Progress Energy

January 27, 2012

Ms. Renné Vance
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4325

RE: NCUC Docket No. E-100, Sub 128

Dear Ms. Vance:

Enclosed for filing in the above-referenced docket are the original and 30 copies of Progress Energy Carolinas, Inc.'s Reply Comments.

Yours very truly,

Len S. Anthony
General Counsel
Progress Energy Carolinas, Inc.

LSA:mhm

Enclosure

STAREG2106

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Clerk's Office
N.C. Utilities Commission

BEFORE THE

NORTH CAROLINA UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 128

In the Matter of	)	
	)	
Investigation of Least Cost	)	**PROGRESS ENERGY CAROLINAS,**
Integrated Resource Planning in	)	**INC.'S REPLY COMMENTS**
North Carolina – 2010	)	

Pursuant to North Carolina Utilities Commission ("the Commission") Rule R8-60(j), Carolina Power & Light Company, d/b/a Progress Energy Carolinas, Inc. ("PEC"), submits its Reply Comments to the Initial Comments of the Public Staff, the North Carolina Waste Awareness and Reduction Network, Inc. ("NC WARN"), the North Carolina Sustainable Energy Association ("NCSEA") and the Southern Alliance for Clean Energy ("SACE"), in the above referenced docket. In support thereof, PEC shows the following:

Commission Rule R8-60 requires all North Carolina electric suppliers to file comprehensive biennial Integrated Resource Plans ("IRPs") with the Commission on September 1 of each evenly numbered year. On September 1 of odd numbered years, electric suppliers must file updates to their comprehensive biennial IRPs.

All North Carolina electric suppliers filed their comprehensive biennial IRPs in September of 2010[1] and filed their annual IRP updates on September 1, 2011. By Order dated October 26, 2011, the Commission approved PEC's 2010 biennial IRP. PEC employed the same models and processes in developing its 2011 IRP update as it did in developing its 2010 biennial IRP.

The key issues raised regarding PEC's 2011 IRP update are the same as those raised regarding its 2010 comprehensive biennial IRP. Those issues are: PEC's load forecasts; its resource plan to meet the forecasted load, including demand-side management and energy efficiency ("DSM and EE") programs and measures; the resulting reserve margins; and PEC's Renewable Energy and Energy Efficiency Portfolio Standard ("REPS") compliance plan. In its January 13, 2012 Comments, the Public Staff addressed each of these key issues.

The Public Staff stated that it agrees with PEC's load and energy forecasts. The Public Staff found that "..... the economic, weather, and demographic assumptions that underlie PEC's peak and energy forecasts are reasonable and that PEC has employed accepted statistical and econometric practices. In conclusion, the Public Staff believes that PEC's peak load and energy sales forecasts are reasonable for planning purposes."[2] The Public Staff's conclusions regarding PEC's load and energy forecasts are consistent with the Public Staff's and Commission's findings in

[1] All electric suppliers, except PEC, filed their 2010 IRPs on September 1, 2010. PEC was granted permission by the Commission to file its 2010 IRP on September 13, 2010.
[2] Comments of the Public Staff filed in Docket No. E-100, Sub 128 on January 13, 2012; see page 6.

past IRP proceedings. For instance, in its Order[3] regarding the utilities' 2006 IRP filings, the Commission concluded: "The peak and energy forecasts appear reasonable for planning purposes." Similarly, in its Order[4] regarding the utilities' 2007 IRP filings and its Order[5] regarding the utilities' 2008-2009 IRP filings, the Commission stated: "Based on the foregoing, the Commission concludes that the energy and peak load forecasts of PEC and Duke are reasonable and appropriate. Their forecasting methodology is well accepted in the industry and has been proven over time to be reasonably accurate." Most recently, the Commission in its October 26, 2011 Order in the instant docket, after finding the utilities' forecasts, resource plans and reserve margins to be reasonable, approved the utilities' biennial plans filed in this proceeding.[6]

With regards to DSM and EE, the Public Staff recommends: 1) the Commission require the utilities to include a discussion of significant variances in projected EE savings in future IRPs when the projected EE variance from one IRP to the next is 10% or greater, and 2) the utilities include a discussion of the status of market potential studies or updates in their 2012 IRPs. PEC does not object to these proposals.

