

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-7, SUB 819

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Duke Energy Carolinas,) ORDER DENYING REQUEST
LLC for Approval of Decision to Incur) FOR SHOW CAUSE ORDER
Nuclear Generation Project Development) AND REQUESTING ADDITIONAL
Costs) INFORMATION

BY THE COMMISSION: On February 1, 2017, Duke Energy Carolinas (DEC) filed a semiannual report in the above-captioned docket regarding preconstruction costs associated with the development of DEC's William States Lee III Nuclear Station (Lee Nuclear Station) in Cherokee County, South Carolina.

On March 1, 2017, the North Carolina Waste Awareness and Reduction Network (NC WARN) filed a Response to DEC's report. In its Response, NC WARN urges the Commission to issue a show cause order to DEC to require it to provide an update on the financial status of Toshiba – Westinghouse (Toshiba) and its potential impacts on DEC's plans for the Lee Nuclear Station, and further, to require that no additional cost increases will be passed along to ratepayers for the Lee Nuclear Station.

In addition, NC WARN states that DEC's semiannual report failed to comply with the Commission's Order Approving Decision to Incur Limited Project Development Costs, issued in this docket on August 5, 2011. Ordering Paragraph No. 4 in said Order states:

4. That Duke shall file a report on September 1, 2011, detailing its activities and expenditures in pursuit of project development for the Lee Station from January 1, 2011, through June 30, 2011; and that Duke shall file further reports every six months, beginning February 1, 2012, until further order of the Commission, detailing its activities and expenditures in pursuit of project development for the Lee Station during the six-month period ending one month before the due date for the report (e.g., the report due February 1, 2012, would cover the period from July 1, 2011, through December 31, 2011).

According to NC WARN, DEC's semiannual report failed to comply with the Commission's Order because there are two significant, and related, events not disclosed: (1) the issuance by the Nuclear Regulatory Commission (NRC) of a license to construct and operate the plant, and (2) the ability of Toshiba to oversee the plant's construction and provide technical support.

NC WARN states that, at this juncture, DEC does not have any reasonable and prudent path forward for the Lee Nuclear Station, but keeps it in its Integrated Resource Plan (IRP). See Docket No. E-100, Sub 147. NC WARN points out that DEC received its license to construct and operate the Lee Nuclear Station on December 19, 2016, and the plans are for the reactors to use the Toshiba AP1000 design. However, NC WARN states that Toshiba announced earlier this year that it was no longer going to provide support for those reactor designs because of the ongoing economic failures at nuclear plants presently under construction; that press coverage of Toshiba's precarious financial position has been growing; that Toshiba is preparing a writedown of more than \$6.2 billion in losses for Westinghouse's terminated nuclear programs; that cost estimates for nuclear units using the Toshiba design have increased significantly; and that problems with the proposed Vogtle reactors in Georgia and the Summer reactors in South Carolina have resulted in these projects being three years or more behind schedule and billions of dollars over budget, caused by Toshiba's economic failure and potential bankruptcy.

In addition, NC WARN contends that the fabricators of major structural components for the proposed reactors, such as the Shaw Group and Chicago Bridge & Iron Company, are no longer capable of delivering the components – again, because of financial failures from nuclear cost overruns. NC WARN also contends that, globally, there are no companies left with the engineering expertise, construction experience, or financial wherewithal to undertake nuclear plant construction, especially related to the Lee Station AP1000 design.

NC WARN opines that DEC has spent \$529 million for the Lee Nuclear Station with absolutely nothing used or useful to show the Commission. Further, it argues that DEC cannot meet its burden under G.S. 62-110.7 to show the development and construction costs for the Lee Nuclear Station are reasonable and prudent, or that they ever will be. NC WARN states that if DEC continues to waste money on this project, additional costs will be stranded, and then either borne by shareholders or ratepayers. NC WARN also states that the Lee Nuclear Station is simply not a viable project, and, as a result, the Commission is required to find that it is not prudent or reasonable to expend any additional funds on development activities.

Therefore, NC WARN requests the Commission to issue a show cause order to DEC to provide an update on the financial status on Toshiba and its impacts on DEC's plans for the Lee Nuclear Station, and further, to require no additional cost increases will be passed along to ratepayers for this failed endeavor.

On March 21, 2017, DEC filed a reply to NC WARN's Response. As an initial matter, DEC states that the Commission has clear authority to seek information from the DEC about the Lee Nuclear Station which it would certainly provide. DEC notes that announcements regarding Toshiba and Westinghouse have been widely covered in the news media and several such articles are in fact cited in NC WARN's Response. While DEC believes NC WARN's show cause request is so lacking in merit that it would appear to deserve no reply, DEC provides the following information in the spirit of cooperation.

