

**SUPPLEMENTAL EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT
NO. 36**

(Public Convenience and Necessity)

Docket Nos. E-2, Sub 1095, E-7, Sub 110

**Filed on behalf of Duke Energy Corporation and Piedmont Natural Gas
Company, Inc.**

In the public witness testimony and in consumer statements of position filed in this proceeding, concerns were articulated that the merger was not or may not be in the public interest because of (i) potential negative impacts on the environment due to issues around global warming, fracking, and methane releases to the atmosphere, (ii) potential volatility of natural gas prices, (iii) the pending approval and construction of the Atlantic Coast Pipeline, (iv) the potential for future industry “deconsolidation,” and (v) allegedly “secret” or “back room” settlement procedures used by the Public Staff and/or the Commission in resolving important dockets like this one. Some of these issues were also implicated by questions asked by NC WARN counsel during the hearing which were subject to objections by counsel for the Applicants and which, in this order, the Commission has sustained objections to and has stricken from the record of this proceeding.¹ Several of these matters were also the subject of testimony originally filed by NC WARN witnesses that was stricken from the record as not relevant to the legal issues before the Commission in this proceeding.

¹ The Commission did not rule on these objections at the hearing of this matter but allowed the questioning subject to objection and took the objections under advisement.

The Commission appreciates the statements and concerns of public witnesses and consumers with respect to these issues and in the interest of full transparency will address each of these concerns herein.

As a starting point, it is instructive to recognize that the Commission is a creature of our state legislature and has only those powers expressly granted to it by statute. See e.g. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 307 N.C. 541, 299 S.E.2d 763 (1983); State ex rel. Utilities Comm'n v. General Telephone Co., 281 N.C. 318, 189 S.E.2d 705 (1972). And while the Commission's authority over public utility operations is significant, the scope of that authority is primarily directed toward the supervision of utility operations sufficient to ensure the provision of safe, reliable, non-discriminatory, and reasonably priced utility service to customers located within North Carolina. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974). The Commission is not a policy-making body but instead is responsible for implementing the policies of this State established by the General Assembly as set forth in G.S. 62-2, and elsewhere in the General Statutes. State ex rel. Utilities Comm'n v. Mackie, 79 N.C. App. 19, 338 S.E.2d 888, *aff'd as modified*, 318 N.C. 686, 351 S.E.2d 289 (1986). The Commission is not charged with making or establishing environmental policies for the state of North Carolina or for the United States. It is also not charged with making core business decisions for regulated utilities but is charged with reviewing those decisions in some (but not all) cases. Finally, determinations as to the existence, scope, impacts, and appropriate

mitigation measures (if any) of global warming are far beyond the rightful jurisdiction of this Commission.

With respect to concerns about fracking and methane leakage associated with those activities, it is also useful to note that, at present, no natural gas is produced in North Carolina and that all of the supplies of natural gas utilized in this State originate outside our borders. Natural gas production is largely unregulated except with respect to the environmental impacts thereof which are regulated by the United States Environmental Protection Agency and by the state environmental authorities of the states where the natural gas is physically produced. These natural gas supplies are then transported into North Carolina over the facilities of interstate natural gas pipelines regulated by the Federal Energy Regulatory Commission.

With this context in mind, the Commission will address each of the concerns raised by Public witnesses and consumer statements of position identified above.

Environmental impacts of fracking, global warming and methane emissions.

The Commission recognizes that many members of the public have serious concerns regarding global warming, the potential impact of methane leaks on global warming, and the potential impact of hydraulic fracturing as a natural gas production technique. The heartfelt nature of concerns of public witnesses regarding these matters was apparent to the Commission at the hearing of this matter. These concerns all relate to issues of national or global policy or to activities in the natural gas supply chain that occur outside the State of North Carolina and which are well beyond the scope of this Commission's jurisdiction.

