

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1089

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Duke Energy Progress, LLC,)
for a Certificate of Public Convenience) ORDER DENYING MOTION
and Necessity To Construct a 752-MW) TO COMPEL
Natural Gas-Fueled Electric Generation)
Facility in Buncombe County Near the)
City of Asheville)

BY THE CHAIRMAN: On December 16, 2015, Duke Energy Progress, LLC (DEP), filed a letter in the above-captioned docket giving notice of its intent to file an application on or after January 15, 2016, for a certificate of public convenience and necessity (CPCN) to construct a 752-MW natural gas-fueled electric generation facility consisting of two new natural gas-fueled 280-MW (winter rating) combined cycle units and a natural gas-fueled 192-MW (winter rating) simple cycle combustion turbine unit, each with fuel back up, in Buncombe County near the City of Asheville. In its letter, DEP states, "The Western Carolinas Modernization Project (Project) will enable the early retirement of the 379-MW (winter rating) Asheville 1 and 2 coal units on or before the commercial operation of the new combined cycle units, thereby permanently ceasing operations of all coal-fired units at the site."

On December 18, 2015, the Commission issued an Order Scheduling Public Hearing and Requesting Investigation and Report by the Public Staff. In the Order, the Commission cited Session Law 2015-110 which provides, in pertinent part:

Notwithstanding G.S. 62-110.1, the Commission shall provide an expedited decision on an application for a certificate to construct a generating facility that uses natural gas as the primary fuel if the application meets the requirements of this section. A public utility shall provide written notice to the Commission of the date the utility intends to file an application under this section no less than 30 days prior to the submission of the application. When the public utility applies for a certificate as provided in this section, it shall submit to the Commission an estimate of the costs of construction of the gas-fired generating unit in such detail as the Commission may require. G.S. 62-110.1(e) and G.S. 62-82(a) shall not apply to a certificate applied for under this section. The Commission shall hold a single public hearing on the application applied for under this section and require the applicant to publish a single notice of the public hearing in a newspaper of general circulation in Buncombe County. The Commission shall render its decision on an application for a certificate, including any related transmission line

located on the site of the new generation facility, within 45 days of the date the application is filed if all of the following apply:

- (1) The application for a certificate is for a generating facility to be constructed at the site of the Asheville Steam Electric Generating Plant located in Buncombe County.
- (2) The public utility will permanently cease operations of all coal-fired generating units at the site on or before the commercial operation of the generating unit that is the subject of the certificate application.
- (3) The new natural gas-fired generating facility has no more than twice the generation capacity as the coal-fired generating units to be retired.

The Commission reasoned that in light of the 45-day decision-making deadline, good cause existed to schedule the required public hearing. The Commission further found good cause to require the Public Staff – North Carolina Utilities Commission (Public Staff) to investigate the application and present its findings, conclusions, and recommendations to the Commission at the Commission's Regular Staff Conference on February 22, 2016.

On January 15, 2016, DEP filed an application for a certificate of public convenience and necessity to construct up to 752 MW of natural gas-fueled electric generating capacity consisting of two new natural gas-fueled 280-MW combined cycle units and a natural gas-fueled 186-MW simple cycle combustion turbine unit, each with fuel back up, in Buncombe County at DEP's Asheville Steam Electric Generating Plant.

On January 25, 2016, North Carolina Waste Awareness and Reduction Network (NC WARN) and The Climate Times (collectively, Movants) filed a motion to compel DEP to provide additional responses to Movants' discovery requests and to make public certain information in DEP's application that was filed as confidential. In summary, Movants state that on December 21, 2015, they submitted data requests to DEP requesting information about the costs of the Project, alternatives to the Project, and the advisability of relying on natural gas as a fuel. Movants state that DEP's counsel notified Movants that some of the information requested would likely be confidential in nature. Counsel for Movants responded that they would not sign the regular DEP confidentiality agreement, and requested as complete a response as DEP could make. Movants state that as a matter of practice they do not sign confidentiality agreements because the purpose of both of the organizations is to provide their members, and the public, with as much relevant information as possible. Further, they maintain that having crucial information in-house, even when shared with Movants' experts, defeats their purpose of public education. Movants attach to their motion DEP's responses to their data requests.

