

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-2, SUB 1089

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Application of Duke Energy Progress, LLC,	)	
for a Certificate of Public Convenience and	)	ORDER SETTING HEARING
Necessity to Construct a 752-MW Natural	)	
Gas-Fueled Electric Generation Facility in	)	
Buncombe County Near the City of Asheville	)	

BY THE CHAIRMAN: On April 25, 2016, the North Carolina Waste Awareness and Reduction Network and The Climate Times (collectively, NC WARN) filed a Motion To Set Bond pursuant to G.S. 62-82(b) requesting that the Commission set the bond amount at \$250.00 and requesting an oral argument or evidentiary hearing on the bond requirement.

On April 27, 2016, the Commission issued Procedural Order on Bond allowing Duke Energy Progress, LLC (DEP) to file a response to NC WARN's motion on or before May 2, 2016, and allowing NC WARN to file a reply on or before May 5, 2016. The Commission established an expedited procedure to rule upon NC WARN's motion as the timing of NC WARN's motion left only 32 days for an order and compliance before NC WARN's Notice of Appeal was due.<sup>1</sup> On May 2, 2016, DEP filed a Verified Response to Motion to Set Bond of NC WARN and the Climate Times, and on May 5, 2016, NC WARN filed a Reply.

On May 10, 2016, the Commission entered an Order Setting Undertaking or Bond Pursuant to G.S. 62-82(b) (Bond Order), requiring NC WARN to file the prerequisite undertaking or bond in the sum of \$10 million prior to the filing of its Notice of Appeal and established a procedure for subsequent proceedings to review and potentially modify the pre-notice of appeal bond or undertaking.

On May 19, 2016, NC WARN filed a Petition for Writ of Certiorari to review the Bond Order and a Petition for Writ of Supersedeas to stay the execution and enforcement of the Bond Order. On June 7, 2016, the North Carolina Court of Appeals issued an order allowing the petition for writ of certiorari for the limited purpose of vacating and remanding the Bond Order entered on May 10, 2016, and requiring the Commission on remand to set bond, in its discretion, in an amount that is in accordance with G.S. 62-82(b) and

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<sup>1</sup> On May 27, 2016, NC WARN filed notice of appeal to the Commission's March 28, 2016 Order on DEP's request for a Certificate of Public Convenience and Necessity. NC WARN filed no bond or undertaking with its Notice as required by G.S. 62-82(b).

based upon competent evidence. The Court of Appeals dismissed the petition for writ of supersedeas as moot.

The Chairman finds good cause to schedule a hearing to take evidence on the amount of bond or undertaking to be set by the Commission pursuant to G.S. 62-82(b).

IT IS THEREFORE, SO ORDERED as follows:

1. That an evidentiary hearing 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) is scheduled for Friday, June 17, 2016, beginning at 9:30 a.m. in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina;

2. That DEP's verified response filed on May 2, 2016, shall constitute pre-filed direct testimony. DEP shall sponsor a witness or witnesses appropriately qualified to provide the proper foundation to adopt the verified response and be subject to cross-examination on it.

3. That DEP shall be allowed to augment said pre-filed testimony through live testimony from the stand as well as DEP may prepare written revisions to the verified response dated May 2, 2016, which shall be filed on or before June 16, 2016.

4. Any DEP witness testimony shall be subject to cross-examination at the hearing by NC WARN.

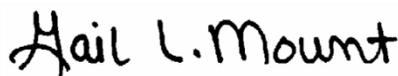
5. NC WARN shall sponsor a witness or witnesses with respect to any factual issues NC WARN wishes to raise responsive to DEP's evidence or to the June 7, 2016 order of the North Carolina Court of Appeals, subject to cross-examination, at the hearing on June 17, 2016. In addition, NC WARN should be prepared to address its willingness and/or ability to execute an undertaking or post a bond as required by G.S. 62-82(b).

6. DEP and NC WARN shall be permitted and should be prepared to make arguments at the hearing as to their positions as to how the Commission should comply with the Court's June 6, 2016 order.

ISSUED BY ORDER OF THE COMMISSION.

This the 8<sup>th</sup> day of June, 2016.

NORTH CAROLINA UTILITIES COMMISSION



Gail L. Mount, Chief Clerk