NO. COA 16-308

NORTH CAROLINA COURT OF APPEALS

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STATE OF NORTH CAROLINA *EX REL.* UTILITIES COMMISSION; PUBLIC STAFF – NORTH CAROLINA UTILITIES COMMISSION; and DUKE ENERTY PROGRESS, LLC,	FROM NC UTILITIES COMMISSION DOCKET NO. E-2, SUB 1089
Respondents,	
v.	
NC WARN and THE CLIMATE TIMES,	
Petitioners.	

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RESPONSE TO PETITION FOR WRIT OF CERTIORARI, AND PETITION FOR WRIT OF SUPERSEDEAS

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TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

NOW COMES Duke Energy Progress, LLC ("DEP) and respectfully files this Response in Opposition to the Petition for Writ of Certiorari and Petition for Writ of Supersedeas filed by NC WARN and The Climate Times ("Petitioners"), pursuant to N.C. Rules of Appellate Procedure 21(d) and 23(d).

RESTATEMENT OF THE FACTS

1. On January 15, 2016, DEP filed with the North Carolina Utilities Commission ("the Commission") a 441 page verified application for a Certificate

of Public Convenience and Necessity ("CPCN") to construct its approximately one billion dollar ($1 billion) Western Carolinas Modernization Project. The application sought authority to construct two new 280 MW natural gas fired combined cycle units and a contingent 186 MW natural gas fired combustion turbine unit, which will enable the early retirement of the 379 MW 1960s vintage Asheville 1 and 2 coal units at DEP's Asheville Plant in Buncombe County. The application included 5 extensive exhibits. Exhibit 1A is the public version of DEP's 2015 Integrated Resource Plan[1]; Exhibit 1B is a Statement of Need; Exhibit 2 contains a Plant Description, Siting and Permitting Information; Exhibit 3 outlines detailed cost information and Exhibit 4 details Construction Information.

2. The Application was filed pursuant to the Mountain Energy Act ("MEA"), Session Law 2015-110, which states the policy of the State to promote the early retirement of the Asheville coal units and their replacement with new natural gas generation at the Asheville plant site. To support this policy, the MEA mandated an expedited 45-day timeline for review of the Application.[2] Section 2 of the MEA amends Section 3(b) of the Coal Ash Management Act ("CAMA"), Session Law 2014-122, and provides that if the CPCN has been issued to DEP by August 1, 2016, certain CAMA requirements for Asheville Plant are extended, but only if

[1] DEP subsequently also filed the confidential version of the IRP.

[2] The MEA applied to the Application because it is (a) for a generating facility to be constructed at the site of the Asheville Steam Electric Generating Plant located in Buncombe County; (b) DEP will permanently cease operations of all coal-fired generating units at the site on or before the commercial operation date of the generating unit that is the subject of the certificate application; and (c) 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 existing Asheville coal units permanently cease operations by January 31, 2020.

3. On January 26, 2016, the Commission held a public hearing on the Application in Asheville. The Commission received written comments from parties, including from the Petitioners on February 12, 2016. On February 22, 2016, the Commission held an oral argument on the Application. On February 26, 2016, the Petitioners filed additional comments with the Commission.

4. On February 29, 2016, the Commission issued a Notice of Decision on the Application in compliance with the MEA deadline. On March 28, 2016, the Commission issued a CPCN Order finding that the public convenience and necessity require DEP to construct the two 280 MW combined cycle units. (Pet.'s Ex. C, p 1).

5. On April 25, 2016, Petitioners filed with the Commission a Motion for an Extension of Time to File Notice of Appeal and Exceptions, which indicated that they "may" file a notice of appeal and exceptions to the CPCN Order. The Commission granted the motion, extending the period to file notice of appeal until May 27, 2016.

6. N.C. Gen. Stat. § 62-82(b) requires a party opposing and appealing from a CPCN order to file a bond with sureties or an undertaking approved by the Commission, in such amount as the Commission determines will be sufficient to

reimburse the party to whom a CPCN is awarded for any increased costs of such generating facility occasioned by the appeal.

