

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. E-100, SUB 169

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	PETITION FOR DECLARATORY
Request for Declaratory Judgment that	)	JUDGMENT BY NC WARN,
Modifications Adding Gas-Fired Generation	)	CENTER FOR BIOLOGICAL
to Coal Units Require a Certificate of	)	DIVERSITY, AND
Public Convenience and Necessity	)	APPALACHIAN VOICES

Petitioners NC WARN, Center for Biological Diversity and Appalachian Voices, (collectively, “Petitioners”), through undersigned counsel, pursuant to N.C. Gen. Stat. § 1-253 and N.C. Gen. Stat. § 62-60, hereby petition the North Carolina Utilities Commission (the “Commission” or “NCUC”) to enter a judgment declaring that Duke Energy Carolinas, LLC, and any other electric public utility, is required to seek a certificate of public convenience and necessity prior to beginning the construction of a modification intended to add gas generation capacity to coal-fired units. In support thereof, Petitioners show the following:

**INTRODUCTION**

1. As this Commission is aware, “no public utility or other person shall begin the construction of any steam, water, or other facility for the generation of electricity . . . without first obtaining from the Commission a certificate that the public convenience and necessity requires, or will require, such construction.” N.C. Gen. Stat. § 62-110.1(a).

2. In violation of this statute, Duke Energy Carolinas, LLC (“DEC”) has recently spent hundreds of millions of dollars installing certain modifications to coal-fired units without seeking the required certificates of public convenience and necessity

(“CPCN”) and imminently intends to construct additional such modifications. These modifications come in at least two types:

- a. A “co-fired modification” which allows the subject unit to be fired with either natural gas or coal, or a simultaneous combination of the two; or
- b. A “conversion modification” which completely modifies a coal-fired unit into a natural gas-fired unit.

For ease of reference, this Petition refers to the co-fired modification and conversion modification simply as “modifications.”

3. These modifications create a brand-new means of generating electricity and increase the public utility’s natural gas capacity. In the words of the applicable statute, these modifications constitute “the construction of . . . [a] facility for the generation of electricity.” N.C. Gen. Stat. § 62-110.1(a). Therefore, the public utility must obtain a CPCN as a condition precedent prior to the construction of such modifications.

4. Yet the established practice by public utilities is to not seek the mandatory CPCN. Accordingly, the Commission and stakeholders are being deprived of their right to evaluate whether these modifications are required by the public convenience and necessity.

5. In fact, these modifications are subject to almost no advanced scrutiny at all. As described below, a review of prior Integrated Resource Plan (“IRP”) filings reveals that few details are provided to the Commission and stakeholders prior to the construction of these modifications.

6. Because a proper pre-construction review is not being conducted, there is no meaningful opportunity to determine whether the modifications are cost-effective. Cliffside Unit 5 is a prominent example of the need for CPCN review. Following a costly

modification in 2018, DEC recently determined that Cliffside Unit 5 is apparently not cost-effective and therefore slated it for early retirement in 2026. The costs associated with a modification that was not cost-effective and which was unnecessary to meet public demand would likely have been avoided if the public utility had been required to seek a CPCN.

7. Both the applicable statute and public policy require that modifications be the subject of CPCN review. Accordingly, Petitioners request that the Commission enter an order declaring that such modifications proposed by DEC or any other electric public utility are required to receive a CPCN prior to construction.

### **THE PARTIES**

8. NC WARN is a not-for-profit corporation organized under North Carolina law, with more than one thousand individual members across North Carolina. NC WARN's primary purpose is to work for climate protection through the advocacy of clean, efficient, and affordable energy. As a means of accomplishing these goals, NC WARN is a frequent advocate concerning energy policy issues before the Commission and other forums. NC WARN's address is Post Office Box 61051, Durham, North Carolina 27715-1051, and NC WARN may be contacted through its attorneys signing the present Petition.

