

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)	MOTION TO SET
Certificate of Public Convenience and Necessity)	BOND OF
to Construct a 752 Megawatt Natural Gas-Fueled)	NC WARN AND
Electric Generation Facility in Buncombe County)	THE CLIMATE TIMES
Near the City of Asheville)	

NOW COMES the North Carolina Waste Awareness and Reduction Network (“NC WARN”) and The Climate Times, by and through undersigned counsel, pursuant to N.C. Gen. Stat. § 62-82(b), and move for the Commission to set a bond for an anticipated appeal of the Commission’s Order Granting Application in Part, With Conditions, and Denying Application in Part, issued on March 28, 2016 (hereinafter, the “Order”), in the above-captioned matter. In support thereof, NC WARN and The Climate Times state the following:

1. Pursuant to N.C. Gen. Stat. § 62-90(a), NC WARN and The Climate Times may file a notice of appeal and exceptions to the Order within thirty (30) days of its issuance, “or within such time thereafter as may be fixed by the Commission, not to exceed 30 additional days.” The current deadline for filing an appeal is Wednesday, April 27, 2016. To allow time for the Commission’s consideration of the present Motion, NC WARN and The Climate Times filed a motion to extend the deadline for filing a notice of appeal and exceptions to and including May 27, 2016.

2. Appeals from the granting of a certificate of public convenience and necessity are subject to the provisions of N.C. Gen. Stat. § 62-82(b). In relevant part, that statute says:

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 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.

N.C. Gen. Stat. § 62-82(b) (emphasis added).

3. To summarize, a party losing an appeal challenging a certificate of public convenience and necessity may be obligated to pay “damages, if any, which [the public utility] sustains.” However, the damages are explicitly limited to damages related to “delay in beginning the construction of the facility which is occasioned by the appeal,” and these damages cannot include “legal fees, court costs, and other expenses incurred in connection with the appeal.” The bond is designed to secure against those damages that may arise if the award is affirmed on appeal.

4. Therefore, any bond obligation is limited to potential damages caused by construction delays due to the appeal.

5. NC WARN and The Climate Times are not requesting an injunction or stay of the Commission's Order. Therefore the anticipated appeal does not prevent Duke Energy Progress LLC ("DEP") from moving forward with the construction of the two 280-MW_{AC} combined cycle natural-gas-fired electric generating units allowed by the Commission's Order. Moreover, NC WARN and The Climate Times are aware of no plans for DEP to delay construction in the event of an appeal. Accordingly, DEP will not suffer damages related to construction delays if the Order is "affirmed upon appeal."

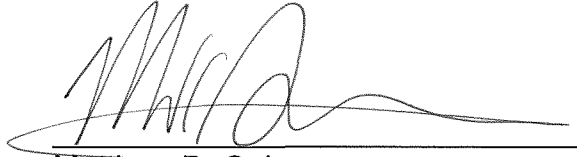
6. The appeals process is important to Utilities Commission proceedings. If bonds are set prohibitively high, then it could be impossible for parties to appeal certificates of public convenience and necessity, thereby practically terminating the rights of parties to appeal Commission orders.

7. Therefore, the bond should be a nominal amount. The bond obligation required by Rule 17(a) of the N.C. Rules of Appellate Procedure is \$250.00. NC WARN and The Climate Times request a similar bond of \$250.00.

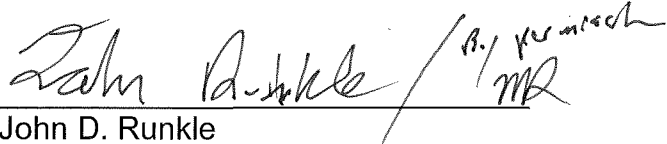
8. NC WARN and The Climate Times respectfully request an oral argument or evidentiary hearing on the bond requirement.

THEREFORE, NC WARN and The Climate Times respectfully request an oral argument or evidentiary hearing on the bond requirement, and furthermore request a bond pursuant to N.C. Gen. Stat. § 62-82(b) of \$250.00.

Respectfully submitted, this the 25th day of April, 2016.



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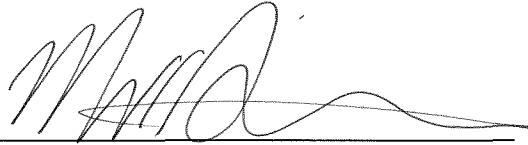
Counsel for NC WARN & The Climate Times

CERTIFICATE OF SERVICE

The undersigned certifies that on this day he served a copy of the foregoing MOTION TO SET BOND OF NC WARN AND THE CLIMATE TIMES upon each of the parties of record in this proceeding or their attorneys of record by electronic mail, or by hand delivery, or by depositing a copy of the same in the United States Mail, postage prepaid.

This the 25th day of April, 2015.

LAW OFFICES OF F. BRYAN BRICE, JR.

By: 
Matthew D. Quinn