

1 PLACE: Dobbs Building
2 Raleigh, North Carolina
3 DATE: June 17, 2016
4 DOCKET NO.: E-2, Sub 1089
5 TIME IN SESSION: 9:30 A.M. TO 12:34 P.M.
6 BEFORE: Chairman Edward S. Finley, Jr., Presiding
7 Commissioner Bryan E. Beatty
8 Commissioner ToNola D. Brown-Bland
9 Commissioner Don M. Bailey
10 Commissioner Jerry C. Dockham
11 Commissioner James G. Patterson
12 Commissioner Lyons Gray
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IN THE MATTER OF:

Duke Energy Progress, LLC

Application for a Certificate of Public Convenience
and Necessity to Construct a 752 Megawatt Natural
Gas-Fueled Electric Generating Facility in Buncombe
County near the City of Asheville

VOLUME 2

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1 P R O C E E D I N G S

2 CHAIRMAN FINLEY: Good morning. Let's come to
3 order and go on the record. My name is Edward Finley,
4 and with me this morning are Commissioners Bryan E.
5 Beatty, ToNola D. Brown-Bland, Don Bailey, Jerry C.
6 Dockham, James G. Patterson and Lyons Gray.

7 The Commission now calls for hearing on the
8 issue of Setting and Undertaking or Bond pursuant to G.S.
9 62-82(b), in Docket Number E-2, Sub 1089, the Application
10 of Duke Energy Progress, LLC, for a Certificate of Public
11 Convenience and Necessity to Construct an Electric
12 Generating Facility in Buncombe County, North Carolina.

13 On March 28, 2016, the Commission issued an
14 order in the above-captioned docket which, among other
15 things, granted Duke Energy Progress a Certificate of
16 Public Convenience and Necessity to construct two 280-
17 megawatt combined cycle natural gas-fired electric
18 generating units in Buncombe County.

19 On April 25, 2016, the North Carolina Waste
20 Awareness and Reduction Network and The Climate Times,
21 collectively NC WARN, filed a Motion to Set Bond pursuant
22 to G.S. 62-82(b), requesting that the Commission set the
23 bond in the amount of \$250 and requesting an oral
24 argument or evidentiary hearing on the bond requirement.

1 On April 27, 2016, the Commission issued a
2 Procedural Order on Bond allowing Duke Energy Progress to
3 file a response to NC WARN's motion on or before May 2 of
4 2016, and allowing NC WARN to file a reply on or before
5 May 5, 2016.

6 On May 2, 2016, Duke Energy Progress filed a
7 Verified Response to Motion to Set Bond. In summary,
8 Duke Energy Progress indicated that the Commission's CPCN
9 Order properly found that the construction of the two
10 280-megawatt combined cycle units was necessary to
11 reliably meet the needs of Duke Energy Progress'
12 customers and provide for the early retirement of 379-
13 megawatt Asheville Coal Units 1 and 2, and that the
14 approximate cost of the project was \$1 billion. Duke
15 Energy Progress indicated that it had not decided if it
16 would delay the beginning of the construction in response
17 to a potential appeal, but if appeal delays occur, the
18 reasonably estimated increase costs are approximately
19 \$100 million in potential coal unit environmental
20 controls and approximately \$140 million in potential
21 increased combine cycle construction costs. Duke Energy
22 Progress requested that the Commission set a bond in the
23 minimum amount of \$50 million.

24 On May 5, 2016, NC WARN filed a Verified Reply

1 to Duke Energy Progress' Response to Motion to Set Bond.
2 In summary, NC WARN argued that Duke Energy Progress'
3 response was an attempt to bully NC WARN away from an
4 appeal. NC WARN argued that Duke Energy Progress has the
5 burden to quantify and substantiate the amount of the
6 bond needed to secure against damages from appellate-
7 related delays in the beginning of construction of the
8 facility. NC WARN stated that Duke Energy Progress
9 provided unsubstantiated and extravagant estimates of the
10 potential damages. NC WARN indicated that Duke Energy
11 Progress' assertions of potential damage are not
12 sufficiently documented and that Duke Energy Progress
13 provided no evidence regarding the 2.5 percent annual
14 cost escalation and did not provide an explanation or
15 breakout of its \$50 million estimate.

16 On May 10, 2016, the Commission issued its
17 Order Setting Undertaking or Bond pursuant to G.S. 62-
18 82(b). The Commission required NC WARN to file an
19 executed undertaking in the sum of \$10 million or a bond
20 in the sum of \$10 million prior to filing Notice of
21 Appeal. The Commission's order stated that should Duke
22 Energy Progress indicate by September 1, 2016, that it
23 would not delay beginning of construction due to appeal,
24 it would entertain a motion by NC WARN to eliminate the

1 bond or undertaking requirement. If not, it would
2 schedule a hearing.

3 On May 19, 2016, NC WARN filed in the Court of
4 Appeals a Petition for Writ of Certiorari, Petition for
5 Writ of Supersedeas, a Motion for Temporary Stay of the
6 Commission's May 10, 2016 Order Setting Undertaking or
7 Bond.

8 On May 24, 2016, the Court of Appeals denied NC
9 WARN's Motion to Temporary Stay.

10 On May 27, 2016, NC WARN filed a Notice of
11 Appeal and Exceptions in Docket Number E-2, Sub 1089,
12 without filing the undertaking or appealed bond.

13 On May 31, 2016, the Court of Appeals -- in the
14 Court of Appeals Duke Energy Progress filed a Response to
15 Petition for Writ of Certiorari, Petition for Writ of
16 Supersedeas.

17 On May 31, 2016, Duke Energy Progress filed a
18 Motion to Dismiss the appeal for NC WARN's failure to
19 file the required undertaking or appealed bond.

20 On June 3, 2016, NC WARN filed a Response
21 opposing the dismissal.

22 On June 7, 2016, the Court of Appeals allowed
23 NC WARN's Petition for Certiorari for the limited purpose
24 of vacating or remanding the Commission's Order Setting

1 Bond. The Court of Appeals stated that on remand, the
2 Commission shall set, in its discretion, an amount in
3 accordance with G.S. 62-82(b) and based upon competent
4 evidence.

5 On June 8, 2016, the Commission issued an Order
6 Setting Hearing, providing Duke Energy Progress and NC
7 WARN an evidentiary hearing on the issue of setting
8 undertaking or bond pursuant to G.S. 62-82(b).

9 In compliance with the State Ethics Act, I'll
10 remind all the members of the Commission of their duty to
11 avoid conflicts of interest, and inquire whether any
12 member of the Commission has a known conflict of interest
13 with regard to this matter this morning?

14 (No response.)

15 CHAIRMAN FINLEY: There appear to be no
16 conflicts, so we'll proceed. I now call upon counsel for
17 the parties to announce their appearances, beginning with
18 NC WARN.

19 MR. RUNKLE: May it please the honorable
20 Commission, my name is John Runkle, representing NC WARN
21 and The Climate Times.

22 MR. SOMERS: Good morning, Mr. Chairman,
23 members of the Commission. I'm Bo Somers, Deputy General
24 Counsel on behalf of Duke Energy Progress.

1 CHAIRMAN FINLEY: All right, Mr. Runkle. I
2 understand that you, on behalf of your clients, have
3 filed a response to the Commission's order indicating
4 that we have committed -- that we are abusing our
5 discretion by holding this hearing. I'll hear you on
6 that -- your support of that position.

7 MR. RUNKLE: Thank you, sir. Part of -- part
8 of our response has been taken care of because Duke
9 Energy did not file any additional testimony yesterday
10 evening. That was our very much concern, that --

11 CHAIRMAN FINLEY: What I want to hear from you
12 right now about is your argument that we are abusing our
13 discretion by holding this hearing and taking evidence.
14 That's what I want you to address. The first part of
15 your -- the first part of your response, please.

16 MR. RUNKLE: The abuse of discretion was giving
17 Duke Energy eight days to have testimony by any number of
18 witnesses, and giving us eight hours to prepare a
19 response and having an expert review -- review the
20 testimony and be able to have a witness here today.
21 Since Duke Energy did not put any testimony in yesterday,
22 no additional witnesses to be called and just going to
23 rest on their initial Verified Response --

24 (To Mr. Watson) Thank you. (Microphone

1 moved.)

2 MR. RUNKLE: -- I mean, that was -- that was
3 our concern. That's why we filed on Monday. If Duke was
4 going to put in a lot of witnesses, we needed the
5 opportunity to review that testimony and be able to
6 respond to it in a meaningful manner.

7 CHAIRMAN FINLEY: And what you say on paragraph
8 1 is, "Providing Duke Energy another opportunity to
9 provide substantive testimony, the Commission is abusing
10 its discretion. In holding an expedited and hybrid
11 hearing of oral arguments and new witnesses, the
12 Commission is simply allowing Duke Energy yet another
13 attempt to get its position right." The Order filed June
14 7, 2016, the Court of Appeals gave the Commission the
15 opportunity to set a bond and, in its discretion, set
16 bond in the amount in accordance with the statute based
17 on competent evidence. "The Court did not allow the
18 Commission to reopen the record in order to base the bond
19 amount on competent evidence." Now, is that still your
20 position today or is it not?

21 MR. RUNKLE: Yes, sir. That's our position,
22 that looking at the Court of Appeals' Order from June
23 7th, and you -- you read from the -- our Response, but
24 it's taken directly from the Order. You know, this is

1 sort of a, you know, how many times are we going to allow
2 Duke Energy to do over? I mean, they had a presentation.
3 There was a public hearing. There were opportunities for
4 them. They were able to have a Verified Response to the
5 Motion Requesting to Set a Bond. We can just keep on
6 playing this out. How many times do -- does Duke Energy
7 be able to try to put on competent evidence? I mean,
8 everything that's been put in so far has been very
9 speculative. How many times are we going to be able to
10 do this?

11 CHAIRMAN FINLEY: All right. Then I take it
12 that you still stand by what you said in paragraph 1,
13 although I sense a bit of equivocation there. I'm
14 prepared to rule on that part of your response.

15 The assertion is that by allowing Duke Energy
16 Progress to offer substantive testimony, the Commission
17 is abusing its discretion. In response to NC WARN's May
18 19, 2016 Petition for Writ of Certiorari, the Court
19 issued an Order on June 17, (sic) 2016 vacating and
20 remanding the Commission's May 10, 2016 Order on Bond so
21 that the Commission, in its discretion, should set a bond
22 in accordance with 62-82(b) that's based on competent
23 evidence.

24 In its May 19 petition, NC WARN cited Currituck

1 Associates Residential Partnership versus Hollowell, 170
2 N.C. App. 399, 612 S.E.2d 386 (2005) opinion. In that
3 case, the Court remanded a Superior Court Bond Order,
4 quote, "for a new determination of the proper bond amount
5 based on competent evidence," end quote. That Court
6 cited Iverson versus TM1, Inc. 82, NC App. 161, a 1985
7 case, quote, "If the parties desire to present new
8 evidence, the trial court should consider that evidence,"
9 end quote. Reading Hollowell, it is clear that the Court
10 anticipated the taking of additional evidence. The Order
11 appeal from Hollowell was based on an affidavit based on
12 information and belief. The Court determined that it
13 should have been based on personal knowledge. Based on
14 the Court's January 7, 2016 order, the Court of Appeals
15 -- that's not right -- June 7, 2006 Order on Hollowell
16 and Iverson, NC WARN's response -- request to prohibit NC
17 WARN from providing additional testimony of witnesses is
18 denied.

19 Anything else? Any other preliminary matters
20 we have to address?

21 (No response.)

22 CHAIRMAN FINLEY: All right. Duke?

23 MR. SOMERS: Mr. Chairman, would you like for
24 us to go first on the amount of bond?

1 CHAIRMAN FINLEY: Yes, sir.

2 MR. SOMERS: Okay. I would call --

3 CHAIRMAN FINLEY: Anything else -- you can take
4 it in whatever -- if that order doesn't suit you, let me
5 know and we can talk about it.

6 MR. SOMERS: Well, I believe we're here on NC
7 WARN's Motion to Set the Bond. Since they filed the
8 motion and we responded to it, I would normally
9 anticipate that they would have the burden of proof and
10 go first, but we're happy to go first if that is the
11 Commission's preference.

12 CHAIRMAN FINLEY: Why don't you go first and
13 see if you present evidence that you would like.

14 MR. SOMERS: Thank you, Mr. Chairman. We would
15 call Mr. Mark Landseidel.

16 MARK LANDSEIDEL; Being first duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION BY MR. SOMERS:

19 Q Would you please state your name for the
20 record.

21 A My full name is Mark Eugene Landseidel.

22 Q What is your business address?

23 A 400 South Tryon, Charlotte, North Carolina.

24 Q And who do you work for?

1 A I work for Duke Energy.

2 Q What is your position with Duke Energy?

3 A I'm currently Director Project Development in
4 our Project Management and Construction Department, where
5 I'm responsible for development of new gas-fired
6 generation projects.

7 Q And specifically, what is your role as it
8 relates to the Western Carolinas Modernization Project or
9 the Asheville combined cycle project that is the subject
10 of this docket?

11 A I've had responsibility for the full
12 development of the project to the state and onward into
13 the construction which we anticipate to begin in October.

14 Q And did you file the Verification to the
15 Company's CPCN Application that was filed in this docket?

16 A Yes, I did.

17 Q And did you also file the Verification to the
18 Company's May 2nd, 2016 Response to the Motion to Set
19 Bond filed by NC WARN and The Climate Times?

20 A Yes, I did.

21 Q All right.

22 MR. SOMERS: Mr. Chairman, based on the
23 Commission's Order, my understanding is that Duke Energy
24 Progress' May 2nd response, as verified by Mr.

1 Landseidel, be treated as prefiled direct testimony. Is
2 my understanding correct?

3 CHAIRMAN FINLEY: Yes, sir.

4 MR. SOMERS: All right. I would ask that that
5 -- to the extent it's not in the record, I would ask that
6 that testimony be admitted as if the questions and
7 answers were given orally from the stand.

8 CHAIRMAN FINLEY: That pleading, as so verified
9 by the witness, is received into evidence.

10 MR. SOMERS: Thank you.

11 (Whereupon, Duke Energy Progress'
12 Verified Responses to Motion to Set
13 Bond of NC WARN and The Climate
14 Times, accepted into the record as
15 prefiled testimony, was copied into
16 the record as if given orally from
17 the stand.)

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BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1089

In the Matter of)	
)	
Application of Duke Energy Progress, LLC for a)	DUKE ENERGY PROGRESS'
Certificate of Public Convenience and Necessity)	VERIFIED RESPONSE TO
To Construct a 752-MW Natural Gas-Fueled)	MOTION TO SET BOND OF NC
Electric Generation Facility in Buncombe)	WARN AND THE CLIMATE
County Near the City of Asheville)	TIMES

NOW COMES Duke Energy Progress, LLC, ("DEP" or "the Company") pursuant to N.C. Gen. Stat. §62-82(b), Session Law 2015-110 (the "Mountain Energy Act"), North Carolina Utilities Commission ("Commission") Rule R1-7, and the Commission's April 27, 2016 *Procedural Order on Bond* and responds to the April 25, 2016 Motion to Set Bond of NC WARN and The Climate Times (collectively, "Potential Appellants"). The Company responds specifically as follows:

1. In its March 28, 2016 *Order Granting Application in Part, with Conditions, and Denying Application in Part* ("CPCN Order"), the Commission held that the public convenience and necessity require the construction of the two 280 MW combined cycle units proposed as part of DEP's Western Carolinas Modernization Project. The Commission's forty-four page CPCN Order contains a comprehensive and detailed evaluation of the facts, law, and arguments of all parties, including those of Potential Appellants, that led to the Commission's conclusion that the approximately \$1 billion¹ Western Carolinas Modernization Project combined cycle units should be

¹ The detailed cost estimate for the combined cycle units is confidential and was filed under seal with the Commission.

approved as the cost-effective option to reliably meet DEP customers' needs and provide for the early retirement of the 379 MW Asheville Coal Units 1 and 2.

2. On April 25, 2016, Potential Appellants filed a Motion for an Extension of Time to File Notice of Appeal and Exceptions, which indicates that they "may" file a notice of appeal and exceptions to the CPCN Order.² The Commission granted the motion, extending the period to file notice of appeal until May 27, 2016. Of the seven Intervenor who opposed all or parts of DEP's Western Carolinas Modernization Project CPCN application, Potential Appellants are the only two who sought an extension of time and have asked the Commission to set their appeal bond, which would appear to indicate that they are the only parties who may intend to potentially file a notice of appeal.

3. In their motion for extension of time, Potential Appellants claim that in conducting research for their potential appeal they "learned that appeals from the granting of a certificate of public convenience and necessity are subject to a unique requirement not present in other types of appeals from the Commission."³ Although irrelevant, Potential Appellants' surprise at this statute is curious, because the statutory bond requirement for any party seeking to appeal a CPCN award order has been the law of North Carolina since 1965.

4. N.C. Gen. Stat. §62-82(b) provides as follows:

(b) Compensation for Damages Sustained by Appeal from Award of Certificate under G.S. 62-110.1; Bond Prerequisite to Appeal. - Any party or parties opposing, and appealing from, an order of the Commission which awards a certificate under G.S. 62-110.1 shall be obligated to recompense the party to whom the certificate is awarded, if such award is affirmed upon appeal, for the damages, if any, which such party sustains by reason of the delay in beginning the construction of the facility which is occasioned by the appeal, such damages to be measured by the increase in the cost of such generating facility (excluding legal

² Motion for Extension, ¶ 1, p. 1

³ *Id.*, ¶ 2, p. 1.

fees, court costs, and other expenses incurred in connection with the appeal). No appeal from any order of the Commission which awards any such certificate may be taken by any party opposing such award unless, within the time limit for filing notice of appeal as provided for in G.S. 62-90, such party shall have filed with the Commission a bond with sureties approved by the Commission, or an undertaking approved by the Commission, in such amount as the Commission determines will be reasonably sufficient to discharge the obligation hereinabove imposed upon such appealing party. The Commission may, when there are two or more such appealing parties, permit them to file a joint bond or undertaking. If the award order of the Commission is affirmed on appeal, the Commission shall determine the amount, if any, of damages sustained by the party to whom the certificate was awarded, and shall issue appropriate orders to assure that such damages be paid and, if necessary, that the bond or undertaking be enforced.

The purpose of the CPCN appeal bond is clear: to protect utility customers from having to pay for any potential construction cost increases caused by unsuccessful appeal-related delays and to place an appropriately high burden upon parties seeking to pursue an appeal from a CPCN order. It is important to note that this statute provides for the bond to secure the payment of damages in the event the appeal is *simply unsuccessful*, not upon a higher standard such as a finding that the appeal was frivolous. This distinction shows how important the requirement of the CPCN appeal bond is under North Carolina law.