9. The Center for Biological Diversity is a national, non-profit conservation organization with offices throughout the United States, including North Carolina. The Center has more than 1.5 million members and online activists, including 33,681 in North Carolina, who care about the state's urgent need to expedite its renewable energy transition and the protection of human health, the natural environment, and species from the ravages of the climate emergency and other environmental harms. The Center's North Carolina

address is P.O. Box 18223, Asheville, NC 28814, and the Center may be contacted through its attorneys signing the present Petition.

10. Appalachian Voices brings people together to protect the land, air, and water of Central and Southern Appalachia and advance a just transition to a generative and equitable clean energy economy. In the pursuit of its positive vision for Appalachia's future, Appalachian Voices builds grassroots campaigns to reduce the impacts of fossil fuels and promote renewable energy, energy efficiency, and ecologically sound economic development. In North Carolina, on behalf of more than 5,000 members and supporters across the state, Appalachian Voices advocates for utility and policy solutions that enhance investments in energy efficiency and distributed renewable energy resources, as well as in programs that alleviate the significant problem of low-income energy burdens faced by more than a million households across the state. Appalachian Voices' North Carolina address is 589 West King Street, Boone, North Carolina 28607, and Appalachian Voices may be contacted through its attorneys signing the present Petition.

11. Petitioners have thousands of members who are the customers of a public utility, DEC, which has installed costly modifications without seeking a CPCN and which is actively implementing plans to install additional modifications without seeking a CPCN. Petitioners' members believe that these modifications are not required by the public convenience and necessity, but if these future modifications are constructed without a CPCN, Petitioners' members will be forced to pay for the expense of these modifications despite a lack of public need. Furthermore, Petitioners, whose membership objects to the proliferation of gas-generated electricity, will be especially harmed where a public utility

further relies upon natural gas despite a lack of need for the additional natural gas capacity. Therefore, Petitioners have a direct and substantial interest in the outcome of this petition.

12. DEC is North Carolina limited liability company and an investor-owned electric public utility.

**THE RECENT HISTORY OF CONSTRUCTING MODIFICATIONS WITHOUT MEANINGFUL PRE-CONSTRUCTION SCRUTINY**

13. There is a regrettable trend of at least one public utility, DEC, constructing modifications without any meaningful advanced scrutiny. The following historical review of DEC's construction of modifications reveals the lack of advanced scrutiny and therefore the importance of requiring a CPCN process prior to construction of a modification.

Lee Unit 3

14. Upon information and belief, the earliest pertinent modification involves DEC's W.S. Lee Station in Anderson County, South Carolina ("Lee"). Lee was originally a three-unit coal-fired power plant. As of April 2015, DEC retired Units 1 and 2 of Lee, and DEC installed a modification which converted Unit 3 from coal-fired to natural gas-fired. *See, e.g., DEC's 2015 IRP*, NCUC Docket No. E-100, Sub 141, p 44.

15. DEC did not seek a CPCN for the modification to Lee Unit 3.<sup>1</sup> Indeed, this modification to Lee Unit 3 received almost no advanced scrutiny, and certainly no

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<sup>1</sup> Since Lee Unit 3 is located in South Carolina, a CPCN application would be the subject of review by the South Carolina Public Service Commission (the "SC PSC"). In fact, DEC filed a petition with the SC PSC to avoid the requirement of seeking a CPCN for Lee Unit 3. The SC PSC granted that petition in an order dated January 16, 2014. *Declaratory Order on Status of Conversion and Repowering the 170 MW Lee Unit 3 from Coal to Natural Gas*, SC PSC, Docket No. 2013-430-E, Order No. 2014-118. Importantly, the SC PSC waived the requirement of a CPCN because of a South Carolina statute, namely S.C. Code Ann. § 58-33-110(1), which states that utilities are not required to seek a CPCN for the construction of a "like facility." Of course, no such statute exists in North Carolina; in fact, the General Statutes expressly require a CPCN "even though the facility be for