7. On April 25, 2016, the Petitioners also filed a Motion to Set Bond pursuant to N.C. Gen. Stat. § 62-82(b), requesting that the Commission set the appeal bond sufficient to discharge Petitioner's obligations for any appeal-related increased costs for the $1 billion Western Carolinas Modernization Project in the amount of only $250.00 and requesting an oral argument or evidentiary hearing on the bond requirement. (Pet.'s Ex. F, p 1).

8. On April 27, 2016, the Commission issued Procedural Order on Bond allowing DEP to file a response to Petitioners' motion on or before May 2, 2016, and allowing NC WARN to file a reply on or before May 5, 2016. (Pet.'s Ex G, p 1).

9. On May 2, 2016, DEP filed its verified response to Petitioners' Motion to Set Bond, in which it emphasized that the timing of the retirement of the Asheville coal units and the construction of the new combined cycle units are subject to strict timing deadlines under the MEA, which modifies the strict timelines of CAMA. As such, any potential delays in beginning construction of the combined cycle units, or subsequent delays in completing construction of the combined cycle units, due to an appeal would subject DEP and its customers to material risks. (Pet.'s Ex H, p 1).

10. DEP further stated that the approximate cost of the Western Carolinas Modernization Project was $1 billion and that it would be required to invest approximately $100 million in additional environmental controls pursuant to CAMA if the two CC units were delayed from being operational by January 31, 2020. *Id.*at ¶ 13. DEP also indicated that a two-year delay due to the appellate process could potentially increase the combined cycle facility costs by an additional $140 million. *Id.* at ¶ 14. DEP noted that it could not fully assess the likelihood that it would delay construction of the combined cycle units due to all of the uncertainties of a potential appeal that had not been filed or briefed and the impact of Mountain Energy Act deadlines, but asked that the Commission establish an appeal bond in a minimum amount of $50 million to adequately protect the Company's customers as provided for in N.C. Gen. Stat. §62-82(b).

11. On May 5, 2016, the Petitioners filed a Reply to DEP's Response to Motion to Set Bond. (Pet.'s Ex 1, ¶ 1).

12. On May 10, 2016, after considering the evidence and arguments of the parties, the Commission entered its Order Setting Undertaking or Bond pursuant to G.S. 62-82(b), which required the Petitioners to issue a bond or undertaking of $10 million and required DEP to state by September 1, 2016 whether an appeal will cause delays in the beginning of construction. (Pet.'s Ex J, p 7). The Commission's Order concluded "that $10 million strikes the right balance between

the parties until such time as the Commission receives additional information as described above." (Pet.'s Ex J, p 7)

13. On May 19, 2016, Petitioners filed a Motion for Writ of Certiorari, Writ of Supersedeas, and requested a temporary stay of enforcement and execution of the Bond Order with this Court, which in effect asks this Court to place the risk for potential damages from delays in construction due to the Petitioner's appeal on DEP and its customers.

14. On May 24, 2016, this Court denied the Petitioner's Motion for a Temporary Stay.

15. On May 27, 2016, Petitioners filed a Notice of Appeal and Exceptions without the appeal bond or undertaking required by N.C. Gen. Stat. § 62-82(b) and the Commission's Order Setting Undertaking or Bond.

STANDARD OF REVIEW

16. In determining whether to grant a Writ of Certiorari the moving party bears the burden of "demonstrat[ing]: (1) no appeal is provided at law; (2) a *prima facie* case of error below; and (3) merit to its petition." *House of Raeford Farms v. City of Raeford*, 104 N.C.App. 280, 284, 408 S.E.2d 885, 888 (1991). Under North Carolina Rule of Appellate Procedure Rule 23, Petitioners, who are seeking a Writ of Supersedeas, must state the reasons as to why the writ should issue in justice to

the Petitioner. For the reasons stated herein, the Petitioners have not met these standards.