5. As the Commission noted in its CPCN Order, the Mountain Energy Act states the policy of the State to promote the early retirement of the Asheville coal units and replacement with new natural gas generation at the Asheville plant site.⁴ Importantly, the Mountain Energy Act specifically provides that the appeal bond provisions of N.C. Gen. Stat. §62-82(b) apply to any appeals from a CPCN order

⁴ CPCN Order at pp. 8; 40-41. Notwithstanding the expedited CPCN procedure provided for by the Mountain Energy Act, the Commission retained the requirement to determine that the public convenience and necessity requires, or will require, the construction of the new Asheville combined cycle units. *Id.* at p. 29.

approving new gas-fired replacement generation at DEP's Asheville Plant.⁵ In contrast, N.C. Gen. Stat. §62-110.1(h), essentially identical legislation to the Mountain Energy Act and which provided for an expedited CPCN process for DEP's Wayne County Combined Cycle Project, exempted the appeal bond requirements of N.C. Gen. Stat. §62-82(b) for a CPCN application filed pursuant to that statutory provision. DEP submits that this difference between the Mountain Energy Act and N.C. Gen. Stat. §62-110.1(h) further emphasizes the importance of an appeal bond in this matter.

6. Potential Appellants do not contend that no appellate bond should be required. In their Motion, however, Potential Appellants allege that DEP and its customers would not suffer any damages under N.C. Gen. Stat. §62-82(b) if their appeal is unsuccessful, and therefore the appeal bond should be a "nominal amount," which they contend should be *a mere two-hundred and fifty dollars (\$250.00)*.⁶ By making the absurd argument that a \$250.00 appeal bond would provide adequate protection for DEP's customers from potential construction costs delays for a \$1 billion generation construction project, Potential Appellants are essentially attempting to argue that the law does not, or should not, somehow apply to them.⁷

7. Potential Appellants' proposed \$250.00 appeal bond is grossly inadequate on its face. That the Potential Appellants fail to acknowledge the risk that their potential appeal could impose upon DEP's customers in terms of reliability risks and potential increased construction costs for an approximately \$1 billion new generating facility that

⁵ The Mountain Energy Act exempts an applicable CPCN application from only the provisions of N.C. Gen. Stat. §62-82(a).

⁶ Motion to Set Bond of NC WARN and the Climate Times, ¶ 7, p. 3.

⁷ This is not the first time NC WARN has advanced such an argument. See Docket No. SP-100, Sub 31.

this Commission has determined is required by the public convenience and necessity to serve the State of North Carolina is baffling and further reveals their true motives.⁸

8. In arguing for a “nominal” appeal bond, Potential Appellants contend that if the bond is set “prohibitively high,” it could be impossible for parties to appeal.⁹ Potential Appellants ignore the fact, however, that they control, to a large extent, whether they are ultimately required to pay damages pursuant to N.C. Gen. Stat. §62-82(b). First, Potential Appellants are required to pay damages to DEP only if the Commission’s CPCN Order is affirmed upon appeal. Thus, Potential Appellants have to assess the merits of their potential appeal. If they believe their appeal will be successful, then they should have no concern that they will be required to pay any damages pursuant to N.C. Gen. Stat. §62-82(b).¹⁰ Second, even if the Commission’s CPCN Order is affirmed on appeal, if there are no actual increases in construction costs due to appeal delays, which Potential Appellants assert will be the case, then they likewise should have no concern that they will ultimately be required to pay any damages pursuant to N.C. Gen. Stat. §62-82(b). Again, while not dispositive of the merits of Potential Appellants’ potential appeal, the Company notes that no other party has indicated their intent to appeal or sought to have their appeal bond established by the Commission.

9. While the Potential Appellants have the right to pursue the appeal if they so choose, the potential appeal of the CPCN Order in this case it is not a “nominal” matter, and the General Assembly so recognized by specifically retaining the appeal bond

⁸ To put Potential Appellants’ proposed \$250.00 appeal bond in perspective, the cost of an appeal from District Court to Superior Court is \$372.50. *NC AOC, “Court Costs and Fees Chart,”* Sept. 2014, p. 13.

⁹ Motion to Set Bond of NC WARN and the Climate Times, ¶ 6, p. 3.

¹⁰ The Company notes that this Commission rejected Potential Appellants’ arguments in the CPCN proceeding, finding them, at least in part, to be “overly simplistic and lacking credibility” (CPCN Order at p. 33), and to “appear to demonstrate a lack of fundamental understanding” of basic electric utility system and Integrated Resource planning principles. (CPCN Order at p. 34).

requirements of N.C. Gen. Stat. §62-82(b). Potential Appellants state they are not requesting an injunction or stay of the CPCN Order. This is irrelevant. Unlike the traditional appellate bonds governed by N.C. Gen. Stat. §1A, Rule 62, it is not necessary that that the Potential Appellants request an injunction or stay of the Commission's Order under N.C. Gen. Stat. §62-82(b), because the General Assembly recognized the tremendous impact and risk to North Carolina citizens that such an appeal produces. The appeals process by its very nature produces uncertainty and the potential for significant delays. As the Potential Appellants state in the Motion to Set Bond, the bond obligation is designed to provide financial protection for DEP's customers from "*potential* damages caused by construction delays due to the appeal."¹¹

10. At this point, the Company has not definitely decided if it would delay beginning construction of the new combined cycle units in response to the potential appeal, or delay construction at some later point in the appellate process once an appeal is actually filed, but the Motions filed by the Potential Appellants have added considerable uncertainty to the process. The Commission's April 27, 2016 Procedural Order on Bond provided only three (3) business days to prepare this response. Even if the response time were unlimited, it would be impossible to evaluate the merits of the possible appeal at this time. The Company has not had the opportunity to review the exceptions that Potential Appellants might take to the CPCN Order, much less their actual briefs supporting a potential appeal, so the Company is unable to adequately evaluate the merits

¹¹ Motion to Set Bond of NC WARN and the Climate Times, ¶ 4, p. 2 (emphasis added).

of a possible appeal and the commensurate risk to beginning or continuing construction pending the appellate process.¹²

11. The subject matter of this docket and the possible appeal have far reaching implications for DEP's customers and the ability of the Company to provide cost-effective and reliable energy as is its public service obligation. The construction of the generating facilities approved by the Commission in the CPCN Order on the current timeline is essential to accomplishing the State's goals of retiring the older, less efficient Asheville coal units and replacing them with cleaner, more efficient gas-fired generating facilities.

12. As the record in this proceeding and the CPCN Order establishes, the timing of the retirement of the Asheville coal units and the construction of the new combined cycle units is subject to strict timing deadlines under the Mountain Energy Act, which modifies the strict timelines of the Coal Ash Management Act, Session Law 2014-122 ("CAMA"). As such, any potential delays in beginning construction of the combined cycle units, or subsequent delays in completing construction of the combined cycle units, due to an appeal would subject DEP and its customers to material risk. As the CPCN Order recites, the Mountain Energy Act extends the CAMA deadlines applicable to the Asheville coal units, *but only if*, in pertinent part, *DEP retires the Asheville coal units on or before the commercial operation of the new gas generation, and no later than January 31, 2020*.¹³

13. If DEP were to delay construction of the combined cycle units beyond the current Mountain Energy Act deadlines in response to an appeal by Potential Appellants,

¹² Importantly, the customary timelines for completion of the appellate process through the North Carolina Court of Appeals and potentially the North Carolina Supreme Court could take two years or more.

¹³ CPCN Order at p. 3

as reflected in the record in the CPCN proceeding, DEP would need to invest approximately \$100 million in additional environmental controls to make the Asheville coal units compliant with the CAMA storm water and dry fly and bottom ash requirements otherwise extended by the Mountain Energy Act. Accordingly, one potential increased construction cost associated with a delay should Potential Appellants file an appeal would be the incurrence of the approximately \$100 million in new environmental controls associated with the Asheville coal units, which would otherwise be avoided as part of the construction of the combined cycle units approved in the CPCN Order.¹⁴

14. An appeal-related delay of the combined cycle units' construction would cause additional cost increases. Since receipt of the CPCN Order, the Company has been finalizing contracts with suppliers and contractors and plans to release the major equipment suppliers to proceed in May 2016. May 2016 is the latest date that DEP could fully release these vendors to proceed and still meet the critical path deadlines for timely commercial operation of the project. Commencement of on-site earthworks construction of the combined cycle units is scheduled to commence in October 2016, to support the November 2019 expected commercial operation date and to comply with the deadlines of the Mountain Energy Act. Although it is difficult to estimate the increased construction costs associated with an appeal-related delay of the combined cycle units' construction after issuing notice to proceed, DEP reasonably estimates that if the Company delayed the commencement of construction beginning in October 2016, then such a delay would result in major equipment contracts cancellation costs of approximately \$40 million, plus

¹⁴ Consistent with the consequences had their opposition to the combined cycle units been successful in the CPCN proceeding, Potential Appellants' pursuit of an appeal here could potentially extend the operation of the Asheville coal units.

an additional \$8 million¹⁵ in sunk development costs associated with the project. The Company further reasonably estimates that if the project were delayed by two years pending completion of the appellate process, the increased project costs of the construction delay would amount to approximately \$50 million, assuming a 2.5% annual cost escalation rate. Finally, based upon current estimates, DEP would be obligated to pay Public Service Company of North Carolina, Inc. approximately \$45 million in estimated fixed firm gas transportation service costs during a two-year construction delay, even though the combined cycle units would not be in operation. Under these scenarios, the total increased combined cycle project costs due to a two-year appeal-related delay would be approximately \$140 million.¹⁶

15. As with most every issue in which they are involved before the Commission, the Potential Appellants have asked for a hearing or oral argument to address the issue of an appeal bond. DEP submits that the record in this docket is complete and comprehensive, including the submission of this verified response and any reply Potential Appellants may file. The Company respectfully submits that the Commission understands the appeal process, and the risk that it imposes, including the potential for delays and disruptions to impact the cost of the combined cycle units approved in the CPCN Order, and that further hearings or oral argument are unnecessary to decide Potential Appellants' motion.

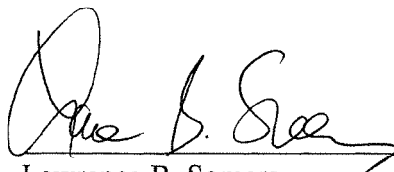
16. The setting of an appeal bond requires balancing of various interests by the Commission. Under N.C. Gen. Stat. §62-82(b), a bond must provide surety

¹⁵ Approximately half of these estimated sunk development costs may need to be written off if the project were to be delayed.
¹⁶ In order to preserve the confidentiality of the cost estimates filed under seal with the Commission, the Company has presented these estimated costs in round numbers.

protection against the potential damages that might be occasioned by a potential delay due to appeal. Clearly, the \$250.00 appeal bond proposed by the Potential Appellants is inadequate and relieves them of any risk associated with cost increases due to construction delays caused by their potential appeal, providing no protection to the Company's customers or to the Company as required by N.C. Gen. Stat. §62-82(b). DEP has submitted reasonably-estimated increased costs of approximately \$100 million in potential coal unit environmental controls and approximately \$140 million in potential increased combined cycle construction costs that could result from delays related to an appeal from Potential Appellants, but cannot fully assess at this time the likelihood that it would delay construction of the combined cycle units due to all of the uncertainties of a potential appeal that has not been filed or briefed and the impact of Mountain Energy Act deadlines.

WHEREFORE, for all the foregoing reasons, Duke Energy Progress respectfully requests that the Commission establish an appeal bond in a minimum amount of \$50 million at this time to adequately protect the Company's customers as provided for in N.C. Gen. Stat. §62-82(b) and that the request for hearing and oral argument be denied.

Respectfully submitted, this the 2nd day of May 2016.



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ATTORNEYS FOR DUKE ENERGY PROGRESS,
LLC

OFFICIAL COPY

May 02 2016

OFFICIAL COPY

Jun 21 2016

STATE OF NORTH CAROLINA)
)
COUNTY OF MECKLENBURG)

VERIFICATION


OFFICIAL COPY
OFFICIAL COPY
May 02 2016
Jun 21 2016

Mark E. Landseidel, being first duly sworn, deposes and says:

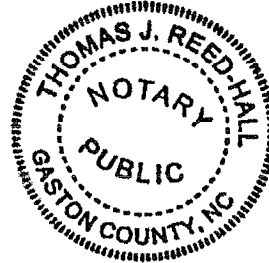
That he is Director of Project Development and Initiation in the Project Management and Construction Department of Duke Energy Corporation; that he has read the foregoing Duke Energy Progress' Verified Response to Motion to Set Bond of NC WARN and the Climate Times and knows the contents thereof; that the same is true and correct to the best of his knowledge, information and belief.


Mark E. Landseidel

Sworn to and subscribed before me
this 2 day of May, 2016.


Notary Public

My Commission expires: 7-30-17



1 CONTINUED DIRECT EXAMINATION BY MR. SOMERS:

2 Q Mr. Landseidel, before we get into your
3 Verified Response or testimony, would you describe for
4 the Commission, please, your work experience at Duke?

5 A Yes. I've worked for Duke Energy for 34 years,
6 approximately 25 of those years in major project
7 development and construction, working across a number of
8 types of projects, from retrofits of existing power
9 plants, to new hydro, to new solar farms, new wind farms,
10 new gas-fired generation projects and gas transmission
11 pipelines. All total, during that time I've probably
12 been responsible for 200 projects, capital projects,
13 ranging in size from as small as \$1 million to as large
14 as \$1.5 billion, a total cost of those projects probably
15 in the range of \$8 billion. Of those projects, around 20
16 are new generation projects, gas, wind, hydro, solar, and
17 of that 20, 8 are gas-fired generation projects.

18 Q And were all those 200 major projects that
19 you've worked on in your career at Duke located in North
20 Carolina?

21 A No. I've worked on projects in North Carolina,
22 South Carolina, Florida, Indiana, Texas, Pennsylvania and
23 Kansas in the United States, and as well in three
24 countries overseas, Argentina, Indonesia and Australia.

1 Q Mr. Landseidel, in your career at Duke, what
2 experience do you have with establishing construction
3 cost estimates?

4 A For all of those listed projects, I've been
5 primarily responsible for developing the cost estimates
6 for approvals and for implementing those projects.

7 Q Likewise, for their projects -- those projects
8 in your 34-year career, how many of them were you
9 involved in negotiating the contracts with the suppliers
10 or contractors that were working on those projects for
11 Duke Energy?

12 A I would say for most of them, not all.

13 Q So most of the 200 projects you had some role
14 in the contract development and negotiation; is that
15 correct?

16 A Correct.

17 Q All right. How about specifically with the
18 Asheville combined cycle projects that we're here to talk
19 about specifically today? What role did you have in the
20 development or negotiation of the contracts for the
21 construction of that project?

22 A Specific to contracting?

23 Q Yes, sir.

24 A The major equipment supply for the project, the

1 gas turbines, steam turbines and boilers, as well as the
2 engineering procurement construction contract, earthworks
3 contract, all the contracts required to put in place to
4 build the project.

5 Q Okay. Now, do you have in front of you the May
6 2nd, 2016 Response that you verified and that has been
7 admitted as your testimony in this case?

8 A Yes, I do.

9 Q All right. Would you look at -- well, it's not
10 numbered, but if you turn to the back of that document,
11 after page 11 which is a page with my signature on it, do
12 you see a page that has Verification at the top?

13 A Yes.

14 Q Is that your signature notarized on that page?

15 A It is.

16 Q And when you signed the Verification, did you
17 understand that you were signing a statement, as
18 notarized, that you knew the content of this filing and
19 that the same was true and correct to the best of your
20 knowledge, information and belief?

21 A Yes, absolutely.

22 Q When you signed this on May the 2nd, 2016, did
23 you provide the numbers that are reflected in this
24 document as to estimated increased construction costs due

1 to a potential delay of the CPCN due to an appeal?

2 A Yes.

3 Q Did you guess at those numbers?

4 A No. They were based on contracts, estimates,
5 previous experience I've had with construction delays.
6 We can get into more details.

7 Q Were those numbers extravagant?

8 A No, I don't believe so. I believe they're
9 reasonable, given the circumstances of this potential
10 delay.

11 Q The numbers, as reflected in your Verified
12 Response and now testimony, did you pull those numbers
13 out of a, quote, "regulatory hat," unquote?

14 A Oh, of course not. They're based on, as I
15 said, contracts, estimates, information from various
16 parts of our company.

17 Q Did you put any number in this document that
18 you verified and are now testifying to under oath in an
19 effort to, quote, "bully," unquote, NC WARN or The
20 Climate Times into not filing an appeal in this case?

21 A No. Absolutely not.

22 Q All right. Have you reviewed all 11 pages of
23 this Verified Response that's now in evidence as your
24 testimony?

1 A Yes, I have.

2 Q Do you have any changes or corrections to any
3 of the numbers that were calculated and reflected in
4 there that relate to increased construction costs due to
5 an appeal-related delay?

6 A No changes to the numbers identified.

7 Q Okay. Do you have anything to augment any
8 other part of that testimony from as it was filed on May
9 the 2nd, 2016?

10 A At this time, we'd like to change the proposed
11 bond amount from the 50 million to the full amount of the
12 projected delay cost of 240 million.

13 Q Okay. How about Duke Energy's position on a
14 delay in beginning construction related to an appeal?

15 A At the time the Company, we made this filing,
16 we hadn't had time to consider the risks associated with
17 construction delay in the event of an appeal. At this
18 time, though, the Company has considered those risks. We
19 consider it to be an important decision, one that has
20 potential risk impact to our customers whom we're
21 obligated to provide clean, affordable, reliable
22 electricity, as well as potential impacts to our
23 shareholders. As such, the Company's not in a position
24 to proceed with the \$1 billion project, starting

1 construction, if there's an appeal pending. To say it
2 another way, in October if there's an appeal pending, we
3 will delay construction.

4 Q Do you have any other augmentation to your
5 prefiled testimony?

6 A I do not.

7 Q All right. If I could ask you to turn, please,
8 to page 4 of your prefiled testimony. Again, this is the
9 May 2nd Response. Let me know when you're at page 4, and
10 specifically on that page paragraph number 6.

11 A Okay. Just a moment. Okay.

12 Q Now, based on that paragraph or your
13 understanding of this matter, do you understand that NC
14 WARN has requested that this Commission set their --

15 MR. SOMERS: And I'll refer to -- instead of
16 saying NC WARN and The Climate Times every time, I'm just
17 going to say NC WARN to refer collectively. That's okay,
18 John?

19 MR. RUNKLE: Yes. That's fair enough.

20 MR. SOMERS: Okay.

21 Q So you understand that NC WARN has asked this
22 Commission to set their appeal bond at a nominal amount
23 of \$250. Is that your understanding?

24 A Yes. That's my understanding.

1 Q In your professional judgment -- for a \$1
2 billion capital investment for the actual combined cycle
3 project, in your professional judgment is \$250 a
4 sufficient amount to secure against any increased cost in
5 construction due to an appeal-related delay?

6 A It's completely inadequate. The amount is way
7 too low.

8 Q All right. Let's talk in detail about the
9 estimated construction cost increases that you provided
10 in your prefiled testimony. And if you would, let's
11 start first with paragraph 12 on page 7. Just let me
12 know when you're there.

13 A All right.

14 Q Okay. So in this section of your testimony,
15 you discuss the timing deadlines in the Mountain Energy
16 Act. Would you please describe for the Commission how
17 the various timing deadlines under the Mountain Energy
18 Act affect any potential construction delays or any
19 resulting damages in the form of increased cost from a
20 delay in beginning construction of the project?

