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June 29, 2016

**VIA ELECTRONIC FILING**

Ms. Gail L. Mount, Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, North Carolina 27699-4300

**RE: Duke Energy Progress, LLC's Reply to Response by NC WARN and  
The Climate Times and to Late-Filed Affidavit of William E. Powers  
for NC WARN and The Climate Times  
Docket No. E-2, Sub 1089**

Dear Ms. Mount:

I enclose Duke Energy Progress, LLC's Reply to Response by NC WARN and The Climate Times and to Late-Filed Affidavit of William E. Powers for NC WARN and The Climate Times for filing in connection with the above-referenced matter.

Thank you for your attention to this matter. If you have any questions, please let me know.

Sincerely,  
A handwritten signature in black ink, appearing to read 'Lawrence B. Somers'.

Lawrence B. Somers

Enclosures

cc: Parties of Record

OFFICIAL COPY

Jun 29 2016

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	)	REPLY TO RESPONSE BY NC
To Construct a 752-MW Natural Gas-Fueled	)	WARN AND THE CLIMATE
Electric Generation Facility in Buncombe	)	TIMES AND TO LATE-FILED
County Near the City of Asheville	)	AFFIDAVIT OF WILLIAM E.
	)	POWERS FOR NC WARN AND
	)	THE CLIMATE TIMES

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NOW COMES Duke Energy Progress, LLC, (“DEP” or “the Company”) pursuant to N.C. Gen. Stat. §62-82(b), North Carolina Utilities Commission (“Commission”) Rule R1-7, and the Commission’s June 8, 2016 *Order Setting Hearing* and replies in opposition to the June 27, 2016 Response by NC WARN and The Climate Times (collectively, “NC WARN”) and the late-filed Affidavit of William E. Powers for NC WARN and The Climate Times. The Company replies specifically as follows:

1. In its June 8, 2016 *Order Setting Hearing* (“Appeal Bond Hearing Order”), the Commission scheduled an evidentiary hearing for 9:30 a.m. on June 17, 2016 “for the purpose of receiving competent evidence on the issue of the amount of bond or undertaking to be set by the Commission pursuant to G.S. 62-82(b).” The Appeal Bond Hearing Order provided, in pertinent part, that “NC WARN shall sponsor a witness or witnesses with respect to any factual issues NC WARN wishes to raise responsive to DEP’s evidence or to the June 7, 2016 Order of the North Carolina Court of Appeals, subject to cross-examination, at the hearing on June 17, 2016.”

2. The June 17, 2016 evidentiary hearing was held as scheduled, with the Commission overruling NC WARN's absurd objection that the Commission's evidentiary hearing was an "abuse of its discretion."<sup>1</sup> Transcript of June 17, 2016 Evidentiary Hearing ("Transcript") at pp. 10-13. Despite NC WARN's completely unfounded criticism of DEP's estimated construction delay cost increases set forth in the Company's May 2, 2016 Verified Response to Motion to Set Bond of NC WARN,<sup>2</sup> NC WARN *failed to call a single witness* at the June 17, 2016 evidentiary hearing to support its position as to the amount of the appeal bond that should be set by the Commission in this matter.<sup>3</sup> In addition to presenting no witnesses, NC WARN informed the Commission that it had not even consulted with an expert witness to testify on its behalf. Transcript at p. 82-83.

3. At the evidentiary hearing, the Company presented the testimony of Mr. Mark E. Landseidel, Duke Energy's Director of Project Development and Initiation in the Project Management and Construction Department, the same witness who verified the Company's May 2, 2016 filing and provided the estimates of increased construction costs due to an appeal-related delay contained therein.<sup>4</sup> Despite Mr. Landseidel testifying that none of his estimated construction costs increases from an appeal-related delay had changed at all since the filing of his May 2, 2016 verified response,<sup>5</sup> at the conclusion of the evidentiary hearing, counsel for NC WARN informed the Commission that NC

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<sup>1</sup> The objection rises to the point of absurdity because NC WARN had sought the evidentiary hearing to which it objected.

<sup>2</sup> See Transcript at pp. 31-33; 51-53.

<sup>3</sup> In fact, NC WARN even objected when DEP called NC WARN's executive director, James Warren, to testify at the evidentiary hearing. Transcript at p. 95.

<sup>4</sup> Transcript at pp. 31-32

<sup>5</sup> Transcript at p. 33

WARN would like until June 22, 2016 to determine if it could locate an expert witness to respond. Transcript at p. 141-42.

4. Instead of filing an affidavit on June 22, 2016 as it committed to do, NC WARN waited until June 27, 2016, to file its Response and Affidavit.<sup>6</sup> In its Response, NC WARN summarizes the Affidavit of Mr. Powers as concluding that “none” of the \$240 million in increased construction costs testified to Mr. Landseidel are “reasonable.” Response at p. 1. Such a conclusion by Mr. Powers and NC WARN is simply preposterous.

