

OFFICIAL COPY

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FILED

JUL 01 2016

Clerk's Office
N.C. Utilities Commission

E-2 SUB 1095
E-7 SUB 1100
G-9 SUB 682

June 28, 2016

Re: State of North Carolina *EX REL.* Utilities Commission; Public Staff -
North Carolina Utilities Commission; and Duke Energy Corporation,
Piedmont Natural Gas Co., Inc.

Counsel;

Please find the enclosed Petition for Writ of Mandamus in the above
reference matter that was submitted by U.S. Postal Service to the Clerk of
the Court of Appeals.

Sincerely,



Richard Fireman

FILED

JUL 01 2016

Clerk's Office
N.C. Utilities Commission

NO. _____

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA <i>EX</i>)	
<i>REL.</i> UTILITIES COMMISSION;)	<u>FROM NC UTILITIES</u>
PUBLIC STAFF – NORTH CAROLINA)	<u>COMMISSION</u>
UTILITIES COMMISSION; and DUKE)	<u>DOCKET NO. E-2 SUB 1095</u>
ENERGY CORPORATION, PIEDMONT)	<u>DOCKET NO. E-7 SUB 1100</u>
NATURAL GAS COMPANY, INC)	DOCKET NO. G-9 SUB 682
 Respondent,)	
 Richard Fireman, Petitioner)	

PETITION FOR WRIT OF MANDAMUS,
AND MOTION FOR TEMPORARY STAY

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

NOW COMES the Petitioner, Richard Fireman, who respectfully petitions this Honorable Court, pursuant to Rule 22 of the North Carolina Rules of Appellate Procedure, to issue a Writ of Mandamus, granting the Petitioner the legal right to Intervene in the above referenced Dockets, known hereafter as the Merger.

The Petitioner believes that he has a legal right under N.C. law, Sections 62-90, § 62-91, § 62-92 and Rule R 1- 19 of the N.C. Utilities Commission to ask the Court for a Writ of Mandamus.

In support of this petitions, the Petitioner attaches certified copies of all relevant pleadings and verification of the facts as follows:

STATEMENT OF THE FACTS

1. This controversy surrounds whether the Petitioner has a right to Intervene in the Merger Dockets under N.C. law and regulations.

2. On January 15, 2016, Duke Energy Corporation (Duke) and Piedmont Natural Gas Company, Inc. (Piedmont) (collectively, the Applicants), filed an application pursuant to G.S. 62-111(a) for authorization to engage in a business combination transaction; and to revise and apply Duke Energy Carolinas, LLC's (DEC) and Duke Energy Progress, LLC's (DEP) Regulatory Conditions and Code of Conduct to Piedmont.

3. On March 2, 2016, the NC Utilities Commission issued an Order Scheduling Hearing, Establishing Procedural Deadlines, and Requiring Public Hearing.

4. On May 24, 2016, the Petitioner filed a Petition to Intervene.

5. On May 25, 2016 Duke Energy Corp. and Piedmont Natural Gas filed a response in Opposition to my Petition citing that I had no "real interest in the subject matter of the proceeding."

6. On June 9, 2016 the Chairman of the Commission ruled against the Petitioner, rejecting his Petition to Intervene, citing that the Petitioner did not have the "requisite substantial interest in the proposed Merger."

7. On June 20, the Petitioner requested that the full Commission review his request to Intervene.

8. On June 23, 2016 the full Commission, in its review, denied the Petitioners request to Intervene.

9. An evidentiary hearing on the merits of the merger is scheduled for July 18, 2015.

REASONS WHY WRIT OF MANDAMUS SHOULD BE ISSUED,
GRANTING THE PETITIONER THE RIGHT OF INTEVENTION

1. The Petitioner is a retired Medical Doctor and has been resident of North Carolina for 43 years and has been engaged in energy policy analysis and advocacy for over 25 years. His interest and expertise is neither arbitrary nor frivolous, and centers around protecting the public welfare and health, and the health, productivity, integrity and beauty of the ecosystems of the state per se and for the benefit of its human community.