[3] July 9, 2007 Order Approving Integrated Resource Plans in Docket No. E-100, Sub 109; see page 10.
[4] September 19, 2008 Order Approving Integrated Resource Plans in Docket No. E-100, Sub 114; see page 14.
[5] August 10, 2010 Order Approving Integrated Resource Plans in Docket Nos. E-100, Sub 118 and E-100, Sub 124; see page 14.
[6] October 26, 2011 Order Approving 2010 Biennial Integrated Resource Plans and 2010 REPS Compliance Plans, Docket No. E-100, Sub 128; see page 43.

The Public Staff also recommends that the Commission require the utilities to evaluate no-carbon alternative plans or scenarios in their 2012 and future IRPs until the status of future carbon legislation becomes clearer. PEC does not object to this recommendation.

In its October 7, 2011 Comments, NC WARN alleges that PEC (and Duke Energy Carolinas) have significantly overestimated the need for baseload power plants and that the utilities' load forecasts are too high. PEC's 2011 IRP update was developed using the same methods and tools as its Commission approved 2010 biennial IRP. The updated plan is very similar to the 2010 plan. The Public Staff states in its January 13, 2012 Comments that PEC's 2011 forecasts are reasonable.[7] NC WARN does not provide a substantive explanation of its position. Thus, there does not appear to be any basis for the Commission to disagree with the Public Staff's findings.

NC WARN also alleges that the 2011 IRP update does not reflect the minimum energy efficiency and renewable energy requirements established by Senate Bill 3, and points to certain charts in PEC's 2011 IRP to support its claim. These allegations appear to result from a lack of understanding of the charts in question. The charts cited by NC WARN are not intended to present or explain PEC's REPS compliance plan. Rather, Appendices D and E present and explain PEC's REPS compliance plan

[7] Comments of the Public Staff filed in Docket No. E-100, Sub 128 on January 13, 2012; see page 6.

and DSM and EE activities, respectively. As shown in Appendix C, PEC's REPS Compliance Plan includes the resources necessary to achieve compliance with the REPS requirements during the planning period prescribed by Commission Rule R8-67(b). After investigating NC WARN's allegations, the Public Staff concluded that it is satisfied that PEC intends to comply with the general REPS requirements through the year 2016, and the pie charts referenced by NC WARN should not be taken as an indication to the contrary.[8] Further, the Public Staff concluded, after reviewing PEC's REPS Compliance Plan, that PEC has contracted for and banked sufficient resources to meet the general REPS requirements for the planning period.[9]

As in previous comments in this and other proceedings, NC WARN's focus appears to be its ongoing opposition to proposed new baseload generating units, in particular nuclear power plants, and its desire that all existing coal plants be retired. No utility is seeking approval for construction of a new nuclear generating unit in this proceeding. Before PEC, or any utility, can build a nuclear plant it must obtain explicit approval from the Commission. A proceeding in which the Commission is considering such a request for approval to build a new nuclear plant would be the proper forum to address the need for such a plant and the alternatives. Regarding the continued operation of PEC's coal plants, as shown in the 2011 IRP, PEC intends to close all of its coal plants that do not have environmental controls by the end of 2013.

[8] Comments of the Public Staff filed in Docket No. E-100, Sub 128 on January 13, 2012; see page 30.
[9] Comments of the Public Staff filed in Docket No. E-100, Sub 128 on January 13, 2012; see page 20.

PEC will evaluate the economic viability of its controlled plants based upon the costs to comply with new Environmental Protection Agency regulations, new state and federal environmental laws, the cost of coal, the cost of reagents, routine operations and maintenance costs, and the costs of alternative sources of generation.

