

**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)
a Certificate of Public Convenience and)
Necessity to Construct a 500-MW Natural)
Gas-Fueled Merchant Power Plant in)
Rockingham County, North Carolina)
	ORDER DENYING OBJECTION TO INTERVENTION

BY THE PRESIDING COMMISSIONER: On July 29, 2016, NTE Carolinas II, LLC (NTE) filed an application pursuant to G.S. 62-110.1 and Commission Rule R8-63 for a certificate of public convenience and necessity (CPCN) to construct a 500-MW combined cycle natural gas-fueled merchant electric generating facility near Reidsville, Rockingham County, North Carolina.

On October 5, 2016, the North Carolina Waste Awareness and Reduction Network, Inc. (NC WARN) filed a motion to intervene in this proceeding. In summary, NC WARN stated that it is a non-profit organization having more than one thousand individual members and families across North Carolina. NC WARN further stated that its purpose is to work for climate protection through advocacy for clean, efficient, and affordable energy. With regard to the present proceeding, NC WARN stated that its members are concerned about the economic, environmental and climate costs of a natural gas future, and that its members are customers of electric membership cooperatives (EMCs) and municipalities that may be wholesale power customers of NTE. Moreover, NC WARN stated that some members live in the Winston-Salem and Reidsville areas and may be adversely affected by emissions from the proposed facility. NC WARN concluded by stating that it will advocate for the Commission to fully investigate the impacts of the NTE plant on ratepayers and the climate.

On October 7, 2016, the Commission issued an Order granting NC WARN's motion to intervene.

On October 11, 2016, NTE filed a motion requesting that the Commission reconsider its Order allowing NC WARN to intervene in this docket and, upon reconsideration, deny NC WARN's intervention. NTE states that on October 6, 2016, the day after receiving NC WARN's motion requesting intervention, counsel for NTE left a voicemail message on the office telephone of the general counsel of the Commission informing the general

counsel that NTE wished to respond to NC WARN's motion.¹ Further, as NTE's principal place of business is located in St. Augustine, Florida, NTE states that its headquarters were closed on October 6 through 10, 2016, due to Hurricane Matthew. In light of the exceptional circumstances of Hurricane Matthew, NTE was not able to file a response to NC WARN's motion until October 11, 2016.

NTE asserts that NC WARN has no "real interest in the subject matter of the proceeding" as required by Commission Rule R1-19(d). It states that the purpose of this proceeding is for the Commission to determine whether NTE's proposed merchant facility satisfies the standards set in G.S. 62-110.1 and Commission Rule R8-63, and not to debate or challenge the state's energy and environmental policies. Further, NTE contends that the Commission should consider whether NTE has made a sufficient showing of need for the proposed facility to prevent overbuilding, citing State ex rel. Utilities Commission v. High Rock Lake Ass'n, Inc., 37 N.C. App. 138, 245 S.E.2d 787, disc. review denied, 295 N.C. 646, 248 S.E.2d 257 (1978) (High Rock). NTE maintains that the applicable standards do not include consideration of the concerns that NC WARN states in its motion and will presumably raise in this proceeding, as such policy concerns are left to state and federal legislative bodies and regulatory agencies other than the Commission.

In addition, NTE cites NC WARN's participation in Docket No. E-2, Sub 1089, and Docket Nos. E-2, Sub 1095, E-7, Sub 1100, G-9, Sub 682 as evidence that the reason for NC WARN's intervention is to make general objections to the use of natural gas in North Carolina and to argue about the alleged environmental impacts of natural-gas fueled facilities. NTE submits that such information is irrelevant and is beyond the scope of the Commission's jurisdiction in considering the issues in this proceeding.

Further, NTE contends that the fact that NTE's facility will not be part of the rate base of a retail electric service public utility provides a significant distinction from the Commission's typical CPCN dockets. NTE notes that electric power from the NTE facility will be sold in North Carolina only in the wholesale market, and that the Commission does not regulate the wholesale market decisions of EMCs or municipalities. Thus, NTE takes the position that NC WARN's statement that its members are customers of EMCs and municipalities who may become wholesale customers of NTE's merchant plant is too tenuous a nexus to support NC WARN's intervention in this docket.

Moreover, NTE notes that the Commission denied NC WARN's intervention in Docket No. E-7, Sub 1017 (Sub 1017), the Commission's 2012 investigation into the Duke Energy/Progress Energy merger. NTE notes that Sub 1017 was an investigation docket initiated by the Commission. However, it nonetheless asserts that the Commission's determination that the Public Staff would represent the interest of consumers affected by the Commission's investigation in Sub 1017 is applicable to NC WARN's request to intervene in the present docket, since the Public Staff is a party to this docket and will represent the interests of the using and consuming public in its assessment of the need

¹ The Commission's general counsel, Sam Watson, was attending a continuing legal education seminar at another location on October 6 and 7, 2016. His voice mail message noted that he would be out of the office on those dates.

for the proposed facility. In conclusion, NTE submits that determining the need for the facility is the issue that is the proper purpose and scope of this docket.