21 A If construction were to be delayed, in my
22 opinion we'd be unable to meet the deadline for having
23 the combined cycle project in commercial operation,
24 demonstrating reliable energy delivery in time to support

1 retirement of the coal units January 31st, 2020.

2 Q All right. What are the -- would you please
3 describe which deadlines under the Coal Ash Management
4 Act that were extended by the Mountain Energy Act?

5 A The key one would be removal of ash from the
6 site, and it extended those deadlines and allowed us to
7 defer some environmental controls and other work to the
8 benefit of the Western Carolinas Modernization Project.

9 Q Okay. And on those environmental controls and
10 related work, did you calculate those costs in your
11 prefiled testimony?

12 A Yes.

13 Q Okay. And look at -- if you would, look at
14 paragraph number 13, which is at the bottom of page 7 and
15 continues on to page 8.

16 A Okay.

17 Q Anything in that paragraph change between May
18 2nd and today?

19 A No.

20 Q All right. Would you please describe what the
21 approximately 100 million in additional environmental
22 controls are that would be incurred by Duke Energy
23 Progress as a result of an appeal-related delay in
24 beginning construction of the project?

1 A The three primary projects that make up the
2 \$100 million, the first one would be we'd have to modify
3 a wastewater treatment system at the plant, primarily the
4 flue gas desulphurization wastewater. The estimated cost
5 of that project is approximately \$25 million.

6 The second project would be to convert the fly
7 ash collection system from wet to a dry system, and we
8 estimate that cost to be approximately \$50 million.

9 The third project would be to convert the
10 bottom ash collection system from wet to dry, and that
11 project is estimated at approximately \$25 million, total
12 \$100 million in environmental projects that would
13 otherwise be deferred if we could comply with the
14 Mountain Energy Act.

15 Q So you just testified to the breakdown of that
16 approximately \$100 million in additional environmental
17 controls. Where do those numbers come from?

18 A Our environmental engineering group put these
19 estimates together, and it's based on having done these
20 projects on a number of our units across the fleet, so
21 their experience in that, looking at the scope of this
22 specific project and what they believe to be a reasonable
23 cost estimate for implementing these controls.

24 Q All right. Thank you. Let's turn next to

1 paragraph 14. Now, in this -- in this paragraph you talk
2 about where Duke was, where Duke Energy Progress was as
3 of May 2nd as it relates to finalizing contracts with the
4 major equipment suppliers, correct?

5 A That is correct.

6 Q All right. So would you please update the
7 Commission on where the Company is in terms of these
8 contracts as of today's date?

9 A Sure. Subsequent to the May 2nd filing, we
10 have now given full release to the three major equipment
11 suppliers, one for the two gas turbines, one for the two
12 steam turbines and one for the two boilers, or in
13 combined cycle we call them heat recovery steam
14 generators or HRSGs, so they've been fully released and
15 they were released on May 31st. That was the latest
16 possible date under the contract we could release them
17 and them still be able to meet the delivery-to-site
18 requirements to support the schedule deadlines in the
19 Mountain Energy Act.

20 Q So what was the date that those suppliers were
21 given the notice to proceed?

22 A May 31st, 2016.

23 Q And you may have described this, but I want to
24 make sure it's clear. In laymen's terms, not all of us

1 negotiate multi-million dollar contracts for a living
2 like you do, but would you explain, please, what giving a
3 contractor or a supplier full notice to proceed means?

4 A Sure. So they're fully released now to
5 complete their engineering, award subcontracts for major
6 materials, reserve shop space in their manufacturing
7 plants or subcontractor plants. They're out there making
8 major commitments at this time in order to support
9 delivery. Typical lead times for turbines and boilers
10 are in the 18-to-21-month time frame, and for them to get
11 fully released now allows them that time to get them to
12 the site to support our schedule.

13 Q And you mentioned that that notice was given on
14 May 31st of 2016, correct?

15 A Correct.

16 Q Why not June 1st?

17 A May 31st is a date certain in the contracts,
18 the latest possible date we can issue full notice to
19 where they're still required and agreed they'll deliver
20 the units to the site for the -- to meet the schedule.

21 Q All right. And you mentioned, I believe,
22 earlier, but what is the total estimated cost, and I'll
23 caution you that details of the cost for the project were
24 filed under seal as confidential information in this

1 docket, but what is a publicly available estimate of the
2 construction cost for the total project?

3 A Around a billion dollars.

4 Q All right. That's a pretty large project,
5 isn't it?

6 A It's very large, a lot of money.

7 Q I believe you testified earlier that in your 34
8 years you've worked on some 200 large construction
9 projects for Duke Energy; is that correct?

10 A Yeah. Some being -- a million I wouldn't
11 consider being really large, but it depends on the scale
12 -- but up to 1.5 billion.

13 Q You might not consider a million dollars large,
14 but most people would, wouldn't they?

15 A Yes.

16 Q Okay. Now, any of those approximately 200
17 large projects, as you've defined them, did any of them
18 involve construction delays?

19 A Certainly.

20 Q How many?

21 A I would guess maybe 20 percent.

22 (Emergency alarm sounds with announcement.)

23 MR. SOMERS: Mr. Chairman, should we go off the
24 record and take a recess due to the emergency alarm?

1 CHAIRMAN FINLEY: Yes. The Commission will
2 take a recess until the emergency is over and we can come
3 back in.

4 (Recess taken from 10:00 a.m. to 10:16 a.m.)

5 CHAIRMAN FINLEY: Let's come back on the
6 record.

7 MR. SOMERS: Thank you, Mr. Chairman.

8 CONTINUED DIRECT EXAMINATION BY MR. SOMERS:

9 Q Mr. Landseidel, before we were interrupted by
10 the fire alarm, I believe that your response to my last
11 question was that approximately 20 percent of the major
12 construction projects you have worked on in your career
13 involved some form of construction delay; is that
14 correct?

15 A Yeah. Sounds about right. One in five
16 projects are typical in the industry.

17 Q So is that a -- is a construction delay an
18 uncommon occurrence?

19 A No. It's very common. There's lots of causes.

20 Q What are some of the causes?

21 A Equipment could be late delivered to the site,
22 a permit could get delayed, a contractor may not perform
23 or a supplier, could have bad weather, could have labor
24 disputes, contract disputes. There's a number of issues

1 that could cause a delay in construction.

2 Q Have you ever had a construction project
3 delayed because of an appeal, a court appeal?

4 A No, not in my experience.

5 Q Regardless for the reason of the construction
6 delay, are construction delays something that
7 sophisticated parties negotiate in contracts for such
8 large construction projects?

9 A As best you can. And you develop a contract,
10 you try to outline things like cancellation or
11 termination, exit provisions, how you might deal with a
12 significant project delay, but ultimately it comes down
13 to the situation of the parties involved and negotiating,
14 if you need to, a different result.

15 Q So have you ever been involved in a major
16 construction project that had a delay where you had to
17 estimate damages due to delay or be involved in a dispute
18 related to what those costs were or who was responsible
19 for them?

20 A Yes, I have.

21 Q How many times, roughly?

22 A Where it got to a dispute level, maybe eight or
23 10 times.

24 Q All right. In your prefiled testimony, the May

1 2nd response, you discuss when construction is scheduled
2 to commence, correct?

3 A Yes.

4 Q And when is that?

5 A October of this year.

6 Q All right. And what's going to happen in
7 October?

8 A October of this year we would -- the 1982 ash
9 basin or the new plant is going to be built, will be --
10 all the ash will have been excavated and clean and we'll
11 begin breach of the dam and filling of the basin with
12 compacted fill up to a level that will support
13 construction of the new combined cycle plant.

14 Q All right. So in your prefiled testimony, you
15 noted several additional elements of damages due to a
16 delay in construction of the project; is that correct?

17 A Yes, it is.

18 Q Looking at the bottom of page 8, you estimated
19 that if the Company delays commencement of construction
20 beginning in October of 2016, that a delay would result
21 in major equipment contracts' cancellation costs of
22 approximately \$40 million. Is that your testimony?

23 A It is.

24 Q Nothing's changed about that number --

1 A Nothing's changed.

2 Q -- since May 2nd?

3 A Nothing's changed.

4 Q All right. Would you please explain how you
5 derived that \$40 million estimate?

6 A Those three contracts, the two gas turbines,
7 the two steam turbines and the two boilers, each of those
8 contracts have specific cancellation schedules in those
9 that specifies if the contract is terminated by the owner
10 at a -- in a specific month, how much the cancellation
11 cost would be, and that's the basis for this \$40 million,
12 assuming they were canceled in October.

13 Q All right. Why would Duke Energy Progress
14 cancel the contracts in October instead of just putting
15 them on hold or delaying them with those counterparties?

16 A There's no provision in the major equipment
17 supply contracts to suspend the manufacturing. You can
18 understand they're -- they're going into manufacturing,
19 ordering materials. They can't just arbitrarily say,
20 well, we'll just put this on hold and do something else,
21 so it's difficult for them. It's something that could be
22 negotiated possibly, but the only thing we have certain
23 right now is that we have a right to terminate, and in
24 that case the supplier's sole remedy is this cancellation

1 payment. That's what we believe would be a reasonable
2 estimate of the construction delay.

3 Q All right. The next item, carrying over on to
4 page 9 of the May 2nd response and your prefiled
5 testimony, references an additional \$8 million in sunk
6 development costs associated with the project. Is that
7 number still accurate today?

8 A It is.

9 Q Would you please describe for the Commission
10 what the \$8 million in sunk development costs entail?

11 A It excludes the major equipment supply
12 contracts, but it's development cost to date to get the
13 project -- at that stage in October we're ready for
14 construction, so it involves project management,
15 engineering, project controls, environmental health and
16 safety, your supply chain, corporate resources,
17 operations, all the people, a team of around 25 or 30
18 people, Duke employees or contractors that are developing
19 the project to get it ready for construction. The other
20 major component of these development costs will be
21 consultants. We have owners engineer, site specialty
22 companies that do site studies, a company that helps
23 prepare air permits, so there are consultants' fees as
24 well. The majority would be the owner labor, and then a

1 significant piece of it, also, the consultants. And at
2 that stage, that would be about 1 percent of the total
3 project cost, which is quite reasonable for a project
4 like this.

5 Q All right. And how many of that \$8 million has
6 been incurred to date?

7 A Through May, approximately \$5 million.

8 Q Okay. And in your prefiled response and
9 testimony, you noted in the footnote, footnote 15 on page
10 -- the bottom of page 9, approximately half of those
11 estimated sunk development costs may need to be written
12 off if the project were to be delayed. Would you explain
13 what you mean by that?

14 A Yeah. My estimate would be is that if we were
15 to delay the project for two years, we would have to
16 rework a significant amount of this development effort,
17 rebid equipment, rebid construction, rework our schedule,
18 our cost estimate. A lot of the work we've done to date
19 would effectively be wasted and we'd have to do it over
20 again or rework. So I'd estimate, in my experience,
21 about half of that would be considered rework.

22 Q Okay. You mentioned earlier that onsite
23 construction is scheduled to commence in October of this
24 year, correct?

1 A Correct.

2 Q When was -- why is October the magic date to
3 begin construction?

4 A Well, you back up from the Mountain Energy Act
5 requirements for having the plant in service to when you
6 need to order major equipment, as we discussed, and begin
7 construction. So if we can begin construction in
8 October, that will give us time to get the site built up
9 to where we can start major foundations in, say, the
10 third quarter of 2017 and so forth to build the project
11 on schedule. It's not an arbitrary date. It's required
12 to make the schedule.

13 Q And when was that October 2016 commencement
14 date established?

15 A I guess it was late last year, November,
16 December.

17 Q Okay. Through now to the next item of
18 construction-related delay damage that you mention in
19 your testimony, the May 2nd Response, again, on page 9
20 you note that -- first of all, you talk about if the
21 project were delayed by two years pending completion of
22 the appellate process. Why did you use two years?

23 A Well, I'm not a lawyer, but in discussions with
24 Mr. Somers, an understanding of the appellate process

1 could be -- could take two years, maybe more, maybe less,
2 determined that two years was a reasonable allowance for
3 a delay for a potential appeal.

4 Q All right. You testified in that prefiled
5 response that there would be increased project costs of
6 \$50 million, assuming a 2.5 percent annual cost
7 escalation rate during that two-year period. Do you see
8 that?

9 A I do.

10 Q Is that number still accurate and true --

11 A Yes.

12 Q -- to the best of your knowledge?

13 A Correct.

14 Q Are you sure?

15 A Yes.

16 Q All right. Would you please explain how you
17 calculated that \$50 million figure?

18 A Simply the arithmetic, the approximate billion
19 dollars of the project escalated at two and a half
20 percent for two years was an additional \$50 million. The
21 two and a half percent rate was based upon our Integrated
22 Resource Planning Group who routinely looks at historical
23 data for labor and material cost increases, and then two
24 and a half percent is roughly the 20-year average, and

1 that's what we use for resource planning, and I think
2 it's reviewed by the -- by this Commission's Staff from
3 time to time. So two and a half percent is a reasonable
4 estimate for escalation of the cost to the plant, that if
5 we build it two years later, the labor and materials are
6 going to be more expensive than if we did it today.

7 Q And have you -- do you have personal experience
8 with delays and escalation rates and whether projected
9 escalation rates turn out to, in fact, be accurate after
10 the fact?

11 A Well, oftentimes it could be -- it could be
12 different. In this case for equipment -- equipment,
13 materials and labor for power plants, there's potential
14 that there could be higher escalation rates going
15 forward.

16 Q Okay. The next item you discussed in the
17 Verified Response, your prefiled testimony, was that Duke
18 Energy Progress will be obligated to pay Public Service
19 Company approximately \$45 million in estimated fixed firm
20 transportation service costs during a two-year delay,
21 even though the plant would not be in operation. Do you
22 see that?

23 A Yes.

24 Q Is that number still accurate?

1 A It is.

2 Q Would you explain to the Commission how you
3 determined that \$45 million cost increase?

4 A Yes. Duke Energy Progress entered into a gas
5 transportation contract with PSNC. That contract has
6 been approved by this Commission. And in that contract,
7 Duke Energy is required to pay for transportation on a
8 monthly basis whether it's used or not, and if the
9 project was delayed for two years, there would be a two-
10 year period where we'd be paying for this gas
11 transportation and not actually bringing gas into the
12 plant, obviously. And if you use the contract volume and
13 the contract estimated rates, that's how you get to the
14 number of \$45 million.

15 Q All right. And was that contract filed by PSNC
16 with this Commission and approved?

17 A Yes, it was.

18 Q All right. Why wouldn't Duke just cancel the
19 contract with PSNC if there's going to be a two-year or
20 however long appeal delay?

21 A It's an alternative. We thought about it.
22 We've estimated that if we were to cancel it in October
23 for delayed construction, there would be a cancellation
24 payment to PSNC in the neighborhood of \$17 million, but

1 the real problem is, is that if we build a gas -- if we
2 go back to them later and want the gas pumped later and
3 they haven't done it coincident with their existing
4 project, the incremental cost is much higher. When we
5 were developing this project and looking at the benefits
6 of doing it now, the estimated transportation rate was
7 more than double what the current rate is in this
8 contract, which would equate to roughly \$25 million a
9 year for the life of the plant, ultimately, if it's
10 built, so at this time we think a more prudent step would
11 be to incur those -- those transportation costs and keep
12 that -- keep that contract in place.

13 Q So if I'm understanding your testimony, you're
14 saying if Duke cancelled the contract with PSNC, it would
15 be a \$17 million, per the contract, cancellation fee,
16 plus an approximately \$25 million increase in the gas
17 contract rate for the life of the plant?

18 A That's right, for the life of the contract.

19 Q \$25 million per year more.

20 A Correct.

21 Q Why didn't you choose that bigger number?

22 A I don't think that would be the best -- in the
23 best interest of our customers at this time.

24 Q All these numbers that you submitted on May 2nd

1 and have testified to here today under oath, do you
2 believe they're reasonable?

3 A I do.

4 Q Are they on the high side?

5 A I don't think so. I think ultimately it's hard
6 to estimate a construction delay. There are a lot of
7 factors. But based on these and the diligence we put
8 behind these, I think the total delay costs we've
9 estimated are reasonable. Could be more; could be less.

10 Q Throughout your testimony, and as noted in
11 footnote 16 at the bottom of page 9 of that prefiled
12 testimony and the May 2nd response, it notes that certain
13 cost estimates were filed confidentially under seal with
14 the Commission in this proceeding, correct?

15 A Yes.

16 Q And so you've used, in your terms, round
17 numbers in your cost estimates for damages in the form of
18 increased construction costs from a delay in beginning
19 construction due to the appeal; is that right?

20 A Correct.

21 Q Are those round numbers intended to inflate the
22 numbers for any reason?

23 A No, absolutely not.

24 Q What is your best estimate using your 34 years

1 of experience, your engineering professional judgment, as
2 to what the increased cost in construction would be due
3 to a delay in beginning construction caused by an appeal
4 for this project?

5 A For delay in construction of two years, my best
6 estimate is a total of \$240 million.

7 MR. SOMERS: Thank you. I have no further
8 questions. He's available for cross.

9 CHAIRMAN FINLEY: Redirect, I mean, cross
10 examination, Mr. Runkle.

11 CROSS EXAMINATION BY MR. RUNKLE:

12 Q Good morning, Mr. Landseidel.

13 A Good morning.

14 Q My name is John Runkle. I represent NC WARN
15 and The Climate Times. And we're talking about a
16 potential bond that we have to put up to be able to
17 appeal this. Is that your understanding?

18 A Yes, it is.

19 Q Okay. Now, I was a little -- I didn't quite
20 understand what was going to happen on October 1st. You
21 said that's when construction is scheduled to commence?

22 A That's correct.

23 Q And you said that the coal ash basins will be
24 cleaned up by then?

1 A The 1982 basin is planned to be fully excavated
2 of ash at that point and clean and ready for backfill to
3 begin.

4 Q Okay. Who has to sign off on whether the coal
5 ash basin is properly excavated and suitable for
6 construction?

7 A I'm not an expert in this area, but I think
8 it's the DEQ.

9 Q Have you gone to DEQ for their ruling on
10 whether that coal ash basin is to be excavated and
11 properly cleaned up?

12 A There have been ongoing discussions with DEQ
13 about how we would determine whether or not it's clean
14 and their approval. Those discussions continue today.

15 Q And what's the deadline the Company has to
16 clean up the coal ash basins at the Asheville site?

17 A In total, the Mountain Energy Act extended the
18 removal of all ash from site to -- I don't know if I
19 remember the date exact -- I think it's 2022 or '23.

20 Q Would you accept, subject to check, that it's
21 August 1st, 2022?

22 A Yes.

23 Q Now, will the other -- will the other coal ash
24 basin have to be cleaned up at the Asheville site?

1 A Yes, it will.

2 Q Is that -- is there any part of the
3 construction that's contingent on the second coal ash
4 basin being cleaned up?

5 A Not for this plant, no.

6 Q Not for what, now?

7 A Not for the combined cycle plant, no.

8 Q Okay. So that would ongoing construction.
9 Now, and under the -- the Coal Ash Management Act, you
10 have to clean that up anyway, right?

