

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 137

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
2013 Updated Integrated Resource Plans) ORDER DENYING
and Related 2013 REPS Compliance Plans) NC WARN'S MOTION

BY THE PRESIDING COMMISSIONER: On March 10, 2014, the North Carolina Waste Awareness and Reduction Network (NC WARN) filed a Motion to Review Costs of Proposed Plant in South Carolina in the above-captioned docket. By its motion, NC WARN requests that the Commission conduct a review of the costs and need for a 750-MW combined cycle natural gas generating plant (Lee CC Plant) that Duke Energy Carolinas, LLC (DEC) is proposing to build in South Carolina. NC WARN states that on October 24, 2013, DEC and the North Carolina Electric Membership Corporation (NCEMC) filed an application with the South Carolina Public Service Commission (SCPSC) for a Certificate of Environmental Compatibility and Public Convenience and Necessity (CPCN) to construct and operate the Lee CC Plant. DEC will own 650 MW of the plant's capacity and NCEMC will own 100 MW.

NC WARN requests that the Commission's review of the Lee CC Plant be conducted in the present docket as a part of the Commission's review of DEC's integrated resource plan (IRP). In the alternative, NC WARN suggests that the Commission open a new docket to examine the need and cost of the Lee CC Plant. Further, it opines that the South Carolina statute governing DEC's application, S.C. Code Ann. ¶ 58-33-110(1), is similar to G.S. 62-110.1(a), in that DEC must show that the cost of the plant is reasonable prior to beginning construction. NC WARN states that DEC and NCEMC did not publicly disclose the estimated cost of the Lee CC Plant. Nevertheless, based on a January 2013 report by the U.S. Energy Information Administration on levelized costs of new generation, NC WARN estimates the cost of the Lee CC Plant to be \$750 million.

NC WARN submits that the principal purpose of G.S. 62-110.1, which includes the provisions governing IRPs and CPCNs, is to prevent costly overbuilding. Further, NC WARN believes it would be more efficient for the Commission and parties to address the cost of the Lee CC Plant now rather than in a future DEC general rate case, which typically involves a multitude of issues. In addition, NC WARN acknowledges that DEC and NCEMC are not required to obtain a CPCN in North Carolina before constructing a generating plant in South Carolina, even though the plant will serve North Carolina customers, citing State ex rel. Utilities Comm'n v. Eddleman, 320 N.C. 344, 358 S.E.2d 339 (1987). Nonetheless, NC WARN maintains that the Commission has wide discretionary authority under G.S. 62-30 to fully and closely review the cost of any utility practice that may have a significant impact on the utility's rates.

NC WARN also cites G.S. 62-110.6 in support of its motion. General Statute 62-110.6 allows a utility to petition the Commission for a determination of the need and estimated cost of an out-of-state plant. NC WARN notes that DEC's IRP projects its reserve margins over the planning horizon to be between 14% and 22%, with a goal of 14.5%, and that the Lee CC Plant will increase DEC's reserve margin beyond its goal. Finally, NC WARN states that its comments on DEC's IRP will include additional support for its position that there are a wide range of competitive alternatives to the Lee CC Plant.

On March 11, 2014, DEC filed a Response to NC WARN's Motion. DEC states that the Lee CC Plant will be a cost-effective base load and intermediate generating plant that is needed to serve its customers in North Carolina and South Carolina. Further, it is a part of DEC's modernization efforts to retire and replace aging, less efficient coal plants. In particular, DEC states that in 2015 its three 1950s vintage Lee Steam Station coal units will be retired, with one unit being converted to natural gas. The Lee CC plant is projected to go into full commercial operation in 2017. A hearing on the CPCN application for the plant was held by the SCPSC on February 4, 2014. DEC notes that NC WARN did not intervene in the SCPSC proceeding. DEC also states that its 2013 IRP filed in this docket includes a new 680-MW combined cycle addition in 2017.

In addition, DEC submits that the procedure established by G.S. 62-110.6 for the Commission to determine the need and cost estimate for an out-of-state plant is limited to the situation in which a public utility petitions the Commission for such a determination. DEC acknowledges that the Commission has broad power and authority under the Public Utilities Act to conduct investigations and seek information from DEC. It submits that if the SCPSC approves the Lee CC Plant, the Commission will have the full authority pursuant to G.S. 62-133 to review the reasonableness and prudence of the costs incurred by DEC to construct the plant in a future general rate case. At that time, NC WARN and other parties will have the opportunity to oppose recovery of the costs incurred for the Lee CC Plant. DEC maintains that until that time it is shouldering the risk of building the plant, not DEC's ratepayers. Thus, DEC asserts that NC WARN will not be prejudiced if its motion is denied by the Commission.

Discussion

In State ex rel. Utilities Comm'n v. Eddleman, Duke Power Company sought in a general rate case to recover, among other costs, its cost of constructing and operating the Catawba Nuclear Station Unit 1. The Catawba plant was built in South Carolina after Duke received a CPCN from the SCPSC. Duke did not apply for a CPCN from this Commission. The Commission concluded that Duke was not required to obtain a CPCN in North Carolina. Further, it found that the Catawba plant was used and useful for North Carolina ratepayers. Therefore, the Commission concluded that the Catawba plant's cost could be included in Duke's North Carolina rates. On appeal, the North Carolina

Supreme Court upheld the Commission's decision. With regard to the appellants' concerns about overbuilding, the Court stated that the requirement of G.S. 62-133(b)(1) that a generating facility must be found to be used and useful in serving North Carolina customers before it can be included in a utility's ratebase provides adequate protection against overbuilding. Eddleman, at 362, 358 S.E.2d at 357.

The Commission has broad discretion to regulate public utilities under G.S. 62-30 and other sections of the Public Utilities Act. However, the Commission agrees with the Supreme Court's rationale and holding in Eddleman. DEC does not need a CPCN from the Commission to build the Lee CC Plant. Further, North Carolina ratepayers are protected from overbuilding by the used and useful requirement of G.S. 62-133(b)(1).

With regard to NC WARN's reliance on G.S. 62-110.6, the first rule of statutory interpretation is to discern the intent of the legislature. See Wilkins v. North Carolina State University, 178 N.C. App. 377, 379, 631 S.E.2d 221, 223 (2006) ("Where the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must construe the statute using its plain meaning.") Under G.S. 62-110.6(a), the procedure for obtaining a pre-construction determination of the need and estimated cost of an out-of-state generating facility is limited to the situation in which those issues are presented "upon petition of a public utility." Conversely, where the legislature has intended that a particular procedure be available to a wide array of persons, it has made that intent clear. See, e.g. G.S. 62-73 ("Complaints may be made by the Commission on its own motion or by any person having an interest, either direct or as a representative of any person having a direct interest in the subject matter").

Under G.S. 62-110.6, DEC can choose to bear the risk of building the Lee CC Plant without first getting a determination by the Commission that the plant is needed to serve North Carolina customers and that its estimated cost is reasonable. Thus far, DEC has made that choice.

Finally, NC WARN's concern that the Lee CC Plant will increase DEC's reserve margin beyond DEC's goal of 14.5% is a subject that NC WARN can address in its comments and analysis in response to DEC's IRP.

Conclusion

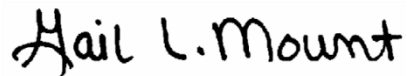
Based on the foregoing and the record in this docket, the Presiding Commissioner is not persuaded that there is good cause to grant NC WARN's motion that the Commission make a determination at this time of the need and estimated cost of the Lee CC Plant that DEC is proposing to build in South Carolina. As a result, the motion should be denied.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of March, 2014.

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