advanced scrutiny regarding the public convenience and necessity. During the years preceding construction of the modification, DEC's IRPs contained only brief references—typically one sentence, never more than a paragraph—to DEC's intent to construct the modification. *See, e.g., DEC's 2014 IRP*, NCUC Docket No. E-100, Sub 141, pp 34, 36, 43, 48, & 68; *DEC's 2013 IRP*, NCUC Docket No. E-100, Sub 137, pp 31, 38, & 61; *DEC's 2012 IRP*, NCUC Docket No. E-100, Sub 137, pp 10, 14, 53, 56, 91, 95, & 104.

16. Typical of the terse treatment given by DEC's IRPs to the modification at Lee Unit 3 is the following single-sentence reference in DEC's 2014 IRP: "The following assumptions impacted the 2014 resource plan: . . . Conversion of 170 MW of Lee Unit 3 to natural gas in April 2015." *DEC's 2014 IRP*, NCUC Docket No. E-100, Sub 141, p 48.

17. DEC's IRPs provided neither cost information nor construction information on the modification to Lee Unit 3. Of course, such crucial information would be necessary exhibits to an application for a CPCN. NCUC Rule R8-61(b)(2)-(4). In fact, the modification to Lee Unit 3 received no meaningful pre-construction scrutiny.

#### The Cliffside DFO

18. Another prominent example is DEC's modification project entitled Cliffside Dual Fuel Optimization ("Cliffside DFO"). The Cliffside DFO project "enable[d] up to 100% gas co-firing on Unit 6 and up to 10% gas co-firing on Unit 5 when the units are running simultaneously." *DEC's 2017 IRP*, NCUC Docket No. E-100, Sub 147, p 59.

The Cliffside DFO was completed in 2018. *DEC's 2019 IRP*, NCUC Docket No. E-100,

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furnishing the service already being rendered." N.C. Gen. Stat. § 62-110.1(a). Hence, the SC PSC's analysis is completely inapplicable to the present Petition. What is significant, however, is that DEC felt the need to seek permission from the SC PSC to avoid its generally applicable obligation to seek a CPCN.

Sub 157, p 73. As this Commission is aware, no CPCN was sought or obtained for the Cliffside DFO.

19. Despite a completion date of 2018, *id.*, upon information and belief, the first disclosure of the Cliffside DFO to the Commission was in DEC's 2017 IRP filed on September 1, 2017. In that filing, DEC provided the following laconic, last-minute details about the Cliffside DFO: "Complete engineering phase of Cliffside Dual Fuel Optimization (DFO) project by year-end 2017, and begin construction in 1Q2018. Current commercial operation date (COD) for both Units 5 and 6 is year-end 2018." *DEC's 2017 IRP*, NCUC Docket No. E-100, Sub 147, p 59.

20. Since DEC's filing was made in September 1, 2017, the Commission had no meaningful opportunity to review DEC's plans to complete the "engineering phase . . . by year-end 2017" and "begin construction in 1Q2018." *Id.*

21. DEC's IRPs provided neither cost information nor construction information on the Cliffside DFO modification. Of course, such crucial information would be necessary exhibits to an application for a CPCN. NCUC Rule R8-61(b)(2)-(4). In fact, the Cliffside DFO modification received no meaningful pre-construction scrutiny, and certainly no advanced scrutiny regarding the public convenience and necessity.

#### Belews Creek and Marshall

22. Further examples of expensive modifications without meaningful preconstruction review are DEC's Belews Creek Coal Units 1 and 2 and Marshall Coal Units 1 through 4.

23. DEC's 2019 IRP described the Belews Creek and Marshall modifications as follows:

. . . DEC is moving forward with modifications to Belews Creek Coal Units 1 and 2 and Marshall Coal Units 1 – 4. The Belews Creek project will enable 50% natural gas co-firing on each unit. The Marshall Project will enable 50% co-firing on Units 3 & 4 and up to 40% co-firing on Units 1&2. . . . Based on the current schedule, COD [*i.e.*, Commercial Operation Date] for Belews Creek Unit 1 is December 2019 and Belews Creek Unit 2 is December 2020. COD for Marshall Unit 3 is September 2020, Unit 4 is November 2020, and Units 1&2 are December 2021.

