

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1095
DOCKET NO. E-7, SUB 1100
DOCKET NO. G-9, SUB 682

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Duke Energy Corporation)	
and Piedmont Natural Gas, Inc., to Engage)	ORDER GRANTING MOTION
in a Business Combination Transaction)	TO STRIKE AND RESERVING
and Address Regulatory Conditions and)	DECISION ON MOTION IN LIMINE
Code of Conduct)	

BY THE CHAIRMAN: On January 15, 2016, Duke Energy Corporation (Duke) and Piedmont Natural Gas Company, Inc. (Piedmont) (collectively, Applicants) filed an application in the above-captioned dockets for authorization to engage in a business combination transaction (proposed merger), and to revise and apply Duke Energy Carolinas, LLC's (DEC's) and Duke Energy Progress, LLC's (DEP's) Regulatory Conditions and Code of Conduct to Piedmont.

On June 10, 2016, the North Carolina Waste Awareness and Reduction Network (NC WARN), The Climate Times (TCT), and the North Carolina Housing Coalition (NCHC) (collectively, NC WARN), filed testimony of Touché Howard and J. David Hughes.

On June 16, 2016, the Applicants filed a Motion to Strike and Motion in Limine. The Motion to Strike requests that the Commission strike all of the substantive testimony of NC WARN's witnesses. In summary, Applicants state two grounds for striking NC WARN's testimony. First, Applicants contend that the testimony is irrelevant to the subject matter of this docket. Applicants cite G.S. 62-111(a) and several precedents under that statute, and submit that the main issue before the Commission is whether the proposed merger serves the public convenience and necessity. Applicants maintain that NC WARN's testimony has no relevance to that issue, but, rather, addresses broad public policy questions about regulating methane emissions and climate change, and speculates on the future adequacy of natural gas supplies. Applicants maintain that the Commission's approval of the proposed merger will have no effect on either of these matters. Second, Applicants contend that NC WARN's testimony is beyond the scope of this docket because regulating methane emissions and addressing future shortages of natural gas supplies are not matters within the jurisdiction of the Commission.

The Applicants' Motion in Limine requests that the Commission prevent NC WARN from cross-examining witnesses on irrelevant subject matters. In summary, Applicants state that NC WARN should be precluded from cross-examining the witnesses in this proceeding about the subject matters addressed in NC WARN's

testimony because those subject matters are irrelevant and beyond the scope of this docket.

Finally, the Applicants request expedited treatment of their Motion to Strike due to the July 1, 2016, deadline for Applicants to file rebuttal testimony.

On June 22, 2016, NC WARN filed a response to the Applicants' Motion to Strike and Motion in Limine. NC WARN asserts that its testimony is directly relevant to the issue of whether the proposed merger will serve the public convenience and necessity. NC WARN cites G.S. 62-111 and case law interpreting the statute. NC WARN acknowledges that it is not requesting that the Commission resolve the broad policy concerns addressed in its testimony, but, instead, is requesting that the Commission “consider the risky implications of these public policy issues on the proposed merger.” Response to Motion to Strike and Motion in Limine, at p. 2. Moreover, NC WARN states that the utilities routinely use policy arguments in their filings with the Commission, including Integrated Resource Plans (IRPs), rate cases and merger cases. In addition, NC WARN notes that DEC's and DEP's most recent IRPs, in Docket No. E-100, Sub 141, state that they plan to build up to 15 natural gas-fired generating plants in the next 15 years, the costs of which will be passed on to Duke's ratepayers. According to NC WARN, its testimony “provides the background to the Commission on the fundamental issues of cost increases likely from this merger.” *Id.*, at p. 3. Therefore, NC WARN submits that the Commission should deny the Applicants' Motion to Strike and Motion in Limine.

NC WARN's Testimony

Testimony of Touché Howard

In summary, witness Howard testifies that methane emissions from the production of natural gas are far worse than the United States Environmental Protection Agency (EPA) or the oil and gas industry acknowledge. He discusses in detail the various sources of methane emissions during the production and delivery of natural gas, the methods for measuring the emissions, and his conclusion that current emission rate estimates are far too low. In addition, he asserts that the likelihood of new regulations to reduce methane emissions means that the cost of natural gas could increase. He further states that methane emissions are harmful to the public health and have a major impact on global climate change. Witness Howard concludes that “The combined companies' increased use and investment in natural gas transmission and distribution pipelines, compressor stations, and other equipment and facilities for natural gas may also increase the economic, environmental, health and safety risks for Duke Energy ratepayers.” Testimony of Touché Howard, p. 2, lines 14-17.

Testimony of J. David Hughes

In summary, witness Hughes testifies that there is a risk of inadequate natural gas supplies in the future because of the overly optimistic forecasts of the production of shale gas. He discusses several studies of oil and gas production in the United States and Canada that show over estimation of the production from existing and future shale gas plays. According to witness Hughes, production is being over estimated by at least 50%,

thus posing the risk of higher gas costs from supply restrictions, with the higher gas costs being passed on to ratepayers. Therefore, he concludes that “The high decline rates for shale gas wells and overestimated supplies make the combination of Duke Energy and PNG, two companies that are heavily reliant on the shale gas industry, vulnerable to supply shortfalls and price spikes.” Testimony of J. David Hughes, pp. 13-14, lines 15-16 and line 1. In addition, witness Hughes testifies that full cycle greenhouse gas emissions from shale gas are higher than coal emissions over a 20-year timeframe, but lower than coal over a 100-year timeframe. He opines that this factor has significant policy implications with regard to using gas-fired generation to replace coal plants. He concludes that reliance on natural gas is likely to result in higher and more volatile costs and more carbon emissions than could be attained by using other resources, such as demand-side management and carbon-free energy sources.

