke Energy relies on bald statements on its most recent winter peak and the availability of its plants to meet that peak, and the ability of other utilities or merchant plants to provide needed power. In particular, there is no evidence on page 30 of its Answer supporting Duke Energy’s bald assertion that it used all of its capacity during its recent winter peak, and especially that no additional power was available from all other Southeast utilities or merchant plants. Duke Energy specifically did not address whether it utilized its industrial curtailment program.

Much of the information Duke Energy asserts NC WARN requires for a complaint is unavailable to NC WARN, especially in the jurisdictions outside North Carolina. Much of this data has been determined to be proprietary in nature, or trade secrets by state legislatures or the various public service commissioners. The precedent relied upon by Duke Energy in its argument at page 19 of its Answer, citing *Tri-State Generation & Transmission Ass'n, Inc. v. Public Service Co. of New Mexico*, 143 FERC ¶ 61,226 (2013), sets up an impossible hurdle to claimants who are unable to quantify an impact when it is inside a “black box” of confidentiality. The Entergy MISO study provides enough credible testimony to require a study for the Southeast.

Duke Energy’s assertions on page 27 of its answer are misleading at best. NC WARN in its Complaint, pages 5 – 8, presents credible evidence that Duke Energy’s capacity is in excess of any reasonable industry-recognized reserve margin. It examines the gross exaggeration of Duke Energy’s growth forecast, comparing it to historic data, and the forecasts of such reliable sources as the EIA and the American Council for an Energy Efficient Economy.

Since the filing of the Complaint on December 16, 2014, at least twelve intervenors have come forward, showing interest in examining the issues further. Contrary to Duke Energy’s assertion on page 20 of its Answer, the NCUC has intervened, as has the Tennessee Valley Authority and a wide variety of co-ops and other interested parties. In response to NC WARN’s filing the Complaint to the various public service commissions in the Southeast and Florida, the South Carolina Public Service Commission (“SCPSC”) has opened a docket specifically to address the issue. SCPSC Docket No. 2015-17-E.

THEREFORE, in light of the above and the allegations and credible evidence presented in NC WARN's Complaint, NC WARN renews its petition for a full assessment on the costs and benefits for Duke Energy's involvement in a regional strategy. NC WARN renews its request for a hearing in Raleigh, North Carolina, to hear testimony and receive evidence.

Respectfully submitted this the 9<sup>th</sup> day of February 2015.

FOR NC WARN

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CERTIFICATE OF SERVICE

I hereby certify that the following persons have been served this MOTION TO ALLOW REPLY AND REPLY BY NC WARN by email transmission as the contacts for Duke Energy as listed on the Commission's list of Corporate Officials. Email transmission of this filing have additional been sent to those parties who have made filings to intervene in this docket.

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This is the 9<sup>th</sup> day of January 2015.

\_\_\_\_\_/s/ John D. Runkle\_\_\_\_\_  
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