THE BOND REQUIREMENT OF GEN. STAT. § 62-82 (b) PROTECTS CUSTOMERS FROM COST INCREASES DUE TO UNSUCCESSFUL APPEALS AND APPROPRIATELY PLACES A HIGH BURDEN ON PARTIES SEEKING REVIEW

17. Petitioners state that during their investigation of a potential appeal, they discovered that there is a unique bond requirement for appeals from a CPCN Order for generating facilities. (Pet.'s Ex D, p 1-2). The late discovery by Petitioners is irrelevant; however, the requirement has been the law of North Carolina since 1965. The purpose of the CPCN bond is clear.[3] The bond protects utility customers from having to pay for any unsuccessful appeal-related delays and appropriately shifts the economic risk from customers to the party seeking to appeal. Significantly, the statute provides for the bond to secure the payment of damages in the event that the appeal is unsuccessful, not upon a higher standard such as a finding that the appeal is frivolous.

18. Although it is not mentioned explicitly in the Petition filed with this Court, Petitioners do not contend that no appellate bond should be required. Rather, Petitioners recommended to the Commission that it set a nominal appeal bond of $250, which is grossly inadequate on its face. (Pet.'s Ex F, ¶ 7). Petitioners

[3] It should be noted that the bond requirements for G.S. § 62-82 (b) apply only to appeals relating to the construction of generating facilities. The bond requirement does not apply to other appeals from Commission Orders. Thus, Petitioners argument that the bond approved by the Commission is the equivalent of preventing appeals from the Commission is simply not true. (Petition, ¶ 25)

contend that the Commission's Bond Order is tantamount to dismissing the potential appeal because Petitioner's cannot afford the undertaking required by the Commission. (Pet.'s Ex F, ¶ 13). Petitioners further state that they are not requesting an injunction or stay of the Commission's CPCN Order. (Pet.'s Exh. F, ¶ 5). The ability or inability of a potential Appellant to pay an appeal bond is simply not relevant to an inquiry under Gen. Stat. § 62-82 (b). Similarly, the status of the potential Appellant as a profit or not-for- profit entity is equally not relevant.

19. That Petitioners have not requested an injunction or stay of the CPCN Order is likewise not relevant. Unlike traditional appellate bonds governed by N.C. Gen. Stat. § 1A, Rule 62, it is not necessary that Petitioners request stay under N.C. Gen. Stat. § 62-82 (b) because the General Assembly recognized the significant risks to North Carolina customers that such an appeal produces. This is not a trivial matter. It involves approximately $1 billion in capital investments and the potential delays expose DEP's customers to energy reliability risks and increased construction costs.

THE COMMISSION'S ORDER SETTING UNDERTAKING OR BOND BALANCES THE INTERESTS OF THE PARTIES AND IS REASONABLY BASED ON THE EVIDENCE

20. Contrary to the statement by Petitioners, DEP did not refuse to state that an appeal would result in delays in the initiation of construction. (Petition, ¶ 11). Rather, DEP advised the Commission that it is impossible to evaluate the merits of

a possible appeal at this stage of the proceedings. The Company had not had a chance to review the exceptions that Petitioners might take to the CPCN Order, much less the actual briefs that would be filed in support of the appeal. Thus, DEP concluded that it was impossible, to evaluate the merits of a possible appeal and the commensurate risk of beginning an approximate $1 billion construction project pending resolution of the appellate process. (Pet.'s Ex H, ¶ 10).

21. It is for that reason that the Commission referred to its Order Setting Undertaking or Bond as a "pre-notice of appeal decision." (Pet.'s Ex I, p 6). Under the process adopted by the Commission and pursuant to the N.C. Gen. Stat. §62-82(b) CPCN appeal bond prerequisite, Petitioners were required to file an undertaking or a surety bond by May 27, 2016, which should include a Notice of Appeal with exceptions and justification sufficient to provide DEP with the basis for the appeal. The Commission further ordered DEP to inform the Commission on or before September 1, 2016, whether DEP plans to delay the beginning of construction due to the proposed appeal. Should DEP advise the Commission that it will not delay construction due to the appeal, the Commission will entertain a motion that the undertaking be cancelled. If, on the other hand, DEP decides to delay the beginning of construction due to the appeal, the Commission will expeditiously schedule a hearing to determine whether the amount of the undertaking or bond should be modified. (Pet.'s Ex I, p 6)