On October 13, 2016, NC WARN filed a response to NTE's motion for reconsideration. In summary, NC WARN states that it accepts NTE's statements about weather delays and other complications and, as such, the Commission should treat NTE's motion as a response to NC WARN's motion to intervene rather than a motion for reconsideration. Further, NC WARN states that its motion to intervene meets the requirements of Commission Rule R1-19 by providing a "clear, concise statement of petitioner's interest in the subject matter of the proceeding, and the way and manner in which such interest is affected by the issues involved in the proceeding." R1-19(a)(3). In particular, NC WARN states that its members are concerned about the costs of the proposed plant, both economic and environmental, especially those members living in the Triad – Reidsville area.

Moreover, NC WARN notes that in its application NTE fails to openly state who will purchase the power. Therefore, it is impossible for NC WARN to list specific EMCs or municipalities in which NC WARN has members. However, many of NC WARN's members are Duke Energy customers and others reside in various areas served by entities that might purchase power from NTE.

Further, NC WARN acknowledges that the Commission denied its motion to intervene in the Duke Energy/Progress Energy merger investigation in Sub 1017. However, NC WARN contends that this was an exceptional situation because it was an investigation of possible improprieties, and, therefore, it was treated much differently than routine interventions under the Commission's standard practices.

In addition, NC WARN states that the issues before the Commission in this docket are whether there is a need for the proposed plant and whether construction of the plant is in the public interest. NC WARN asserts that the proposed plant does not meet either of those standards.

Finally, NC WARN states that it is preparing prefiled testimony on the substantive issues, and the testimony is due to be filed by October 18, 2016. Therefore, NC WARN states that it would appreciate a timely resolution of this matter.

Discussion and Decision

In the normal course, a motion for reconsideration is considered by the Commission pursuant to G.S. 62-80. That statute provides the Commission with the discretion to amend, alter or rescind a prior Commission Order. However, it also requires a showing by the movant that there are new facts or a change of circumstances that justify the Commission in changing its prior Order. In fairness to NTE, the Presiding Commissioner will consider NTE's motion for reconsideration as a timely objection to NC WARN's motion to intervene, and will not apply the usual standard of G.S. 62-80.

In its motion, NTE relies upon the High Rock case in support of its position that the crux of the public convenience and necessity standard in this proceeding is the issue of whether there is a need for the electricity to be produced by NTE's proposed plant. In High Rock, Duke Power Company filed an application for a CPCN to build a nuclear generating plant, the Perkins Nuclear Station, in Davie County. One of the intervenors, High Rock Lake Association, Inc. (Lake Association) presented evidence that the use by the Perkins facility of cooling water from the Yadkin River upstream of High Rock Lake would adversely affect the Lake's water quality. The Commission issued a CPCN to Duke, subject to conditions imposing limitations on the use of water from the Yadkin River.

The Lake Association appealed the Commission's Order to the Court of Appeals. The Court affirmed the Commission's Order. Although the Court focused most of its attention on the question of the need for the Perkins facility, the Court also noted with approval that the Commission considered other factors, such as "alternate sites, fuels and cooling designs." High Rock, 37 N.C. App., at 142, 245 S.E.2d, at 791. In addition, the Court noted with approval the Commission's concern with the Lake Association's "legitimate interest in the quality of the Yadkin River," and that the Commission included conditions in its Order that addressed the Lake Association's concerns. Id.

The Presiding Commissioner notes that Commission Rule R8-63 requires an applicant for a CPCN authorizing construction of a merchant plant to submit information beyond simply establishing the need for the plant. For example, the applicant must provide information regarding the proposed location of the plant, the applicant's balance sheet and income statement, details of the nature of the proposed facility, including fuel and transmission resources, and service contracts or tariffs for interstate gas pipeline capacity.

NTE appears to advocate that the Commission issue a ruling that the sole issue in this docket is the need for NTE's proposed facility. However, the Presiding Commissioner will not attempt to pre-determine what facts and issues the Commission will consider in making a decision on NTE's application. At this stage of the proceeding, it is sufficient to state that the Commission has the authority to consider factors other than the need for the facility.

In addition, the Presiding Commissioner will not attempt to speculate as to what issues NC WARN might attempt to raise in this proceeding. At a minimum the members of NC WARN have a real interest, within the meaning of Commission Rule R1-19, in addressing the need for the facility. However, pursuant to Rule R1-19(d), this is not a finding by the Commission that NC WARN or its members will or may be affected by the Commission's decisions in this docket.

Conclusion

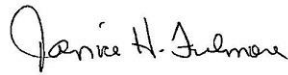
Based on the foregoing and the record in this docket, the Presiding Commissioner is not persuaded that the Commission should deny NC WARN's motion to intervene in this docket. As a result, NTE's objection to NC WARN's intervention shall be, and is hereby, denied.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of October, 2016.

NORTH CAROLINA UTILITIES COMMISSION

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

Janice H. Fulmore, Deputy Clerk