

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-7, SUB 986
DOCKET NO. E-2, SUB 998

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)
Application of Duke Energy Corporation and)
Progress Energy, Inc., to Engage in a) NC WARN'S POSITION ON
Business Combination Transaction and to) MERGER STIPULATIONS
Address Regulatory Conditions and Codes)
of Conduct)

NOW COMES NC WARN, by and through the undersigned counsel with a statement on its position on the merger stipulations and agreement between the Public Staff and the Applicants, Duke Energy Carolinas and Progress Energy Carolinas, filed by the Public Staff on September 2, 2011. After reviewing the merger stipulation documents, NC WARN offers the following:

1. NC WARN's position is promoted by a broad coalition of public interest and environmental organizations, consisting of the NC Justice Center, the NC Housing Coalition, the Nuclear Information and Resource Service, the Alliance for NC SAVE\$ Energy, Citizens Against Rate Hikes, Public Citizen, Florida Consumer Action Network, Interfaith Power & Light (a project of the NC Council of Churches), Clean Water for NC and the Blue Ridge Environmental Defense League. The position is supported by the testimony of Roger D. Colton, filed on behalf of NC WARN today and that testimony is incorporated into this position by reference.

2. The Commission is only authorized to approve the merger if it is in the best interest of rate payers and will provide a net positive benefit for them, summed up in the statement "benefits outweigh costs and potential benefits outweigh potential costs." G.S. 62-111(a) puts this slightly more broadly as requiring "public convenience and necessity," the same standard for granting a certificate for a new power plant.

3. In his testimony, Roger Colton cautions that the changes resulting from a merger often result in inequalities, especially as the new company addresses the services provided to low-income families. He further advises the Commission on merger stipulations that would directly meet the long-term needs of these families, funding the low-income weatherization program and establishing an arrearage management program.

4. NC WARN's position is that the merger stipulations simply do not adequately address the needs of low-income families and only allocate minimal funds for low-income energy assistance. The Agreement and Stipulation of Settlement Between the Applicants and the Public Staff, filed September 2, 2011, at paragraph 4, states

Other Contributions. DEC and PEC will contribute a total of \$15 million dollars during the first year following the close of the Merger for purposes such as workforce development and low income energy assistance. The \$15 million will be allocated between DEC's and PEC's North Carolina service territories in proportion to the number of North Carolina retail customers served by each.

This is a one-time payment of \$15 million and even the amount for low income energy assistance is not clear because it is combined with "work force development."

5. Duke Energy's current energy assistance programs are Share the Warmth which provides low income families with financial assistance on heating bills during the winter season: Cooling Assistance, which assists disabled, elderly and/or low income families with energy costs associated with extreme summer temperatures; and Fan-Heat Relief, which assists senior citizens with some form of cooling in their residences during the summer months. It should be noted that the Share the Warmth and Cooling Assistance basically are funds to compensate Duke Energy when bills cannot be paid. Progress Energy's Energy Neighbor Fund similarly covers heating bills for families who cannot pay during winter months. These programs do not address the needs for low-income families for improvements to home repair and comfort, or long-term reduction of electricity bills.

RECOMMENDED STIPULATIONS

6. NC WARN contends that robust energy efficiency programs for low-income families and funded by the new Duke Energy in both the existing service areas are necessary to offset the potential harm done to low-income families by the merger, and at the same time help develop a permanent work force for weatherization programs. Energy efficiency and conservation programs also have the distinct advantage of reducing the need for expensive new power plants. Here are NC WARN's recommended energy efficiency priorities for the new Duke Energy:

A. Develop a policy statement for "energy efficiency first" before all forms of generation. Given the "least cost" energy standard in G.S. 62-2(3a) ("to result in the least cost mix of generation and demand reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills"), it seems a reasonable approach to declare that EE will be the preferred alternative to generation. With this clear management direction, Duke Energy staff can effectively conduct planning, funding allocation and marketing

programs which support this decision. It is also my understanding that several utilities already have such a policy in place. We would be glad to assist in developing such a statement.

B. Adopt an Energy Efficiency Portfolio Standard (EEPS) for all customers. An EEPS for all residential, commercial, and industrial customers is needed in order to maximize the best possible outcome for NC. Analysis by national experts such as the American Council for an Energy Efficient Economy (ACEEE), and Duke Energy's own Forefront study, show that a 15 - 22% savings by 2025 is economically achievable. We note the cost-effectiveness of an EE program in the ACEEE study was 5¢/kWh or less, even as rates increase, but when EE programs are compared to new generation, the realizable energy savings would be substantially greater.