5. First, Mr. Landseidel testified to his thirty-four year career with Duke Energy, including the nearly two hundred large capital construction projects that range in cost from \$1 million to \$1.5 billion and have been located in North Carolina, South Carolina, Florida, Indiana, Texas, Pennsylvania, Kansas, Argentina, Indonesia and Australia, for which he has had responsibility. Transcript at p. 29. Furthermore, Mr. Landseidel is responsible for the full development of DEP’s Western Carolinas Modernization Project, including development and negotiation of all contracts required to build the project. *Id.* at pp. 15; 30-31. Mr. Landseidel testified in detail as to the basis for his estimate of \$240 million in project construction cost increases that would reasonably result from an appeal-related delay in beginning construction. *Id.* at pp. 23-25; 35-40; 45-53.

6. In an attempt to validate its argument that no appeal bond should be required for its attempted appeal of the approximate \$1 billion Western Carolinas Modernization Project, NC WARN ignores the plain purpose and language of N.C. Gen.

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<sup>6</sup> The Company notes that NC WARN filed an affidavit from Mr. Powers in this docket on February 12, 2016, and has offered no explanation as to why it waited until after the June 17, 2016 evidentiary hearing to attempt to seek an affidavit from Mr. Powers or otherwise explain or excuse its late filing of the affidavit.

Stat. §62-82(b) and attempts to discredit Mr. Landseidel's testimony. Even a cursory review of Mr. Powers' affidavit, however, reveals the simplistic and factually incorrect assertions advanced by NC WARN.

7. Mr. Powers first asserts that Mr. Landseidel's testimony that DEP would incur \$100 million in additional environmental control costs for the existing Asheville coal units is unavailing because DEP can simply retire the existing coal units and rely upon existing generation and transmission import capability, plus additional hydroelectric generation and natural gas-fired generation owned by third parties and located outside of the DEP-West balancing authority area. Powers Affidavit at ¶4. Consistent with NC WARN's typical practice, Mr. Powers ignores the fact that the Commission specifically considered and rejected each of these arguments in its March 28, 2016 *Order Granting Application in Part, with Conditions, and Denying Application in Part* ("CPCN Order").<sup>7</sup>

8. For example, Mr. Powers cites in his affidavit to the affidavit of Mr. Richard S. Hahn, submitted on behalf of MountainTrue and the Sierra Club in the underlying CPCN proceeding, regarding the alleged sufficient existing transmission import capability into the DEP-West balancing authority. Powers Affidavit at ¶4. In a detailed discussion in the CPCN Order, however, the Commission agreed with DEP's evidence regarding transmission import limitations and NERC reliability standards, and specifically rejected Mr. Hahn's assumptions regarding 2,200 MVA of transmission import capability by concluding "this assumption is incorrect." CPCN Order at p. 32-33. Next, as to NC WARN's arguments in the CPCN proceeding that the new combined cycle units are not needed to reliably serve DEP's customers, which Mr. Powers restates

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<sup>7</sup> Detailed "Discussion and Conclusions" in the CPCN Order at pp. 29-43.

in his affidavit here, the Commission held,

The Commission has repeatedly rejected the NC WARN criticisms. . . . The Commission determines NC WARN's assertions of excess capacity *overly simplistic and lacking credibility*.

CPCN Order at p. 33 (emphasis added). Finally, after a detailed discussion of the arguments and affidavits submitted by NC WARN and other intervenors, including Mr. Power's assertion that DEP could rely upon hydroelectric and natural gas-fired generation owned by third parties, the Commission held as follows:

The comments filed by many of the Intervenors appear to demonstrate a lack of fundamental understanding as to the difference between capacity and energy, a fundamental lack of understanding as to how load forecasts are prepared and approved by this Commission, as well as a fundamental lack of understanding of how electric systems are planned and maintained for a reliable and least cost system.

CPCN Order at pp. 33-34. Mr. Powers' claim that the coal units could be retired without any replacement generation and new transmission capacity, and that DEP could thereby avoid the \$100 million in additional environmental controls, ignores the reality of the DEP system and customer reliability needs, as has been previously dismissed by this Commission, and is simply not credible.

9. Second, Mr. Powers purports to challenge the \$40 million in contract cancellation costs testified to by Mr. Landseidel - - not by challenging Mr. Landseidel's estimate based upon the actual contract terms themselves, but by arguing that such cancellation costs should be borne by Duke Energy shareholders because DEP signed the contracts and gave notice to proceed while the potential NC WARN appeal was being adjudicated. Affidavit at ¶5. In actuality, Mr. Powers advances a faulty legal argument rather than a challenge to the cancellation costs determined by Mr. Landseidel. Again,

consistent with NC WARN'S usual practice of interpreting the law as it wishes it to be rather than what it says, Mr. Powers completely ignores the plain language of N.C. Gen. Stat. §62-82(b), the purpose of which 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.