22. Thus, Petitioners control their own destiny. The Petitioners can evaluate the merits of their own potential appeal. If Petitioners believe their appeal has merit and will be successful, they should have no concern that they will be required to pay damages under N.C. Gen. Stat. § 62-82 (b). If they believe as stated in their Petition that it is highly unlikely that DEP will delay anything, they should likewise have no concern. (Petition ¶ 17). Pursuant to the Commission's Order Setting Bond and Undertaking, Petitioners can wait until September 1, 2016. If DEP chooses not to delay, the Commission has issued an invitation to Petitioners to file a Motion asking that undertaking or bond requirement be cancelled. If by September 1, 2016, Petitioners conclude that their proposed appeal is lacking in merit, the appeal can be withdrawn at that time. If DEP chooses to delay the beginning of construction due to the proposed appeal, Petitioners will be afforded the opportunity of offering evidence that might justify a modification of the undertaking.

23. The Commission's Order Setting Undertaking or Bond provides a unique solution to a complex issue that balances the interests of all parties. It provides DEP with an opportunity to gain further information as to the substance of the proposed appeal. It also affords Petitioner the opportunity for further relief once DEP advises the Commission of its intentions by September 1, 2016.

24. The Petitioners, DEP and the Commission are aware of no cases interpreting N.C. Gen. Stat. § 62-82(b). (Pet.'s Ex J, p 4). This is not surprising. With good reason, generally, parties are cautious about appealing CPCNs because unnecessary costs can be shifted to ratepayers and delays can cause consequences for reliability and low cost energy. The Petitioners, who are the only party to appeal this CPCN, even recognize that appeals from the granting of a CPCN are subject to a unique requirement not present in other types of appeals from the Commission. (Pet.'s Ex D, p 1-2). Nonetheless, the Petitioners cite *Currituck Assocs. Res. P'ship v. Hollowell*, 170 N.C. App. 399, 612 S.E.2d 386 (2005) as an example of another context in which this Court has remanded a bond requirement. The Petitioner's reliance on the *Hollowell* case is misguided due to its inapposite context from the issue at hand and due to the Petitioner's faulty analogies.

25. In *Hollowell*, the appellee submitted an affidavit signed by an attorney-in-fact upon information and belief without personal knowledge stating it would be damaged $1,369,040 per year if it was delayed by appeal. The trial court ordered appellants to post a bond of $1,000,000 in order to stay execution on the court's previous judgment and to cover all costs and damages appellee may sustain by reason of the delay associated with the appeal should appellant not prevail. *Id.* at 401. Contrary to the Petitioner's incorrect assertions that DEP failed to provide any evidence or detail in support of its damage estimates, DEP filed a Verified

Response to the Petitioner's Motion to Set Bond, which was verified Mr. Mark E. Landseidel, the Director of Project Development and Initiation in the Project Management and Construction Department of Duke Energy Corporation, who states the contents thereof are correct and true to the best of his knowledge, information and belief. (Pet.'s Ex H, p 12).

26. In its Verified Response, DEP states that (1) if it was to delay construction of the combined cycle units beyond the current MEA deadline, it would need to invest approximately $100 million in additional environmental controls to make the Asheville coal units compliant with CAMA storm water, dry fly and bottom ash requirements otherwise extended by the MEA. *Id.* at 7-8. Furthermore, DEP's Verified Response provides evidence that delay would result in major equipment contract cancellation costs of approximately $40 million, plus an additional $8 million[4] in sunk development costs, increased project costs of $50 million, assuming a 2.5% annual cost escalation rate, and $45 million in estimated fixed firm gas transportation service costs during a two-year construction delay, even though the combined cycle units would not be in operation. *Id.* at 8-9. Thus, unlike the appellees in the *Hollowell* case, DEP provided competent evidence verified by one with personal knowledge, and the Commission issued its Order based on this

[4] Approximately half of these estimated sunk development costs may need to be written off if the project were to be delayed.

evidence. The costs are hardly "guesses" as asserted by Petitioners. (Petition, ¶ 11).