*DEC's 2019 IRP*, NCUC Docket No. E-100, Sub 157, p 73.

24. As the Commission is aware, the modification at Belews Creek Unit 1 is completed and operational. The other modifications at Belews Creek and Marshall are imminent with anticipated operational dates ranging from September 2020 through December 2021. *Id.*

25. Upon information and belief, the earliest disclosure to the Commission of the Belews Creek modifications appeared in DEC's 2017 IRP, filed on September 1, 2017. *DEC's 2017 IRP*, NCUC Docket No. E-100, Sub 147, pp 59-60. Upon information and belief, DEC did not make any disclosure of the modification at Marshall until September 3, 2019 in its 2019 IRP. *DEC's 2019 IRP*, NCUC Docket No. E-100, Sub 157, p 73.

26. DEC's 2018 IRP is especially illustrative of the lack of disclosure of the significant modification projects. Even though DEC acknowledged the potential Belews Creek modification in its 2017 IRP and must surely have been actively analyzing the potential modification at Marshall, DEC's 2018 IRP omitted any disclosure whatsoever concerning these modifications and instead vaguely stated that it was investigating "new projects to enable gas to be co-fired at coal burning stations." *DEC's 2018 IRP*, NCUC Docket No. E-100, Sub 157, p 167. No other details were provided, including even where such modifications would be performed.



27. None of DEC’s preconstruction disclosures concerning modifications at Belews Creek or Marshall included cost or construction information. Of course, such crucial information would be necessary exhibits to an application for a CPCN. NCUC Rule R8-61(b)(2)-(4). In fact, the modification projects at Belews Creek and Marshall have received no meaningful pre-construction scrutiny, and certainly no advanced scrutiny regarding the public convenience and necessity.

28. Despite the lack of meaningful pre-construction scrutiny, the modifications at Belews Creek and Marshall were extremely costly. According to DEC’s Federal Energy Regulatory Commission (“FERC”) Form 1 filings, the capital expenditures for the modification at Belews Creek from 2018 to 2019 was \$101.3 million, and over the same time period, the capital expenditure for the modification at Marshall was \$57.2 million.

**PUBLIC UTILITIES ARE REQUIRED TO OBTAIN A CPCN BEFORE  
CONSTRUCTING A MODIFICATION**

29. According to the Public Utilities Act, N.C. Gen. Stat. §§ 62-1 *et seq.*, public utilities shall not construct any facility for the generation of electricity without first obtaining a CPCN. The pertinent statute states, in relevant part, the following:

[N]o public utility or other person shall begin the construction of any steam, water, or other facility for the generation of electricity to be directly or indirectly used for the furnishing of public utility service, even though the facility be for furnishing the service already being rendered, without first obtaining from the Commission a certificate that public convenience and necessity requires, or will require, such construction.

N.C. Gen. Stat. § 62-110.1(a).

30. The plain language of the applicable statute requires that a public utility must seek a CPCN before beginning “the construction of any . . . facility for the **generation**

**of electricity.”** *Id.* (emphasis added). Manifestly, the modifications addressed in the present petition are “for the generation of electricity.” By way of example, DEC’s 2013 IRP characterized the modification of Lee Unit 3 as a “Capacity Addition[.]” which added natural gas-fired generation capacity in the amount of “170 MW.” *DEC’s 2013 IRP*, NCUC Docket No. E-100, Sub 137, p 31.

31. Presumably, DEC would argue that it was not required to seek a CPCN for the subject modifications because overall nameplate capacity is not being increased; instead, supposedly there is only a change in the means of generating that electricity. This argument fails for at least four reasons.