As has been indicated previously in this Order, the scope of the Commission's inquiry in this proceeding is substantially more limited and does not encompass, nor could it reasonably encompass these issues. In short, this Commission has no expertise or rightful authority over whether or how hydraulic fracturing should be conducted as a natural gas production technique, how it may or may not impact global warming, or whether or to what extent methane leaks may contribute to global warming. These are matters that are simply beyond any reasonable interpretation of the Commission's jurisdiction or authority no matter how genuine the concerns of members of the public may be regarding these issues.

Potential volatility of natural gas prices. The Commission does have supervisory authority over the recovery of gas costs by Piedmont and by DEC and DEP (as components of their fuel costs). This authority is focused on whether costs incurred for natural gas are prudently incurred and whether they are properly accounted, rather than the advisability of using natural gas as an energy source in the first place. As a general statement, the Commission's review is limited to an after-the-fact analysis of these costs, which are generally established in a competitive market. The Commission does have some greater authority over fuel choices by DEC and DEP but that authority is exercised in the respective Integrated Resource Plan proceedings for those companies where issues such as fuel choice are actually considered. Notably, no proposals to change or adjust fuel choice for DEC or DEP have been raised in this proceeding.

Pending construction of the Atlantic Coast Pipeline. The Atlantic Coast Pipeline is an interstate natural gas pipeline project currently undergoing review by

the Federal Energy Regulatory Commission, who has exclusive jurisdiction over projects of this nature and who will render determinations, in due course, as to whether the project is justified by the public convenience and necessity and meets environmental standards. This Commission has no authority over that project – except for the right and obligation to review agreements by Piedmont and DEC/DEP to purchase capacity on that pipeline and determine whether those contracts are prudent, which this Commission did in Docket Nos. E-2, Sub 1052, E-7, Sub 1062, and G-9, Sub 655.

Potential for future industry deconsolidation. Decisions regarding whether to buy or sell a privately held or investor owned utility are fundamentally made by the shareholders or owners of those corporations consistent with prevailing securities and business laws and on the basis of market conditions. This Commission has the right and obligation to review such transactions affecting North Carolina public utilities as they are entered into but has no general right to direct either the disposition or non-disposition of a utility business. That function is, instead, a responsibility of the management of those companies.

Allegedly secret or “back room” settlements. Some public witnesses alleged that “secret” or “back room” settlements were reached by Applicants in this matter. NC WARN also filed a petition for rulemaking related to settlements in Commission dockets on July 14, 2016 in Docket No. M-100, Sub 145 making similar allegations. The Commission dismisses such allegations as completely unfounded. When conducting hearings on contested matters, this Commission exercises its authority as a quasi-judicial body and conducts itself accordingly. The

Public Staff, while technically a part of the Commission, operates independently under the supervision of its Executive Director who is appointed by the Governor. The Public Staff represents the “using and consuming public” in cases before the Commission and acts as a party to those cases. There is no communication between the Public Staff and the Commission with regard to such cases except in the form of public filings with the Commission Clerk’s Office. Like all parties to contested proceedings before the Commission, the Public Staff has the right to engage in partial or comprehensive settlements with any or all parties to a proceeding but has no obligation to settle with any party. These are the exact same rights available to any party participating in a hearing before the Commission. There are no restrictions as to the timing of filing of settlements with the Commission in contested cases. By statute, the Commission may consider such settlements as evidence of the appropriate disposition of a docket but, as is the case in this proceeding, must independently conduct its own analysis of dockets and comply with statutorily imposed standards of approval – in this case the Commission must (and by this Order does) determine by its own analysis, and looking at all the evidence in a case, that the proposed merger is justified by the public convenience and necessity.

The Commission would further note that there are three separate settlement agreements on file in these dockets which entailed three different sets of settlement negotiations. The process and procedures that led to these settlement agreements is set forth in the prefiled and hearing testimony of Mr. Barkley. T. Vol. 2, pp. 140-44 and Vol. 3, pp. 60-63. Mr. Barkley testified that the Applicants were

willing to engage in settlement discussions with any party who contacted them, which included all parties in this proceeding except for NC WARN. T. Vol. 3, pp. 60-61.