2. The Petitioner has grandchildren who live in North Carolina and will be directly impacted by the Merger for the duration of their lives.

3. The Petitioner understands the science of climate change and the risks anthropogenic global warming are having and will continue to have on the residents and ecosystems of North Carolina.

4. The Petitioner understands the risks associated with anthropogenic global warming and the dangers those risks present to the people and ecosystems on North Carolina now and into the future.

5. As a Medical Doctor, the Petitioner knows the risks to his patients were enormous if he did not keep current with the science of Medicine. When the Petitioner began the practice of medicine in 1969, coronary artery disease was essentially a non-treatable illness. If in 2016, he used the science and technology of 1969 medicine to treat his patients, he would not only be sued by dissatisfied patients, but would have his license revoked by the NC Board of Medical Examiners.

6. In an analogous manner, the Public Staff of the Utilities Commission must use ALL current science and econometric analysis of risk/cost/ benefit analysis in its evaluation of the proposed Merger.

7. The Petitioner, if allowed to Intervene, will demonstrate, on examination of witnesses from the Public Staff, that their analysis of the Merger is inadequate to the magnitude of risk that the Merger poses for the public and for the integrity of North Carolina's coastal region, general economy and public health, none of which they consider in their inadequate, out of date and narrow conception of costs/benefits and risks in its analysis.

8. There is NO OTHER INTERVENER in the Merger proceedings who is examining the Public Staff's rationale for supporting the Merger, as it has in its Testimony submitted on June 10 and 13, 2016.

9. The Petitioner, although not a direct customer of Duke Energy Corp. or Piedmont Natural Gas, Inc., believes he has substantial interest in the Merger as a matter of Common Law and the Public Trust Doctrine as articulated in the April 8, 2016 ruling by Judge Thomas Coffin in *Juliana v. United States of America*, 2016 WL 1442435 (D.Or. April 8, 2016).

10. The Petitioner believes that it is his duty as a resident of North Carolina to Intervene in the Merger, that if the Merger is allowed to go forward without full professional, independent risk/benefit analysis irrevocable damage to the public, its health and welfare will occur because Duke Energy Corporation's business model of relying on natural gas as a fuel for generating electricity will help accelerate global warming and consequently its disastrous effects on North Carolina and its inhabitants.

11. The Petitioner requests that he be granted the right to present evidence, to call witnesses and subpoena members of the Public Staff.

12. The Petitioner claims that he has no other relief other than the granting of Writ of Mandamus under North Carolina law in order that the intent of the North Carolina Constitution and the Rules and Regulations

establishing the NC Utilities Commission, General Statute: § 62-2, be legally implemented. The Petitioner contends that the Public Staff has abrogated its duty to protect the public interest by its inadequate and out of date analysis by failing to:

- a. promote fair regulation of public utilities in the interest of the public
- b. encourage and promote harmony between public utilities, their users and the environment;
- c. advocating to diversify the resources used to reliably meet the energy needs of consumers in the State.
- d. encourage private investment in renewable energy and energy efficiency
- e. advocating for improved air quality and other benefits to energy consumers and citizens of the State.

The Commission is also abrogating its duties by failing to consider these issues.

13. The Commission and the Public Staff have also failed to consider the proposed merger's impact on our posterity. Such consideration is required by the Preamble to the North Carolina Constitution:

We, the people of the State of North Carolina, grateful to Almighty God, the Sovereign Ruler of Nations, for the preservation of the American Union and the existence of our civil, political and religious liberties, and acknowledging our dependence upon Him for

the continuance of those blessings to us and our **posterity**, do, for the more certain security thereof and for the better government of this State, ordain and establish this Constitution. (emphasis added)

The Constitution was adopted in part to protect our resources for future generations. All laws must be interpreted consistent with this charge.

14. The Petitioner contends that he has no other relief other than this Court granting the Writ of Mandamus and order a Temporary Stay of the Commission's Order denying him the right to Intervene.