32. First, this argument was already evaluated and rejected by the General Assembly. The pertinent statute expressly requires a CPCN “**even though** the facility be for furnishing the service **already being rendered.**” N.C. Gen. Stat. § 62-110.1(a) (emphasis added).

33. Second, that argument violates the plain language of the Public Utilities Act. The pertinent statute clearly states that “**any . . . facility for the generation of electricity**” must be the subject of a CPCN proceeding. N.C. Gen. Stat. § 62-110.1(a) (emphasis added). These modifications clearly fall within the broad category of *any facility*, and these modifications self-evidently *generate electricity*, and therefore, the Public Utilities Act mandates the utilities seek a CPCN before constructing a modification.

34. Third, these modifications increase the natural gas-fired capacity of a utility. Indeed, in its 2013 IRP, DEC characterized Lee Unit 3 in the following manner: “Capacity Additions include the conversion of Lee Steam Station unit 3 from coal to natural gas in 2015 (170 MW).” *DEC’s 2013 IRP*, NCUC Docket No. E-100, Sub 137, p 31.

35. Fourth, CPCN proceedings are not intended merely to evaluate the raw increase in overall generation capacity, but must also address the suitability of the particular generation method proposed by the utility. This Commission has aptly stated that, when evaluating an application for a CPCN, “the Commission must also determine if the public convenience and necessity are best served by the **generation option being proposed.**” *In re Application of DEC for Approval for an Electric Generation CPCN to Construct Two Units at Cliffside*, Order Granting CPCN with Conditions, NCUC Docket No. E-7, Sub 790, p 10 (emphasis added). Accordingly, a public utility’s decision to add natural gas-fired generation to a coal-fired unit is a matter for review in a CPCN proceeding to assess whether public convenience and necessity are best served.

**PUBLIC POLICY DICTATES THAT MODIFICATIONS RECEIVE THE SCRUTINY OF A CPCN PROCEEDING**

36. According to the N.C. Court of Appeals, “The primary purpose of the [CPCN] statute is to provide for the orderly expansion of the State’s electric generating capacity in order to create the most reliable and economical power supply possible and to avoid the costly overbuilding of generation resources.” *State ex rel. Utilities Commission v. Empire Power Co.*, 112 N.C. App. 265, 278, 435 S.E.2d 553, 560 (1993).

37. As described below, there are compelling reasons to believe that DEC’s modifications were neither orderly nor economical. Hence, a formal CPCN process for DEC’s modifications, or any electric public utility’s modifications, could potentially save ratepayers substantial funds and avoided the proliferation of environmentally harmful emissions.

38. Take, for example, the Cliffside DFO project. As described above, DEC completed a modification of Cliffside Unit 5 in 2018. *DEC’s 2019 IRP*, NCUC Docket

No. E-100, Sub 157, p 73. While exact figures are not publicly available, this modification was obviously extremely costly, and presumably was based upon an anticipated retirement date of December 2032. *DEC's 2019 IRP*, NCUC Docket No. E-100, Sub 157, p 55. However, in DEC's rate-increase proceeding filed in 2019, DEC indicated its intent to shorten the anticipated life of Cliffside Unit 5 to 2026. *In re Application of DEC for Adjustment of Rates and Charges Applicable to Electric Utility Service in NC*, Testimony of Dustin R. Metz, NCUC Docket No. E-7, Sub 1214, p 15. It is highly questionable that the significant expense to undertake the Cliffside DFO project was justified based on the newly shortened retirement date of 2026, which presumably reflects DEC's decision that Cliffside Unit 5 was no longer cost-effective. A CPCN proceeding would be an excellent forum for addressing such issues.