11 A That's correct.

12 Q Yeah. And that's been modified by the Mountain
13 Energy Act to allow you -- instead of 2019, it allow you
14 to clean it up to 2022.

15 A That's my understanding.

16 Q Okay. What happens if DEQ comes out on
17 September 30th and says that the coal ash basin is not
18 cleaned up to adequate standard?

19 MR. SOMERS: Objection. Calls for speculation.

20 CHAIRMAN FINLEY: You may answer if you can.
21 If you can't, you can't.

22 A I don't know how to answer the question. I
23 think it's an unlikely event.

24 Q Let me rephrase it to be maybe a little more

1 clear on that. Will there be a construction delay if DEQ
2 does not sign off on the cleanup of the 1982 coal ash
3 basin?

4 A Potentially, yes.

5 Q Now, looking at other permits, you had listed
6 possible delays to construction causes, permits,
7 equipment, and you named a list of them in response to a
8 question. Now, in the permits itself, there need to be
9 air quality permits for the -- the natural gas plants; is
10 that correct?

11 A That's correct, yes.

12 Q What's the timetable for obtaining those
13 permits?

14 A The air permit application was filed some time
15 ago, and we expect, in our discussions with the Western
16 North Carolina Regional Authority, the final permit would
17 be issued in September of this year.

18 Q Are there things that you -- are there parts of
19 construction that you cannot do until you have an air
20 quality permit?

21 A I think the definition has been around
22 permanent installation. Concrete foundations typically
23 would be that type of --

24 Q And those are the things that you can do or

1 cannot do?

2 A Those are things we cannot do until we have the
3 air permit.

4 Q Now, if -- well, if NC WARN would go ahead and
5 challenge the air quality permit and cause a delay in --
6 in doing those kind of construction activities, that
7 would -- that could be a construction delay, could it
8 not?

9 MR. SOMERS: Objection. Calls for speculation.
10 We'll stipulate NC WARN will do anything to try to delay
11 this project.

12 MR. RUNKLE: I won't accept that stipulation.

13 CHAIRMAN FINLEY: Well, to the extent that you
14 are able to say what would happen if the air permit is
15 not granted, what would it do to delay the project,
16 you're entitled to answer that question.

17 A Our schedule calls to begin foundations, an
18 activity that would require a permit, in November of
19 2017, so I believe there's adequate time to receive the
20 air permit.

21 Q Now, you also testified that there were a
22 number of, you know, operations and environmental
23 controls that had to be added because of the CAMA; is
24 that correct?

1 A You're speaking to the environmental
2 controls --

3 Q Yes.

4 A -- that are required for the coal plant? Yeah.
5 Without the Mountain Energy Act, if we don't meet those
6 dates, we'd have to implement those environmental
7 controls on the coal units.

8 Q And because of the Mountain Energy Act, instead
9 of 2019, you can do that to 2022?

10 A I believe that's correct. Again, it's not my
11 area of expertise.

12 Q Now, would you accept, subject to check, that
13 the Coal Ash Management Act was ratified on September 20,
14 2014?

15 A I -- I don't know. The Mountain Energy Act?

16 Q No. The Coal Ash Management Act itself.

17 A I'm not familiar with the details of the CAMA
18 legislation, so I'm not -- I couldn't verify that date.

19 Q Well, assume, subject to check, it was ratified
20 on August 20 of 2014 and actually became law on September
21 20th, 2014. The point is, are you aware when the
22 Mountain Energy Act itself was passed?

23 A I don't recall the date.

24 Q Would you accept, subject to check, it was June

1 15, 2015?

2 A That sounds right.

3 Q Now, there was another part of the Coal Ash
4 Management Act --

5 MR. SOMERS: I'm sorry. What date did you say
6 for the Mountain Energy Act?

7 MR. RUNKLE: I read June 15th, 2015.

8 MR. SOMERS: Okay. Thank you.

9 Q And are you aware that another -- that the --
10 parts of the Coal Ash Management Act were subject to
11 litigation?

12 A I'm not aware of that.

13 Q Okay. Are you aware that another Coal Ash
14 Management Act was recently passed by the General
15 Assembly this session?

16 A I recall that, but I don't have any details
17 around it.

18 Q Are you aware that that bill was vetoed by the
19 governor?

20 A No.

21 Q Now, in looking at potential construction
22 delays, do you have to look at the actual rules and
23 regulations that you have to follow to be able to
24 construct a facility?

1 MR. SOMERS: Objection. Vague. What rules and
2 regulations are you talking about?

3 MR. RUNKLE: Just in general, just rules and
4 regulations.

5 Q You have to follow the rules before -- as part
6 of your construction. If you're required to get a
7 permit, you have to get that permit; is that correct?

8 A Yes.

9 Q All right. In your testimony you talk about
10 \$100 million worth of additional environmental controls
11 under the Mountain Energy Act, is that correct, if
12 there's a two-year delay?

13 A Caused by not being able to meet the deadlines
14 in the Mountain Energy Act if we delay construction.

15 Q Could Duke Energy go to the Legislature and get
16 a Mountain Energy Act Number 2?

17 A I don't know. That's not what I do.

18 Q Could Duke Energy go to the Department of
19 Environmental Quality and ask for an extension of
20 requirements for these environmental controls?

21 A I suppose we could ask, but it would be
22 speculation on whether or not they would agree to any
23 changes.

24 Q In your -- in your testimony you talk about a

1 contract with the Public Service Company for firm gas
2 transportation service costs?

3 A Yes.

4 Q Did Duke Energy just buy Piedmont Natural Gas
5 Company?

6 A That acquisition hasn't closed, but it's in
7 progress.

8 Q Would Duke Energy go to Piedmont Natural Gas to
9 get firm gas transportation service costs? I guess --

10 A I'm sorry. In what context?

11 Q I guess instead of going to Public Service
12 Company, you would go to Piedmont.

13 A No. I don't believe we would.

14 Q Okay. And why wouldn't you go to Piedmont?

15 A They don't have -- they don't have assets up
16 into that region like PSNC does or is planning to build.

17 Q Fair enough. And looking at, you know, the
18 overall construction plan, when do you expect the natural
19 gas plants to come online?

20 A In service beginning in November of 2019, and
21 demonstrate a reliable in January to support ceasing
22 operation of the coal units.

23 Q And that's January 20th --

24 A January --

1 Q -- January 2020.

2 A January 31st, 2020, yes.

3 Q Okay. Thanks.

4 MR. RUNKLE: You know, I have no further
5 questions of the witness.

6 CHAIRMAN FINLEY: Redirect?

7 MR. SOMERS: Just a couple, Mr. Chairman.
8 Thank you.

9 REDIRECT EXAMINATION BY MR. SOMERS:

10 Q Mr. Landseidel, you were asked by Mr. Runkle
11 about some hypothetical, speculative potential delays
12 related to receipt of air permits or appeals by NC WARN
13 of any air permits. Do you recall those questions?

14 A Yes.

15 MR. RUNKLE: Mr. Chairman, I'm going to object
16 to the hypothetical, speculative nature -- we asked
17 questions -- if counsel is characterizing as hypothetical
18 and speculative.

19 Q Well, are there any --

20 MR. SOMERS: I'm sorry, Mr. Chairman. Do you
21 want to rule on that?

22 CHAIRMAN FINLEY: Well, rephrase if you don't
23 mind.

24 Q Are there any appeals pending by NC WARN of any

1 air or any other environmental permit today?

2 A I'm sorry. I don't -- I'm not aware of that.

3 Q Have any air permits been issued by DEQ for
4 this project?

5 A For the combined cycle project? No.

6 Q Yes, sir.

7 A No.

8 Q No. So has NC WARN appealed any of those?

9 A Not to my knowledge.

10 Q Mr. Runkle also asked you about potential
11 legislative changes. Do you recall that question?

12 A Yes.

13 Q Do you know about any legislative changes that
14 are pending to the Mountain Energy Act today?

15 A No, I don't. That's not what I do.

16 Q What's the only reason for a delay, that you
17 personally are aware of, for this project?

18 A The only reason at this point is whether or not
19 there's an appeal pending.

20 MR. SOMERS: Thank you. No further questions.

21 CHAIRMAN FINLEY: Commission -- questions by
22 the Commission? Commissioner Beatty?

23 EXAMINATION BY COMMISSIONER BEATTY:

24 Q Good morning. As I understood your testimony,

1 you said that the Company is not in a position to proceed
2 if there is an appeal pending in October of this year; is
3 that right?

4 A That's correct.

5 Q At what point would you make a decision to
6 start delaying construction -- would it be this month,
7 next month, September -- if there is still an appeal
8 pending?

9 A It would be likely in October.

10 Q So you would wait until October to make that
11 decision?

12 A Yes, but we wouldn't start the construction in
13 that case.

14 Q Okay. Would the fact that an appeal is pending
15 now delay anything that would increase the cost?

16 A At this moment there's a little bit too much
17 uncertainty for us to do anything different at this time.

18 COMMISSIONER BEATTY: Thank you, sir.

19 THE WITNESS: You're welcome.

20 EXAMINATION BY CHAIRMAN FINLEY:

21 Q Mr. Landseidel, I'm looking at the filing that
22 is your testimony in this case on page 9 where you have
23 up at the top the \$50 million number.

24 A Yes.

1 Q And that's calculated over 24 months?

2 A Correct.

3 Q I know that you're prognosticating in the
4 future, but would that be --if that were the damage,
5 would that be incurred pro rata over the 24 months or
6 more on one month than another month?

7 A The majority of the cost are in the equipment
8 and the engineering construction contracts, so it would
9 be at the time those contracts were placed in a delayed
10 scenario that we incur those additional costs or know
11 that they're -- they're there.

12 Q So they're going to be incurred more in the
13 front end than the back end? Is that what I'm hearing
14 you say?

15 A That's correct.

16 Q All right. You know, my math is not very good,
17 but if you divided the \$50 million by 24 months, that, in
18 my calculations, comes out to \$2,083,000 per month if you
19 just looked at one month at a time. Does that sound
20 right to you?

21 A Looks like it.

22 Q Now, at the bottom of the page there on page 9,
23 you indicate that this information that supplies the
24 backup from the round numbers that you give have been

1 before the Commission already; is that right?

2 A Yes. Specifically, the cost of the combined
3 cycle plant.

4 Q That was in your application for the CPCN?

5 A Yes.

6 Q And that was filed with the Commission in
7 January of 2015 (sic)?

8 A Yes. That's correct.

9 CHAIRMAN FINLEY: All right. I believe that's
10 all I have. Questions on the Commission's questions?

11 MR. SOMERS: If I could just make one
12 clarification. I believe the CPCN application was filed
13 in January of 2016.

14 CHAIRMAN FINLEY: 2016. Excuse me for that.

15 THE WITNESS: I'm sorry.

16 EXAMINATION BY COMMISSIONER BAILEY:

17 Q Good morning, Mr. Landseidel.

18 A Good morning.

19 Q If for whatever reason you had to go after the
20 environmental equipment for the existing coal ash, I
21 mean, the coal plants that you have now, how long would
22 those permits take? Do we have -- does Duke have any
23 history on how long those applications or permits would
24 take to be received by DEQ if you had to go after the

1 \$100 million worth of environmental equipment?

2 A That would be part of -- if we do decide to
3 delay the project in October if this appeal is pending,
4 we would immediately begin engineering, construction
5 permitting to support getting those projects in service
6 by the required dates.

7 COMMISSIONER BAILEY: Thank you, sir.

8 CHAIRMAN FINLEY: Other questions by the
9 Commission? Any questions on these last questions by the
10 Commission?

11 MR. SOMERS: No, thank you.

12 MR. RUNKLE: If I may just have one, Your
13 Honor.

14 CHAIRMAN FINLEY: Sure.

15 MR. RUNKLE: I'm going to pass.

16 CHAIRMAN FINLEY: All right, Mr. Runkle. The
17 witnesses for evidence that you have?

18 MR. RUNKLE: I have none, Your Honor.

19 CHAIRMAN FINLEY: All right.

20 MR. SOMERS: Is Mr. Landseidel excused, Mr.
21 Chairman?

22 CHAIRMAN FINLEY: Without objection, you are
23 excused, and thank you for coming.

24 THE WITNESS: Thank you, Mr. Chairman,

1 Commissioners.

2 (Witness excused.)

3 CHAIRMAN FINLEY: All right. So where are we?

4 Let's talk a little bit about where we are in this case.

5 I think I heard for the first time today Duke Energy

6 Progress say that based on the pendency of this appeal

7 and the events that have transpired with the Court of

8 Appeals and so forth, that your intent is, based on the

9 fact that this appeal is pending, that you want to delay
10 the beginning of the construction of the plant?

11 MR. SOMERS: I think, generally speaking, I

12 agree with your characterization, Mr. Chairman. If I

13 may, I'm not sure there is an appeal pending. I think

14 there's a technical issue. The statute plainly provides

15 that NC WARN has to post a bond or undertaking, as

16 approved by this Commission, prior to filing Notice of

17 Appeal. Clearly, they did not do that. They acknowledge

18 as much in their filing. So I would not agree legally

19 that there is an appeal pending today.

20 However, as Mr. Landseidel explained, it is the

21 Company's intention, if there is an appeal pending and

22 it's a valid appeal and a bond has been posted or an

23 undertaking has been signed to perfect that appeal, the

24 Company will not begin construction in October.

1 CHAIRMAN FINLEY: All right. Let's assume that
2 the Commission establishes a bond or an undertaking after
3 this hearing, whatever the number, and let's assume for
4 the moment that it was a sufficient number that NC WARN
5 can meet it by filing the bond or filing an undertaking,
6 Duke Energy Progress over here has said that it really
7 doesn't make any difference because the Notice of Appeal
8 was due May 27th, no appeal bond was -- or undertaking
9 was filed then. Mr. Runkle, where do we stand if we
10 issue an order and it's one with which you can comply?

11 MR. RUNKLE: If it's one that we can comply?

12 CHAIRMAN FINLEY: If it's one with which you
13 can comply.

14 MR. RUNKLE: Well, that's -- I mean, \$250
15 million, no one could comply with that.

16 CHAIRMAN FINLEY: Well, now hypothetically --

17 MR. RUNKLE: Yeah.

18 CHAIRMAN FINLEY: -- if we establish a
19 number --

20 MR. RUNKLE: Right.

21 CHAIRMAN FINLEY: -- that you can meet, you can
22 file an undertaking or file the bond and meet it, it will
23 be after this hearing --

24 MR. RUNKLE: Right.

1 CHAIRMAN FINLEY: -- and an order will come in
2 after this hearing, but the Notice of Appeal was due May
3 the 27th to file your Notice of Appeal. That was the
4 last time we could extend --

5 MR. RUNKLE: Right.

6 CHAIRMAN FINLEY: -- the time for filing the
7 Notice of Appeal under the statute, 62-90. So what
8 happens --

9 MR. RUNKLE: Well, with the -- well --

10 CHAIRMAN FINLEY: -- with you?

11 MR. RUNKLE: I mean, if you file and establish
12 a bond, we still have the opportunity to go to the Court
13 of Appeals with the -- similar to the motions that we
14 filed before if the -- if the bond is, you know, we think
15 is improper or too much, we certainly can go to the Court
16 of Appeals and let them rule on that specific issue. You
17 know, before they ruled on whether there was credible
18 evidence to support the bond. You know, the testimony
19 today appeared to be -- you know, Duke had the
20 opportunity. They put on, you know, much more complete
21 testimony. We didn't have the opportunity to see that
22 testimony till this morning. We certainly haven't had
23 our potential experts to review that testimony. So going
24 back to your first question, is this an abuse of process?

1 Yes. I mean, we feel that, you know, given the very --
2 the much more detailed explanation of the witness'
3 augmentation of his -- of his May 2nd verified statement,
4 that's a -- that's a much different thing than it was.

5 There was two paragraphs we had this morning. Now
6 there's probably, you know, 30, 40 pages of transcript on
7 -- so, I mean, our option would be to go back to the
8 Court of Appeals and challenge your decision if it's --

9 CHAIRMAN FINLEY: Well, hold on a minute.

10 You're not -- you're missing my question. Let's assume
11 hypothetically that we set the bond for \$250. This what
12 you've asked us to set it with as a result of this
13 hearing.

14 MR. RUNKLE: Right.

15 CHAIRMAN FINLEY: The Notice of Appeal was due
16 on file May 27th of this year. It wasn't -- the bond was
17 not filed. Where are we, because you filed your Notice
18 of Appeal and no bond was filed with it, and it was --
19 and if we approve one for \$250, it's going to be in June
20 at the latest. So how do you comply with the statute?
21 That's my question.

22 MR. RUNKLE: Yeah. Well, I think that by
23 filing with the Court of Appeals, our objections to the
24 establishment of a bond for \$10 million, that keeps the

1 bond amount open, and make the case to the Court of
2 Appeals that we could not afford that kind of bond. If
3 you do \$250, you know, I could probably raise the cash
4 this morning for that. But I don't think that that gets
5 in the way of going to the appeal. Now, we may have to
6 argue that between the parties at the Court of Appeals of
7 whether we met all the requirements. Our position is
8 that we've set forth our position all along clearly to
9 the Court of Appeals and have met whatever requirements
10 were in the statute.

11 CHAIRMAN FINLEY: Mr. Runkle, I don't want to
12 put words in your mouth, but what I'm hearing you say is
13 that if we set the bond for \$250 hypothetically --

14 MR. RUNKLE: Yeah.

15 CHAIRMAN FINLEY: -- then you would go to the
16 Court of Appeals and, I assume, ask that that bond
17 requirement relate back nunc pro tunc to May 27 and so
18 that your appeal would be viable there; is that right?

19 MR. RUNKLE: Yes, sir.

20 CHAIRMAN FINLEY: What do you say to that, Mr.
21 Somers?

22 MR. SOMERS: I apologize, Mr. Chairman. I was
23 preparing another argument and I missed your question.

24 CHAIRMAN FINLEY: All right.

1 MR. SOMERS: Would you please repeat that?

2 CHAIRMAN FINLEY: All right. I asked Mr.

3 Runkle if we set the bond hypothetically for \$250 after

4 this hearing and it's something that he can meet, \$250,

5 it will be done in June, and the Notice of Appeal was

6 filed on May the 27th without the bond which the statute

7 requires. I think you alluded to this earlier. As I

8 understood the argument that Mr. Runkle is making, he

9 would say that he would go to the Court of Appeals

10 because the Court of Appeals granted the Writ of

11 Certiorari and we have this hearing, that the fact that

12 the bond was set at \$250, it would relate back to May the

13 27th, 2016, and that he could proceed with his appeal.

14 And my question to you is what is your response to that?

15 MR. SOMERS: Thank you, Mr. Chairman.

16 Obviously, you're asking me about several potentially

17 complicated legal processes. I will -- in my obligation

18 to be candid with the Commission, I will give you my best

19 answer, recognizing that if I had more time to research

20 and think about it, my answer may -- I may supplement

21 that.

22 My answer would be, first of all, I will not

23 argue to you at this moment why a \$250 bond order from

24 this Commission has no legitimate basis in my legal

1 opinion. So first of all, if a bond were hypothetically
2 set in an amount of that nominal nature, Duke Energy
3 Progress would likely pursue remedies at the Court of
4 Appeals to ensure that in that hypothetical situation,
5 that such a bond was appropriate.