CONCLUSION

The Petitioner respectfully requests the Court of Appeals to issue a Writ of Mandamus to the North Carolina Utilities Commission requiring it to allow the Petitioner to intervene.

ATTACHMENTS

Attached to this Petition for consideration by the Court are copies of all documents identified in the Statement of Facts to be reviewed.

<u>Exhibit</u>	<u>Document Title</u>
A	Duke Energy Corp. and Piedmont Natural Gas, Inc.'s application pursuant to G.S. 62-111(a) for authorization to engage in a business combination transaction
B	Order Scheduling Hearing, Establishing Procedural Deadlines, and Requiring Public Hearing
C	Richard Fireman's Petition to Intervene

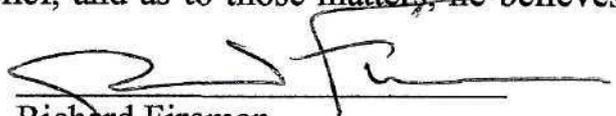
- D Duke Energy Corp. and Piedmont Natural Gas, Inc.'s Opposition to Fireman's Petition to Intervene
- E Fireman's Response to Duke Energy and Piedmont Natural Gas's Objection
- F Chairman of the Commission's ruling against the Petitioner, rejecting his Petition to Intervene
- H Petitioner's request that the full Commission review his request to Intervene
- I Full Commission's review denying the Petitioners request to Intervene.
- J Ruling by Judge Thomas Coffin in Kelsey Julianna et al v. United States of America et al.

State of North Carolina
Buncombe County

VERIFICATION

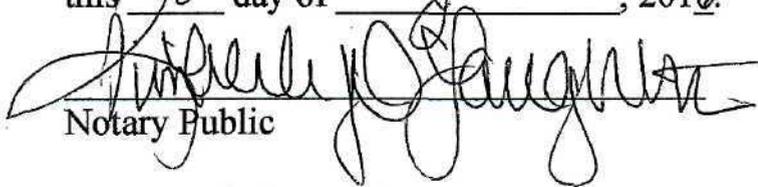
Richard Fireman, being duly sworn, deposes and says:

That the contents of the foregoing Petition for Writ of Mandamus and Motion for Temporary Stay are true to his own knowledge, except as to those matters stated on information and belief, and as to those matters, ~~he~~ believes them to be true.


Richard Fireman

Sworn to and subscribed before me,

this 28 day of June, 2016.


Notary Public

My commission expires:

9-10-17

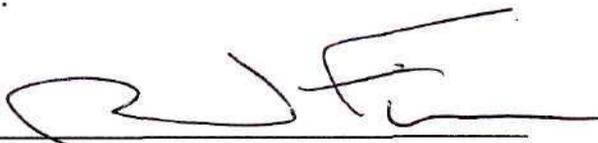


CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing PETITION FOR WRIT MANDAMUS AND MOTION FOR TEMPORARY STAY was served on the following parties to this action, pursuant to Appellate Rule 26, by depositing the same enclosed in a postpaid, properly addressed wrapper in a Post Office or official depository under the exclusive care and custody of the United States Post Office Department to:

Gail L. Mount, Chief Clerk of the NC Utilities Commission
Sam Watson, General Counsel of the NC Utilities Commission this for the
Antoinette Wike, Chief Counsel Public Staff of the NC Utilities Commission;
Lawrence B. Somers, General Counsel Duke Energy Corporation
James H. Jeffries, IV, Piedmont Natural Gas, Inc
John J Finnigan, Jr., Environmental Defense Fund
Reggie Wallace, Fayetteville Public Works Department
James P. West, West Law Offices
Sharon Miller, Carolina Utility Customers Assoc.
John Runkle, NC WARN
Daniel Higgins, Burns Day and Presnell, P.A.
Robert Page, Crisp, Page & Currin, LLP

This the 28 day of June, 2016.


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