39. Moreover, the evidence shows that these modifications to Belews Creek (Unit 1) and Cliffside (Units 5 and 6) were completely unnecessary to meet DEC's reserve margin. The modification of Belews Creek provided a 1,110 MW total capacity addition of gas-fired generation, *DEC's 2019 IRP*, NCUC Docket No. E-100, Sub 157, p 79, and the modification of Cliffside provided a 1,395 MW total capacity addition of gas-fired generation, *DEC's 2019 IRP*, NCUC Docket No. E-100, Sub 157, p 79, for a combined total of 2,505 MW. However, DEC has two combustion turbine plants, namely Lincoln and Mill Creek, with 24 total units and a combined capacity of 2,322 MW that are almost never used, and in fact were effectively not used at all in 2019.<sup>2</sup> *DEC's 2019 IRP*, NCUC

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<sup>2</sup> 2019 DEC FERC Form 1, p. 403.2. 1,565 MW Lincoln megawatt-hours (MWh) of output in 2019 = 24,505 MWh (line 12). Therefore, 2019 Lincoln capacity factor = (24,505 MWh)/(1,565 MW x 8,760 hr) = 0.0018 (0.18 percent). p. 403.3, Mill Creek: 757MW Mill Creek megawatt-hours (MWh) of output in 2019 = 73,101 MWh (line 12).

Docket No. E-100, Sub 157, p 80. A third plant, Rockingham, which has a capacity of 895 MW, is used sparingly.<sup>3</sup> *DEC's 2019 IRP*, NCUC Docket No. E-100, Sub 157, p 80. These three plants—Lincoln, Mill Creek and Rockingham—have a combined total 3,217 MW of capacity and yet are rarely used. FERC Form 1, 2019, pp 403.2 and 403.3.

40. Instead of installing modifications at Belews Creek and Cliffside, which added 2,505 MW total, DEC would be better served relying upon Lincoln, Mill Creek and Rockingham, which have 3,217 MW total. When these CT plants are operated a substantial number of hours in a year, such as Rockingham in 2018 and 2019, the CT cost-of-production is similar to that of coal-firing at Belews Creek, Cliffside, or Marshall, with all coal plants at a production cost of about \$0.04/kWh.<sup>4</sup> Said another way, the capital cost of the Cliffside DFO is not justified because equally low-cost electricity could be generated by 1) generating the same amount of electricity at existing DEC natural gas-fired CT plants, or 2) importing low-cost merchant combined-cycle power from the adjacent PJM control area. Much of this DEC CT capacity is rarely if ever used – and therefore is available to provide what would otherwise be generated at Belews Creek or Cliffside – because DEC has sufficient reserves without these CT plants. Significantly, these alternatives would require no capital investment. For example, Petitioners estimate the de facto 2020 reserve margin in DEC service territory is about 33 percent, based on the actual 2019 DEC winter

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Therefore, 2019 Mill Creek capacity factor =  $(73,101 \text{ MWh}) / (757 \text{ MW} \times 8,760 \text{ hr}) = 0.011$  (1.10 percent).

<sup>3</sup> 2019 DEC FERC Form 1, p. 403.3. 895 MW Rockingham megawatt-hours (MWh) of output in 2019 = 959,484 MWh (line 12). Therefore, 2019 Rockingham capacity factor =  $(959,484 \text{ MWh}) / (895 \text{ MW} \times 8,760 \text{ hr}) = 0.0122$  (12.2 percent). The Rockingham 2019 cost-of-production, at \$0.0420/kWh (line 35), was lower than the average cost-of-production at Marshall of \$0.0423/kWh (p. 402, line 35).