Movants also contend that DEP excluded from the public version of its application information that is crucial to a full public review of the application, with DEP claiming that the information is proprietary and should be kept confidential. According to Movants, the

most significant information redacted by DEP is the system operations and planning needs for the Asheville units, which is included in the application as Exhibit 1B, Attachment A. Movants contend that DEP has not provided support for its claims that the Asheville area will be without adequate electricity if the three new gas units are not approved. Further, Movants maintain that public disclosure of the information regarding the need for the Project would not be damaging to DEP's financial interests. Movants assert that DEP refuses to provide any study or analysis to substantiate its claim that its regional winter peak will grow by 17% in the next decade. Movants question how they and the public can have meaningful participation in the CPCN application process without having the basic operations and needs assessment information. Moreover, Movants cite DEP's confidentiality claims regarding information on cost and construction of the Project, wholesale contracts, renewable resource contracts and avoided costs as being counter to a full review and discussion of the Project. Finally, Movants contend that the Commission has the authority to suspend the 45-day decision-making requirement of Session Law 2015-110 if Movants' motion cannot be reviewed and decided in an expeditious manner.

On February 1, 2016, DEP filed Revised Exhibit 1B, Attachment A, Revised Exhibit 3 and Revised Exhibit 4. In its cover letter, DEP states that it conducted a comprehensive review of the confidential information filed under seal on January 15, 2016, with its CPCN application and removed the confidential designation on much of the information initially designated as a trade secret.

Also on February 1, 2016, DEP filed a response to the Movants' motion to compel. In summary, DEP states that Movants served their First Data Requests on DEP on December 21, 2015. Because the data requests sought some confidential information, counsel for DEP inquired whether Movants would sign DEP's standard confidentiality agreement. On January 4, 2016, counsel for Movants explained to DEP that Movants would not sign a confidentiality agreement. Attached to DEP's response is a copy of an email exchange between DEP's and Movants' counsel regarding Movants' decision to not sign a confidentiality agreement.

DEP further states that on January 15, 2016, the same day that DEP filed its CPCN application, DEP served its responses to 25 of 30 of Movants' First Data Requests, including all of DEP's objections on the grounds of confidentiality that are the subject of Movants' motion to compel. DEP states that it served its remaining responses to Movants' First Data Requests on January 19, 20 and 25, 2016, and that none of these final five data request responses contain objections on the grounds of confidentiality. In addition, DEP states that it has withdrawn its objection to Data Request No. 1-5 and has provided the information to Movants.

DEP states that due to Movants' refusal to sign a confidentiality agreement, DEP served only the public version of the CPCN application on Movants. DEP further notes that of DEP's 441 page original CPCN application, only portions of 14 pages were filed under seal as confidential pursuant to G.S. 132-1.2 and withheld from Movants. DEP describes the above-referenced review of its application exhibits and states that the

revised exhibits filed on February 1, 2016, reduce the confidential information to only portions of 12 pages. Moreover, DEP asserts that the confidential portions of the CPCN application and the information sought in the data requests are limited to: (1) market and commercially-sensitive information; and (2) critical energy infrastructure information that is protected from public disclosure pursuant to the Federal Energy Regulatory Commission's (FERC's) regulations. In addition, DEP notes that it provided its \$1.1 billion cost estimate for the Project in its application, as well as an estimate of the rate impact of the Project. See Exhibit 3, page 3, Section 3.1.4.

DEP also attaches an affidavit signed by Michael Delowery, Vice President of Project Management and Construction for Duke Energy Corporation. In summary, Delowery states that the premature public disclosure of the detailed Project costs and procurement information would disadvantage DEP in its negotiations for the procurement of major equipment, as well as with engineering, procurement and construction (EPC) contractors because it would allow equipment suppliers or EPC contractors to deduce DEP's projections of anticipated equipment costs. As a result, DEP's ability to negotiate the lowest cost for its customers would be hampered. In addition, DEP states it has agreements with the Project bidders that prohibit DEP from publicly disclosing their names and their bid information.

DEP's response also includes a discussion of the North Carolina Public Records Act, and the courts' and Commission's decisions applying the trade secret provisions of the Act. In addition, DEP cites FERC orders that prohibit disclosure of critical energy infrastructure information. Further, DEP sets forth each of the remaining nine contested Data Requests and briefly states its basis for asserting that the information sought by Movants is confidential. Finally, DEP contends that the Commission should deny Movants' alternative request to suspend the 45-day decision-making timeline required by Session Law 2015-110.

Movants' Data Requests

Set forth below are the Movants' data requests, DEP's response to each data request, a summary of Movants' position as to why DEP's response is not adequate, and a summary of DEP's position as to why its confidentiality claims should be sustained.