NCSEA's Comments focus on its opinion that the Commission should require more "candor" in the IRP filings, encourage the utilities to disclose more information in the filed plans, and to adopt "standardized" formats. Specifically, NCSEA proposed the utilities be required to include, in a standardized format, the levelized cost of energy for each resource option for each year of the planning period as well as the delivered fuel costs, fixed charge rates, capacity factors and other variables for each resource option for each year in the planning period.

Generally speaking, more information may be better than less information. The question is how much relevant information should be included in the IRP filing, above and beyond that required by the Commission's IRP rules, and what information should be left for discovery. NCSEA, or any other party to the IRP proceedings, is free to conduct discovery to obtain data from the utilities supporting the filed IRPs. NCSEA routinely engages in discovery, and PEC always provides NCSEA the additional information necessary for NCSEA to properly develop its position. It does warrant noting that many of NCSEA's members are commercial businesses selling renewable energy products and energy efficiency services. Thus,

PEC must be mindful when providing confidential information to NCSEA that certain of this information should not be provided to such members.

In its comments, the NCSEA asks the Commission to require the utilities to file all portions of their IRPs as public documents. NCSEA also asks the Commission to make all previous portions of the utilities' IRPs that were filed confidentially, public. The basis for NCSEA's request appears to be the assumption that the filing of certain IRP information confidentially harms persons and companies who have chosen not to intervene in the IRP proceeding because they do not have access to this information, and therefore, their lack of knowledge somehow harms the IRP process as a whole. NCSEA's assumption is wrong, and its request should be denied for several reasons. First, a person or company that has chosen not to intervene in an IRP proceeding is not foreclosed from contacting a utility and asking to review the information in question pursuant to a confidentiality agreement. Confidential information is routinely disclosed, pursuant to a confidentiality agreement, to parties that have been granted intervention. There is no reason non-parties cannot request and receive confidential information in the same manner, assuming they can demonstrate a genuine and relevant need for the information, and that disclosure of the confidential information to them will not impair PEC's ability to obtain resources at least cost to its customers.

Secondly, any person or company is free to petition to intervene in the Commission's IRP proceeding and be treated in the same manner as all other parties, such as NCSEA.

Thirdly, NCSEA has not challenged the confidentiality of the information in question. Before information which has previously been filed by a utility as confidential and accepted by the Commission as confidential is publicly disclosed, either there must be a showing that the information in question is no longer confidential or the utility's consent must be obtained. NCSEA has done neither.

In addition, in Docket No. E-7, Sub 819, by order issued June 6, 2008, the Commission ruled that Duke Energy Carolinas was not required to disclose cost estimates for the proposed Lee nuclear unit. The parties supporting disclosure had argued that a "public interest component" must be considered along with the trade secret analysis. Citing *State ex rel. Utilities Comm'n v. MCI Telecommunications Corp.*, 132 N.C. App. 625, 514 S.E. 2d 276 (N.C. App. 1999), the Commission rejected that argument, holding that:

> ... the "confidential information" provision of the Public Records Act cannot be construed differently in the context of a regulated industry. See MCI, 132 N.C. App. at 635. The Commission concludes that there is no "public interest" exception to the "confidential information" provisions of G.S. 132-1.2(1). If the cost estimates qualify as a "trade secret" under G.S. 66-152(3), and if they also meet the other conditions of G.S. 132-1.2(1) (which, in this case, is not disputed), then the Commission is not authorized to order that they be publicly disclosed, even if it were otherwise inclined to do so based upon the "public interest" argument.

