

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, Sub 1089

In the Matter of
Application of Duke Energy Progress, LLC for)
a Certificate of Public Convenience and Necessity) COMMENTS OF
to Construct a 752 Megawatt Natural Gas-Fueled) COLUMBIA ENERGY, LLC
Electric Generation Facility in Buncombe County)
Near the City of Asheville)

Pursuant to the Order on Procedure for Accepting Comments of the Parties, Columbia Energy, LLC provides these comments as to certain issues presented in this docket.

BACKGROUND

By Order issued February 4, 2016, the Commission granted Columbia Energy's Petition to Intervene in this docket. As shown in that Petition, Columbia Energy owns and operates an existing 523 MW combined cycle power generating facility located in Gaston, SC. Columbia Energy's facility is a cogeneration facility and a Qualifying Facility ("QF"), as that term is defined in Section 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), 18 U.S.C.A 824a-3. Pursuant to PURPA, DEP is legally obligated to purchase Columbia's energy and capacity at DEP's avoided cost.

Columbia Energy's facility has eleven years of reliable operating history. Columbia holds firm pipeline transportation contracts to access natural gas on existing Transco pipelines and is also capable of operating on fuel oil with approximately one million gallons of on-site oil storage. Columbia Energy has filed for long term (10 year) firm transmission service to deliver all of its energy and capacity to DEP's service territory.

Columbia Energy has delivered to Duke Energy Progress, LLC (“DEP”) the information DEP requires from a QF prior to contracting to accept the capacity and energy. Columbia Energy has also delivered information to DEP indicating its intent to sell to DEP its full output of 523 MW of capacity and energy to DEP.

On January 15, 2016, DEP filed its Application in this docket pursuant to N.C. Sess. Law 2015-110 and N.C. Gen. Stat. § 62-110.1. By its Application, DEP seeks a Certificate of Public Convenience and Necessity authorizing it to construct what it describes as its Western Carolinas Modernization Project, which would include closure of existing 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 proposed to commence operations in 2019 and an optional or “contingent” 192 MW combustion turbine unit proposed to commence operations in 2023). The combined cycle units are proposed for baseload operation, with the combustion turbine to apparently be contingent on future peak needs. At some unknown point in the future, DEP may also install a solar system at the facility site.

STANDARD OF REVIEW

Section 1 of N.C. Sess. Law 2015-110 requires an expedited decision on any application for a certificate related to "a generating facility to be constructed at the site of the Asheville Steam Electric Generating Plant located in Buncombe County," if the criteria set forth in Section 1 are met. This statute does not, however, alter the fundamental determination that the Commission must make when reviewing an application for a certificate of public convenience and necessity — specifically, whether "public convenience and necessity requires, or will require" the "construction of any . . . facility for the generation of electricity to be directly or indirectly used for the furnishing of public

utility service, even though the facility be for furnishing the service already being rendered. . . ." N.C. Gen. Stat. § 62-110.1(a).

In a prior docket that also involved a legislatively-mandated expedited review process related to another power plant, the Commission still conducted a traditional analysis of the public interest, even though it was operating in a compressed time frame. *See In the Matter of Application of Progress Energy Carolinas, Inc. for Certificate of Public Convenience and Necessity to Construct a 950 Megawatt Combined Cycle Natural Gas Fueled Electric Generation Facility*, Docket No. E-2, Sub 960. There the Commission concluded "that the public convenience and necessity require the construction of the facility as proposed in the application subject to" the various conditions proposed by the Public Staff and approved by the Commission, and additional conditions imposed by the Commission. *In the Matter of Application of Progress Energy Carolinas, Inc. for a Certificate of Public Convenience and Necessity to Construct a 950 Megawatt Combined Cycle Natural Gas Fueled Electric Generation Facility in Wayne County*, Docket No. E-2, Sub 960, *Order Granting Certificate of Public Convenience and Necessity Subject to Conditions*, p. 10 (October 22, 2009) ("PEC Order").

The Commission has previously stated the following in addressing the "public convenience and necessity" standard to be applied with regard to such facilities.