Data Request No. 1-1

What is the estimated cost of the proposed Asheville modernization project? Please provide a cost for the natural gas units, additional infrastructure requirements, the decommissioning of the current coal-fueled units, and if still proposed, the transmission line project and the substation in South Carolina. Note a specific cost is not necessary but at least data detailing a rounded estimate should be made available.

DEP's Response

As provided in DEP's CPCN application, the total estimated costs of the Western Carolinas Modernization Project are approximately \$1.1 billion. More detailed capital

costs are presented in the CPCN application as “Confidential.” This request seeks information that contains proprietary and commercially sensitive business information that would harm Duke Energy Progress if produced publicly. NC WARN and The Climate Times have declined to execute a standard confidentiality agreement when offered by Duke Energy Progress. Accordingly, Duke Energy Progress objects to providing this further information in accordance with the January 4, 2016 agreement of counsel.

Except as otherwise noted, DEP asserted this same trade secret claim in its responses to the remaining Data Requests at issue herein.

Movants' Position: The \$1.1 billion total cost of the Project does not allow members of NC WARN and The Climate Times to debate whether a different project, such as one combined cycle plant, elimination of the diesel generators, or robust renewable energy and energy efficiency programs can meet the area’s needs at a reasonable cost. The information requested would enable Movants to examine the various components of the proposed project, such as the cost of decommissioning the existing coal units, the cost of remediating the coal ash sites, or broadly the cost of each of the three proposed units. Movants do not seek specific commercial data, such as the estimated cost of a Westinghouse turbine, but a breakdown of the various components of the project.

DEP's Position: DEP is evaluating bids and engaging in negotiations with equipment suppliers and EPC contractors. The details of the cost estimates filed confidentially are preliminary and are being developed as negotiations progress. If the details of the cost estimates were publicly disclosed at this stage of the negotiations, DEP's negotiating position would be damaged because suppliers might be able to use the project estimates to deduce DEP's estimates regarding the price of Project equipment. As a result, DEP could lose the ability to negotiate the lowest cost for its customers. In addition, DEP has agreements with the Project bidders requiring that DEP protect information provided by the bidders as confidential and proprietary, including the identity of the bidders and the fact that they are participating in the bid and/or negotiation process.

Except as otherwise noted, DEP asserted this same trade secret claim in stating its position regarding the remaining Data Requests at issue herein.

Data Request No. 1-8

Please fill out this chart on the expected cost of natural gas for the Asheville plant, starting with the year the plant is expected to go into operation (estimated here at 2018), through the year of an expected 30 years of operation. (The chart calls for DEP's expected cost of natural gas at high, medium and low price scenarios for 30 years.)

Movants' Position: DEP's reliance on natural gas is risky because of supply risks. Further, the future price of natural gas appears to be extremely volatile and could outweigh the cost of the proposed units.

Data Request No. 1-10

How accurate has DEC and DEP been in forecasting the cost of natural gas for its North Carolina gas plants? Please fill out the following table to explain. (The table calls for DEC's and DEP's estimated and actual cost of natural gas from 2007-2014, and the percentage difference for each year.)

DEP's Response

DEP objects to this question on the grounds that it is vague and seeks to have DEP to prepare data and analysis that is not reasonable [sic] available or does not exist and therefore would be unduly burdensome to create. Notwithstanding this objection, DEP responds that forecasts take place at many points in time and purchases take place at many points in time throughout the year. Accuracy can be defined many ways and there is no metric that tracks the accuracy of the Company's natural gas purchases. DEP stands by the reasonableness of its fuel forecasting and ultimate fuel costs as are investigated and approved by the North Carolina Utilities Commission in the annual fuel clause proceedings.

Movants' Position: These costs are historic and are relevant to Duke Energy's accuracy in determining the cost of natural gas, which constitutes a significant part of the gas plant's total operating costs.

DEP's Position: DEP further states that it provided information responsive to this data request in its response to Data Request No. 1-9. In that response, DEP gives an overview of its process of estimating natural gas prices 10 years ahead, including the identification of specific gas price indices that DEP uses.

Data Request No. 1-11

What is the yearly estimated increase in total spending on natural gas in North Carolina for the next 15 years? Please fill out the following table to explain. (The table calls for DEC's and DEP's estimated total natural gas spending at high, medium and low spending scenarios for 2015-2030.)

Movants' Position: Similar to DR No.1-8, estimated spending on natural gas is relevant because of volatility and risk.

Data Request No. 1-13

Please respond to the following questions to explain the sources that will supply natural gas for the proposed plant:

- a. What kinds of upgrades will need to be made to the existing natural gas pipelines to provide adequate natural gas for the Asheville plant?
- b. Will new compressing stations be required?