6 Having said that respectfully, if NC WARN --
7 Duke Energy Progress has a pending motion to dismiss
8 their appeal which has not been ruled on by the
9 Commission. It is my legal argument to you that they
10 were required to post a bond or undertaking prior to
11 filing the Notice of Appeal. They failed to do so.
12 Therefore, their appeal should be dismissed. And while I
13 cannot fully forecast what arguments we might make to the
14 Court of Appeals at that time, that will likely be one of
15 them.

16 CHAIRMAN FINLEY: All right. Mr. Runkle, you
17 know, you have accused Duke of bullying you and pulling
18 up numbers out of the air, and you didn't like the \$50
19 million. Where did the \$250 come from?

20 MR. RUNKLE: That's a minimal bond. I mean,
21 either looking at potential bonds, that was what you
22 regularly pay to the Court of Appeals. It's a de minimis
23 bond. That's a number that several of the courts give
24 there -- through the clerks put up.

1 CHAIRMAN FINLEY: So what, if anything, does it
2 have to do with the potential damages that Duke Energy
3 Progress might suffer if this project gets delayed
4 because of the pendency of the appeal?

5 MR. RUNKLE: Well, it -- it's -- if the statute
6 requires a bond to be established --

7 CHAIRMAN FINLEY: Well, do you maintain that
8 the statute does not require a bond?

9 MR. RUNKLE: No, no, no.

10 CHAIRMAN FINLEY: Okay.

11 MR. RUNKLE: No. Don't get me wrong. If the
12 bond requires -- the statute requires a bond and -- for
13 potential delays of construction.

14 CHAIRMAN FINLEY: All right.

15 MR. RUNKLE: We're not asking to stay the
16 proceeding. We're not asking them to stop the
17 construction. That's their decision. And this is all
18 new territory, sir. I mean, this is -- this is the only
19 statute that requires a bond up front before you --
20 without staying the project. This is a -- we've done a
21 fair amount of research on this and, you know, it's the
22 only time that you have to put up a -- what could be a
23 substantial bond to appeal a government decision. And,
24 you know, routinely if a permit is issued, you want to

1 stay the permit, you may have to put up a bond. If you
2 don't stay the permit, the company can go ahead and, you
3 know, begin its construction or do whatever it needs to
4 under that permit.

5 So, yeah, this has not been the cleanest
6 process because it is -- it is, you know, new territory,
7 you know, starting with -- well, I mean, starting with
8 the 45-day review period and going through of trying to
9 get to the substance of it. It seems to me that a
10 billion dollar, you know, plant is the very thing that we
11 would want the Court of Appeals to review the legality of
12 it. And so if a bond is needed to get there, a de
13 minimis bond probably makes as much sense as anything
14 else.

15 CHAIRMAN FINLEY: Mr. Runkle, in your argument
16 a moment ago you said that this information that the
17 witness has provided today to substantiate the filing
18 that was before the Commission before the Court of
19 Appeals, that that was all new. Now, what I heard was
20 that the information that he recited today has already
21 been before the Commission and it has been in the
22 Company's application. Is that right or is that wrong,
23 Mr. Somers?

24 MR. SOMERS: Clearly, the confidential cost

1 estimate for the combined cycle portion of the project is
2 in the record under seal. The contracts themselves have
3 not been filed with the Commission. They were provided
4 in discovery to the Public Staff. If I brought them here
5 today, they are binders that would cover this entire
6 table. NC WARN has not reviewed them because if I may
7 remind the Commission, we offered NC WARN the opportunity
8 to file our standard confidentiality agreement and they
9 refused to do so, so they've not seen the contracts. As
10 Mr. Landseidel mentioned, the contract cancellation
11 provisions that he testified to were based upon the
12 provisions of those confidential contracts, so they are
13 not in the record. If the Commission would like, we
14 would be happy to file as late-filed exhibits those
15 contracts, again, happy to do so, but they are quite
16 voluminous. As an alternative, I do have copies of the
17 cancellation schedules from the three contracts that are
18 one-page each that are confidential, one page from each
19 of those contracts. If the Commission would like, we'd
20 be happy to offer those into evidence confidentially
21 under seal.

22 CHAIRMAN FINLEY: All right. Just a minute.
23 Earlier in the proceeding the Public Staff and other
24 parties engaged in discovery of Duke Energy Progress,

1 right?

2 MR. SOMERS: Yes, sir.

3 CHAIRMAN FINLEY: And they signed
4 confidentiality agreements. Were those contracts made
5 available to those parties in the earlier part of the
6 proceeding, if you recall?

7 MR. SOMERS: They were. To my -- the best of
8 my memory is the Public Staff was the only party who
9 actually asked for and came to review them. But other
10 parties signed confidentiality agreements; they just
11 didn't ask to come to review the contracts.

12 CHAIRMAN FINLEY: But they would have been
13 available to NC WARN if NC WARN asked for them and if NC
14 WARN had been willing to sign the confidentiality
15 agreement?

16 MR. SOMERS: Absolutely.

17 CHAIRMAN FINLEY: And now so what I'm hearing,
18 Mr. Runkle, is that although you say that all this
19 information is new, other parties asked for it and got it
20 because they signed confidentiality agreements, but it
21 sounds like you could have gotten it earlier, but you
22 didn't ask for it. What is your response to that?

23 MR. RUNKLE: Yes, sir.

24 CHAIRMAN FINLEY: Okay.

1 MR. SOMERS: If I may. I don't mean to belabor
2 this, and I'll ask John to correct this. My memory is we
3 answered at least three sets of data requests from NC
4 WARN. Many of them we objected to on the grounds of
5 confidentiality, and that resulted in NC WARN filing a
6 Motion to Compel, which I recall was denied by this
7 Commission. Sitting here today, I do not recall if NC
8 WARN asked for copies of the contracts. I do recall that
9 we objected to several of their data requests on the
10 grounds of confidentiality. That was resolved by the
11 Commission. Just to be clear, I don't remember if you
12 asked for the contracts or not. Had you signed the
13 confidentiality agreement, we would have made them
14 available.

15 MR. RUNKLE: Yeah. We did not request the
16 contracts.

17 CHAIRMAN FINLEY: Commissioner Brown-Bland has
18 a question.

19 COMMISSIONER BROWN-BLAND: I just had a follow-
20 up question for Mr. Runkle. Mr. Runkle, if I understood
21 you correctly, you indicated that the detail that was
22 added this morning through the witness was new and that
23 somehow that had prevented NC WARN from -- and The
24 Climate Times from going out and having its experts to

1 take a look or -- and therefore being able to do
2 satisfactory cross. However, in normal motions practice,
3 it appears to me that since May 2nd you knew, in round
4 numbers anyway, what Duke would now be coming and trying
5 to support. What reason -- why is it that you could not
6 have had experts to look at whether these numbers
7 appeared to be reasonable or correct or whatever the case
8 may be?

9 MR. RUNKLE: When I -- when I made the -- when
10 I made the statement earlier, I was looking at the top of
11 page 8, \$100 million in additional environmental
12 controls, and that was broken down, again, in approximate
13 numbers, 25, 50 and 25 million. I mean, that's a --
14 that's a detail that wasn't in there, and certainly the,
15 you know, the additional testimony about the dollar
16 figures and certainly, you know, the 5 million cost to
17 date, those kind of things, I don't know if those are
18 appropriate numbers or not. And I can't tell you
19 whether, you know, having somebody in hand, you know, two
20 weeks ago would have made a difference. I mean, we got a
21 -- we got a notice last week that this hearing was going
22 to come up. Up until I checked my email at 11:59 last
23 night to see if there was -- that Duke was going to file
24 testimony with additional witnesses, we just did not know

1 what -- how this hearing was going to go this morning.

2 COMMISSIONER BROWN-BLAND: And do you think you
3 were somehow hampered from using a construction expert of
4 your own who had -- who had past history and involvement
5 with this kind of gas plant construction?

6 MR. RUNKLE: I would think so. I mean, that's
7 -- I mean, that's -- if we'd had, you know, the --
8 certainly knowing what the witness was going to say today
9 and that was the only witness, that's a different thing
10 than if -- than if Duke would have filed for 15 witnesses
11 last night, so we just -- it's hard to have a witness
12 prepared to respond to something that we don't know what
13 it is. And --

14 COMMISSIONER BROWN-BLAND: But I believe your
15 comment went specifically to what we have now heard this
16 morning, and I guess my question is, that much you had
17 some knowledge of -- of the generality of the testimony,
18 and so --

19 MR. RUNKLE: Yes. Certainly, we had some
20 knowledge of the testimony in paragraphs 13 and 14 where
21 it talks about potential cost. The big difference of the
22 testimony this morning was Duke's statement that it was
23 -- that it would delay -- delay construction while the
24 appeal went on. I mean, that's -- to me, that's the --

1 that's a major difference in what they said on May 2nd
2 and what they said this morning.

3 COMMISSIONER BROWN-BLAND: And you believe you
4 would have had to have known that to have your own
5 construction expert talk about a review, what you had,
6 and -- and be able to give some assistance in your side
7 of the matter about delay cost?

8 MR. RUNKLE: Yeah. And looking at all the
9 potential, you know, causes for delay that were, you
10 know, testified about this morning and the different
11 costs, it would have been very helpful to have an expert,
12 and I --

13 COMMISSIONER BROWN-BLAND: But I guess my
14 question is what stopped you from having that since or
15 doing or -- or going out to get yours since May 2nd when
16 this initial information was filed?

17 MR. RUNKLE: I'd have to ask my clients that.
18 I mean, I just -- I can't answer that question at this
19 point.

20 COMMISSIONER BROWN-BLAND: All right. Thank
21 you.

22 CHAIRMAN FINLEY: To your knowledge, Mr.
23 Runkle, has your client gone out to see if they could
24 obtain the services of an expert to come in here and

1 testify this morning?

2 MR. RUNKLE: May I have a minute?

3 (Off-the-record discussion.)

4 MR. RUNKLE: To answer your question, my
5 clients have not consulted an engineer or a construction
6 expert for the hearing today. The verified complaint was
7 filed on May 2nd. We had a very short timeline to
8 respond to that, and our response to that was verified,
9 questioning the -- the basis for those numbers. And then
10 the Commission issued their -- the order on the -- under
11 bond or undertaking and, you know, we had from May 2nd,
12 but then it went to the Court of Appeals, and this week
13 we had from -- just a couple of days, and we're expecting
14 a different outcome of the hearing today in terms of more
15 filing, more details.

16 CHAIRMAN FINLEY: Well, Mr. Runkle, the time to
17 get things done in order for you to post a bond by May
18 the 27th, 2016, in order to perfect your appeal was
19 compressed in part because you waited until April the
20 25th to ask for the bond to be set, and you didn't leave
21 us much time at all to do these things. And so, sure, it
22 was a compressed schedule because that had to be the case
23 in order for us to get an order out to tell you what the
24 bond was and so you could go out and undertake steps to

1 do it. If you had --

2 MR. RUNKLE: Right.

3 CHAIRMAN FINLEY: -- come in here weeks earlier
4 and given us more time, we would have given you more time
5 to do this. I think, you know, the facts are as the
6 facts are.

7 Let me ask you this, you can't pay -- you
8 represented that you can't pay the \$50 million, you can't
9 pay the \$10 million that the Commission said in its
10 earlier order. What efforts, if any, did you make to try
11 to comply with the \$10 million request?

12 MR. RUNKLE: Your Honor, I'm right on the edge
13 of testifying at this point and -- and I'm a little
14 uncomfortable about it. My clients went to their funding
15 sources to see if that kind of money was available, and I
16 mean, looking at the -- both the groups' budgets, I
17 wasn't aware of The Climate Times' budget. Looking at NC
18 WARN budget of what is available, \$10 million was an
19 amount that the groups could not put up.

20 CHAIRMAN FINLEY: I'm really not familiar with
21 The Climate Times. Can you tell me a little bit about
22 The Climate Times and what -- just in general terms what
23 their resources might be?

24 MR. RUNKLE: I think Dr. Ayers, Harvard Ayers,

1 testified at the meeting up in Asheville, the public
2 meeting. He is a professor emeritus at Appalachian
3 State. He is doing interviews on people and climate.
4 They have a couple -- maybe a staff person or two, and a
5 -- and a fairly active board, fairly small. I don't
6 think their budget is very big.

7 CHAIRMAN FINLEY: So The Climate Times is Mr.
8 Ayers?

9 MR. RUNKLE: Pretty much.

10 CHAIRMAN FINLEY: You know, Mr. Runkle, if we
11 -- I don't -- I don't think -- I think if -- \$250 is --
12 I think that's out of the question. I'm sorry. What
13 could you -- what could you comply with?

14 MR. RUNKLE: I think we would have to respond
15 to whatever you set as a reasonable bond based on
16 credible evidence. I mean, that -- that seems to me --
17 you know, if we say, well, we can do, you know -- you
18 know, \$10,000 or 100,000 or, you know, 10 million or a
19 100 million, I mean, I think your position at this point
20 is to set a bond based on credible energy -- credible
21 evidence, and we just have to respond to that whether we
22 can put it up or not.

23 CHAIRMAN FINLEY: Well, you know, we heard
24 evidence that was verified from Duke Energy, and they cut

1 it down to \$50 million, and we cut it down to \$10
2 million. We did that to make it a more reasonable number
3 for you to come up with, and then we said, look, all
4 you've got to do is post that and then we'll wait until
5 September to see what Duke Energy does, and if they say
6 they're not going to delay, you get your money back.

7 MR. RUNKLE: Yeah.

8 CHAIRMAN FINLEY: And then you fussed at the
9 Court of Appeals and said we pulled that number out of
10 midair. I haven't heard any numbers anywhere close to
11 \$10 million, so what can you post?

12 MR. RUNKLE: Well, I mean, it's -- I think it's
13 a different question today than it was yesterday.

14 CHAIRMAN FINLEY: All right.

15 MR. RUNKLE: The question yesterday was how
16 much could we post. The question today is they have
17 stated flat out that they will -- if we go ahead and
18 appeal, they're not going to start construction. That's
19 a much different decision than it was yesterday.

20 CHAIRMAN FINLEY: That's true. Well, let's get
21 -- hypothetically again, let's assume that they hadn't
22 said that, and I want to -- I want to ask you about your
23 legal theory here. You have said in your pleadings a
24 number of times that it's incumbent upon Duke Energy

1 Progress in order to determine the amount of the bond
2 that should be set, that they need to come in and tell
3 whether or not they intend to delay. Was that a correct
4 recitation of your position?

5 MR. RUNKLE: That's certainly part of it, yes.

6 CHAIRMAN FINLEY: Well, point me to what the
7 statute -- the language in the statute that supports that
8 argument, please. We don't have any courts interpreting
9 the statute, but we've got the language in the statute
10 itself, so point me to some language in the statute that
11 -- that says that the utility is going to build a \$1
12 billion plant at the -- before you file the Notice of
13 Appeal, it's got to come in and explain to you whether or
14 not they will delay the beginning of the construction
15 before they know what the grounds for the appeal are.

16 MR. RUNKLE: Well, if they say that we're going
17 to go ahead with the project October 1st no matter what
18 the appeal is, then there's no delay for the -- there's
19 no delay in construction.

20 CHAIRMAN FINLEY: Yeah, but my question is
21 point me to the language of the statute that says it's
22 the obligation of the utility that's going to build a
23 major generating plant, a \$1 billion plant in this case,
24 that says that they've got to come in and tell you

1 whether or not they will delay, based on your appeal,
2 before you have to file your Notice of Appeal. Now, just
3 point me to the language of the statute that says that,
4 please, if you can.

5 MR. RUNKLE: I think you need to repeat that
6 for me, sir. I don't want to be dense about this, but
7 looking at G.S. 62 --

8 CHAIRMAN FINLEY: All right. I'll repeat it --
9 I'll repeat it a third time.

10 MR. RUNKLE: All right.

11 CHAIRMAN FINLEY: As I understand it, it's NC
12 WARN's position that based on 62-82(b) --

13 MR. RUNKLE: Uh-huh.

14 CHAIRMAN FINLEY: -- it is incumbent upon the
15 party to whom the Commission has granted a Certificate of
16 Public Convenience and Necessity for a major plant, in
17 this case \$1 billion, to come in and explain to the
18 Commission whether or not it will delay the beginning of
19 construction as a result of a potential appeal before
20 they know what the appeal is. I understand that to be NC
21 WARN's position, and what I'm asking you to do is to
22 point me to anything in the statute that supports that
23 contention.

24 MR. RUNKLE: Well, I mean, my reading of

1 62-82(b) that -- is for damages, if any. If they're
2 saying that they're -- they're going to go ahead with
3 construction, they've made the business decision to go
4 ahead with that, that there will be no damages based --
5 for delay of construction. And that to me is a much
6 different thing than saying, well, there may be a damage
7 here or damage there; we don't know.

8 CHAIRMAN FINLEY: All right. What do you say
9 to that? Can you answer that question from Duke Energy
10 Progress' position?

11 MR. SOMERS: I'll turn to the language of the
12 statute, Mr. Chairman. And if I may, there's a lot of
13 things I'd like to respond to at the appropriate time,
14 but to try to answer your question, there's nothing in my
15 read of General Statute 62-82(b) that requires the
16 Company to state at this time whether they will delay or
17 not. If I may, again, emphasize, the statute is
18 unequivocal. For NC WARN to appeal the CPCN order that
19 was issued back in March, they have to post a bond or
20 undertaking as approved by this Commission. They still
21 haven't done it. They started the process to set the
22 bond over two months ago, and because of the Court of
23 Appeals order, which I would respectfully say has added a
24 great deal of uncertainty, and in the Company's mind,

1 respectfully, the Court of Appeals order is inconsistent
2 with their other order denying the Motion for Temporary
3 Stay. So for the Company to evaluate the risk at this
4 point, there is too great of a risk and uncertainty about
5 this appellate process, which we haven't even gotten
6 started with, and here we are three months after the CPCN
7 order was started. And this is a CPCN for a \$1 billion
8 plant that this Commission has determined, after a
9 thorough process, is required in a public convenience and
10 necessity.

11 But the Court of Appeals process, in taking Mr.
12 Runkle at his word earlier, likely a Supreme Court
13 challenge process could take months or years, and the
14 Company, again, I would -- I would argue to you nothing
15 in the statute requires the Company to say they will
16 delay, but because of the uncertainty about the appeals
17 process, the Company has made that difficult decision.
18 We believe that is the only reasonable and prudent
19 decision that we can make on behalf of our customers and
20 our shareholders, given all the uncertainty and delays
21 from an appeal for a \$1 billion project.

22 CHAIRMAN FINLEY: That's very interesting, and
23 I appreciate that information, but my question -- I'll
24 ask it a fourth time. As I understand NC WARN/The

1 Climate Times' position, it is that before they had to
2 post a bond, before they had to file Notice of Appeal
3 with exceptions, it was incumbent upon, in this case,
4 Duke Energy Progress to come in and represent to the
5 Commission whether or not you would delay the beginning
6 of the construction of this project. And I asked Mr.
7 Runkle where he could point to in the statute that
8 imposed that requirement on the party building the plant,
9 and I'm asking you if in your opinion the statute makes
10 that requirement that NC WARN says is there.