27. In its Order Setting Undertaking or Bond, the Commission concluded that in arguing that DEP's estimate of $50 million in potential damages was extravagant, Petitioners ignored the fact that the estimated total cost of the project is $1 billion. Although the Commission concluded that the $50 million of increased costs due to construction delays caused by appellate delays do not appear to be unreasonable, it nonetheless chose to adopt a lesser sum of $10 million, balancing the interests of Petitioners, DEP, and its customers pending further revisions as set forth in the Commission's Order. (Pet.'s Ex J, p 6).

REASONS CITED BY PETITIONERS DO NOT MERIT ISSUANCE OF REQUESTED WRITS

28. In their proposed appeal, Petitioners seem to challenge the fuel source for the generation facility advanced by the General Assembly in the MEA. (Session Law, 2015-110). In the Petition filed with this Court, Petitioners allege, "DEP's reliance upon natural gas is problematic because of the volatility of the natural gas market, the risks of shale gas supply shortages and because of natural gas's harmful impacts on the environment." (Petition, ¶ 5). In their Petition to Intervene filed with the Commission on December 21, 2015, Petitioner, NC WARN, stated that its primary purpose is to work for climate protection through the advocacy of clean, efficient and affordable energy. (Ex 1, p 1). Climate Times was identified as

a recently formed not-for-profit corporation dedicated to the use of science and policy to minimize the impacts of climate change (Ex 1, p 2).

29. The policy goals of the General Assembly in adopting the MEA were very clear. Section 2 of the MEA amended Section 3 (b) of CAMA to provide for the permanent closing of the Asheville coal fired generating units no later than January 31, 2020.

30. In its Order Granting Application in Part, With Conditions, and Denying Application in Part issued on May 28, 2016, the Commission stated,

> "To comply with the MEA, the Commission compressed the procedural schedule and truncated the process for accepting evidence. The Commission had no choice. The procedures and processes it employed were mandated by provisions of the MEA. Entities and parties dissatisfied by these processes and procedures had opportunity to address provisions of the Mountain Energy Act while the General Assembly deliberated over its provisions. To the extent they failed to do so, efforts to persuade this Commission to disregard the dictates of the MEA are too late and out of place." (Pet.'s Ex C, p 41)

The General Assembly, as a matter of policy, has the right to determine the fuel source to be used.

31. At the same time, the Commission recognized that under our system of economic regulation of public utilities, the rights of all parties to challenge the economics of the proposed generating facility should be preserved. It provided specifically that, for ratemaking purposes, the issuance of the Order and CPCN is without prejudice to the right of any party to take issue with the treatment of final costs in a future ratemaking proceeding. (Pet.'s Ex C, p 44).

ATTACHMENTS

Attached to this Response as Exhibit 1 is the Petitioner's Petition to Intervene in the Commission Docket No. E-2, Sub 1089.

CONCLUSION

The Commission's Order Setting Undertaking or Bond appropriately balanced the interests of the parties and adopted a middle ground in setting the undertaking or bond required by N.C. Gen. Stat. § 62-82. In doing so, it recognized that appeals from CPCN Orders involving generating facilities are unique and that potential Appellants in such cases cannot shift the energy reliability risks and the cost escalation risks to North Carolina citizens when they choose to seek appellate review.

WHEREFORE, Respondent, DEP, respectfully requests that this Court deny the Petitioner's request for this Court to issue a Writ of Certiorari to review the Commission's Order Setting Undertaking or Bond, and deny Petitioner's request for this Court to issue a Writ of Supersedeas to stay execution and enforcement of the Commission's Order.

Respectfully submitted, this 31st day of May 2016.