- c. If so, what is the approximate cost of each compressing station?
- d. What is the expected interval (number of miles) between each compressing station?
- e. How much energy is required to run the compressing stations? Approximately how much energy, as a percentage of the total delivered gas, does this represent?
- f. Will the natural gas need further treatment in the pipeline, such as heating? If so, how much energy will be required to heat the gas?
- g. How much extra pipeline will be added?
- h. What is the current size the existing pipeline Duke Energy expects to utilize to supply the proposed plant, and will that pipeline be expanded? If so, by how much?

Movants' Position: Similar to DR No. 1-1, the costs of supplying natural gas to the proposed units should be broken out of the total in order to show the total cost of a significant portion of the proposal.

Data Request No. 1-20

How much energy will it take to run the natural gas pipeline overall, in both absolute terms and as a percentage of the energy from the natural gas in the pipeline?

DEP's Response

The information sought is proprietary information belonging to Public Service Company of North Carolina (PSNC) and subject to confidentiality provisions between DEP and PSNC. NC WARN and The Climate Times have declined to execute a standard confidentiality agreement when offered by Duke Energy Progress. Accordingly, Duke Energy Progress objects to providing this information in accordance with the January 4, 2016 agreement of counsel.

Movants' Position: The net energy used to provide natural gas to the proposed units is relevant.

Data Request No. 1-24

How much of the natural gas that will be supplying the proposed Asheville natural gas units will DEP be hedging?

Movants' Position: The amount of the natural gas supply that is hedged is a relevant cost over the lifetime of the proposed units.

Data Request No. 1-25

How far in the future will DEP be hedging natural gas for the proposed Asheville units?

Movants' Position: The length of time the natural gas supply is hedged is a relevant cost over the lifetime of the proposed units.

Data Request No. 1-30

Please provide a map of transmission lines that DEP and DEC own or connect to in North and South Carolina. Please include, either in the map of existing transmission or in a separate map, the potential transmission additions that would result from building of the proposed Asheville natural gas units and development of the Western North Carolina Modernization Project.

Movants' Position: The existing and planned transmission infrastructure required in the area is relevant in looking at other possible providers of power, especially through DEC's territory or using DEC's resources to provide power, as well as whether the power generated by the proposed units will serve the Asheville area or other purposes. Movants suggest that if a detailed map of transmission infrastructure is confidential under FERC's rules, then DEP can provide a list of existing and proposed transmission infrastructure that connects to the Western region, including its general routes and capacities.

DEP's Position: This is confidential critical energy infrastructure information. DEP is prohibited by FERC's Order Nos. 702, 630, 630-A, 643, 649 and 683 from making public disclosure of the information.

DEP's Confidential Application Exhibits

DEP's application included several exhibits. As originally filed, all of Exhibit 1B, Attachment A was designated as confidential, and large portions of Exhibits 1A, 3 and 4 were designated as confidential. Movants contend that much of the information redacted by DEP is not commercially sensitive and should be available to the public. As previously discussed, on February 1, 2016, DEP filed public versions of Revised Exhibit 1B, Attachment A, Revised Exhibit 3 and Revised Exhibit 4. The revised public versions of these exhibits include a large portion of the information initially designated by DEP as trade secret information. The Chairman has reviewed the remaining confidential information, as discussed below.

DEP's Exhibit 1A

This is DEP's 2015 Integrated Resource Plan (IRP), previously filed by DEP in the Commission's pending IRP docket, E-100, Sub 141.

Movants' Position: Movants take issue with DEP's redaction of the details of DEP's wholesale power contracts (pp. 50 and 64), renewable resource contracts with third

parties (pp. 88-97) and DEP's current and projected avoided costs (p. 86).¹ Movants state that this information is essential for the purpose of assessing the alternatives to DEP's proposal to build new generation.

DEP's Position: Public disclosure of this information would harm DEP's ability to negotiate contracts with wholesale energy and capacity suppliers and renewable resource contractors at the lowest reasonable cost for the benefit of DEP's ratepayers.

DEP's Exhibit 1B, Attachment A

This exhibit discusses DEP's obligations as a Balancing Authority (BA) and Transmission Operator (TOP), the role that the current Asheville Coal Units 1 and 2 play in fulfilling adequacy and reliability requirements in the western North Carolina BA (CPLW), and the role that DEP's proposed new generation units will play.