Finally, NCSEA does not have standing to make this request as it has not demonstrated that it is authorized to represent these unnamed non-parties or that it has suffered a direct harm as a result of this information being filed confidentially. NCSEA does not allege that it has been authorized to speak for these unnamed parties, thus its arguments cannot be treated as being made in a representative capacity. Regarding the issue of whether NCSEA has standing to raise this argument because it has been harmed, in the case of *Marriott v. Chatham County,* 654 S.E.2d 13, 16, 187 N.C. App. 491, 494 (N.C.App. 2007), rev. denied, 362 N.C. 472, 666 S.E. 2d 122 (2008), the North Carolina Court of Appeals held that:

> "Standing is a necessary prerequisite to a court's proper exercise of subject matter jurisdiction." *Aubin v. Susi,* 149 N.C.App. 320, 324, 560 S.E.2d 875, 878 (2002) (citation omitted). As the party invoking jurisdiction, plaintiffs have the burden of establishing standing. *Neuse River Found. v. Smithfield Foods,* 155 N.C.App. 110, 113, 574 S.E.2d 48, 51 (2002) (citation omitted). The elements of standing are:
>
> (1) "injury in fact" - an invasion of a legally protected interest that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical;
>
> (2) the injury is fairly traceable to the challenged action of the defendant;
>
> (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

NCSEA has not satisfied the threshold requirement that it has suffered a concrete, real injury. NCSEA has not been denied access to the confidential information at issue. Thus, NCSEA has not been restrained or impaired in the

preparation or presentation of its position in this proceeding. Nor has NCSEA explained how the failure of non-parties to have access to the information harms NCSEA. Vague, conjectural assertions of harm to the IRP process do not meet the standing requirements established by the North Carolina courts.

Thus, NCSEA's request to publicly disclose the confidential information in question should be denied.

It must be remembered that the purpose of IRP filings is not to convey price signals or other information to third parties to facilitate their business decisions for their own gains. Rather, the purpose of the IRP filings is to enable the Commission to ensure the utilities' resource plans will provide a reliable and adequate supply of electricity to meet customers' needs at the least cost.

SACE's Comments regarding PEC's 2011 IRP update are similar to comments it made regarding the 2010 biennial IRP filing. PEC addressed those comments in its March 1, 2011 Reply Comments. The Commission, in its October 26, 2011 Order,[10] also addressed SACE's comments in reaching its Findings of Facts and Conclusions. Specifically, the Commission in its Finding of Fact No. 5 stated:

> "PEC and Duke have adequately addressed the issues raised by SACE and NC WARN in this proceeding including the proper evaluation of EE and demand-side management (DSM) resources, least cost portfolio selection, peak demand and energy growth projections, baseload requirements, the cost of new nuclear generation, greenhouse gas (GHG)

[10] October 26, 2011 Order Approving 2010 Biennial Integrated Resource Plans and 2010 REPS Compliance Plans, Docket No. E-100, Sub 128.

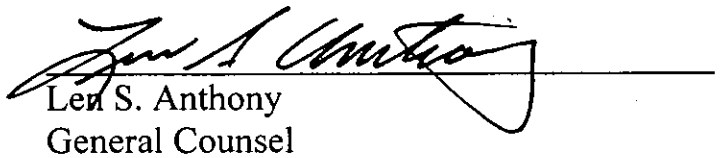
emissions, and the potential economic viability of existing scrubbed coal units."

In that same Order, the Commission found PEC's 2010 IRP to be reasonable and approved it. As stated earlier in these Reply Comments, the 2011 IRP filing is an update to the 2010 biennial IRP filing. SACE has presented nothing new in its most recent Comments to justify any findings or conclusions concerning the 2011 IRP update that are different from those reached by the Commission in its October 26, 2011 Order.

WHEREFORE, PEC requests the Commission accept its Reply Comments in response to the Initial Comments filed in this docket.

Respectfully submitted this 27th day of January, 2012.

PROGRESS ENERGY CAROLINAS, INC.



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STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 128

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:

Investigation of Least Cost Integrated Resource Planning in North Carolina – 2010	))	**CERTIFICATE OF SERVICE**

I, Len S. Anthony, hereby certify that a copy of Progress Energy Carolinas, Inc.'s Reply Comments have been served on all parties by email, hand delivery or depositing said copy in the United States mail, postage prepaid, addressed as follows:

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This the 27th day of January, 2012.

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