10. Third, Mr. Powers also purports to challenge the \$8 million in sunk development costs testified to by Mr. Landseidel - - not by challenging Mr. Landseidel's testimony based upon the actual development costs incurred to date and his estimate of those to be incurred prior to the October 2016 commencement of construction, but by arguing that such development costs should be borne by Duke Energy shareholders. Affidavit at ¶6. Again, however, Mr. Powers offers a faulty legal argument that completely ignores the plain language and purpose of N.C. Gen. Stat. §62-82(b).

11. Fourth, Mr. Powers claims that there is "no support" for Mr. Landseidel's testimony for the 2.5% escalation rate he used to calculate the \$50 million in increased construction costs due to a two-year appeal-related delay. Affidavit at ¶7. For Mr. Powers to make such a claim while quoting a portion of Mr. Landseidel's testimony providing support for the 2.5% escalation rate is baffling. Mr. Landseidel explained the basis for his estimate. Transcript at pp. 48-49. Mr. Powers' assertion that the cost of the Western Carolinas Modernization Project would be substantially less expensive if delayed by two years is simply not credible, nor consistent with Mr. Landseidel's experience and testimony.

12. Finally, Mr. Powers claims that DEP “*misrepresents* the alternatives it is [sic] has available regarding the gas transportation contract with PSNC” and alleges that DEP can simply resell its PSNC gas capacity to third parties, likely at a substantial premium during high demands in the Northeast. Affidavit at ¶8 (emphasis added). In his zeal to attempt to discredit Mr. Landseidel’s testimony that DEP would incur \$45 million in firm gas transportation payments to PSNC during a two-year appeal delay, Mr. Powers is either completely uninformed, or chooses to ignore the basic facts related to the PSNC pipeline project. The PSNC capacity cannot be resold on PSNC’s system or sold to a hypothetical customer who might need it due to a demand in the Northeast during a winter cold weather snap. This is not interstate pipeline capacity and there is not a secondary capacity release market on PSNC’s system. Further, the incremental gas facilities being installed by PSNC are for the specific design needed to provide firm deliveries to meet the requirements for the Western Carolinas Modernization Project.

13. The Commission fully considered the evidence from all parties in its CPCN Order, despite NC WARN’s repeated insistence that the Commission did not even consider evidence from their purported “experts” in the CPCN proceeding. In the CPCN Order, the Commission plainly stated, “The Commission has accepted, relied upon, and addressed the written comments of expert witnesses tendered by Intervenors.” CPCN Order at p. 40. For NC WARN to attempt to relitigate those same arguments in its Response and Affidavit here is (1) simply not relevant to the amount of the appeal bond and (2) fails to acknowledge that the Commission found their arguments and evidence to simply not be credible and rejected them.

14. Mr. Landseidel's testimony as to the \$240 million appeal bond is the only credible and competent evidence before the Commission.

WHEREFORE, for all the foregoing reasons, Duke Energy Progress respectfully requests that the Commission deny NC WARN's further attempts to delay this proceeding and promptly establish an appeal bond in the credible and reasonable amount of \$240 million at this time to adequately protect the Company's customers as provided for in N.C. Gen. Stat. §62-82(b), and grant such further relief as the Commission deems just, equitable and proper.

Respectfully submitted, this the 29<sup>th</sup> day of June 2016.



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LLC

STATE OF FLORIDA                    )  
  )  
COUNTY OF NASSAU            )

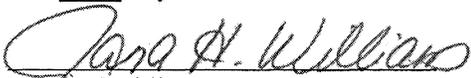
VERIFICATION

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

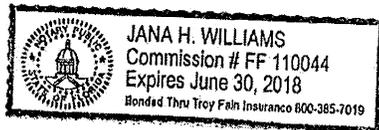
That he is Director of Project Development and Initiation in the Project Management and Construction Department of Duke Energy Corporation; that he has read the foregoing Duke Energy Progress' Reply to Response by NC WARN and the Climate Times and to Late-Filed Affidavit of William E. Powers for NC WARN and The Climate Times and knows the contents thereof; that the same is true and correct to the best of his knowledge, except as to those matters stated on information and believe, and as to those matters, he believes them to be true.

  
\_\_\_\_\_  
Mark E. Landseidel

Sworn to and subscribed before me  
this 27<sup>th</sup> day of June, 2016.

  
\_\_\_\_\_  
Notary Public

My Commission expires: 6/30/2018



## CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Progress, LLC's Reply in Opposition to Response by NC WARN and The Climate Times in Docket No. E-2, Sub 1089, has been served by electronic mail, hand delivery or by depositing a copy in the United States mail, postage prepaid to the following parties:

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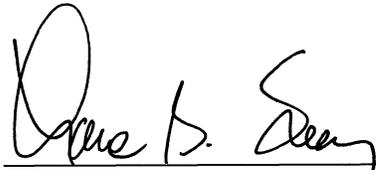
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This the 29<sup>th</sup> day of June, 2016



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