

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 1095
DOCKET NO. E-7, SUB 1100
DOCKET NO. G-9, SUB 682

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Application of Duke Energy Corporation and)	PUBLIC INTEREST GROUPS'
Piedmont Natural Gas Company Inc., to)	RESPONSE TO MOTION
Engage in Business Combination Transaction)	TO STRIKE AND MOTION
and Address Regulatory Conditions and)	IN LIMINE BY DUKE ENERGY
Codes of Conduct)	PIEDMONT NATURAL GAS

NOW COME NC WARN, The Climate Times, and the North Carolina Housing Coalition (together the "Public Interest Groups"), by and through the undersigned attorney, with a response to the Duke Energy and Piedmont Natural Gas (the "utilities") Motion to Strike and Motion in Limine, filed June 16, 2016.

1. The motions by Duke Energy and Piedmont Natural Gas seek to strike almost the entire testimony of the two expert witnesses proffered by the Public Interest Groups, filed June 10, 2016, and further restrict cross-examination on the issues raised in the expert testimony. The utilities' argument is that the future increased costs and risky supply of natural gas, and the resulting costs to consumers, is outside the Commission's consideration.

2. The Public Interest Groups agree with the Utilities that the Commission is able to keep irrelevant and immaterial matters from the proceeding. NCUC Rule R1-7(a)(5). However, the testimony of the experts, Mr. Hughes and Mr. Howard, is directly relevant to the issues in this docket and go directly to the

Commission's fundamental determination of whether the merger is in the public convenience and necessity. The Commission cannot approve a merger affecting a public utility unless the merger is "justified by the public convenience and necessity." G.S. 62-111(a). The Commission "must inquire into all aspects of anticipated service and rates occasioned and engendered" by the merger in an effort to determine whether the merger is justified by the public convenience and necessity. *State ex rel. Utilities Comm'n v. Pinehurst*, 99 N.C. App. 224, 229, 393 S.E.2d 111, 115 (1992). As a "threshold question," the merger must not have adverse effects. *Id.* at 229, 393 S.E.2d at 115. In this case, the merger potentially has significant adverse effects on future electric rates.

3. The utilities misinterpret the testimony, and the position of the Public Interest Groups, by arguing the "broad policy arguments" addressed in the testimony can only be addressed by other agencies, the General Assembly, or Congress, and not this Commission. Clearly, the Public Interest Groups are not requesting in this docket that the Commission directly resolve these public policy concerns, but are instead requesting that the Commission consider the risky implications of these public policy issues on the proposed merger. The utilities routinely use broad policy arguments to argue for their choices in Integrated Resource Plans ("IRPs"), rate cases, applications for Certificates of Convenience and Necessity ("CPCN") and even in merger cases. For example, the utilities frequently discuss the existence or potential for Federal regulation of emissions reductions as rational for approval. The present case should not be immune from policy considerations if the testimony assists the Commission in making its

determination on whether the merger is in the public convenience and necessity or whether the detriments to the ratepayers outweigh any benefits.

4. The argument of the Public Interest Groups is the merger between the two monopoly utilities, one electric and one natural gas, is not in the public convenience and necessity. It is risky to tie an electric utility to a natural gas utility. The merger will support Duke Energy's planned reliance on natural gas as its fuel of choice for the next decade, and in to the future. In the past decade (2004 – 2014), Duke Energy increased its electricity generated from natural gas from 4% to 24% and has continued to increase its dependence on natural gas. Duke Energy has stated in its most recent IRPs, Docket E-100, Sub 141, it is planning to build up to fifteen large natural gas plants over the next fifteen years, with up to 10,000 MW of new generation. As a result, Duke Energy is becoming almost totally reliant on natural gas, and in addition to the baseload costs of new plants, the availability of future supplies, the production and distribution costs, and regulatory costs are relevant because those costs will be passed on to the ratepayers. These costs will have an undue impact on those least able to pay for the new plants, and the increasing fuel costs.

5. The more Duke Energy is tied to natural gas, the greater the potential for much higher rates. The testimony of Mr. Hughes and Mr. Howard sought to be stricken from the record provides the background to the Commission on the fundamental issues of cost increases likely from this merger. As Mr. Hughes testifies, the supply of natural gas is at risk because the current fracking plays will not be able to maintain their present level of production. As such, the present low

costs of natural gas will increase in the near future, and in North Carolina, the more Duke Energy is dependent on natural gas, the greater the increase the overall rates of the consumers. Likewise, as Mr. Howard testifies, the high methane emissions from venting and leakage in natural gas production and distribution will require regulatory controls because of the significant impact of methane on the climate crisis. The costs from regulation, on top of the cost increases from the lack of availability, will have serious rate impacts as the fuel costs are passed through to customers.

6. The potential for increased costs arising from the merger should clearly be investigated by the Commission at the hearing. As the expert witnesses testify, there will be costs associated with production risks and new regulations.

THEREFORE, the Public Interest Groups pray that the Commission deny the motion to strike and the motion in limine.

Respectfully submitted, this the 22nd day of June 2016.

/s/ John D. Runkle

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing PUBLIC INTEREST GROUPS' RESPONSE TO MOTION TO STRIKE AND MOTION IN LIMINE BY DUKE ENERGY AND PIEDMONT NATURAL GAS upon each of the parties of record in this proceeding or their attorneys of record by deposit in the U.S. Mail, postage prepaid, or by email transmission.

This is the 22nd day of June 2016.

/s/ John D. Runkle