DUKE ENERGY PROGRESS, LLC

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing RESPONSE TO PETITION FOR WRIT OF CERTIORARI, PETITION FOR AND WRIT OF SUPERSEDEAS was served on the following parties to this action, pursuant to Appellate Rule 26, by depositing the same enclosed in a postpaid, properly addressed wrapper in a Post Office or official depository under the exclusive care and custody of the United States Post Office Department to:

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This the 31st day of May, 2016

Dwight W. Allen

Exhibit 1

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 and Necessity to Construct a 752 Megawatt Natural Gas-Fueled Electric Generation Facility in Buncombe County Near the City of Asheville	))))))	MOTION TO INTERVENE BY NCWARN AND THE CLIMATE TIMES AND MOTION FOR EVIDENTIARY HEARING

PURSUANT TO NCUC Rule R1-19, and the Order Scheduling Public Hearing and Requesting Investigation and Report by the Public Staff, December 18, 2015, now comes the North Carolina Waste Awareness and Reduction Network, Inc. ("NC WARN") and The Climate Times, by and through the undersigned attorney, with a motion to allow them to intervene in this docket.

Accompanying the motion to intervene is a motion for an evidentiary hearing OR IN THE ALTERNATIVE the denial of the application because the Commission, and parties, will be unable to investigate the costs and impacts of the proposed project if the Commission holds itself to a 45-day timeline.

In support of the motions is the following:

1. NC WARN is a not-for-profit corporation under North Carolina law, with more than one thousand individual members and families across the state, including Asheville, North Carolina. Its primary purpose is to work for climate protection through the advocacy of clean, efficient, and affordable energy. Its address is Post Office Box 61051, Durham, North Carolina 27715-1051.

2. The Climate Times is a recently formed not-for-profit corporation under North Carolina law, dedicated to the use of science and policy to minimize the impacts of climate change. As part of its public education, The Climate Times will publish feature-length pieces based on extended interviews of experienced scientists working on issues related to climate change concerns in our state. Its address is 346 Fieldstream Drive, Boone, North Carolina 28607.

3. The attorney for NC WARN to whom all correspondence and filings should be addressed is John Runkle, Attorney at Law, 2121 Damascus Church Road, Chapel Hill, North Carolina 27516. Rule 1-39 service by email is acceptable and may be sent to jrunkle@pricecreek.com.

4. Many of NC WARN's members are customers of Duke Energy Progress, and several reside in the Asheville area, and use electric power supplied by those utilities in their homes and businesses. NC WARN's members are concerned about the economic and environmental cost of energy and the impacts of those costs on themselves, their families and their livelihood. Of primary concern is the contribution to the climate crisis from Duke Energy Progress's reliance on fossil fuel for generation. NC WARN has intervened in several dockets before the Commission, including the issuance of certificates for public convenience and necessity ("CPCN") for generating facilities.

5. The Climate Times brings with it expertise on the costs and environmental impacts of natural gas generation, primarily from the release of methane.

6. If allowed to intervene in this docket, NC WARN and The Climate Times will advocate that the Commission fully investigate the costs and impacts of the proposed natural gas-fueled generating units prior to the issuance of a CPCN.

MOTION FOR EVIDENTIARY HEARING

7. NC WARN and The Climate Times further move that the Commission establish a considered process for an evidentiary hearing to gather testimony and evidence on the proposed project OR IN THE ALTERNATIVE deny the application because the Commission, and parties, will be unable to investigate the costs and impacts of the proposed project if the Commission holds itself to a 45-day timeline. This motion is included in the present motion to intervene because of the potentially abbreviated timeframe for this project in the Mountain Energy Act of 2015, Session Law 2015-110.

8. On December 16, 2015, Duke Energy Progress ("DEP"), gave its notification that it would file its application for the CPCN on the Western Carolinas Modernization Project on or after January 15, 2015. The project is the proposed closure of the 379 MW Asheville 1 and 2 coal units and construction of approximately 752 MW of natural gas-fueled generation (two 280 MW combined cycle units and a192 MW combustion turbine unit). It should also be noted the present coal units have an average capacity factor of 46% (in 2014) so operate closer to 174 MW. The combined cycle units are proposed for baseload, with the combustion turbine contingent on future peak needs. At some undesignated point in the future, DEP may install a solar system at the site.