Movants' Position: Movants maintain that the information provided in this discussion does not support DEP's claim that the CPLW will experience power shortages without the addition of the proposed new generation. Further, Movants contend that providing this information to the public will not adversely affect DEP's financial interests.

DEP's Position: The general information regarding DEP's role as a BA and TOP is publicly disclosed in Revised Exhibit 1B, Attachment A. The information that remains filed under seal is critical energy infrastructure information that DEP is prohibited from disclosing under FERC's orders.

DEP's Exhibit 3

This exhibit contains detailed cost, cash flow and operating information about the combined cycle and simple cycle units proposed by DEP.

Movants' Position: Movants assert that this is crucial information that should be made public.

DEP's Position: The general information regarding cash flow, cost estimating methodology, operating costs and the projected effects on customers' future rates is publicly disclosed in Revised Exhibit 3. The information that remains filed under seal is the specific cash flow, capital cost and operating cost amounts. Public disclosure of this information would harm DEP's ability to negotiate contracts with equipment suppliers at the lowest reasonable cost for the benefit of DEP's ratepayers.

¹ Movants state that DEP's IRP "redacts avoided costs rates, a major input into planning for renewable energy sources. Exhibit 1A, IRP, page 86." However, DEP's standard contract avoided cost rates are filed as public information in the Commission's biennial avoided cost proceedings. The confidential information on page 86 of DEP's IRP is a table showing DEP's current and projected avoided capacity and energy costs.

DEP's Exhibit 4

This exhibit contains detailed descriptions of the combined cycle and simple cycle equipment, the natural gas and back-up fuel oil supplies, the general criteria to be used by DEP for the selection of an EPC contractor, and the names of equipment suppliers and EPC contractors being considered by DEP.

Movants' Position: Movants contend that this is crucial information that should be made public.

DEP's Position: The general information describing the combined cycle and simple cycle turbine equipment, and the equipment supplier and EPC contractor selection criteria is publicly disclosed in Revised Exhibit 4. The information that remains filed under seal is the specific brands and models of equipment to be used and the names of equipment suppliers and EPC contractors being considered by DEP. Public disclosure of this information would harm DEP's ability to negotiate contracts with equipment suppliers and EPC contractors at the lowest reasonable cost for the benefit of DEP's ratepayers.

Considerations under the Public Records Act

The essence of the Movants' contentions is that DEP is refusing to provide information that should be available to the public under the North Carolina Public Records Act (Act), G.S. 132-1, et seq. Under G.S. 132-1, information filed with a state agency becomes the property of the people. Pursuant to G.S. 132-6, a custodian of public records shall allow inspection and copying of public records in its custody by any person requesting inspection and copying. Further, G.S. 132-6(b) provides that no person making such a request shall be required to disclose the purpose or motive for the request.

However, under G.S.132-1.2 a person has the right to file information under seal when the information constitutes a trade secret. A "trade secret" is defined in G.S. 66-152(3) to include:

[B]usiness or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:

- a. Derives independent actual or potential commercial value from not being generally known or readily accessible through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and
- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

In State ex rel. Utilities Comm'n v. MCI Telecommunications Corp., 132 N.C. App. 625, 514 S.E. 2d 276 (1999), MCI and other competing local providers (CLPs) objected to public disclosure of certain information that the Commission required the CLPs to

provide in their monthly access line reports, which were entitled Questions for Competing Carriers (QCC). In particular, QCC Nos. 11, 12 and 13 required the CLPs to provide detailed plans of when they intended to enter the market for local telephone service and how they intended to provide business and residential customers with such service. The Commission rejected the CLPs claims for confidentiality of the QCC information under the trade secret exception to the Act, concluding that the trade secret exception must be analyzed differently within the context of a regulated industry, and that there was a compelling public interest justification for public disclosure of the QCC information. The Commission based this ruling, in part, on the broad regulatory powers granted to the Commission by the General Assembly, including G.S. 62-30, 62-31 and 62-32.

However, the Court of Appeals disagreed, holding that the access line reports contained trade secret information. The Court identified the following factors for determining whether information is a trade secret:

- (1) the extent to which the information is known outside the business;
- (2) the extent to which the information is known to employees and others involved in the business;
- (3) the extent of measures taken to guard the secrecy of the information;
- (4) the value of the information to the business and its competitors;
- (5) the amount of effort or money expended in developing the information; and
- (6) the ease or difficulty with which the information could properly be acquired or duplicated by others.

