

September 13, 2016

Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina

RE: Docket No. E-2, Sub 1089

Dear Chief Clerk:

Enclosed for filing in the above referenced docket is Duke Energy Progress, LLC's Objection to Proposed Record on Appeal Filed by NC WARN and the Climate Times.

Thank you for your assistance in this matter.

Sincerely,



Brady W. Allen

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1089

| | | |
|---|---|------------------------|
| In the Matter of |) | |
| |) | |
| Application of Duke Energy Progress, LLC for a |) | DUKE ENERGY PROGRESS' |
| Certificate of Public Convenience and Necessity |) | OBJECTIONS TO PROPOSED |
| To Construct a 752-MW Natural Gas-Fueled |) | RECORD ON APPEAL FILED |
| Electric Generation Facility in Buncombe |) | BY NC WARN AND THE |
| County Near the City of Asheville |) | CLIMATE TIMES |
| |) | |
| |) | |

NOW COMES Duke Energy Progress, LLC, ("DEP" or "the Company") pursuant to N.C. Gen. Stat. §62-82(b), N.C. Gen. Stat. § 62-90, and North Carolina Rule of Appellate Procedure 9 and 11, and objects to the Proposed Record on Appeal filed by NC WARN and The Climate Times (collectively, "NC WARN") on August 4, 2016. DEP has filed numerous pleadings outlining the history of this case, but, for ease of reference, limited portions of the history of this case relevant to the Objections are, once again, stated as follows:

1. On April 25, 2016, along with a Motion to Set Bond, NC WARN filed a Motion for an Extension of Time to File Notice of Appeal and Exceptions. Pursuant to G.S. § 62-90(a), the Commission granted the motion, extending the period to file Notice of Appeal until May 27, 2016.

2. On May 19, 2016, NC WARN filed a Petition for a Writ of Certiorari, a Petition for a Writ of Supersedeas, and a Motion for Temporary Stay with the North Carolina Court of Appeals, seeking review of and temporary relief from the Commission's Appeal Bond Order issued on May 10, 2016 ("First Bond Order").

3. On May 27, 2016, NC WARN filed a Notice of Appeal; without posting an appeal bond in violation of the N.C. Gen. Stat. § 62-82(b) and the First Bond Order.

4. On May 31, 2016, DEP filed a Motion to Dismiss Appeal of NC WARN.

5. On June 7, 2016, the Court of Appeals allowed NC WARN's Petition for Certiorari for the limited purpose of vacating and remanding the Commission's Order setting bond, stating, "the Commission shall set the bond in an amount that is in accordance with N.C. Gen. Stat. § 62-82 (b) and based upon competent evidence."

6. On June 8, 2016, the Commission issued an Order Setting Hearing on the issue of setting an undertaking or bond pursuant to N.C. Gen. Stat. § 62-82(b), requiring both NC WARN and DEP to sponsor witnesses to testify on the appropriate amount of the bond.

7. On June 14, 2016, NC WARN filed a motion to prevent the Commission from allowing additional evidence at the hearing, or to provide NC WARN ten more days to submit additional evidence.

8. On June 17, 2016, the Commission denied the Motion of NC WARN and proceeded with the evidentiary hearing.

9. On July 8, 2016, the Commission issued an Order Setting Undertaking or Bond pursuant to N.C. Gen. Stat. § 62-82(b) ("Second Bond Order") setting the amount of the bond or undertaking at \$98 million and allowing NC WARN until July 13, 2016, Order to file the bond or undertaking with the Commission.

10. On July 20, 2016, DEP filed a Renewed Motion to Dismiss the Appeal for NC WARN for failure to perfect their appeal by not filing the prerequisite bond with the Commission.

11. On July 26, 2016, NC WARN emailed other parties requesting permission to serve the record on appeal on a compact disc (“CD”).¹

12. On July 28, 2016, subsequent to its email to the other parties regarding the service of the Proposed Record by CD, NC WARN filed Notice of Appeal and Exceptions as to the Second Bond Order.

13. On August 2, 2016, the Commission issued its *Order Dismissing Appeal for Failure to Comply with Bond Prerequisite*, which dismissed NC WARN’s appeal of the CPCN Order (“Dismissal Order”) filed on May 27, 2016.

14. On August 4, 2016, NC WARN filed a Proposed Record on Appeal with this Commission.² The Proposed Record on Appeal addressed multiple issues, but was primarily directed at NC WARN’s appeal from the CPCN Order, which was dismissed by this Commission on August 2, 2016.