DEC states that the Commission has issued three prior orders approving its decisions to incur project development costs for the proposed Lee Nuclear Station. DEC contends that through its March 20, 2007 Order Issuing Declaratory Ruling (2007 Order), its June 11, 2008 Order Approving Decision to Incur Project Development Costs (2008 Order), and its August 5, 2011 Order Approving Decision to Incur Limited Additional Project Development Costs (2011 Order), the Commission carefully weighed the benefits to customers from developing and preserving the Lee Nuclear Station as an option to serve DEC's customers in the context of the evolving planning environment for new nuclear development in the United States. In providing its approval of DEC's decisions to incur certain project development costs, the Commission has noted that this planning environment has been characterized by regulatory, economic, and legislative uncertainties.

DEC states that the Commission's approval of the plans and project development costs for the Lee Nuclear Station in this docket have included approval of DEC's decision to pursue a combined construction and operating license (COL) for the Lee Nuclear Station from the NRC. DEC successfully received the Lee Nuclear Station COL from the NRC on December 19, 2016, which DEC submits is consistent with the Commission's 2007, 2008, and 2011 Orders.

According to DEC, the Lee Nuclear Station COL provides significant value to DEC's customers because nuclear generation is a reliable, carbon-free and cost-effective source of electricity and remains important in creating a diverse, sustainable energy future. Receipt of the COL is a critical step in establishing the option to add the Lee Nuclear Station while the current uncertainties in the planning environment, including the prospect of environmental and carbon regulation and the relicensing of existing nuclear plants, continue to evolve.

DEC notes that the Lee Nuclear Station design utilizes the Westinghouse AP1000 technology. DEC submits that in late January of 2017, unforeseen and significant public announcements were made by Toshiba, parent of Westinghouse, regarding its financial condition and decision to exit the new nuclear construction and design business. DEC states that it has been carefully monitoring these developments, as well as the ongoing construction of Vogtle and Summer projects, and will continue to do so to determine the impact on DEC's future decisions regarding the Lee Nuclear Station.

Regarding NC WARN's request that the Commission require that "no additional cost increases will be passed to ratepayers", DEC states that it has not yet sought cost recovery for any project development costs for the Lee Nuclear Station. DEC states that the 2007, 2008, and 2011 Orders plainly provide, and G.S. 62-110.7(b) makes clear, that while the Commission has approved DEC's decision to incur project development costs, the Commission has reserved the determination of recovery of specific Lee Nuclear Station project development costs for a future general rate case. As a result, DEC states that no cost recovery issues for the Lee Nuclear Station are currently before the Commission and will not be until DEC makes a decision to seek cost recovery in a future

rate case proceeding. Therefore, DEC submits that NC WARN's request related to cost recovery is premature, at best, and not ripe for consideration by the Commission at this time.

DEC adds that the Lee Nuclear Station would be the largest single capital project in its history; and, therefore, DEC has consistently brought information and applications to the Commission throughout the project development process to seek guidance and approval of DEC's decisions for the benefit of its customers. DEC states that it will continue to carefully evaluate all of the information necessary to make a decision regarding the construction of the Lee Nuclear Station and will pursue appropriate approvals from the Commission in due course.

For all of the reasons stated in its Reply, DEC requests that the Commission deny the relief requested in NC WARN's Response.

DISCUSSION AND CONCLUSIONS

NC WARN requests that the Commission issue a show cause order to DEC to require it to provide an update on the financial status of Toshiba and its potential impacts on DEC's plans for the Lee Nuclear Station. To support this request, NC WARN claims that DEC's semiannual report, filed on February 7, 2017 in this docket, failed to comply with Ordering Paragraph No. 4 of the Commission's 2011 Order because it did not disclose the NRC's issuance of the Lee Nuclear Station COL on December 16, 2016, and because DEC failed to disclose the ability of Toshiba to oversee the plant's construction and provide technical support. NC WARN also requests that the show cause order require that no additional cost increases will be passed along to ratepayers.

After carefully considering NC WARN's request, the Commission is not persuaded that NC WARN's request for the Commission to issue a show cause order is supported by sufficient facts and allegations regarding any deficiencies in DEC's report or other actions. On page one of DEC's semiannual report filed on February 1, 2017, DEC reports various activities such as the dates when it filed the COL application with the NRC and when the NRC docketed the application for hearing. Given that DEC chose to include those types of activities, it could be argued that DEC should have also reported that the NRC actually issued the COL on December 19, 2016. However, whether that omission was simply an oversight, assumed by DEC to be common knowledge, or a lack of clarity concerning the reporting requirements, the Commission concludes that a show cause is not justified. Further, with regard to NC WARN's request that the Commission require that no additional cost increases will be passed along to ratepayers, the Commission concludes that such a measure is premature and lacks sufficient basis in the record at this time.

