

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. EMP-92, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Application of NTE Carolinas II, LLC, for)	NC WARN'S REPLY
a Certificate of Public Convenience and)	TO MOTION TO STRIKE
Necessity to Construct a 500-MW Natural)	AND MOTION IN LIMINE
Gas-Fueled Merchant Power Plant in)	
Rockingham County, North Carolina)	

NOW COMES NC WARN, by and through the undersigned attorney, with a reply to NTE's Motion to Strike and Motion in Limine as to Portions of the Testimony of William E. Powers, filed October 26, 2016.

1. NTE's motion to strike and motion in limine would remove Mr. Powers's testimony relating to his opinions about the greenhouse gas footprint of the proposed natural gas-fired plant and his testimony regarding battery storage as a method of meeting demand.

2. In making its motions, NTE replicates arguments made by Duke Energy Progress in the recent merger docket to strike testimony from expert witnesses put forward by NC WARN *et al.* on the costs and risks of overreliance on natural gas in the Carolinas.¹ NTE fails to realize the standard review of a certificate for convenience and necessity ("CPCN") for a power plant pursuant to G.S. 62-110.1 is different from that for a merger. The former requires a much broader range of

¹ Dockets E-2, Sub 1095, E-7, Sub 1100, and G-9, Sub 682.

issues to be considered and resolved, while the Commission primarily limits its review of a merger to whether ratepayers will be adversely impacted.

3. As an example of issues to be resolved in a power plant CPCN, the most heavily contested CPCN before the Commission in the recent decade was for Duke Energy's Cliffside coal plants (now the "Rogers Energy Complex"). In the Order issued by the Commission on March 21, 2007, the Commission stated in Findings of Fact 3

The Commission must consider many factors, including the recent and future needs for power in the area; the extent, size, mix, and location of the utility's existing plants; arrangements for pooling or purchasing power; and the construction and fuel costs of the project and of alternatives, before granting a certificate of public convenience and necessity for a new generating facility.

This broad review of a CPCN application includes alternatives to the proposed plant, the costs to ratepayers, and the size, mix, and location of existing plants, as well as whether it is in the public interest to build the plant. Public convenience and necessity in this context requires a more comprehensive look at these issues than the equivalent for a merger.

4. The CPCN statute, G.S. 62-110.1, and related Commission rule, R8-63 for merchant plants, are intended to provide for the orderly expansion of electric generating capacity in order to create a reliable and economical power supply and to avoid the costly overbuilding of generation resources. *State ex rel. Utilities Comm. v. Empire Power Co.*, 112 N.C.App. 265, 278 (1993), disc, rev, denied, 335 NC 564 (1994); *State ex rel. Utilities Comm. v. High Rock*

Lake Ass'n, 37 N.C.App. 138, 141, disc, rev, denied, 295 NC 646 (1978). In the Cliffside order, the Commission stated,

Beyond need, the Commission must also determine if the public convenience and necessity are best served by the generation option being proposed. The standard of public convenience and necessity is relative or elastic, rather than abstract or absolute, and the facts of each case must be considered. *State ex rel. Utilities Comm. v. Casey*, 245 NC 297, 302 (1957).

In the present matter, NTE needs to justify its plant in terms of whether the plant best serves the public convenience and necessity.

5. In its application as the basis for the need for the proposed plant, NTE relies upon the Duke Energy integrated resource plans (“IRPs”) but fails to recognize Duke Energy reached its conclusions for its future generation needs based in large part on carbon impacts on climate change. Although NC WARN disagrees with the outcome of Duke Energy’s IRPs because of the total methane emissions resulting from the proposed expansion of natural gas infrastructure, NTE cannot rely on Duke Energy’s IRPs without addressing the climate impacts of its proposed plant. By requesting to strike Mr. Powers’s testimony about the greenhouse gas footprint of the proposed natural gas-fired plant, NTE is effectively asking that the Commission ignore the climate impacts of its proposed plant when assessing whether the plant is in the public interest.

6. As noted above, the Commission routinely looks at all reasonable alternatives to a proposed plant in its deliberations over whether to issue a CPCN or not. In the Cliffside docket, the Commission

reviewed a broad range of options, including renewable energy, wind, energy efficiency and demand-side management, different coal technologies, peaking and baseload use of natural gas-fired plants, power purchases, and nuclear power. In his testimony, Mr. Powers adds the ability of utility-scale batteries to the list of alternative resources that should be considered, providing an additional method of meeting whatever needs are identified in the Duke Energy IRPs (and which are relied upon by NTE).

7. The issues before the Commission are whether there is a need for the proposed plant and whether it is in the public interest. NC WARN believes the plant meets neither criteria, and that the testimony of Mr. Powers speaks directly to why that is the case.

THEREFORE, NC WARN prays that the motion to strike and the motion in limine be denied.

Respectfully submitted, this the 28th day of October 2016.

/s/ John D. Runkle

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing NC WARN'S
REPLY TO MOTION TO STRIKE AND MOTION IN LIMINE upon each of the
parties of record in this proceeding or their attorneys of record by deposit in the
U.S. Mail, postage prepaid, or by email transmission.

This is the 28th day of October 2016.

/s/ John D. Runkle
