

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1089

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Duke Energy Progress, LLC,)
for a Certificate of Public Convenience)
and Necessity To Construct a 752 MW) NOTICE OF DECISION
Natural Gas-Fueled Electric Generation)
Facility in Buncombe County Near the)
City of Asheville)

BY THE COMMISSION: On December 16, 2015, Duke Energy Progress, LLC (DEP), filed a letter in the above-captioned docket giving notice of its intent to file an application on or after January 15, 2016, for a certificate of public convenience and necessity (CPCN) to construct a 752 MW natural gas-fueled electric generation facility consisting of two new natural gas-fueled 280 MW (winter rating) combined cycle units and a natural gas-fueled 192 MW (winter rating) simple cycle combustion turbine unit, each with fuel back up, in Buncombe County near the City of Asheville. In its letter, DEP states, "The Western Carolinas Modernization Project (Project) will enable the early retirement of the 379 MW (winter rating) Asheville 1 and 2 coal units on or before the commercial operation of the new combined cycle units, thereby permanently ceasing operations of all coal-fired units at the site."

The notice of intent was filed by DEP pursuant to Section 1 of the Mountain Energy Act, Session Law 2015-110, which provides:

Notwithstanding G.S. 62-110.1, the Commission shall provide an expedited decision on an application for a certificate to construct a generating facility that uses natural gas as the primary fuel if the application meets the requirements of this section. A public utility shall provide written notice to the Commission of the date the utility intends to file an application under this section no less than 30 days prior to the submission of the application. When the public utility applies for a certificate as provided in this section, it shall submit to the Commission an estimate of the costs of construction of the gas-fired generating unit in such detail as the Commission may require. G.S. 62-110.1(e) and G.S. 62-82(a) shall not apply to a certificate applied for under this section. The Commission shall hold a single public hearing on the application applied for under this section and require the applicant to publish a single notice of the public hearing in a newspaper of general circulation in Buncombe County. The Commission shall render its decision on an application for a certificate, including any related transmission line

located on the site of the new generation facility, within 45 days of the date the application is filed if all of the following apply:

- (1) The application for a certificate is for a generating facility to be constructed at the site of the Asheville Steam Electric Generating Plant located in Buncombe County.
- (2) The public utility will permanently cease operations of all coal-fired generating units at the site on or before the commercial operation of the generating unit that is the subject of the certificate application.
- (3) The new natural gas-fired generating facility has no more than twice the generation capacity as the coal-fired generating units to be retired.

Section 2 of the Mountain Energy Act amends Section 3(b) of the Coal Ash Management Act (CAMA), Session Law 2014-122, by extending the deadline for closing the coal combustion residual (coal ash) surface impoundments at the Asheville Steam Electric Generating Plant (Asheville Plant) by three years if, on or before August 1, 2016, the Commission has issued a CPCN to DEP for a new natural gas-fired facility to replace the coal units at the Asheville Plant, based upon written notice by DEP to the Commission that it will permanently cease operations at the coal units no later than January 31, 2020. In addition, replacement of coal generation with gas-fired generation within the deadlines set forth in the Act exempts impoundments and electric generating facilities located at the Asheville Plant from the prohibitions in CAMA related to storm water discharge and the requirements for conversion to “dry” fly and bottom ash.

On December 18, 2015, the Commission issued an Order Scheduling Public Hearing and Requesting Investigation and Report by the Public Staff. Among other things, the Order scheduled a public hearing on DEP's application for Tuesday, January 26, 2016, at 7:00 p.m. in Asheville, North Carolina. The Commission concluded that in light of the 45-day deadline for making a decision on DEP's application good cause existed to schedule the required public hearing. The Commission further found good cause to require the Public Staff to investigate the application and present its findings, conclusions, and recommendations to the Commission at the Commission's Regular Staff Conference on February 22, 2016.

On December 21, 2015, North Carolina Waste Awareness and Reduction Network (NC WARN) and The Climate Times (collectively, NC WARN) filed a motion requesting that the Commission hold an evidentiary hearing for expert witnesses in this docket or, in the alternative, deny DEP's CPCN application as incomplete and insufficient until an evidentiary hearing can be held. On December 31, 2015, DEP filed a response requesting that the Commission deny NC WARN's motion.

On January 5, 2016, DEP filed an affidavit of publication certifying that DEP caused to be published a notice of the public hearing scheduled for January 26, 2016, in Asheville, North Carolina.