However, the Commission notes that page one of DEC's semiannual report filed on February 1, 2017, shows a project total cost at December 31, 2016, equal to approximately \$520.0 million for the Lee Nuclear Station. Further, for the six month period

July 1, 2016 through December 31, 2016, DEC reported an allowance for funds used during construction (AFUDC) amount of approximately \$19.4 million, which is the vast majority of the total cost of approximately \$25.0 million during the same six month period. In addition, DEC's IRP filing on September 30, 2016, shows the Lee Nuclear Station units being added in 2026 and 2028. Finally, as noted herein, recent development concerning Toshiba, as well as at the Vogtle and Summer projects that utilize the Westinghouse AP1000 technology, need to be monitored and assessed.

Therefore, the Commission will require DEC to provide information concerning its assessment of the Toshiba financial situation and potential impact on the Lee Nuclear Station. In requesting this information, the Commission recognizes that the Toshiba situation is evolving and uncertain. Nevertheless, DEC should provide such information to the best of its ability at the current time. Specifically, the Commission requests that DEC provide a report containing: its assessment of the Toshiba bankruptcy situation, including possible resolutions and likely timelines; a brief and general description of any contracts that DEC may have entered with Toshiba or Toshiba's affiliates to support the design and construction of the Lee Nuclear Station, including any termination clauses; whether there are any other entities using the AP1000 technology, or some other technology, that may be available and acceptable to DEC to support design and construction of the Lee Nuclear Station; DEC's estimate of any delay caused by the Toshiba situation with respect to DEC's plans to construct or complete the Lee Nuclear Station; whether the COL granted by the NRC to DEC for the Lee Nuclear Station is contingent upon the use of the AP1000 technology; and what delay DEC would estimate to occur if the COL has to be amended or reissued.

In addition, the Commission requests that DEC provide verified responses to the following questions.

1. Generally, how has DEC accounted for costs related to the Lee Nuclear Station? Include in the response to this question when DEC began recording such costs, whether any such costs have been expensed in years prior to 2017, and identify the asset account(s) and the amount(s) in those account(s) at December 31, 2016.
2. What was the AFUDC rate used for the most recent period ending December 31, 2016? Provide the calculation of that rate and the basis for calculating the AFUDC rate in that manner.
3. If DEC has included any costs related to the Lee Nuclear Plant in CWIP, does DEC believe it may request inclusion of such CWIP in its rate base in its next general rate case application? If so, cite the North Carolina General Statute(s) that DEC would rely upon to request such CWIP in rate base.
4. What is DEC's current estimate of the total cost of the Lee Nuclear Station at commercial operation?

5. What are DEC's total budgeted expenditures for the Lee Nuclear Station for 2017, 2018, and 2019, excluding and including AFUDC?
6. Has DEC suspended further investment in the Lee Nuclear Station until the Toshiba-Westinghouse situation is resolved? If so, will DEC continue to accrue AFUDC during the time period of any such suspension?
7. If DEC decides to cancel the Lee Nuclear Station and seeks Commission approval to record any abandoned project development costs in a regulatory asset account pursuant to Commission Rule R8-27, would DEC seek to include a return on such abandoned costs until recovery could be addressed by the Commission in DEC's subsequent general rate case?
8. The Commission Order in this Docket dated August 5, 2011, stated in Finding of Fact No. 9 that "[I]t is appropriate for Duke to incur on and after January 1, 2011, only those nuclear project development costs that must be incurred to maintain the status quo with respect to the Lee Nuclear Station, including Duke's combined construction and operating license (COL) application at the Nuclear Regulatory Commission (NRC), up to a maximum of the North Carolina allocable portion of \$120 million." As of the date of DEC's response to these questions, provide DEC's total expenditures on development costs. If DEC's expenditures for such costs have exceeded the \$120 million, explain how this occurred without the Commission's approval.

IT IS, THEREFORE, ORDERED as follows:

1. That NC WARN's request for a show cause order shall be, and is hereby, denied.
2. That DEC shall file the requested information and its answers to the above Commission questions within sixty (60) days of the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of May, 2017.

NORTH CAROLINA UTILITIES COMMISSION



Linnetta Threatt, Acting Deputy Clerk