11 MR. SOMERS: I'm sorry. I tried to answer that
12 question. No. I don't think it's in the statute at all.
13 But if I -- could I elaborate on that answer, please?

14 The way the statute is set up, within the 30-
15 day period, or in this case NC WARN got an additional 30
16 days extension of time, so in that 60-day period they're
17 required to file a Notice of Appeal, but only after they
18 have posted the bond or undertaking as set by this
19 Commission. I don't see how Duke Energy or any company
20 can evaluate the entire merits of an appeal that hasn't
21 been filed, much less hasn't been briefed, and that is, I
22 would submit to you respectfully, what is reflected in
23 the May 2nd filing when we informed the Commission in Mr.
24 Landseidel's Verified Response that it was difficult to

1 understand, there was -- or excuse me -- it was difficult
2 to assess a potential appeal that had not been filed,
3 much less briefed, at that point in time to make a
4 decision as to whether or not the Company should delay
5 the beginning of construction.

6 Having said all that, given all that has
7 transpired since that time, and in particular the Court
8 of Appeals' order vacating this Commission's order, which
9 while on Duke's behalf I would not agree that a \$10
10 million bond was adequate to protect our customers as the
11 statute requires, setting that aside, I thought the
12 Commission's order clearly demonstrated what they based
13 that appeal bond amount on, but for whatever reason the
14 Court of Appeals, and I can't read a lot into a two-
15 sentence order from the Court of Appeals, they vacated
16 that order and sent it back to receive competent
17 evidence, which we've tried to present today.

18 And at the right time, I would like to be heard
19 on what process we're going to have for competent
20 evidence to hear from NC WARN.

21 CHAIRMAN FINLEY: Go right ahead.

22 MR. SOMERS: I heard Mr. Runkle argue in
23 response, I believe, Mr. Chairman, to either a question
24 from you or from perhaps Commissioner Brown-Bland or

1 both, that they were somehow hampered in being prepared
2 for this hearing today. And I'm baffled by that
3 argument, and let me explain why.

4 Duke Energy Progress filed its response on May
5 the 2nd. We're sitting here today June 17th, a month and
6 a half later. NC WARN has known clearly what Duke Energy
7 Progress forecasted to be the reasonable amount of
8 damages, as determined by a construction delay caused by
9 the appeal, since May the 2nd. They presented no witness
10 at all. And to argue that they couldn't find an expert
11 in that time is simply not credible.

12 Now, whether they tried to do that or not, I
13 notice Mr. Runkle's response to you was he limited it to
14 an engineering expert or construction expert. They
15 didn't explain to you whether they sought and consulted
16 with other types of experts, so that's an open question
17 in my mind. But the fact remains they had the
18 opportunity to present whatever witness they wanted, and
19 they refused or have chosen not to do so.

20 They also had the opportunity to cross examine
21 Mr. Landseidel, and it was fairly limited today, and I
22 think that's an acknowledgement that Mr. Landseidel's
23 testimony is credible. And it's the exact same testimony
24 as was filed in the verified response on May the 2nd.

1 Now, again, he augmented it, as the Commission's order
2 allowed, to explain in greater detail how he arrived at
3 those projected damages, but the amounts have not changed
4 at all. So NC WARN has had more than adequate time to
5 prepare, and if they chose not to ask Mr. Landseidel more
6 questions or if they've chosen not to present a witness,
7 that's their own fault.

8 What I would like to know is in the
9 Commission's Order, NC WARN was required, they shall
10 sponsor a witness or witnesses with respect to any
11 factual issues NC WARN wishes to raise responsive to
12 DEP's evidence or to the June 7, 2016 Order of the Court
13 of Appeals, subject to cross examination at this hearing
14 here today. They've presented no witness, so they are
15 not availing themselves of the opportunity to put
16 whatever evidence in front of this Commission they would
17 like to. So I will argue to you there is no evidence in
18 the record other than the \$240 million damages that Mr.
19 Landseidel has testified to, and that is what the
20 Commission should base its appeal bond on, obviously
21 subject to the Commission's obligation and authority to
22 determine the credibility of Mr. Landseidel's testimony.

23 I note that the reply that NC WARN filed on May
24 the 5th, 2016, was verified by James Warren, the

1 Executive Director of NC WARN who is sitting right behind
2 Mr. Runkle, and I'd like to call him to the stand and ask
3 him some questions about NC WARN's position, any factual
4 issues they have as to what the bond -- in what amount it
5 should be set. He's sitting here. He can answer
6 questions from the Commission, from Mr. Runkle, and
7 certainly be subject to cross examination from me.

8 CHAIRMAN FINLEY: All right. Mr. Warren,
9 you're present in the hearing room, and the Chair has the
10 ability to call witnesses who are present in the hearing
11 room based on the Rules of Evidence, so come up to the
12 stand and be sworn, please.

13 MR. WARREN: I will affirm, please.

14 CHAIRMAN FINLEY: All right.

15 JAMES WARREN: Being first duly affirmed,

16 Testified as follows:

17 MR. RUNKLE: Your Honor, I would object to the
18 testimony, just Mr. Warren is not prepared, did not come
19 to this proceeding prepared to testify. Even -- I mean,
20 it's just -- this process from the beginning has been
21 haphazard. It's all been new testi--- it's been new
22 procedures as we go along. This morning certainly is
23 along that track.

24 CHAIRMAN FINLEY: Your objection is noted. Mr.

1 Somers, do you have questions?

2 CROSS EXAMINATION BY MR. SOMERS:

3 Q Would you please state your name for the
4 record?

5 A My name is Jim Warren.

6 Q What's your address, please, sir?

7 A Business address P.O. Box 61051, Durham.

8 Q And what is your position with NC WARN?

9 A Executive director.

10 Q And what is -- what are your responsibilities
11 as executive director?

12 A Well, they're fairly broad. I'm responsible
13 for the daily operations, the financial stability, the
14 ongoing activities of the organization over now a 23-year
15 period.

16 Q And so I'm not very familiar with the
17 organization structure at NC WARN. Are you essentially
18 the highest ranking official for NC WARN?

19 A Technically, the chair of the board is the
20 highest ranking official.

21 Q Okay. Who is the chairman of the NC WARN
22 board?

23 A Ryan Thompson.

24 Q Okay. Are there other members of the NC WARN

1 board?

2 A Yes, sir.

3 Q Who are they?

4 A Beth Henry, George Friday, and I am also a
5 member of the board.

6 Q Okay. How many employees -- are you an
7 employee of NC WARN?

8 A Yes.

9 Q Okay. How many other employees does NC WARN
10 have in addition to yourself?

11 A Right now I think we have nine or 10 others.

12 Q Okay. And do you have with you NC WARN and The
13 Climate Times' Verified Reply to Duke Energy Progress'
14 Response to Motion to Set Bond that was filed with this
15 Commission on or about May the 5th, 2016?

16 A I don't have it in front of me, but I'm
17 familiar with it.

18 Q Okay. And you signed the Verification to that
19 filing; is that correct?

20 A Yes.

21 Q And in it you stated that, "I, James Warren,
22 Executive Director of NC WARN, verify that the contents
23 of the above filing in this docket are true to the best
24 of my knowledge except as to those matters stated on

1 information and belief, and as to those matters I believe
2 them to be true." Is that correct?

3 A Yes, sir.

4 Q All right. And in that filing you argued that
5 the Commission should set an appeal bond in a nominal
6 amount which you calculated as \$250; is that correct?

7 A Yes, sir.

8 Q How did you calculate \$250?

9 A I would agree with Mr. Runkle's earlier
10 characterization. It's obviously a nominal amount. In
11 fact, we do not believe a bond should be required at all.
12 It is a unique type of situation, as John explained
13 earlier, and we do not believe that a bond should be
14 required, especially in a situation where we have had a
15 truncated process with no evidentiary hearing, with no
16 ability for us to provide witness testimony or to cross
17 examine Duke Energy. We believe this, among all sorts of
18 proceedings that have transpired before this Commission
19 over the years, this among all of those should not be
20 involving a bond that would block our way toward trying
21 to get finally an open discussion about the issues
22 involved in this -- in this case. It's a \$1 billion
23 power plant. It's exactly the wrong type of project to
24 be fast tracked and to have critics prevented from

1 providing legitimate, nationally prominent witnesses and
2 to have their opinions be fully considered and to have
3 our ability to cross examine Duke Energy's witnesses. So
4 we do not believe a bond should be required at all.

5 Q How many power plants have you built?

6 (Pause.)

7 Q I'm sorry. Did you hear my question?

8 A I guess I should answer that. I've been
9 responsible for a number of solar energy installations,
10 but I haven't built power plants. You know that.

11 Q I get to ask the questions. I'd just
12 appreciate an answer, okay?

13 A Sure.

14 Q How many large construction projects in the
15 range of 1 million to 1.5 million have you been involved
16 in?

17 A A number of them years ago. I was in the
18 construction industry.

19 Q And yet have you -- I realize you're not a
20 lawyer, and I'm not going to ask you for a legal
21 conclusion, but as verifying NC WARN's reply that you've
22 testified to, did you read the statute on the appeal
23 bond?

24 A Yes, sir.

1 Q And you understand that it requires a bond to
2 post the -- it requires a party appealing a CPCN order to
3 post a bond or an undertaking prior to filing their
4 appeal?

5 A My understanding was that it requires the party
6 to go to this Commission to discuss the bond. My --
7 whether that requires this Commission to post a bond, I
8 did not quite understand it that way, but I do understand
9 that it -- that the Commission has broad discretion to
10 set that bond at any amount, nominal or otherwise, that
11 it would choose to, and that's why we asked this
12 Commission, again, for the reasons I said earlier, that
13 this is an important project, not just because of cost,
14 but because of future risk to customers and because of
15 the extreme climate impacts of this project at exactly
16 the worst possible time for planetary global warming,
17 that we believe that -- that we need a full airing of the
18 issues involved in this case. And we have been prevented
19 from making that case so far, and it is, I think, an
20 injustice to the people of this state and beyond.

21 MR. SOMERS: Mr. Chairman, I would move to
22 strike his response after the response to my actual
23 question, which is you've read the statute and you
24 understand a bond is required prior to filing a Notice of

1 Appeal.

2 CHAIRMAN FINLEY: Well, we'll --

3 MR. SOMERS: It's nonresponsive.

4 CHAIRMAN FINLEY: Well, I agree it's not
5 responsive. We'll allow it, but we -- but we're not a
6 jury trial here, and we'll take it for what it's worth.

7 MR. SOMERS: Thank you.

8 THE WITNESS: Pardon me. I couldn't -- I
9 couldn't hear. How did you respond to his...

10 CHAIRMAN FINLEY: I overruled his objection,
11 Mr. Warren.

12 Q Mr. Warren, in your Verified Response from May
13 the 5th, you stated that DEP's response is an attempt to
14 bully NC WARN and The Climate Times. You've been -- so
15 you've been present here in the hearing room this entire
16 morning, aside from the fire alarm break; is that
17 correct?

18 A Yes, sir.

19 Q And you heard Mr. Landseidel testify?

20 A Yes, sir.

21 Q Do you believe he's a bully?

22 A He's not the one we referred to. No. I --
23 but, no, I don't believe he's a bully.

24 Q And you have no reason to criticize the

1 detailed cost estimates that he's testified to in this
2 case, do you?

3 A Given that -- I would say I do have reason to
4 because given that this morning was the first time we had
5 access to the specifics of what he would provide and what
6 you planned to provide, then yes, I do believe we have
7 cause. And by the way, related to this broader
8 discussion of what you put in binders full of contracts
9 and who had access to them months ago, that's not the
10 issue that we're dealing with here today. The issue
11 we're dealing with is what evidence was going to be
12 presented to support a \$10 million bond in specificity,
13 and we were denied an opportunity to understand that and
14 we got instead this -- what might be described as a shell
15 game that John's up until late at night trying to find
16 out if you all are actually posting something. If you
17 hadn't planned to post something, testimony, you could
18 have alerted us and we could have at least known that we
19 might be fielding what your witness would say during the
20 proceeding instead of having to guess and then try to
21 listen to new numbers that have been ascribed to this
22 particular situation at this time. That's not a fair
23 process.

24 Q So your testimony under oath is that you didn't

1 know what those numbers were when Duke filed them on May
2 the 2nd?

3 A No. I don't think that's what I said. We saw
4 what the broad numbers were, but we argued, and the Court
5 agreed with us, that there was not detail to support any
6 of that. And as John testified, there's this whole other
7 really odd area regarding the handling of coal ash at
8 that site, and I think I understood from what you
9 confirmed earlier that -- the detail of those numbers
10 wouldn't have been available to us even if we had signed
11 a confidentiality agreement.

12 MR. SOMERS: Mr. Chairman, I'm going to, again,
13 move to strike as nonresponsive.

14 CHAIRMAN FINLEY: Well, that's -- we won't --
15 we won't issue an order to strike, but let's try to leave
16 the answers to -- responsive to the questions, Mr.
17 Warren.

18 MR. SOMERS: May I approach the witness?

19 CHAIRMAN FINLEY: Mr. Runkle can follow up and
20 ask questions after he's asked. Go ahead.

21 MR. SOMERS: May I approach the witness?

22 CHAIRMAN FINLEY: Yes, you may.

23 Q Mr. Warren, I have handed you what I will ask
24 to be marked as DEP Cross Exhibit Number 1.

1 CHAIRMAN FINLEY: It shall be so marked.

2 (Whereupon, DEP Cross Examination
3 Exhibit Number 1 was marked for
4 identification.)

5 Q And you recognize this document, don't you, Mr.
6 Warren?

7 A Yes, sir.

8 Q And this is a press release issued by NC WARN
9 on May 19, 2016; is that correct?

10 A Yes, sir.

11 Q Did you write this?

12 A I think I did.

13 Q All right. So you were --

14 A With -- probably with help to make it a little
15 better.

16 Q Okay. Who helped you?

17 A I don't recall specifically. It's usually
18 among two or three different members of our staff,
19 possibly others.

20 Q And who are they?

21 A It would usually be associate or Assistant
22 Director Rita Leadem. It would be our paralegal and
23 researcher Anna Henry. It could have been Sally
24 Robertson. Sometimes other people might look at them.

1 Q Are any of those people here in the courtroom
2 today?

3 A Anna Henry is here, paralegal.

4 Q Okay. And she's -- you said --

5 A But, again, I don't recall specifically,
6 somebody else might, who might have reviewed and done
7 some editing on this. I -- believe me, I take full
8 responsibility for it.

9 Q Fair enough. Thank you for that. If you
10 would, look at the second paragraph --

11 A Okay.

12 Q -- of your May 19 news release.

13 A Yes, sir.

14 Q And it says, quote, "That unprecedented bond
15 action is yet another example of Commissioners shielding
16 Duke - and themselves, in this case - from scrutiny of
17 Duke executives' business model." Is that correct?

18 A I wrote it, yes, sir.

19 Q Okay. And that was in response to the
20 Commission's Appeal Bond Order setting the \$10 million
21 bond.

22 A Yes, sir.

23 Q And it's your testimony that the Commission is
24 shielding Duke and themselves in this matter?

1 A I believe that's what has happened here. I --
2 I do. And I can elaborate on that if you'd like or
3 explain why I believe that.

4 Q Okay. Look down at the bottom of that page.
5 There's a paragraph that reads, I'll quote, "Even more
6 amazing is that the Commissioners went along with the
7 prohibitive bond approach, calling for a \$10 million bond
8 even while providing no rationale for the bond amount,"
9 unquote. You wrote that?

10 A Yes, sir.

11 Q Did you read the Commission's Order --

12 A Yes, sir.

13 Q -- that explained how they --

14 A Yes, sir.

15 Q -- the rationale for that bond?

16 A Yes, sir.

17 Q And yet you say --

18 A I found it to be weak. I found it to be
19 related -- I mean, they admitted that they hadn't done
20 this before. I'm sympathetic to that. It was new
21 ground. But I -- I believe there was no rationale. I
22 also was the one that wrote that they pulled it out of
23 their regulatory hat.

24 Q Okay. Let me ask you to look at the next

1 sentence. In fact -- quote, "In fact, neither Duke nor
2 the Commission cited a shred of evidence to support those
3 giant..." -- "giant numbers - either of which would
4 prevent any critic from taking the case to court,"
5 unquote. You wrote that?

6 A Yes, sir.

7 Q And it's your -- it's your testimony that there
8 was no evidence, despite hearing Mr. Landseidel testify
9 today, that he verified Duke's response? It's still your
10 belief there was no evidence to support the Commission's
11 Bond Order?

12 A It's a belief that was supported by the North
13 Carolina Court of Appeals.

14 MR. SOMERS: Just a minute, Mr. Chairman. I'm
15 marking these exhibits. May I approach?

16 CHAIRMAN FINLEY: Yes.

17 Q All right. Mr. Warren, have you had a chance
18 to look at what I'll ask to be marked as DEP Cross
19 Examination Exhibit Number 2?

20 A Yes, sir.

21 CHAIRMAN FINLEY: It shall be so marked.

22 (Whereupon, DEP Cross Examination
23 Exhibit Number 2 was marked for
24 identification.)

1 Q This appears to me to be a Facebook post from
2 NC WARN. Do you recognize that?

3 A Yes, sir.

4 Q And did you write this?

5 A I believe this was probably excerpted from
6 other things that I did write or was reworked. No. I
7 think I did write most of what I see as text there.

8 Q Okay. And you --

9 A Not specifically on the Facebook post, but it
10 was transferred there.

11 Q Okay. And you had -- before my -- before I
12 showed you this exhibit, you had just talked about the
13 Court of Appeals order, correct?

14 A (Nods head affirmatively.)

15 Q Is that -- can you answer?

16 A Yes, sir.

17 Q Okay. You can nod your head to me, but the
18 court reporter --

19 A Okay.

20 Q -- can't pick it up --

21 A Sure.

22 Q -- all right? So the Court of Appeals order
23 that you reference is what is referred to in this
24 Facebook post; is that correct?

1 A Yes, sir.

2 Q All right. And you -- you or NC WARN said in
3 this post, "This is an important" --

4 MR. RUNKLE: Excuse me. Excuse me, counsel.

5 Q -- "incremental victory and embarrassment to
6 the Commission."

7 MR. RUNKLE: Excuse me, counsel.

8 CHAIRMAN FINLEY: Let him finish. Let him
9 finish. Start over -- start over again.

10 MR. RUNKLE: I have an objection to this line
11 of questioning.

12 CHAIRMAN FINLEY: Well, let him finish the
13 question, and then I'll hear your objection. Repeat your
14 question, Mr. Somers.

15 MR. SOMERS: Thank you.

16 Q Mr. Warren, I was asking you, in this Facebook
17 post discussing the Court of Appeals opinion in this
18 matter, you said, quote, "This is an important
19 incremental victory and embarrassment to the Commission,"
20 unquote, correct?