G.S. 62-110.1 is intended to provide for the orderly expansion of electric generating capacity in order to create a reliable and economical power supply and to avoid the costly overbuilding of generation resources. *State ex rel. Utilities Comm. v. Empire Power Co.*, 112 NC App. 265, 278 (1993), *disc. rev. denied*, 335 NC 564 (1994); *State ex rel. Utilities Comm. v. High Rock Lake Ass* 37 NC App. 138, 141, *disc. rev. denied*, 295 NC 646 (1978). A public need for a proposed generating facility must be established before a certificate is issued. *Empire*, 112 NC App. at 279-80; *High Rock Lake*, 37 NC App. at 140. Beyond need, the Commission must also determine if the public convenience and necessity are best served by the generation option being proposed. The standard of public convenience and necessity is

relative or elastic, rather than abstract or absolute, and the facts of each case must be considered. *State ex rel. Utilities Comm. v. Casey*, 245 NC 297, 302 (1957).

In the Matter of Application of Duke Energy Carolinas, LLC, for Approval for an Electric Generation Certificate of Public Convenience and Necessity, Docket No. E-7, Sub 790, *Order Granting Certificate of Public Convenience and Necessity with Conditions*, p. 10 (March 21, 2007).

Thus, the bottom line is that regardless of the expedited decision required by N.C. Sess. Law 2015-110, the Commission still must find and conclude on the record before it that DEP has established that the public convenience and necessity would be served by construction of all of the facilities proposed in DEP's Application.

COMMENTS

With that standard in mind, Columbia Energy offers comments on three aspects of DEP's present Application that are inconsistent with the public interest and the public convenience and necessity.

First, in its Application, DEP has offered no information to the Commission regarding optional sources of power available to DEP from the wholesale market for serving all or part of the load described in the Application. In fact, in its Application, DEP acknowledges that "the Company did not evaluate the wholesale market for alternatives to meet these resource needs." (Application ¶ 26).

Columbia Energy submits that it is not possible for the Commission to make an informed and adequate assessment of the public convenience and necessity, as it would relate to the proposed project, without access to any information as to alternatives available to DEP. In other words, without a meaningful analysis of such alternatives, and the costs associated with such alternatives, the Commission cannot adequately assess how the public interest would best be served by the project proposed in the Application.

The public convenience and necessity will best be served if the Commission requires DEP to implement the most cost effective solution to reliably meet the needs of DEP's customers in Western North Carolina. As such, the Commission should consider the cost implications of long term contracts with Columbia Energy or other providers in evaluating DEP's Application. Columbia Energy is ready, willing, and able to enter into a long-term contract to provide 523 MW of capacity and energy to DEP annually, at DEP's avoided cost for energy and capacity.

Pursuant to PURPA, DEP is legally obligated to purchase Columbia's energy and capacity at DEP's avoided cost. As shown in its Petition to Intervene, Columbia Energy is pursuing efforts pursuant to PURPA to sell its capacity and energy via a power purchase agreement with DEP, whereby DEP will purchase energy and capacity from Columbia pursuant to its legal obligation to do so.

As noted above, DEP acknowledges that "the Company did not evaluate the wholesale market for alternatives to meet these resource needs." (Application ¶ 26). As such, no aspect of the information provided to the Commission by DEP would allow the Commission to evaluate the cost and benefits of alternative sources of power supply, including Columbia Energy. Absent information to facilitate such an evaluation, the Commission cannot make any informed evaluation of the estimated projected costs of the proposed facility as compared to the cost of alternative arrangements and, as such, the Commission cannot evaluate the impact of the proposed project on the public convenience and necessity.

As indicated in its Petition to Intervene, Columbia Energy believes that it can provide capacity and energy to DEP at lower costs than would otherwise be incurred by DEP's customers if the Western Carolinas Modernization Project is approved. Unlike the Western

Carolinas Modernization Project, Columbia would not need to procure new pipeline construction or service in order for Columbia to supply energy and capacity to DEP. Columbia is party to firm transportation gas supply arrangements, and its facility has access to the Transco interstate pipeline and is capable of burning fuel oil. As a result, Columbia Energy believes that one potential alternative that should be evaluated that could result in a more cost effective approach is for DEP to purchase power from Columbia at DEP's avoided cost rate and defer any incremental need and the cost associated therewith until new growth would require the installation of additional generation.

Columbia Energy's efforts to contract with DEP aside, Columbia submits that in order to make an informed decision as to how DEP's proposed project will impact the public interest, the Commission should require DEP to provide a thorough analysis of the cost of its proposed construction as compared to the cost of securing significant portions of the power which it seeks to generate from alternative sources, including Columbia Energy.

