

**OFFICIAL COPY**

October 14, 2016

**FILED**

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Clerk's Office  
N.C. Utilities Commission

Chief Clerk  
North Carolina Utilities Commission  
Dobbs Building, Fifth Floor  
430 North Salisbury Street  
Raleigh, North Carolina 27602

**VIA HAND DELIVERY**

Re: Docket No. M-100, Sub 145  
N.C. WARN Petition to Adopt Rules  
Reply Comments of Carolina Utility Customers Association, Inc. ("CUCA")

Dear Chief Clerk:

On July 14, 2016, the North Carolina Waste Awareness and Reduction Network ("NC WARN") filed a Petition with the Commission asking that the Commission establish a rulemaking proceeding to develop rules regarding the rate case settlement and stipulation process. In its Petition, NC WARN argues, among other things, that some parties are not afforded an opportunity to participate in the settlement process and that, in some cases, settlements are not finally reached until close to the time for hearing of the case and, once the settlements are presented, non-settling parties are only given a short time to respond to the proposed settlement, and seldom have time to prepare testimony in response to the testimony supporting settlement filed by the parties participating in the settlement.

On August 1, 2016, the Commission issued an Order Requesting Comments asking for interested parties to file direct comments on or before September 16, 2016 and reply comments on or before October 14, 2016. CUCA intervened in the proceeding on August 19, 2016. While CUCA did not file initial comments on September 16, 2016, a variety of parties, including Duke Energy, Dominion North Carolina Power, Piedmont Natural Gas Company, Public Service Company of North Carolina, Frontier Natural Gas Company, ("Joint Utilities") and the Public Staff did file initial comments. CUCA respectfully requests that the Commission treat this letter as its "Reply Comments" in this Docket.

First of all, CUCA has been an active participant in the existing rate case settlement process and believes that, in most circumstances, it has worked well. For example, CUCA participated in settlements of the last Duke Energy Carolinas (Docket No. E-7, Sub 1026) and Duke Energy Progress (Docket No. E-2, Sub 1023) rate cases, and the more recent Public Service Company of North Carolina (Docket No. G-5, Sub 565) rate case. CUCA participated in lengthy settlement discussions with Dominion

North Carolina Power in its recent (Docket No. E-22, Sub 532) rate case; however, despite good faith bargaining, all parties were unable to reach a settlement in that case.

The Commission surely realizes that the whole idea of "settlement" is that independent parties to a proceeding voluntarily agree to participate in a process that may lead to a negotiated settlement. The process is fully protected by Confidentiality Agreements. The parties are able to engage in "full, frank and forthright" discussions of their respective positions on the rate case issues. At all times, the parties are assured that offers and counter-offers which they make in settlement negotiations will not come back to "haunt" them during the trial of the case if settlement is not reached. Requiring "volunteer" parties to participate in a more formalized structure of the type envisioned by the NC WARN Petition will tend to defeat the very essence and confidential nature of settlement talks. This, in turn, will result in fewer settlements being reached, which will have a negative effect on the Commission's judicial efficiency. A settlement is, at best an "offer" to the Commission, supported by competent evidence, that the proposed settlement results in a fair and reasonable balancing of the interests of both the utility and its consumers. The Commission retains plenary power, at all times, to accept or reject the proposed settlement. Based on its actual experience, CUCA believes that the current, more informal and confidentiality-protected process of settlement is the better way to proceed. If all major case proceedings filed at the Commission had to be fully litigated, without the possibility of settlement, the Commission Hearing Room would likely be occupied each and every working day of the year and the Commission would, likely, have to divide up into panels of three Commissioners far more often than the Commission would likely deem to be desirable. CUCA also believes that sound exercise of the Commission's discretion, rather than a hard and fast Rule, is the better way to handle settlements that occur near the start of scheduled hearings.

CUCA notes that NC WARN contends that it is, in essence, "shut out" of the settlement negotiation and bargaining process. A significant barrier to NC WARN's participation in the process is its staunch refusal to execute the appropriate Confidentiality or Non-Disclosure Agreements. Neither the utilities nor CUCA would be willing to have another party participate in settlement negotiations which has not executed a Confidentiality Agreement. This would defeat the very purpose of full and open discussion and bargaining with all cards "on the table" since neither the utility nor CUCA (on behalf of its members) would run the risk of its confidential information being disclosed by a party which has not agreed to protect confidentiality. CUCA has reviewed the Initial Comments filed by the Joint Utilities and the Public Staff and agrees with those Comments. CUCA therefore adopts the Initial Comments heretofore filed by the Joint Utilities and the Public Staff as the balance of its Reply Comments in this matter.

Pursuant to the Commission's Rules, we are filing the original and thirty-three (33) copies of this document. CUCA requests that the three (3) "extra" copies of these Reply Comments be date-stamped and returned to CUCA via its courier. Should anything further be required in connection with these Reply Comments, please contact the undersigned at your early convenience.

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