On January 6, 2016, NC WARN filed a reply to DEP's response to NC WARN's motion for an evidentiary hearing. On January 15, 2016, the Commission issued an Order denying NC WARN's motion.

On January 15, 2016, DEP filed a verified application for a certificate of public convenience and necessity to construct up to 752 MW of natural gas-fueled electric generating capacity consisting of two new natural gas-fueled 280 MW combined cycle units (CC units) and a natural gas-fueled 186 MW simple cycle combustion turbine unit (CT), each with fuel back up, in Buncombe County at DEP's Asheville Plant. In addition, DEP requested a waiver of Commission Rule R8-61(a), which requires certain information to be filed 120 days prior to a CPCN application, and a waiver of Rule R8-61(b), which requires the filing of testimony with a CPCN application. The application further notes that the need for the 186 MW CT may be avoided or delayed due to the utilization of other technologies and programs to meet the future peak demand requirements of DEP's customers in the region. The application also includes information about related on-site transmission facilities and DEP's plans to build up to 15 MW of solar generation at the Asheville Plant. In addition, DEP notes that the North Carolina Electric Membership Corporation (NCEMC) has an option to purchase 100 MW of the proposed facility, but states that the load required to be served by DEP in the region will be the same regardless of NCEMC's ownership decision.

Attached to the application are four exhibits, portions of which were filed under seal on the ground that they contain confidential information and are not subject to disclosure pursuant to G.S. 132-1.2. Exhibit 1A is the public version of DEP's 2015 Integrated Resource Plan (IRP). Exhibit 1B is a Statement of Need and contains additional resource planning information required by Commission Rule R8-61(b)(1). Exhibit 2 contains Plant Description, Siting, and Permitting Information, Exhibit 3 contains Cost Information, and Exhibit 4 contains Construction Information.

DEP asserts that the application is subject to expedited review under the Mountain Energy Act because it complies with the three factors for such expedited review: (1) the application is for a CPCN to construct a generating facility at the Asheville Plant, (2) DEP has proposed to permanently cease operations of its coal-fired units at the Asheville Plant on or before the commercial operation of the CC units, and (3) the proposed natural gas-fired generating facility would have no more than twice the generation capacity as the coal-fired units to be retired. DEP requests that the Commission find that the public convenience and necessity requires construction of the two 280 MW CC units and the contingent 186 MW CT unit and issue a CPCN for their construction.

On January 22, 2016, the Commission issued an Order on Procedure for Accepting Comments of the Parties. The Order provided that parties could present a brief opening statement at the January 26, 2016 public hearing, that parties could file comments on or before February 12, 2016, and that parties would have an opportunity to make comments at the Commission's Regular Staff Conference on February 22, 2016.

On January 25, 2016, NC WARN and The Climate Times filed a motion to compel DEP to provide additional responses to discovery requests submitted by NC WARN and to make public certain information in DEP's application that was filed as confidential trade secrets.

On January 26, 2016, the public hearing was held in Asheville as scheduled where Robert Sipes and Grant Millin provided an opening statement and fifty-one public witnesses testified.

On January 29, 2016, the Commission issued an Order granting DEP's request for a waiver of Commission Rule R8-61(a) and (b).

On February 1, 2016, DEP filed Revised Exhibit 1B, Attachment A, Revised Exhibit 3 and Revised Exhibit 4. In its cover letter, DEP stated that it conducted a comprehensive review of the confidential information filed under seal on January 15, 2016, with its CPCN application and removed the confidential designation on much of the information initially designated as a trade secret.

Also on February 1, 2016, DEP filed a response to NC WARN's motion to compel. On February 4, 2016, the Commission issued an Order denying NC WARN's motion to compel.

Motions to intervene were filed and granted for the following persons and organizations: Grant Millin, Richard Fireman, Brad Rouse, North Carolina Sustainable Energy Association (NCSEA), Sierra Club, MountainTrue, Carolina Utility Customers Association, Inc. (CUCA), Carolina Industrial Group for Fair Utility Rates II (CIGFUR II), NC WARN, The Climate Times and Columbia Energy, LLC (Columbia Energy).

The intervention and participation of the North Carolina Utilities Commission - Public Staff (Public Staff) is recognized and made pursuant to G.S. 62-15.

The Commission has received numerous statements of position from interested persons. All statements of position have been filed as a part of the record in this docket.

