

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	)	RESPONSE TO ORDER
Certificate of Public Convenience and Necessity	)	BY NC WARN AND THE
to Construct a 752 Megawatt Natural Gas-Fueled	)	CLIMATE TIMES
Electric Generation Facility in Buncombe County	)	
Near the City of Asheville	)	

NOW COME NC WARN and The Climate Times (“TCT”), by and through the undersigned attorney, with a response to the Commission’s Order setting Hearing, filed June 8, 2016.

1. By providing Duke Energy another opportunity to provide substantive testimony the Commission is abusing its discretion. In holding an expedited and hybrid hearing of oral arguments and new witnesses, the Commission is simply allowing Duke Energy yet another attempt to get its position right. In its Order, filed June 7, 2016, the Court of Appeals gave the Commission the opportunity to set a bond and “in its discretion, set bond in an amount that is in accordance with N.C. Gen. Stat. 62-82(b) and based upon competent evidence.” The Court did not allow the Commission to reopen the record in order base the bond amount on competent evidence.

2. There is no competent evidence in the record on “the damages, if any, which such party sustains by reason of the delay in beginning the construction of the facility which is occasioned by the appeal, such damages to be measured by

the increase in the cost of such generating facility (excluding legal fees, court costs, and other expenses incurred in connection with the appeal).” G.S. 62-82(b). Without unduly repeating previous arguments, the rough guesses in Duke Energy’s March 2 response, albeit verified, do not raise to the level of providing competent evidence. Duke Energy also provided no competent evidence that the beginning of construction of the facility would definitively be delayed, a necessary finding for the Commission to make in setting a bond or undertaking. Therefore, the Commission should find based on the evidence presently before it that no bond is required.

3. In the event that the Commission does reopen the record to new evidence and testimony, NC WARN and TCT do not see how they can meaningfully review new testimony and prepare to cross-examine Duke Energy’s witness (or witnesses) by June 17, 2016, when the Order provides Duke Energy the opportunity to supplement its May 2, 2016 Response on June 16, the day before the evidentiary hearing the next morning. Experts who may be able to assist NC WARN and TCT in the review of Duke Energy’s new testimony are not available on such short notice, nor could such an expert, even if available, provide coherent testimony under cross-examination in response to evidence submitted provided by Duke Energy only a few hours before.

4. NC WARN and TCT understand the Commission’s position that it was required by the Mountain Energy Act, S.L. 2015-110, to expedite the review of the certificate *sub judice*. However, setting a bond under pursuant to G.S. 62-82(b) is a matter of first impression and is, for that matter, the only statutorily

required bond without a request for a stay of an agency decision in North Carolina law. As such, the Commission should ensure the process is deliberate and provides NC WARN and TCT the opportunity to participate in a fair and meaningful manner.

THEREFORE, NC WARN and TCT pray the Commission reconsider its Order and not allow Duke Energy to provide additional testimony and witnesses,

OR IN THE ALTERNATIVE,

If the Commission allows additional testimony, it provides NC WARN and TCT at least ten days following Duke Energy's deadline to submit additional testimony to review and provide witnesses to respond to the testimony prior to an evidentiary hearing.

Respectfully submitted, this the 13<sup>th</sup> day of June 2016.

*/s/ John D. Runkle*

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing RESPONSE TO ORDER BY NC WARN AND THE CLIMATE TIMES (E-2, Sub 1089) upon each of the parties of record in this proceeding or their attorneys of record by deposit in the U.S. Mail, postage prepaid, or by email transmission.

This is the 13<sup>th</sup> day of June 2016.

*/s/ John D. Runkle*

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