15. On August 12, 2016, DEP filed a Verified Motion to Dismiss Appeal of Second Bond Order, and on September 9, 2016 DEP filed Verified Motion Renewing its Motion to Dismiss Appeal of Second Bond Order asking the Commission to dismiss the subsequent Notice of Appeal filed on August 18, 2016, and asking that the Proposed Record on Appeal be declared invalid because it relates to an appeal of matters previously dismissed by the Commission.

ARGUMENT

¹ The email chain is attached as Exhibit A to these objections.

² On June 30, 2016, the Commission issued its Order Granting Motion for Extension of Time to File Proposed Record on Appeal setting the deadline for filing the record as July 31, 2016 (because July 31, 2016 was a Sunday the filing deadline was actually August 1, 2016).

DEP respectfully objects to the Record on Appeal in its entirety and each of the documents contained therein because it is not applicable to any appeal currently pending before the Commission. It appears that NC WARN is attempting to argue that the Proposed Record on Appeal filed on August 4, 2016 is related to the Notice of Appeal to the Second Bond Order filed by NC WARN on July 28, 2016 although the contents of that Proposed Record demonstrates otherwise. Those contents and NC WARN's correspondences with the other parties clearly show that the Proposed Record on Appeal was meant to relate to the Notice of Appeal filed on May 27, 2016, which was dismissed by this Commission on August 2, 2016. In essence, the Proposed Record on Appeal and the Commission's Order dismissing the appeal to which it was addressed appear to have crossed in the mail.

NC WARN's Proposed Record on Appeal addresses the CPCN Order and related constitutional issues. Thus, the Proposed Record on Appeal is clearly addressed to the Notice of Appeal, which was dismissed by the Commission on August 2, 2016. Furthermore, on July 26, 2016, NC WARN's counsel sent an email to the parties in this case asking for permission to serve the record on appeal on CD, two days before NC WARN's Notice of Appeal of the Second Bond Order was even filed. (See Exhibit A).

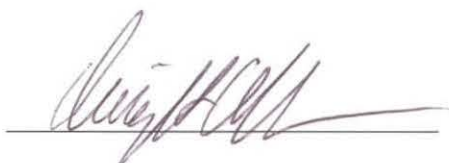
It is DEP's view that NC WARN did not originally intend for this proposed record to apply to their Appeal of the Second Bond Order. DEP respectfully asks that its objections be sustained in order to eliminate further delays and uncertainty in this docket.

At this point, the Commission has pending before it Motions that, once resolved, will help clarify the status of the various Notices of Appeal that have been filed,

including those that are still pending. Once these issues are resolved, DEP and the other parties to this docket will be able to assess any further filings that need to be made with the Commission, if any.

WHEREFORE, DEP respectfully asks that its objections to the Proposed Record on Appeal be sustained and that further filings that may be required, if any, be made after the Commission has ruled on pending Motions in this docket.

Respectfully submitted, this 13th day of September, 2016.



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ATTORNEYS FOR DUKE ENERGY
PROGRESS, LLC

Exhibit A

From: Matt Quinn [<mailto:Matt@attybryanbrice.com>]

Sent: Tuesday, July 26, 2016 11:52 AM

To: Sutton, Dawn H; Adam N. Olls; Antoinette R. Wike (antoinette.wike@psncuc.nc.gov); Austin D. Gerken, Jr.; Brad Rouse; Daniel Higgins; Grant Millin; Gudrun Thompson; Michael Youth (NCSEA); Peter H. Ledford; Ralph "Bo" McDonald (rmcdonald@bdixon.com); Richard Fireman; rpage@cpclaw.com; Scott Carver; Sharon Miller; Somers, Bo; dallen@theallenlawoffices.com

Cc: jrunkle@pricecreek.com

Subject: NCUC Docket No. E-2, Sub 1089 - Proposed Record on Appeal

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

All –

Hope you're well. On Monday, August 1, 2016, NC WARN and The Climate Times will serve their proposed record on appeal in the above-mentioned case. Please let me know whether your client plans to participate in the appeal and therefore wants to be listed on the case caption.

Due to the size of the docket, I plan to serve the proposed record on a CD. Please let me know if you object to this.

Thanks.

Matt

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing VERIFIED MOTION TO DISMISS APPEALS OF NC WARN AND THE CLIMATE TIMES was served on the following parties to this matter by electronic service or by depositing the same, postage prepaid and properly addressed with the United States Postal Service to:

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This the 13th day of September, 2016

