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May 31, 2016

VIA ELECTRONIC FILING

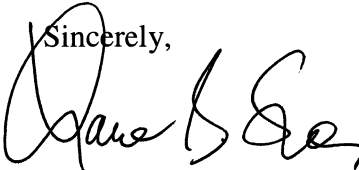
Gail L. Mount
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

**RE: Duke Energy Progress, LLC's Motion to Dismiss Appeal of NC
WARN and The Climate Times
Docket No. E-2, Sub 1089**

Dear Ms. Mount:

I enclose Duke Energy Progress, LLC's Motion to Dismiss Appeal of NC WARN and the Climate Times for filing in connection with the referenced matter.

Thank you for your attention to this matter. If you have any questions, please let me know.

Sincerely,

Lawrence B. Somers

Enclosure

cc: Parties of Record

OFFICIAL COPY

May 31 2016

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)	MOTION TO DISMISS APPEAL
To Construct a 752-MW Natural Gas-Fueled)	OF NC WARN AND THE
Electric Generation Facility in Buncombe)	CLIMATE TIMES
County Near the City of Asheville)	

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, North Carolina Rule of Appellate Procedure 25(a), and the North Carolina Utilities Commission’s April 27, 2016 *Procedural Order on Bond* and hereby moves to dismiss the Notice of Appeal and Exceptions By NC WARN and The Climate Times (collectively, “Appellants”), filed on May 27, 2016 (“Notice of Appeal”). In support of its Motion, the Company states as follows:

1. On March 28, 2016, the Commission issued its *Order Granting Application in Part, with Conditions, and Denying Application in Part* (“CPCN Order”), holding that the public convenience and necessity require the construction of the two 280 MW combined cycle units proposed as part of DEP’s Western Carolinas Modernization Project.

2. On April 25, 2016, along with a Motion to Set Bond, Appellants filed a Motion for an Extension of Time to File Notice of Appeal and Exceptions. The Commission granted the motion, extending the period to file notice of appeal until May 27, 2016.

3. On May 10, 2016, the Commission issued its *Order Setting Undertaking or Bond Pursuant to G.S. 62-82(b)* (“Appeal Bond Order”), which required Appellants to file an executed undertaking or bond on or before May 27, 2016, and prior to filing their Notice of Appeal.

4. On May 19, 2016, Appellants 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. The Court of Appeals denied Appellants’ Motion for a Temporary Stay on May 24, 2016.

5. On May 27, 2016, Appellants filed their Notice of Appeal; however, they expressly noted they did so without filing the undertaking or appeal bond required by N.C. Gen. Stat. §62-82(b) and the Appeal Bond Order.¹

ARGUMENT

Appellants failed to timely file the prerequisite undertaking or appeal bond required by N.C. Gen. Stat. §62-82(b) and the Appeal Bond Order and their appeal should be dismissed as a matter of law. N.C. Gen. Stat. §62-82(b) provides as follows:

(b) Compensation for Damages Sustained by Appeal from Award of Certificate under G.S. 62-110.1; *Bond Prerequisite to Appeal*. - Any party or parties opposing, and appealing from, an order of the Commission which awards a certificate under G.S. 62-110.1 shall be obligated to recompense the party to whom the certificate is awarded, if such award is affirmed upon appeal, for the damages, if any, which such party sustains by reason of the delay in beginning the construction of the facility which is occasioned by the appeal, such damages to be measured by the increase in the cost of such generating facility (excluding legal fees, court costs, and other expenses incurred in connection with the appeal). *No appeal from any order of the Commission which awards any such certificate may be taken by any party opposing*

¹ Notice of Appeal, at p. 2.

such award unless, within the time limit for filing notice of appeal as provided for in G.S. 62-90, such party shall have filed with the Commission a bond with sureties approved by the Commission, or an undertaking approved by the Commission, in such amount as the Commission determines will be reasonably sufficient to discharge the obligation hereinabove imposed upon such appealing party.

(emphasis added). Likewise, the Commission's Appeal Bond Order required Appellants to file an executed undertaking or bond prior to filing their Notice of Appeal. In pertinent part, the Appeal Bond Order provided as follows:

[Appellants] shall file as a condition of its notice of appeal an executed undertaking in the sum of \$10 million, which is attached as Exhibit A to this Order, or a bond in the sum of \$10 million on or before May 27, 2016, and prior to filing a Notice of Appeal.

Appellants sought a temporary stay of the Appeal Bond Order from the Court of Appeals, which was denied. Accordingly, because of their failure to timely take action to perfect their appeal by filing the required undertaking or bond, Appellants' Notice of Appeal should be dismissed pursuant to North Carolina Rule of Appellate Procedure 25(a). Rule 25(a) provides, in pertinent part, as follows,

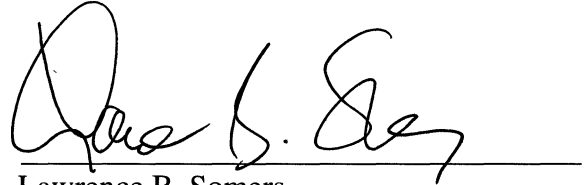
If after giving notice of appeal from any court, commission, or commissioner the appellant shall fail within the times allowed by these rules or by order of court to take any action required to present the appeal for decision, the appeal may on motion of any other party be dismissed. Prior to the filing of an appeal in an appellate court motions to dismiss are made to the court, commission, or commissioner from which appeal has been taken; after an appeal has been filed in an appellate court motions to dismiss are made to that court. . . . motions made under this rule to a commission may be heard and determined by the chair of the commission.

(emphasis added). Because Appellant's notice of appeal has not yet been filed in the Court of Appeals (as the appeal has not yet been docketed), DEP's motion to dismiss is

properly before this Commission pursuant to Rule 25(a) and should be granted.

WHEREFORE, for all the foregoing reasons, Duke Energy Progress respectfully requests that the Commission dismiss Appellants' Notice of Appeal.

Respectfully submitted, this the 31st day of May 2016.



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LLC

CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Progress, LLC's Motion to Dismiss Appeal of NC WARN and The Climate Times in Docket No. E-2, Sub 1089, has been served by electronic mail, hand delivery or by depositing a copy in the United States mail, postage prepaid to the following parties:

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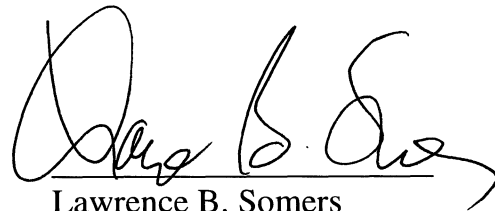
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This the 31st day of May, 2016



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