21 A Yes, sir.

22 CHAIRMAN FINLEY: All right, Mr. Runkle. Your
23 objection?

24 MR. RUNKLE: I would object to this line of

1 questioning. It's totally not relevant to any matter
2 before us. It's -- it's rehashing what NC WARN's
3 position may or may not have been in a Court of Appeals
4 case and what kind of Facebook pages they were putting
5 on. It's just totally not relevant.

6 CHAIRMAN FINLEY: Well, I think, you know, Mr.
7 Runkle, I think it is a bit relevant to the credibility
8 of the party NC WARN and Climate Change (sic) before this
9 Commission in matters such as this. We'll allow the
10 questioning, but we'll take it for what it's worth in any
11 order the Commission might issue.

12 MR. RUNKLE: Thank you.

13 Q So you disagree with the Commission's orders to
14 date in this case on the appeal bond issue, correct?

15 A I disagree with the orders and the process. I
16 think that we all could have done a lot better with --
17 with the whole -- this whole mess that's happened over
18 the last few months, yes, sir.

19 Q And in your words the Commission has asked in
20 an -- acted in an embarrassing manner?

21 A I believe so. I believe it -- that, again, the
22 entire process all the way back to the Legislature is not
23 one that is befitting the state of North Carolina, yes,
24 sir.

1 Q You were aware that as part of this Western
2 Carolinas Modernization Project that from your partic---
3 let me start over.

4 You were present for the -- were you present at
5 the public hearing in Asheville on this project that the
6 Commission held back in February, I believe?

7 A No, I think not.

8 Q Okay. But you were present here in the hearing
9 room for the oral argument that the Commission held on
10 the CPCN application that's what's led us to get to where
11 we are today --

12 A Yes, sir.

13 Q -- is that right?

14 A Yes, sir.

15 Q All right. And so you're aware that Duke
16 Energy Progress, as part of this project that's subject
17 to your purported appeal, has worked with the Asheville
18 community to develop energy efficiency, demand response,
19 renewable programs to help transition that community in
20 western North Carolina to a smarter, cleaner energy
21 future; is that correct?

22 A I don't think I would characterize it that way.
23 I think that smacks a little too much of public relations
24 language, and so I don't think I would characterize it

1 that way.

2 Q But you -- certainly, you would agree that a
3 central point to that effort is retiring the Asheville
4 coal units, correct?

5 A Absolutely, and we agree with that, yes.

6 Q But you understand that by pursuing this
7 appeal, NC WARN is going to require those coal units to
8 run in perpetuity?

9 A Well, I don't believe that is necessarily the
10 case at all and, in fact, I will repeat that perpetuity
11 sort of flies in the face of the fact that the capacities
12 used at those plants are quite low in recent years,
13 especially, so we believe the coal plants can and should
14 be retired. There is plenty of generation throughout
15 that region and the capability of bringing it in and out
16 of Asheville to accommodate the people of that area
17 without having to build new giant gas units.

18 Q You would agree that the people of Asheville,
19 western North Carolina, the entire state of North
20 Carolina, deserve better than that, don't they?

21 A Deserve -- excuse me?

22 Q Better than NC WARN's efforts to keep that coal
23 plant running.

24 A You have just made a statement that is not my

1 statement. We are -- again, we are insisting that the
2 coal plants should be retired. We have never said that
3 those plants should be kept running, so let's be clear
4 about that.

5 Q You --

6 A If you are implying that it's a package deal
7 and what you all call in Orwellian language a
8 modernization project is -- means that if you don't get
9 the whole thing, the coal units have to run for
10 perpetuity. Again, I don't agree with that
11 characterization. In fact, I believe -- to restate, I
12 believe you should close the coal units and use the glut
13 of regional supply that's available, including from
14 Columbia Energy outside the direct region, that you
15 refused to even consider for and get rid of the coal
16 units and not try to build a billion-dollar power plant
17 that you don't need.

18 Q So it's your testimony here before the
19 Commission today that if Duke Energy delays the new
20 combined cycle gas plant, they can still shut down the
21 coal units and reliably serve western North Carolina?

22 A Absolutely. And, in fact, that was the -- the
23 case that we brought -- we worked with a technical expert
24 from the West Coast to argue that, and that's the part of

1 the tragedy of this entire process, that we weren't even
2 allowed to make that case before this Commission. And I
3 would add that everything we learned during the course of
4 this case, limited as it was, given our limited access to
5 information that Duke Energy chose to withhold instead of
6 openly making its case, everything we learned confirmed
7 and amplified our belief that you could build the -- you
8 could move forward without building new generation at
9 that site. And that's part of the tragedy of this entire
10 proceeding, that that argument wasn't allowed to be made
11 to these good people and that we were not allowed to
12 cross examine your technical experts on the stand around
13 that very issue. It comes down to very fairly
14 straightforward math about whether there's enough
15 generation in the region and whether there are enough
16 wires that you can get it in and out of that area. We
17 were demanding let's have that argument, let's have that
18 debate in a proper proceeding. Duke Energy did
19 everything they could to prevent that from happening
20 because I believe Duke Energy could not afford to have a
21 vetting of that basic math.

22 MR. SOMERS: Again, Mr. Chairman, I'm going to
23 move to strike that as non---

24 THE WITNESS: You asked the question.

1 MR. SOMERS: It was nonresponsive to my
2 question.

3 CHAIRMAN FINLEY: I won't -- I won't strike it,
4 but we're not before the jury, and I'll take it for what
5 it's worth.

6 THE WITNESS: Pardon me. I could not hear.
7 Did you strike it or not strike it?

8 CHAIRMAN FINLEY: I did not.

9 THE WITNESS: Thank you.

10 Q You testified under oath just now that Duke
11 Energy withheld information?

12 A Yes, sir.

13 Q What -- all right. Never mind.

14 MR. SOMERS: May I approach?

15 CHAIRMAN FINLEY: Yes, sir.

16 THE WITNESS: Getting a lot of web hits from
17 you, Bo. Appreciate that.

18 Q All right, Mr. Warren. I'll now ask you about
19 what I'll -- I've handed to you and I'll ask to be marked
20 as DEP Cross Examination Exhibit Number 3.

21 MR. SOMERS: Mr. Chairman, has that been marked
22 as such?

23 CHAIRMAN FINLEY: It shall be so marked.

24 (Whereupon, DEP Cross Examination

1 Exhibit Number 3 was marked for
2 identification.)

3 Q Again, Mr. Warren -- sorry, that sounds a lot
4 like WARN. I'm trying to keep --

5 A Don't I know it?

6 Q Yeah. So Duke Energy Progress Cross
7 Examination Exhibit 3 is a press release from NC WARN
8 dated June 7th, 2016; is that correct?

9 A Yes, sir.

10 Q Did you also write this press release?

11 A I think I did.

12 Q Okay. If you would look at the third
13 paragraph, in this paragraph you're talking about the
14 Court of Appeals decision, correct?

15 A Yeah.

16 Q And the headline is "Appeals Court Deals Blow
17 to Duke Energy and Regulators of Power Plant Fight."

18 A Yes, sir.

19 Q Okay. The third paragraph says that, quote,
20 "The court essentially ordered the Commission to conduct
21 a proper proceeding over the bond issue instead of
22 pulling" a multi-million -- excuse me -- "instead of
23 pulling multi-million dollar amounts out of its
24 regulatory hat while not even requiring Duke to provide

1 any evidence - or to even state - that our appeal would
2 delay construction of the \$1.1 billion project." Did you
3 write that?

4 A Yes, sir.

5 Q Is it your testimony today that we're not in a
6 proper proceeding?

7 A I think this is a new type of proceeding. I
8 would assume that this is an appropriate proceeding. I
9 don't agree with the process that -- and the timing that
10 led to it.

11 Q Okay. If you would look at the next sentence
12 that you wrote. Quote, "If the Commission blows the
13 issue again, the court could decide to accept the appeal
14 without a bond - which would be entirely appropriate,"
15 unquote. Did you write that?

16 A Yes, sir, and I agree with it.

17 Q What did you mean if the Commission blows --
18 "If the Commission blows the issue again...?"

19 A Well, the Commission made the order for the
20 bond that the court struck down or remanded because there
21 was not appropriate and sufficient evidence provided by
22 Duke Energy or the Commission to justify a \$10 million
23 bond. And it's my understanding that the court could
24 decide to -- to hear the appeal without a bond, which is

1 what we believe should be the case anyway, again, to try
2 to finally get on the table some of the content of the
3 issue in this important case.

4 MR. SOMERS: Thank you, Mr. Warren. I have no
5 further questions.

6 CHAIRMAN FINLEY: Mr. Runkle, do you have
7 questions of Mr. Warren?

8 EXAMINATION BY MR. RUNKLE:

9 Q Looking at the DEP Cross Exhibits, I guess all
10 of them, 1, 2 and 3, do you routinely write press
11 releases about activities that happen in North Carolina?

12 A Yes, sir.

13 Q And you don't intend these to be legal briefs,
14 do you?

15 A No.

16 Q You're trying -- what is the purpose of these
17 press releases?

18 A To inform the news media, reporters and
19 editors, and the public about events that are involved
20 with our work.

21 Q And this is -- and you send these out. This is
22 your understanding of what the Court of Appeals meant and
23 what actions the Commission meant, those kinds of things?

24 A Right.

1 MR. RUNKLE: I have no further questions.

2 CHAIRMAN FINLEY: Questions from the

3 Commission? Commissioner Patterson?

4 EXAMINATION BY COMMISSIONER PATTERSON:

5 Q From a number of your answers, you seem to be

6 suggesting that the Commission can ignore the

7 Legislature; is that your opinion?

8 A No, sir.

9 Q Okay.

10 A But I -- I think what you're referring to is a
11 matter that we do believe that the Commission has quite a
12 lot of discretion, and you had quite a lot of discretion
13 in this particular case, the CPCN case, and that you
14 could have used it to -- for -- to create a more open and
15 constructive process than you chose to do.

16 Q But we did have some legislation that told us
17 what to do. Are you familiar with that?

18 A I -- yes, sir, but that legislation was fairly
19 broad, and it was -- it did leave you a situation to
20 craft new ground and to create the rules as you went.
21 And I'm sympathetic to that, but, again, you had
22 discretion, and in particular you had a situation where
23 you could have chosen to do what other agencies do, which
24 is what we asked you to do, which was to stop the clock

1 until all credible evidence was into the -- the case and
2 in front of you, and then restart the clock after you'd
3 had a chance to deal with that. The legislation did not
4 prohibit you all from doing that.

5 Q I have one more question.

6 A Okay.

7 Q Mr. Runkle said that you went to your funders
8 about this bond and they would not -- they wouldn't fund
9 it. Who are those funders?

10 MR. RUNKLE: I would -- I would object to -- we
11 could file that under confidentiality agreements, but I
12 don't think that's proper to put out into open session.

13 THE WITNESS: I'd like -- I can address --

14 COMMISSIONER PATTERSON: You brought it up.

15 THE WITNESS: I could address the first part of
16 the question there.

17 A This is a matter we consulted and discussed
18 internally and with attorneys and with some funders
19 generally. I did not ask any funder. I think what you
20 -- your question was not the same as what Mr. Runkle
21 described. I did not ask any funder to put up the kind
22 of money here because I did not agree with the -- the
23 prospect of us having to put down an amount of bond, and
24 I especially didn't agree with it, given my understanding

1 that this Commission would be the same arbiter who would
2 end up potentially taking some of that money and giving
3 it to Duke Energy if Duke claimed that there was a damage
4 that -- that needed to be done. So -- but, again, our
5 main position was we do not believe that we should be
6 barred access to the courthouse to appeal your decision
7 based on a bond that you try to set yourself.

8 Q I'll ask the question one more time.

9 A Okay.

10 Q Who are those funders?

11 A I don't specifically recall any of the
12 particular people that I talked to and, frankly, I would
13 not feel that it was appropriate for me to reveal their
14 names if I did.

15 MR. RUNKLE: If you'll excuse me, Mr.
16 Patterson, I misspoke when I -- when I -- I apparently
17 misspoke when I said that NC WARN had gone to funders.
18 Mr. Warren says that he did not go to anybody
19 specifically. I apologize for my testimony.

20 THE WITNESS: Well, I think I can clarify it.
21 I think what you said was accurate. I discussed with --
22 with a number of people, but I did not ask anyone to put
23 up money for this kind of bond.

24 CHAIRMAN FINLEY: Commissioner Bailey?

1 EXAMINATION BY COMMISSIONER BAILEY:

2 Q It's almost afternoon. Good afternoon, Mr.
3 Warren. I guess my question is going to deal with my
4 understanding is that you're saying that your West Coast
5 experts are saying that without the coal plant being in
6 Asheville and without making any modifications whatsoever
7 to any transmission lines in the western part of North
8 Carolina, that the people of Asheville and that region
9 can certainly be served with existing whatever hydro that
10 you guys are claiming is out there and all the other
11 stuff there, and even if they have to wheel power from
12 Columbia, South Carolina up there, it certainly could be
13 on existing transmission lines that exist up there to the
14 point it would meet NERC's reliability standards that are
15 required to the Duke -- to Duke Energy Progress. I mean,
16 they don't dream that up. That's dictated to them by
17 FERC and through NERC, obviously. So is that your
18 position?

19 A I would alter one of the clauses early in your
20 -- your question, that we do believe there's a likelihood
21 that there could be transmission upgrades necessary, and
22 we tried to put that into the record through
23 reconductoring, by the way, which our understanding, as I
24 recall, Duke Energy did not -- did not even consider that

1 they could have reconductored the existing transmission
2 lines at a very cost effective rate. And it's not -- not
3 a -- it's not vanguard technology. It's something that a
4 lot of other utilities do. But yeah -- but the rest of
5 your question is -- the answer is, yes, we believe that
6 overall Duke Energy, based on what we saw in the
7 evidence, in the case, and we were very eager to have a
8 chance to have that debate and see if it does, in fact,
9 as I characterized earlier, really come down to fairly
10 straightforward math questions as to is there enough
11 generation at the hydro plant and the other Duke Energy
12 system, DEP and DEC, and in combination with other
13 resources in the area. Yes, our position is it appears
14 that there is adequate capacity throughout the region to
15 avoid having to build another power plant.

16 Q So in general, NC WARN is totally against any
17 type of power plant in the entire state of North
18 Carolina. If DEP says we're building this not only just
19 for this region, but for -- to upgrade the efficiency of
20 our existing systems across the whole state of North
21 Carolina and our ratepayers, you totally disagree with
22 that assumption?

23 A Well, that -- this relates to the fact that --
24 you may be familiar with the fact we appealed to or -- or

1 filed a complaint or petition with FERC because of Duke
2 Energy's lack of regional sharing with neighboring
3 utilities, and we showed and filed federal doc--- federal
4 documents in the case showing a virtual -- what I
5 characterize as a glut of supply across the Southeast,
6 and a glut that is projected many, many years into the
7 future. So in general to your -- to your question, we
8 don't see the -- the need to be building more gas,
9 certainly not coal, power plants anywhere, not nuclear
10 either, but not -- as if that would ever happen, given
11 the abject failure of the US nuclear renaissance, but,
12 yes, in general we do not see the need to be putting on
13 more fossil fuel resources. We need to be phasing out
14 fossil fuels through ramping up renewable technologies
15 and putting to use Duke Energy's very large energy
16 storage capacity in northern South Carolina that they
17 could be putting online to help balance the intermittency
18 of renewable technologies across the region and which
19 their own people, plant managers are very proud of.

20 COMMISSIONER BAILEY: Thank you.

21 CHAIRMAN FINLEY: Go ahead, Commissioner Gray.

22 EXAMINATION BY COMMISSIONER GRAY:

23 Q Mr. Warren, would NC WARN support plasma arc
24 gasification?

1 A If it were to ever become commercialized, I --
2 I'm not prepared to answer that question. I think what
3 you're -- I don't know the latest state of that
4 technology, Commissioner Gray. I -- several years ago a
5 number of people were talking about that. I recall at
6 the time it involved turning municipal waste into energy,
7 and there was some effort to try to jumpstart some
8 discussion in North Carolina around it. I recall that
9 all died out because it was extremely cost ineffective,
10 but that's -- that's the latest that I understand about
11 that.

12 COMMISSIONER GRAY: Thank you.

13 CHAIRMAN FINLEY: Mr. Warren, just a few
14 questions.

15 EXAMINATION BY CHAIRMAN FINLEY:

16 Q I think in response to questions earlier in the
17 proceeding, you said that it would have been your wish
18 that the Commission in its order -- before it issued its
19 order on the CPCN initially, that it should have stopped
20 the clock --

21 A Yes.

22 Q -- that you requested the Commission to do
23 based on what other administrative tribunals could have
24 done. Would you elaborate on what other tribunals you're

1 talking about exactly?

2 A My understanding that at state agencies, water
3 -- on water issues, air permits, other things, if they
4 have insufficient evidence before them or if a permit,
5 for example, is not completed, then they are able to
6 suspend the time frame or extend the time frame to make
7 sure they have all the information in front of them so
8 that they can make an appropriate decision.

9 Q So it's --

10 A That's my understanding.

11 Q Sure. So it's your view that the statute that
12 we were operating under here that gave the Commission 45
13 days to come out with this order, a similar process
14 should -- could have -- could have and should have been
15 employed to stop the clock?

16 A I believe so, and I believe that that would
17 have been the reasonable thing, and I think the
18 Legislature would have understood that if the Commission
19 were to go back and said, look, this is a complicated
20 process and, you know, we have to make sure that we do
21 our job appropriately and see all sides of it and make
22 sure that the decision we make is the right one. And I
23 think -- by the way, I think that would have avoided an
24 awful lot of the other problems that we've seen through

1 -- problems that -- that have accrued to you and to us
2 and a lot of other people.

3 Q And I believe you also said that it's your
4 opinion, and I realize you're not a lawyer, but you
5 follow these cases carefully, obviously, that your view
6 that the Commission, based on what this law is, could
7 just say that there should be no bond for you to proceed
8 with your appeal?

9 A I think at the least you could agree that the
10 bond should be de minimis, but...

11 Q Well, there's a difference between no bond and
12 a de minimis bond. Is it your view that we could
13 legitimately, under the statute, have no bond?

14 A Well, I'm not -- as you say, I'm not an
15 attorney, and I don't recall the exact language of the
16 statute. If the statute says that the Commission sets a
17 bond in this case, I'll accept that that would be the
18 case. But, again, you do have broad discretion. And,
19 again, it's really important to remember that we are not
20 seeking, didn't seek in the court through an appeal a
21 stay of this project. And as Mr. Runkle described
22 earlier, and I understand to be the case, bonds are put
23 into place when a project is actually being sought to be
24 stayed and stopped, and we strongly believe that Duke

1 Energy's shareholders should take responsibility for
2 their decision to move forward if they think that their
3 case is not strong enough that they're concerned that
4 they could lose an appeal, then that's a risk that Duke
5 Energy shareholders should bear, not their customers, not
6 the people of the state, and certainly not critics who
7 are -- have simply and persistently tried to seek a fair
8 and clear process where everybody can understand and feel
9 that the decisions made going forward are the appropriate
10 ones.

11 Q All right. Let me -- in your pleadings, NC
12 WARN traditionally says that NC WARN has approximately a
13 thousand members, correct?