Discussion and Conclusion

The Commission's orders must be based on competent, material and substantial evidence. Where practicable, the Commission applies the same rules of evidence used in the superior courts in civil matters. See G.S. 62-65(a).

Pursuant to Rule 402 of the North Carolina Rules of Evidence, only relevant evidence is admissible. Under Rule 401, “relevant evidence” is defined as

[e]vidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

G.S. 8C-1, Rule 401.

With regard to the admissibility of NC WARN's testimony, the main question is whether the testimony has a bearing on “any fact that is of consequence to the determination of the action.”

In the Commission's most recent merger dockets, the Commission has applied a three-prong test for determining whether approval of the merger would serve the public convenience and necessity. For example, in the Duke Energy Corporation and Progress Energy, Inc. merger docket in 2012, the Commission examined: (1) whether the merger would have an adverse impact on the rates and services provided by Duke Energy Carolinas, LLC, and Progress Energy Carolinas, Inc.; (2) whether retail ratepayers would be protected as much as possible from potential costs and risks; and (3) whether the merger would result in sufficient benefits to offset potential costs and risks. See Order Approving Merger Subject To Regulatory Conditions and Code of Conduct, Docket Nos. E-2, Sub 998 and E-7, Sub 986 (Duke/Progress Merger Order), aff'd, In re Duke Energy Corporation, 232 N.C. App. 573, 755 S.E.2d 382 (2014).

Pursuant to G.S. 62-111(a), the Commission must examine all relevant facets of the proposed merger having a bearing on the public convenience and necessity. However, as indicated by the three criteria stated above, the Commission's emphasis is on the rates, services and protection of North Carolina's ratepayers. Further, in assessing

adverse impacts and potential risks of the merger, the Commission necessarily focuses on adverse impacts and potential risks that might be created by the combination of the two companies, not adverse impacts and risks that already exist and may continue to exist irrespective of whether the merger is approved by the Commission.

Based on the foregoing and the record, the Chairman concludes that the bulk of NC WARN's testimony is not evidence of any fact of consequence to the Commission's decision to approve or deny the merger of Duke and Piedmont. Rather, the testimony addresses NC WARN's generic concerns over methane emissions, the potential inadequacy of future natural gas supplies, and the possibility that higher natural gas prices will be passed on to the Applicants' ratepayers. These are concerns of NC WARN that exist today with Duke and Piedmont operating as separate companies. Indeed, witness Hughes states that Duke and Piedmont are "two companies that are heavily reliant on the shale gas industry." Accepting, for the purpose of discussion, witness Hughes' opinion that Duke and Piedmont are "heavily reliant" on shale gas, his testimony and that of witness Howard is based on the premise that the merger of Duke and Piedmont will result in an increased use of natural gas by Duke and Piedmont. However, there is no evidence in the record that the merger of Duke and Piedmont will cause an increase in their use of natural gas. With regard to Duke, the transaction that most likely would cause an increase in its use of natural gas is DEC or DEP building a new gas-fired electric generating plant. As NC WARN notes, DEC's and DEP's IRPs, filed several months prior to the merger application, forecast an increased reliance on natural gas-fired generation. However, in order to build such a plant DEC or DEP would have to acquire a certificate of public convenience and necessity (CPCN) from the Commission. There is no application for a CPCN to build gas-fired electric generation in this docket. Likewise, there is no application to pass along increased rates in this docket. In addition, if DEC or DEP files an application for a CPCN to build a new natural gas-fired plant, that will be the docket in which relevant testimony regarding an increased use of natural gas by DEC or DEP will be appropriate.

With respect to Piedmont, a primary reason that it would increase its use of natural gas is to expand its services to new customers. Economic expansion of natural gas service to unserved areas is a public policy of the State of North Carolina. See G.S. 62-2(a)(9). However, there is no evidence in the record that the merger, in itself, will increase Piedmont's expansion of natural gas services. Further, there is no request in this docket to approve such an expansion of Piedmont's services, or to pass along increased rates. While Piedmont might also increase its use of natural gas to deliver it to electric generating plants, such delivery is as likely to occur without the proposed merger as with it.

Consequently NC WARN's testimony is not relevant to the issues under consideration pursuant to G.S. 62-111(a). As a result, the Chairman concludes that there is good cause to strike the bulk of NC WARN's testimony from the record.

With regard to the Applicants' Motion in Limine, it presents the issue of whether cross-examination on the subjects addressed in NC WARN's testimony would produce evidence of any fact of consequence to the Commission's decision to approve or deny the merger of Duke and Piedmont. The Chairman finds good cause to reserve a decision on the Motion in Limine until the expert witness hearing in this docket.

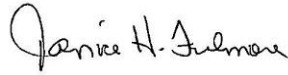
IT IS, THEREFORE, ORDERED as follows:

1. That the testimony of Touché Howard on page 2, line 8 through page 10, line 20 shall be, and is hereby, stricken from the record.
2. That the testimony of J. David Hughes on page 2, line 13, beginning with "These risks are both economic" through page 3, line 6, and page 3, line 12 through page 21, line 2 shall be, and is hereby, stricken from the record.
3. That a decision on the Applicants' Motion in Limine shall be, and is hereby, reserved until the expert witness hearing in this docket.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of June, 2016.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script, reading "Janice H. Fulmore".

Janice H. Fulmore, Deputy Clerk