On February 9, 2016, comments were filed by Richard Fireman. On February 10, 2016, comments were filed by Brad Rouse and NCSEA. On February 12, 2016, comments were filed by Brad Rouse, Sierra Club and MountainTrue, NC WARN and The Climate Times, and Columbia Energy.

On February 17, 2016, the Public Staff filed the agenda items for the Commission's February 22, 2016 Regular Staff Conference, including an agenda item discussing the Public Staff's investigation of DEP's application in this docket and its recommendation for Commission action.

On February 19, 2016, NC WARN filed a response to the Public Staff's agenda item in this docket, and the affidavit of J. David Hughes.

On February 22, 2016, the Public Staff presented the results of its investigation and its recommendation at the Commission's Regular Staff Conference. In addition, Brad Rouse, Columbia Energy, NC WARN, The Mountain Times, Sierra Club, MountainTrue and DEP made statements regarding their position.

On February 25, 2016, Brad Rouse filed additional comments. On February 26, 2016, Brad Rouse filed 2nd Additional Comments of Brad Rouse and Grant Millin filed a statement. On February 26, 2016, NC WARN filed Additional Comments of NC WARN and the Climate Times.

The Commission has reached its decision after careful consideration and review of all filings, comments, public witness testimony received in this docket and the February 22, 2016 proceedings held at the Regular Commission Staff Conference, and issues this Notice of Decision in compliance with the requirement of the Mountain Energy Act. With respect to DEP's application, the Commission accepts the recommendation of the Public Staff for reasons that will be discussed in a subsequent order granting DEP a certificate of public convenience and necessity to construct the proposed two new 280 megawatt (MW) (expected winter rating) combined cycle natural gas-fueled units, with fuel oil backup and related on-site transmission facilities at the Asheville Plant in Buncombe County, subject to the following conditions:

1. DEP shall retire its existing coal units at the Asheville plant no later than the commercial operation date of the CC units;
2. DEP shall construct and operate the CC units in strict accordance with all applicable laws and regulations, including the provisions of all permits issued by the North Carolina Department of Environmental Quality;
3. DEP shall file with the Commission a progress report and any revisions in cost estimates for the CC units on an annual basis in this docket, with the first report due one year from the issuance of the full order;
4. DEP shall file with the Commission a progress report annually in this docket and the report shall include actual accomplishments to date on its efforts to work with its customers in the DEP-Western Region to reduce peak load through demand-side management, energy efficiency or other measures, and on DEP's efforts to site solar and storage capacity in the DEP-Western Region, with the first report due one year from the issuance of the full order;
5. DEP shall conduct an investigation on retrofitting its four Roxboro coal-burning power plants as proposed by the North Carolina Department of Environmental Quality in its November 16, 2015 draft rule entitled Standards of Performance for Existing Electric Generating Units Under Clean Air Act Section 111(d),¹ and submit a report to the Commission in the Company's 2016 integrated resource plan regarding the feasibility and cost effectiveness of conducting such retrofits; and

¹ This draft rule is currently on hold due to the February 9, 2016 United States Supreme Court decision to stay the federal Clean Power Plan. Nonetheless, the retrofits required by the draft rule have the potential to increase the Roxboro units' efficiency, thereby reducing emissions per MWh of electricity produced.

6. That for ratemaking purposes, the issuance of this order and CPCN does not constitute approval of the final costs associated therewith, and that the approval and grant is without prejudice to the right of any party to take issue with the treatment of the final costs for ratemaking purposes in a future proceeding.

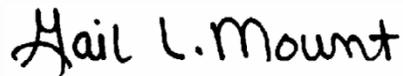
Further and also for reasons that will be addressed in the subsequent order, the Commission accepts the recommendation of the Public Staff and most Intervenors regarding the 186 MW simple cycle combustion turbine unit. The Commission denies the request for a CPCN for the 186 MW combustion turbine unit without prejudice to DEP's right to file a future CPCN application. This Notice of Decision is intended to advise the parties and interested persons of the Commission's ultimate decision in this docket. This Notice of Decision does not include or provide the Commission's determinations and reasoning, nor does it address all issues raised by the parties. Those components of the Commission's decision will be set forth in a separate order to be issued in this docket as soon as practicable. The time for filing exceptions and notices of appeal to the Commission's decision in this docket shall run from the date of entry of said subsequent full order, not from the date of this Notice of Decision.

IT IS THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of February, 2016.

NORTH CAROLINA UTILITIES COMMISSION



Gail L. Mount, Chief Clerk

Commissioner Lyons Gray did not participate in this decision.