9. NC WARN and The Climate Times firmly believe the 45-day time period in S.L. 2015-110, the time the application is filed to when the Commission in its scheduling order expects to render a decision, is both abbreviated and arbitrary.[1] The Commission, the Public Staff, and any intervening parties will not have the opportunity to review the application in any meaningful way, nor will the Commission be able to come to any reasonable decision of whether the project is in the public convenience and is necessary. However, until an evidentiary hearing is held, the Commission can deem the application to be incomplete, clearly within its authority. Further, a statutory provision allows the Commission to require the application to contain "such detail as the Commission may require." S.L. 215-110, Section 1. The Commission will not be able determine the details it requires without a full evidentiary hearing.

10. Without a full evidentiary hearing, the only action available to the Commission is to deny the application because the Commission will not have enough quality information to make its decision. The single public hearing required in S.L. 2015-110 will not provide the Commission with adequate technical testimony from expert witnesses, and the ability to cross-examine DEP witnesses will be eliminated or extremely limited. In recent hearings on CPCN applications, the utility presents its evidence, and allows the Commission and the parties to examine them. In controversial projects, the evidentiary hearings take days or even weeks, and the resulting orders can run hundreds of pages, as the

[1] Duke Energy Progress can of course waive the 45-day period in S.L. 2015-110 in order to provide the Commission the opportunity to hold an evidentiary hearing, just as it can come in pursuant to G.S. 62-110.1 to show the project meets long-standing standards for a CPCN.

Commission examines the various issues relating to the project. As evidenced by the public concern over the proposed transmission line to the new project, the controversies over the air pollution and coal ash at the present facility, and the need to take real actions on the climate crisis, NC WARN and The Climate Times believe this is one of the more controversial projects before the Commission.

11. The investigation of whether the proposed project meets the requirements for a CPCN should look at the full costs of construction. This includes not just the construction of the new natural gas units on the site, but the cost of decommissioning the coal plants, and the cost of coal ash clean up. The costs can be minimized if alternatives to the project are fully utilized, such as a much larger solar energy project and the availability of at least 378 MW of dispatchable hydropower operating at a capacity factor of 42% presently available in western North Carolina. Similar to the application for the Cliffside coal plant, after evidentiary hearings, the Commission may determine only one plant, or a much smaller one, is needed, or again that alternatives exist and should be utilized.

12. The need for the 752-MW natural gas-fueled plants in the Asheville area, much of it baseload generation, is questionable, and especially if limited to the DEP's Western balancing authority area. News reports have based the need for the plants on an astounding projected 15% annual growth rate. An evidentiary hearing on DEP's claims appears crucial before making a multi-billion dollar investment with ratepayer money.

13. Dependence on natural gas is an extremely risky future, both financially and environmentally. The cost of fuel should be an important consideration in the total cost of the project; natural gas prices are considered to be extremely volatile over the next decade and DEP cannot depend on the present low price of natural gas to continue. All ratepayers will be ill-treated from escalating natural gas prices. And of special concern by NC WARN and The Climate Times, the contribution to the climate crisis from the use of natural gas from both conventional wells and fracking is recently coming into focus. The discharge and leakage of methane from the wellhead to the burn point means natural gas may be an even worse choice than coal.

THEREFORE, NC WARN and The Climate Times pray that they are allowed to intervene in this matter and fully participate in the Commission's deliberations. NC WARN and The Climate Times further pray that the Commission hold an evidentiary hearing on the application OR IN THE ALTERNATIVE deny the application as incomplete and insufficient.

Respectfully submitted, this the 21st day of December 2015.

/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 MOTION TO INTERVENE BY NC WARN AND THE CLIMATE TIMES AND MOTION FOR EVIDENTIARY HEARING (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 21st day of December 2015.

/s/ John D. Runkle