14 A I think what we say is over a thousand members.

15 Q What does one do to become a member of NC WARN,
16 just generically?

17 A We've probably got some forms here. I'll hand
18 them out for you all after the proceeding. It -- there's
19 a -- we ask for annual membership dues that's flexible,
20 depending on people's ability. And people get involved
21 in a variety of ways. They volunteer. They sometimes
22 attend hearings, as you know, other things like that.

23 Q So all of the members would have filled out a
24 form to become a member of NC WARN?

1 A Well, sometimes they fill out a form, and
2 sometimes they just send a donation.

3 Q So you can become a member of NC WARN by
4 filling out a form, by sending in a donation. How else?

5 A We have a number of people who contribute time,
6 but aren't able to put in money, and we broadly sort of
7 count them as part of or community, too.

8 Q All right. Do you ever cull your rolls? Do
9 you ever say, well, this person has moved to some other
10 place --

11 A Oh, sure. Oh, sure, yeah.

12 Q How often do you do that?

13 A I don't think it's on a set schedule, but
14 certainly if people move away or lose interest or are not
15 able to stay involved in what we do, we certainly don't
16 keep badgering them to do so.

17 Q Can you tell me, just rough numbers, what
18 percentage of your members are customers of Duke Energy
19 Progress?

20 A Oh, I assume a high percentage. I couldn't
21 tell you directly. We have some people that support us
22 from out of state and certainly people who are members of
23 the co-ops and, of course, they get their juice from the
24 same place, too.

1 Q And I would assume you have some members who
2 are customers of Duke Energy Progress as opposed to --
3 are also members of Duke Energy Carolinas as opposed to
4 Duke Energy Progress?

5 A Yes, sir.

6 Q All right.

7 A And pardon me, my previous answer, I think I
8 was referring to -- to both DEP and DEC.

9 Q All right.

10 CHAIRMAN FINLEY: Other questions by the
11 Commission? Commissioner Patterson?

12 REEXAMINATION BY COMMISSIONER PATTERSON:

13 Q You're a 501(c)(3)?

14 A Yes, sir.

15 Q So you file an annual report with the
16 Department of State, right?

17 A Yes, sir.

18 Q What's your annual budget?

19 A I believe last year our budget was around \$1.2
20 million.

21 Q Uh-huh. And you said you've got nine or 10
22 staff people?

23 A Yes, right now. Yes, sir.

24 Q What -- could you just -- real quick, could you

1 sort of describe what each of them does in, you know, the
2 Twitter version?

3 A Well, we have people, as I described earlier,
4 who work on research and work as part of our legal team.
5 We have people who work in the field, working in
6 communities and helping do outreach and build alliances
7 with other groups. As you may know, we've got -- we work
8 a lot with other groups, not just in the environmental
9 community, but in the social justice community across the
10 state, and a variety of other things. We do a lot of
11 research, and we do -- we read a lot of those folks'
12 filings and writings and things. And we -- we do a lot
13 to try to keep up with climate science and what's
14 happening, and trends in energy and the energy field, and
15 we -- we craft our messages and strategies to try to
16 promote a transition to clean energy and a more
17 democratic process for resolving society's challenges.

18 Q I just wanted to understand what each of those
19 -- do you have, say, an engineering staff?

20 A We work with consultants a lot, and we do not
21 have an engineer on staff. We -- a lot of what we do is,
22 as you all have seen, we work with different --

23 Q You have transmission people on staff, experts
24 in that?

1 A Not on staff, but on a consultancy basis.

2 Q Uh-huh.

3 COMMISSIONER PATTERSON: All right. Thank you.

4 THE WITNESS: Yes, sir.

5 REEXAMINATION BY CHAIRMAN FINLEY:

6 Q One more, excuse me, Mr. Warren, but is NC WARN
7 still dissatisfied with the procedure that we have
8 followed for this hearing today, this morning?

9 A Still dissatisfied?

10 Q Yes.

11 A I think the proceeding today has been
12 interesting. I haven't formulated an opinion on it yet.
13 I do think that -- as I said, I think the process that
14 led to it was -- was problematic.

15 And I should add, if I might take a moment,
16 neither I nor any our people like being critical of the
17 Utilities Commission or Duke Energy or the EPA or anyone
18 else. We do so when we believe that democratic process
19 has not been served, and we do so because we are so
20 deeply, deeply concerned about the climate crisis in
21 particular and how imminent we are toward tipping points,
22 even as millions of people are being harmed badly on an
23 ongoing basis, and -- but we are working with the
24 scientists who are warning that humanity is within

1 probably two, three, four years of passing a point of no
2 return toward a truly chaotic situation, not just climate
3 chaos, but social and economic and political chaos, which
4 is already underway in some ways, but the climate chaos
5 is going to make all of that worse. And so we -- we do
6 push hard to try to get a fair way for this state to make
7 decisions that are so incredibly important to all of us
8 going forward.

9 And so we don't enjoy the criticism. I know
10 that all of you are individuals and you -- you care about
11 this society and this state, too. We just urge you to
12 take a broader view as to how we make these decisions and
13 use your discretionary -- discretionary authority to open
14 up the tent a little bit more. It's incredibly
15 frustrating, as you might understand, for us to have
16 lined up in this case a gentleman from Cornell University
17 who truly is the leading methane climate expert, Dr.
18 Robert Howarth, a gentleman from the Canadian Geological
19 Survey, probably a leading expert on shale gas, and an
20 engineer from the West Coast who is highly credentialed
21 in his field, and we're unable to even get their opinions
22 into consideration here. And so we -- we are left to use
23 the means to get the word out to the public.

24 If we believe that the Legislature, or the

1 governor, or the attorney general, or a regulatory agency
2 is not acting fairly, our job is to make that case in the
3 public opinion arena. We prefer to have a more
4 cooperative relationship with this Commission and with
5 Duke Energy. You might be interested, and you can see on
6 our home page a letter -- an open letter we wrote to the
7 CEO of Duke Energy yesterday seeking a more cooperative
8 approach moving forward, again, because it's the right
9 way to do things in this society, it's the way we all
10 would rather operate, and because there is so incredibly
11 much at stake, not for just our children and
12 grandchildren, but for people in our lifetimes. And I'm
13 -- and I am, you know, intent that we continue pushing to
14 try to get decision making that we can all feel good
15 about.

16 CHAIRMAN FINLEY: Are there questions on the
17 Commission's questions?

18 MR. RUNKLE: No, sir.

19 MR. SOMERS: Just one or two, if I may.

20 RECROSS EXAMINATION BY MR. SOMERS:

21 Q Mr. Warren, you testified in response to a
22 question I believe from Commissioner Bailey about a FERC
23 complaint that NC WARN filed. Do you remember that?

24 A Yes, sir.

1 Q And that was dismissed by FERC, correct?

2 A It was dismissed on a technicality, right, not
3 on the substance of the complaint. And there was not any
4 refutation of the numbers that we put in. They were NERC
5 numbers, by the way. There was a mention of NERC the
6 other day. And NERC's own numbers were showing this
7 large glut of supply that I referred to.

8 Q If I understood your testimony right sort of at
9 the end of your little -- not little, but the end of your
10 statement there prior to my question, is it fair to say
11 you argue that the Commission didn't consider NC WARN's
12 evidence in ruling on the CPCN in this case?

13 A That's my belief. They certainly didn't fully
14 consider it. There was no discussion about it, no
15 discussion from Duke Energy about it, no -- you know, the
16 proceeding that I think you mentioned earlier, where we
17 had the -- the oral case there, that was a far cry from
18 the evidentiary proceeding that we had insisted on and
19 which we desperately needed in this case. I think in
20 retrospect, a lot of people would agree it might have
21 just been better if we could have just had this thing
22 play out the way it always has before.

23 Q But you would -- you would agree that in the
24 Commission's CPCN Order, they specifically held, quote,

1 "The Commission determines NC WARN's assertion of excess
2 capacity overly simplistic and lacking credibility,"
3 unquote. Isn't that what the Commission said in their
4 order?

5 A That -- that statement does not reflect a full
6 consideration of that case that we put in, nor did it
7 reflect an evidentiary proceeding where that testimony
8 would have been fully vetted and -- and explored.

9 Q Also, the Commission said in that order, quote,
10 "The comments filed by many of the Intervenors appeared
11 to demonstrate a lack of fundamental understanding as to
12 the difference between capacity and energy, a fundamental
13 lack of understanding as to how load forecasts are
14 prepared and approved by this Commission, as well as a
15 fundamental lack of understanding of how electric systems
16 are planned and maintained for a reliable and least-cost
17 system," unquote.

18 A Are you saying that that passage refers to NC
19 WARN's or is that -- is that -- was the beginning of that
20 Intervenors?

21 Q It says Intervenors. I am not speaking for the
22 Commission --

23 A Well --

24 Q -- but having participated in this proceeding

1 and listening to the arguments that you made in that
2 case, I believe it does refer to NC WARN.

3 A I think it's easy to -- it's easy enough to
4 make a statement like that in an order when there's
5 nobody available to debate the issue, but that's not the
6 appropriate way this Commission has always operated. If
7 they felt that Bill Powers and other people didn't
8 understand the situation, then you have to -- have to
9 remember that we had a limited amount of information and
10 opportunity to explore it in an open, fair proceeding.

11 MR. SOMERS: Thank you. No further questions.

12 CHAIRMAN FINLEY: All right. What about your
13 exhibits, Mr. Somers?

14 MR. SOMERS: Yeah. Mr. Chairman, I would ask
15 that DEP Cross Examination Exhibits 1, 2 and 3 be
16 admitted for impeachment purposes -- I believe they go to
17 the credibility of the witness who was the verifier for
18 NC WARN's reply comments in this case as to the amount of
19 the bond -- and ask that they be admitted for impeachment
20 purposes, not for the substance of the documents.

21 MR. RUNKLE: Without objection.

22 CHAIRMAN FINLEY: So ordered.

23 (Whereupon, DEP Cross Examination

24 Exhibit Numbers 1, 2 and 3 were

1 admitted into evidence.)

2 CHAIRMAN FINLEY: Okay. Thank you, Mr. Warren.
3 You can step down there.

4 (Witness excused.)

5 CHAIRMAN FINLEY: Just a few more questions
6 before we finish here. Let's take a look at this order
7 of the Court of June 7, 2016, and I just would like to
8 get the parties to tell me their interpretation of what
9 that order means. It's very short. It says, "The
10 Petition for Writ of Certiorari and Petition for Writ of
11 Supersedeas filed in this cause by NC Waste Awareness and
12 Reduction Network and The Climate Times on 19 May" --
13 2006 (sic) -- "are decided as follows: The Petition for
14 Writ of Certiorari is allowed for the limited purpose of
15 vacating and remanding the order entered" -- May 10, 2018
16 (sic) -- "by the North Carolina Utilities Commission
17 setting an appeal bond. On remand, the Commission shall,
18 in its discretion, set bond in an amount that is in
19 accordance with NC Gen. Stat. 62-82(b) and based upon
20 competent evidence. Because we vacate the Commission's
21 order, we dismiss the Petition for Writ of Supersedeas as
22 moot."

23 Now, I will -- you know, that to me is not the
24 most clear order that I have ever seen, but the way I

1 have interpreted that, again, I looked at the Hollowell
2 case and I looked at the cases cited, and in that case a
3 bond order was sent back to the Superior Court because
4 the affidavit upon which the damages that determined the
5 amount of the bond was not based on personal knowledge,
6 but was based on information and belief. So how I am
7 interpreting that, and I could easily be wrong, is that
8 the Court of Appeals looked at the pleading that Duke
9 Energy Progress filed before the court, it looked at the
10 affidavit and didn't think that affidavit was appropriate
11 and sent it back to take live evidence so that that
12 information should be -- could be based on personal
13 knowledge.

14 Now, what is your -- what are the parties' --
15 what is their interpretation of what this order means?

16 MR. RUNKLE: I agree with my colleague here.
17 It's not very clear. It -- if it would -- if it had been
18 more precise about what the expectation was, it would
19 have been very helpful. My reading was a lot narrower
20 than yours, that it had to be -- that any bond had to be
21 set on the record as -- before you at this point rather
22 have a new hearing. But, again, that's a -- that's my
23 interpretation. It may go back up to the Court of
24 Appeals.

1 MR. SOMERS: Mr. Chairman, my reading on this
2 order is it says that the Commission, in its discretion,
3 shall set a bond in an amount that's in accordance with
4 the statute and based upon competent evidence, and what
5 is clear to me is that the Commission has heard competent
6 evidence today. In its discretion, it's allowed a full
7 evidentiary hearing with cross examination, open to all
8 parties, and is, in my opinion, able to set an appeal
9 bond amount based upon the competent evidence it's heard
10 today.

11 CHAIRMAN FINLEY: Okay. But the Hollowell case
12 did use the phrase "competent evidence," didn't it?
13 That's a phrase that came out of that court opinion,
14 right?

15 MR. SOMERS: What I will tell you, in my
16 opinion, is today Mr. Landseidel, on behalf of Duke
17 Energy Progress, has testified on his own knowledge. I
18 will also submit and reiterate that the original filing,
19 that the Court of Appeals review was also based upon Mr.
20 Landseidel's own personal knowledge. Perhaps they -- I
21 won't speculate what they viewed of it, but it was clear
22 from his testimony today that nothing has changed and it
23 was all based upon 34 years of extensive experience and
24 it's competent, in my opinion, for this Commission to

1 issue an order.

2 CHAIRMAN FINLEY: All right. All right. Now,
3 Mr. Runkle, when we started this case, we addressed your
4 June 14 response, and I told you what my ruling was as to
5 whether or not we would have a proceeding. We've had a
6 proceeding and we've taken evidence. And I'm looking at
7 the last page, page 3, where you say, "Or in the
8 alternative, if the Commission allows additional
9 testimony," which we have, "it provides NC WARN and TCT
10 at least ten days following Duke Energy's deadline to
11 submit additional testimony to review and provide
12 witnesses to respond to the testimony prior to" -- any --
13 any -- "to an evidentiary hearing." Now, what say you as
14 to where you are on that request?

15 MR. RUNKLE: Your Honor, at this point, if we
16 had the 10 days, we would -- we would certainly try to
17 find one of the experts that we have talked to before in
18 other matters to bring that testimony back. Now, we
19 would have to confer on that and, you know, the -- it's
20 hard to say where we are at this point, I mean, of the
21 hearing without consultation and going through all the
22 notes.

23 CHAIRMAN FINLEY: Well, when will -- when will
24 you -- well, when will you know where you are on it?

1 MR. RUNKLE: I mean, are you asking for a date?

2 CHAIRMAN FINLEY: Yes, sir.

3 MR. RUNKLE: We will know by Wednesday.

4 CHAIRMAN FINLEY: All right. Well, you let me
5 know. Let me know by Wednesday what your feeling is on
6 that.

7 MR. RUNKLE: Okay. And to either -- to request
8 for the 10 days or how many days that we would need and
9 -- or whether we will have any testimony.

10 CHAIRMAN FINLEY: Yes, sir.

11 MR. RUNKLE: Okay.

12 CHAIRMAN FINLEY: All right. What else do we
13 want to receive from the parties here?

14 MR. SOMERS: If I may, there's two more things
15 I'd like to address at this time. The first one, just so
16 it's clear on the record, earlier there -- Commissioner
17 -- I'm sorry -- Chairman Finley, you asked a question
18 about what was in the record with regard to confidential
19 information. Mr. Landseidel testified to the gas supply
20 contract between Duke Energy Progress and PSNC, and just
21 so it's clear on the record, that contract was filed for
22 approval by PSNC, so it is not in this docket. It was in
23 a G-whatever docket. I don't know what their docket
24 number is. But subject to knowing what that docket is,

1 just so it's clear on the record, that -- the contract
2 was filed under seal by PSNC, was approved by the
3 Commission in a docket other E-2, Sub 1089, just so
4 that's clear.

5 I would also submit that regardless of whether
6 the contracts themselves are in evidence, as I mentioned,
7 the supply contracts -- the gas supply contracts not in
8 evidence in this docket, likewise, the actual contracts
9 between Duke and the three suppliers or contractors that
10 Mr. Landseidel testified to earlier, while they aren't in
11 evidence, I would submit that Mr. Landseidel, having
12 negotiated those contracts and testified to the damages
13 and the cancellation clauses, that he is competent to do
14 so. I would argue that his testimony is credible and
15 ultimately for the Commission to decide, but that you
16 could accept that without the underlying contracts;
17 however, if the Commission believes the record requires
18 those to be filed, we would ask to do so as late-filed
19 confidential exhibits.

20 MR. RUNKLE: We see no purpose to be filing the
21 contracts. The witness' assertions of what was in them
22 is, I think, good enough for our purposes here today. I
23 don't think you need to review 10 feet of documents.

24 MR. SOMERS: I appreciate that acknowledgement

1 and stipulation, Mr. Runkle.

2 If I may, last point, I'd like to address there
3 were a series of questions today from the Commission
4 directed to NC WARN about their ability to post a bond in
5 a certain amount. And if I may respectfully argue to you
6 that NC WARN's ability to pay a bond, whether it's \$2 or
7 \$240 million, is not relevant under the statute. The
8 statute requires NC WARN in this case, and, again, I'm
9 using NC WARN for both NC WARN and The Climate Times, to
10 post a bond to secure damages, and damages are defined in
11 the statute as increased construction costs from the
12 delay in beginning construction. There's nothing in the
13 statute that says or in some lesser amount that the
14 potential appellant can post or sign an undertaking to.

15 The purpose of the statute is clear. It's to
16 protect the company and its customers. It's not to
17 protect NC WARN. And I would argue to the Commission in
18 your deliberations on setting an appeal bond amount that
19 the ability of the potential appellant in this case to
20 post a bond is respectfully not part of the statutory
21 precondition for them to file a Notice of Appeal. Thank
22 you.

23 CHAIRMAN FINLEY: All right. Well, thank you
24 all for your participation this morning. It's been an

1 inconvenience, and I apologize for that. Everybody is
2 mad at the Chairman for having this hearing, but you'll
3 just have to get over it.

4 (Laughter.)

5 CHAIRMAN FINLEY: I think I and the legal staff
6 are going to proceed to work on an order, and I'm not
7 going to require any post-hearing filings by the parties.
8 If you want to file something, you're welcome to do so,
9 but you need to get it in here quickly because it's my
10 view that time is a bit of the essence, and so we're
11 going to proceed to get an order out as quickly as we
12 can.

13 So we are adjourned. Thank you.

14 (The hearing was adjourned.)

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STATE OF NORTH CAROLINA


COUNTY OF WAKE

C E R T I F I C A T E

I, Linda S. Garrett, Notary Public/Court Reporter,
do hereby certify that the foregoing hearing before the
North Carolina Utilities Commission in Docket No. E-2,
Sub 1089, was taken and transcribed under my
supervision; and that the foregoing pages constitute a
true and accurate transcript of said Hearing.

I do further certify that I am not of counsel for,
or in the employment of either of the parties to this
action, nor am I interested in the results of this
action.

IN WITNESS WHEREOF, I have hereunto subscribed my
name this 20th day of June, 2016.



Linda S. Garrett

Notary Public No. 19971700150