We recommend a commitment to a 1.5 - 2.0% annual energy savings from its EE programs with the resources dedicated to reach a 22% savings by 2025. This level is supported by Duke Energy's experience in Ohio in which the .5% annual savings (over the average of the three preceding years) that Duke Energy agreed to, was far exceeded, by almost a threefold savings.

The utility programs to meet this standard should comply with these criteria:

- a. systematic and comprehensive EE programs that maximize the energy savings;
- b. appropriate performance incentives and penalties for Duke Energy and provide it a reasonable rate of return reflecting risks;
- c. strong education and outreach component that will appeal to all customers; and
- d. economic incentives to appeal to all customers.

C. Encourage the use of best EE practices across the Duke Energy operating companies. There are tremendous resources on effective EE programs that have been developed across the Duke Energy and Progress Energy operating companies in the various states, as well as in other utilities in other states. We recommend the "best practices," i.e., the programs that produce the greatest energy saving, be implemented across the companies. It would go a long way to present programs that already have demonstrated outcomes, and which Duke Energy has experience, to the NC Utilities Commission. Similarly, sound management practices dictate that Duke Energy should use what it has learned and implemented successfully across its entire company in all states where it provides services. We would be glad to endorse this initiative, and assist you in seeking approval for use of the best in class, proven measures in the other operating companies.

D. Create a Public Benefits Fund to concentrate on low income and fixed income customers. Building on the EE programs currently operated by the utilities, the one area where there is the most need is for low-income and fixed-income families. These

are the families that most often cannot afford EE measures -- ranging from weatherization and insulation to new appliances and HVAC systems.

As a specific recommendation, the new Duke Energy should fund an independently administered program as a condition of the merger. As part of the testimony provided by Roger Colton, we recommend Duke Energy's contribution to NCHFA be \$27 million annually over the next decade for energy efficiency and conservation-based services plus an arrearage management program. We recommend using the present NC Housing Finance Agency, www.nchfa.com, as the administrator of a new program focusing on EE for low income and fixed income families.

The NCHFA is a quasi-state agency that is funded by a variety of sources, including allocations from the NC Housing Trust Fund. NCHFA already has an infrastructure in place and has a solid reputation as a dependable fiscal agent. It currently has contracts in place with local governments, community action agencies, community development corporations and nongovernmental organizations, such as urban ministries, in each of the 100 counties in North Carolina. The local governments and agencies that are participating in the weatherization programs currently operated in the NC Department of Commerce are many of the same contractors working with the NCHFA.

The NCHFA's urgent repair program addresses the more emergency repairs to make both single and multiple family homes more habitable and safe, and a complimentary source of funding for EE weatherization, insulation, new appliances and HVAC systems, would be a great way to maximize the effectiveness of the existing in-home repairs. A new source of funding, and one that was flexible in terms of the variety of EE projects that could be funded, would fill a real hole.

One of its programs is already funded by Duke Energy Carolinas, the Duke Home Energy Loan Pool (HELP) which provides no interest loans for homeowners to receive assistance as part of a comprehensive housing rehabilitation project. DEC contributed to this program several years ago and funds are being used at roughly the \$1 million level annually. The funds in this program will be exhausted over the next couple of years.

Part of the funds contributed by Duke Energy would need to be reserved for monitoring and surveys to insure the EE components of the projects yield real world savings. In part, this would allow Duke Energy to meet its requirements under an EEPS and also receive EE credits for its contribution.

7. NC WARN and the supporting organizations stand committed to advise Duke Energy in developing and funding these recommendations and programs.

Respectfully submitted, this the 8th day of September 2011.

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CERTIFICATE OF SERVICE

I do hereby certify that I have this day served a copy of the foregoing NC WARN'S POSITION ON MERGER STIPULATIONS and PREFILED TESTIMONY OF ROGER D. COLTON upon each of the parties of record in this proceeding or their attorneys of record by emailing them an electronic copy or by causing a paper copy of the same to be hand-delivered or deposited in the United States mail, postage prepaid, properly addressed to each.

This is the 8th day of September 2011.

Attorney at Law