Second, Columbia Energy believes that DEP's publically available estimate for the cost of building the proposed facilities is much higher than the reasonable market costs for such facilities. Columbia is a subsidiary of the LS Power Development, LLC ("LS Power"). LS Power is a power generation and transmission business with a proven track record of successful development activities, operations management, and commercial project execution. LS Power has actively developed both power generation and transmission infrastructure to serve the need for new generation and improve the aging transmission system. LS Power affiliates currently own approximately 9,300 MW of power generation capacity, including the Columbia facility, as well as transmission lines in Nevada and Texas.

By virtue of its involvement in the planning and construction of power generation facilities, LS Power has significant experience and insight into the cost of constructing facilities such as those described in the public version of DEP's Application and supporting materials. DEP estimates a \$1.1 billion cost for constructing the project described in the Application. Given the optional component of the Application (the "contingent" 186 MW combustion turbine unit "potentially" needed in 2023 and the potential future unspecified solar installation) it is not clear what DEP's cost estimate covers, *i.e.*, the two base units, the contingent combustion turbine, or all three. Even if the \$1.1 billion cost estimate is for all three units, based on LS Power's significant experience relating to the costs of constructing such facilities, a projected cost of \$1.1 billion is approximately **60% higher than the market cost** of building such facilities. If, however, the \$1.1 billion cost estimate is to construct just the two 280 MW units, then that is approximately **double the market cost** of building such facilities. LS Power's experience and other publically available information confirm that under current market conditions such facilities can be built for less than \$1,000 per KWH.¹

Third, the Commission should not grant DEP a certificate authorizing construction of the 186 MW combustion turbine which DEP describes in the Application as a "contingent" future need. In its Application DEP states that the "**contingent** Asheville Combustion Turbine unit would **potentially** begin commercial operation in 2023 **if** the current peak demand growth

¹ *Application of Virginia Electric and Power Company: For revision of rate adjustment clause: Rider BW, Brunswick County Power Station, for the rate year commencing September 1, 2015, Case No. PUE-2014-00103 (Apr. 21, 2015).*

Application of Virginia Electric and Power Company: For revision of rate adjustment clause: Rider W, Warren County Power Station, for the rate year commencing April 1, 2015, Case No. PUE-2014-00042 (Feb. 18, 2015).

is not sufficiently reduced by the alternative approach discussed herein.” (Emphasis added) (Application ¶ 4).

The Commission should not grant certification for construction of this “contingent” combustion turbine that may “potentially” be needed at some future time, because DEP has not established, at this time, that such construction would be warranted by the public convenience and necessity. The record fails to establish anything more than an unripe “contingent” or conditional need for the 186 MW combustion turbine at some relatively remote future time. Columbia Energy endorses the Comments of the North Carolina Sustainable Energy Association on this point, and urges the Commission to not issue a certificate at this time authorizing construction of the 186 MW combustion turbine described in the Application.

Finally, if the Commission should decide to issue a certificate to DEP for any portion of the facilities described in the Application, then Columbia Energy requests that any order providing for issuance of such a certificate include language acknowledging DEP’s obligation under PURPA to purchase electricity from QFs in accordance with the Commission’s recent Orders in Docket E-100, Sub 140, and stating that the issuance of a certificate to DEP in this docket is without prejudice to the right of any party to assert its relative rights and obligations under PURPA in any future arbitration proceeding relating to Columbia Energy.²

CONCLUSION

Columbia Energy requests the Commission take these comments into consideration in the course of its deliberations here. N.C. Sess. Law 2015-110 requires the Commission

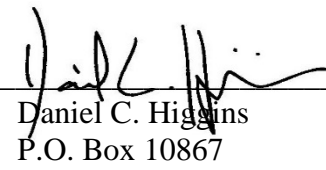
² *PEC Order Finding No. 11*, p. 5.

to act on DEP's Application within 45 days. That statute thus requires an expedited decision; it does not require that the Commission approve DEP's Application within that time frame. Columbia Energy urges the Commission to reject the Application, without prejudice to DEP, and direct DEP to provide the Commission with additional cost information sufficient to allow the Commission to analyze the cost alternative options available to DEP for securing energy through the wholesale market, including from Columbia Energy.

Respectfully submitted, this the 12th day of February, 2016.

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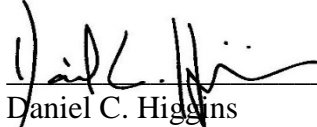
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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document was duly served upon counsel of record for all parties to this docket, and those parties that are not represented by counsel, by either depositing same in a depository of the United States Postal Service, first-class postage prepaid, addressed as shown below, or by electronic delivery, this the 12th day of February, 2016.

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