The Court held that the details of when and how the CLPs intended to provide business and residential customers with local telephone service was a trade secret under the Act, and, thus, the Commission could not require the CLPs to provide this information in the monthly access line reports publicly filed with the Commission. Further, the Court refused to accept the Commission's rationale that a more liberal standard for disclosure should be employed when applying the Act to a regulated industry, and that the Commission was authorized to adopt such a standard outside the provisions of the Act. Id. at 635, 514 S.E. 2d at 283.

Discussion

The Chairman has carefully reviewed the information that DEP contends constitutes trade secrets, as well as the definition of "trade secret" under G.S. 66-152(3) and the cases interpreting that statute. For the purpose of analysis and discussion, the information sought by Movants to be disclosed publicly and claimed by DEP as confidential can be grouped into three categories: (1) costs, (2) operations, and (3) infrastructure.

Cost Information

The information sought by Movants in Data Requests 1-1, 1-8, 1-10, 1-11, 1-24, 1-25, Exhibit 1A and portions of Exhibit 3 is DEP's projected construction, equipment and operating costs, cost estimates and hedging strategies for natural gas, and avoided costs. The Chairman has considered the nature of this information and balanced the benefit of requiring DEP to disclose it to the public versus the detriment of disclosure to DEP and its ratepayers. In that analysis, there are three primary considerations that are the basis for making a determination.

First, this cost information has commercial value to DEP because it is not generally known by other persons who could obtain economic value by its disclosure. For example, if potential EPC contract bidders and suppliers knew DEP's estimated construction and equipment costs, than they could use that information to shape their bids. Similarly, DEP's competitors in the wholesale power market could use DEP's projections of natural gas prices, hedging strategies and avoided costs to gauge their offers when negotiating wholesale contracts with DEP or competing against DEP in the market. In addition, renewable resource contractors could use the details of DEP's current contracts, including their duration and estimated production of RECs, to gain an unfair advantage in negotiating contracts with DEP. Therefore, this cost information meets the definition of a trade secret.

Second, this information has been developed by DEP for DEP's purposes. The cost of developing it will be paid by DEP's ratepayers. Thus, it would not be in DEP's or its ratepayers' interests to allow other persons, companies and utilities to have the information free of charge, as proposed by Movants.

Third, and perhaps most importantly, public disclosure of this cost and pricing information could negatively impact DEP's bargaining position when it is attempting to negotiate to obtain the lowest natural gas, equipment and construction costs and other contract services. With DEP's bargaining position compromised, DEP's ratepayers could be negatively affected by having to pay higher rates.

As a result of these three considerations, the Chairman concludes that this cost information is a trade secret and that it would not be in the public interest to require DEP to disclose it to the general public. This conclusion is consistent with prior court and Commission decisions.

In N.C. Electric Membership Corp. v. N.C. Dept. Of Economic & Community Development, 108 N.C. App. 711, 425 S.E.2d 440 (1993), Duke Power sought public disclosure of documents filed by NCEMC with the N.C. Rural Electrification Authority. NCEMC presented an affidavit from its consultant showing that the documents contained projections of NCEMC's electric rates for sales to its members and its methodologies for preparing such projections. NCEMC argued that this information was a trade secret because it would benefit Duke in its competition with NCEMC in the wholesale power

market. The Court of Appeals agreed and enjoined disclosure of the information pending a trial on the merits.

Similarly, in the Commission's May 30, 2012 Integrated Resource Planning Order in Docket No. E-100, Sub 128, the Commission rejected a request by the North Carolina Sustainable Energy Association to require the electric utilities to disclose projected expenditures for fuel and estimated capital costs related to their generation planning, finding such information to be within the ambit of business or technical information covered by the trade secret exception to the Act. Further, the Commission opined that public disclosure of such information could negatively impact the bargaining position of a utility that is attempting to negotiate a contract to obtain the lowest cost fuel or capital addition, and in the end would harm ratepayers.

Likewise, the Commission has upheld challenges to the confidentiality of information filed by public utilities when public disclosure would involve market and commercially sensitive information that would impair the utilities' bargaining position in other aspects of their business. *See, e.g.,* Order Approving REPS and REPS EMF Riders and 2010 REPS Compliance, Docket No. E-7, Sub 984 (August 23, 2011)(information regarding prices paid for RECs and other renewable energy contract data was properly designated confidential as a trade secret); Order Approving Decision to Incur Project Development Costs, Docket No. E-7, Sub 819 (June 11, 2008)(cost estimates for construction of a nuclear plant are a trade secret and were properly redacted as confidential information).