<sup>4</sup> Ibid, p. 402, p. 403.1. Cost-of-production at Belews Creek in 2019 = \$0.0406/kWh. Cost-of-production at Cliffside in 2019 = \$0.0398/kWh.

peak.<sup>5</sup> This translates into about 2,600 MW of available generation beyond what is necessary to meet the 17 percent reserve margin target.<sup>6</sup>

41. Moreover, the modifications at Belews Creek and Cliffside were extremely inefficient. The production cost at Belews Creek and Cliffside was approximately \$40 per MWh. DEC 2018 FERC Form 1, May 29, 2019, pp 402 & 403.1. Yet, the production cost of a merchant combined cycle unit is about \$31 per MWh, or about 25 percent less than the production cost at Belews Creek or Cliffside.<sup>7</sup> *Id.* at 403.3. Moreover, the production cost of hydroelectric units is considerably lower, at \$13 per MWh, or about one-third the production costs at Belews Creek or Cliffside. *Direct Testimony of Bill Powers*, NCUC Docket No. E-7, Sub 1214, p 21:14-21:15. Hence, these modifications were not only expensive, but also economically inefficient relative to other means of generating electricity.

42. Moreover, these modifications at Belews Creek and Cliffside further reduce the already low thermal efficiency of the steam boilers. “Burning natural gas in steam boilers formerly fired on coal reduces the thermal efficiency of the steam boiler combustion process by 3 to 5 percent. The coal-fired steam boiler is already a relatively low efficiency power generation process compared to a combined cycle power plant.” *Direct Testimony of Bill Powers*, NCUC Docket No. E-7, Sub 1214, p 21:6-21:9.

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<sup>5</sup> DEC 2018 IRP, Table 12-E, p. 61. Available capacity with DSM = 22,229 MW. Adjusted Duke system winter peak forecast = 17,905 MW. Forecast reserve margin = 22,229 MW/17,905 MW = 0.241 (24.1%). Actual DEC 2019 winter peak load = 16,739 MW [DEC 2019 FERC Form 1, p. 401b, January 22, 2019]. Therefore, actual DEC 2019 reserve margin = 22,229 MW/16,739 MW = 0.328 (32.8%).

<sup>6</sup> 22,229 MW – (16,739 MW x 1.17) = 2,644 MW.

<sup>7</sup> Abundant combined cycle capacity is available for import from the adjacent PJM control area. *Direct Testimony of Bill Powers*, NCUC Docket No. E-7, Sub 1214, pp 21-23.

43. Finally, as this Commission is aware, North Carolina Governor Roy Cooper's Executive Order 80 set several goals designed to address climate change and transition to clean energy. For instance, Executive Order 80 set a goal to reduce statewide greenhouse gas emissions to 40% below 2005 levels by 2025. In light of this statewide goal, a CPCN process is particularly important for purposes of determining whether "the public convenience and necessity are best served by the **generation option being proposed.**" *In re Application of DEC for Approval for an Electric Generation CPCN to Construct Two Units at Cliffside*, Order Granting CPCN with Conditions, NCUC Docket No. E-7, Sub 790, p 10 (emphasis added). These facts demonstrate that the CPCN process, in addition to being necessary for modifications, would also be an excellent protector of both ratepayer funds and the environment.

#### CONCLUSION

44. Not only are utilities required by statute to seek a CPCN for modifications, but sound public policy dictates that utilities seek CPCNs for modifications. Therefore, Petitioners respectfully request that this Commission enter a judgment declaring that, in the future, modifications by DEC or any other electric public utility shall be treated as subject to N.C. Gen. Stat. § 62-110.1(a).

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This the 5th day of August, 2020.

/s/ Matthew D. Quinn

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**VERIFICATION**

I, James Warren, Executive Director of NC WARN, verify that the contents of the foregoing Petition for Declaratory Judgment are true to the best of my knowledge and belief. I am authorized to execute this Verification on behalf of NC WARN.

This the 5th day of August, 2020.



\_\_\_\_\_  
James Warren

Sworn to and subscribed before me,  
this the \_\_\_ day of \_\_\_\_\_, 2020.

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

My commission expires: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

As this is a new docket and does not have a service list, complimentary copies of the foregoing document are being sent via email to counsel to Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, Virginia Electric and Power Company, and Public Staff – North Carolina Utilities Commission.

This the 5th day of August, 2020.

*/s/ Matthew D. Quinn* \_\_\_\_\_  
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