With respect to the confidentiality of Exhibit 1A, p. 50, that portion of DEP's IRP lists the wholesale contracts - including names of the suppliers, type of generation and amount of megawatts - that are expiring from 2016-2020. If DEP is planning to replace these contracts, or at least maintain the option of replacing them, then the public disclosure of the details of the expiring contracts could be harmful to DEP's bargaining position. Nevertheless, general information regarding reductions and additions in DEP's wholesale contract megawatts are shown for winter and summer each year from 2016-2030 in the public version of DEP's IRP, Exhibit 1A, on pages 38 and 39, line 9.

In addition, the Chairman notes that in Data Request No. 1-10 the Movants request that DEP produce a comparison of DEP's historic natural gas costs for 2007-2014 with DEP's estimates of natural gas prices during the same years. Although DEP's past natural gas costs is not in itself a trade secret, and is publicly disclosed by DEP each year in the Commission's fuel cost proceedings, the Movants' coupling of the information with DEP's gas price forecasts renders the request objectionable on two grounds. First, as DEP states, the comparison sought by Movants is data that does not exist and would, therefore, require additional analysis and compilation by DEP. The Chairman concludes that DEP should not be required to conduct analysis and perform additional work in order to respond to this discovery request. Second, DEP's historic forecasts of natural gas costs are proprietary property produced by DEP. Public disclosure of the forecasts themselves could be detrimental to DEP's business interests, and, thus, detrimental to its ratepayers interests.

Lastly, DEP filed Revised Exhibit 3 on February 1, 2016, and publicly disclosed the general information concerning the Project's anticipated cash flow, cost estimating methodology, operating costs and the projected effects on customers' future rates. DEP properly maintained as confidential the specific cash flow, capital cost and operating cost amounts contained in the exhibit. The Chairman concludes that this specific cost information is a trade secret, and that public disclosure of the information would harm DEP's ability to negotiate contracts with equipment suppliers at the lowest reasonable cost.

Operations Information

The information sought by Movants in Data Requests 1-13, 1-20, portions of Exhibit 1B, Attachment A, and portions of Exhibit 4 is information about DEP's operations. The Chairman has considered the nature of this information to determine whether it is a trade secret as defined in G.S. 66-152.

In Data Request No. 1-13, Movants seek a variety of information about the size and operation of the natural gas facilities that will serve the Project. This information has commercial value to DEP and could be used by DEP's competitors in the wholesale power market. For example, knowledge about planned expansions of the pipeline size and additions of compressor stations would provide competitors with information about the amount of gas to be consumed by the project and the anticipated capacity factors of the three new units. That information could be used by DEP's competitors to estimate DEP's fuel consumption and fuel costs, thus providing the competitors with a major component of DEP's pricing strategy for wholesale power sales. As a result, this information is a trade secret under the statute and DEP is not required to disclose it publicly.

In Data Request No. 1-20, Movants seek to discover the amount of energy required to operate the natural gas pipeline that will serve the Project, both as an absolute measure and as a percentage of the total amount of natural gas to be consumed by the Project. Similar to the information sought by Movants in Data Request No. 1-13, this information has commercial value to DEP and could be used by DEP's competitors in the wholesale power market. For example, knowledge of the total amount of natural gas to be consumed by the Project would give competitors insight into DEP's prospective fuel costs and the anticipated capacity factors of the three gas-fueled units. Such knowledge could be used to estimate DEP's operating costs and the availability of the units for providing power to the wholesale market. Therefore, this information is a trade secret under the statute and DEP is not required to disclose it publicly.

Exhibit 1B, Attachment A, is entitled System Operations and Planning Needs for Asheville CCs. In summary, the exhibit contains general information about the reliability requirements enforced by the North American Electric Reliability Corporation (NERC), DEP's role as a BA and TOP in meeting the NERC requirements, and specific information about the electric generation and transmission operations that DEP must maintain as a BA and TOP. With respect to the general information, DEP has publicly disclosed this information in its Revised Exhibit 1B, Attachment A. With regard to the specific information about how DEP manages the risk of generation and transmission outages in order to protect the integrity of the transmission system that is its responsibility as a BA, this is

commercially sensitive information that has economic value to DEP and could have economic value to DEP's wholesale market competitors. For example, the information includes very detailed assessments of the most critical transmission lines in the Asheville area, seasonal import capability into the CPLW area and the new facilities required to maintain reliability as electric demand increases. This information is a trade secret under the statute and DEP is not required to disclose it publicly. In addition, this is information that DEP is prohibited from publicly disclosing under FERC's orders, as more fully discussed below regarding Data Request No. 1-30.

With respect to Exhibit 4, it includes general information describing the combined cycle and simple cycle turbine equipment, and the equipment supplier and EPC contractor selection criteria. This general information was made public by DEP in its Revised Exhibit 4 filed on February 1, 2016. However, DEP maintained as confidential the specific brands and models of equipment to be used and the names of equipment suppliers and EPC contractors being considered by DEP. Public disclosure of this information would be detrimental to DEP's ability to negotiate contracts with equipment suppliers and EPC contractors at the lowest reasonable cost, the cost that will most benefit DEP's ratepayers. For example, if a supplier knew that DEP has made a decision to use a particular brand and model turbine, the supplier could use that information to shape its bid and negotiations with DEP. Therefore, the specific information filed under seal by DEP is a trade secret.

The Chairman also notes DEP's contention regarding its agreements with interested suppliers and EPCs to keep their names confidential. Although the claim of trade secret confidentiality of the information involved herein is solely that of DEP, and not its potential suppliers and contractors, the effect on DEP of being forced to disclose the names of companies with whom it is in active negotiations is an appropriate consideration. The effect could be a withdrawal from the negotiations by one or more of those companies, thus narrowing the field of bidders from which DEP can select equipment and EPC services. Ultimately, that loss of bidders in the competition for DEP's business could increase DEP's costs.

Infrastructure Information

The information sought by Movants in Data Request 1-30 is maps of DEP's and DEC's transmission lines in North Carolina and South Carolina, including existing or potential transmission additions that would result from the building of the Project. Acknowledging that this information might be confidential under FERC guidelines, Movants suggest that in the alternative DEP can provide a list of existing and proposed transmission lines that connect to the Western region, including their general routes and capacities.

Beginning with Order No. 630, 102 FERC ¶ 61,190, issued by FERC on February 21, 2003, FERC has established criteria for defining critical energy infrastructure information (CEII) and preventing CEII from being publicly disclosed, including under the federal Freedom of Information Act. The primary purpose of the CEII guidelines is to prevent CEII from falling into the hands of terrorists or other persons who

could create havoc by destroying or damaging energy infrastructure. In summary, the FERC Orders require public utilities to designate certain existing and proposed facilities as CEII and to protect that information from public disclosure. In addition, the Orders establish procedures by which persons can apply to the FERC CEII Coordinator to challenge the designation of information as CEII and to obtain access to CEII.

In its IRP, DEP designated the maps of its transmission facilities as CEII. Therefore, the Commission does not have the authority to make the information public. Movants should address their request for the information to the FERC CEII Coordinator.

However, the Chairman notes that DEP's 2015 IRP includes public information about DEP's planned transmission line and substation additions updated since the filing of DEP's 2014 IRP. See DEP's Integrated Resource Plan, Docket No. E-100, Sub 141, at pp. 18-23 (Sept. 1, 2015).

Conclusions

Based upon the foregoing and the record in this proceeding, the Chairman concludes that DEP has carried its burden of showing that the information that Movants seek to compel disclosure of by way of Movants' Data Requests 1-1, 1-8, 1-10, 1-11, 1-13, 1-20, 1-24, 1-25, Exhibit 1A, Exhibit 1B, Attachment A, Exhibit 3 and Exhibit 4 meets the definition of a trade secret and, therefore, the information shall remain confidential.

In addition, the Chairman notes that all of the confidential trade secret information can be obtained by Movants should they choose to sign a confidentiality agreement, as previously offered by DEP. Thus, Movants have the ability to obtain the information they are requesting from DEP, to conduct their own review and analysis of the information and to use that information to participate in this proceeding.

Further, the Chairman concludes that the transmission maps sought by Movants in Data Request No. 1-30 have been designated by DEP as critical energy infrastructure information. Therefore, the Commission does not have the authority to make the information public.

Finally, the Chairman concludes that the Commission does not have the discretion to suspend the 45-day decision-making timeline required by Session Law 2015-110.

IT IS, THEREFORE, ORDERED as follows:

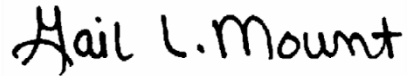
1. That the motion of NC WARN and The Climate Times to compel the public disclosure of additional information by Duke Energy Progress, LLC, shall be, and is hereby, denied.

2. That the alternative motion by NC WARN and The Climate Times to suspend the 45-day decision-making requirement of Session Law 2015-110 shall be, and is hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of February, 2016.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Gail L. Mount". The signature is written in a cursive, flowing style.

Gail L. Mount, Chief Clerk