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October 30, 2015

**VIA ELECTRONIC FILING**

Gail L. Mount  
Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, North Carolina 27699-4300

**Re: Comments of Duke Energy Carolinas, LLC and Duke Energy  
Progress, LLC in Opposition to NC WARN's Request for Declaratory  
Judgment  
Docket No. SP-100, Sub 31**

Dear Ms. Mount:

Pursuant to the Commission's September 30, 2015 *Order Requesting Comments*, I enclose the Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC in Opposition to NC WARN's Request for Declaratory Judgment for filing in connection with the referenced matter.

Thank you for your attention to this matter. If you have any questions, please let me know.

Sincerely,  
A handwritten signature in black ink, appearing to read 'Lawrence B. Somers', written over the word 'Sincerely,'.

Lawrence B. Somers

Enclosure

cc: Parties of Record

OFFICIAL COPY

Oct 30 2015

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. SP-100, SUB 31

In the Matter of	)	
	)	
Petition by North Carolina Waste	)	<b>COMMENTS OF DUKE</b>
Awareness and Reduction Network	)	<b>ENERGY CAROLINAS, LLC</b>
for a Declaratory Ruling Regarding	)	<b>AND DUKE ENERGY</b>
Solar Facility Financing Arrangements	)	<b>PROGRESS, LLC</b>
and Status as a Public Utility	)	<b>IN OPPOSITION TO NC</b>
	)	<b>WARN’S REQUEST FOR</b>
	)	<b>DECLARATORY RULING</b>

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NOW COME Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (collectively the “Companies”), pursuant to North Carolina Utilities Commission (“Commission”) Rule R1-7 and the Commission’s September 30, 2015 *Order Requesting Comments* (“Order”) and hereby submit these Comments in opposition to the North Carolina Waste Awareness and Reduction Network’s (“NC WARN”) June 17, 2015 Request for Declaratory Ruling (“Request”).

**INTRODUCTION**

It is ironic that NC WARN, an anti-utility advocacy group, has asked the Commission for exemption from any regulation when it has admitted to acting unlawfully as an unauthorized and unregulated utility itself. It is clear that North Carolina law, North Carolina Supreme Court precedent, and this Commission’s past orders all unequivocally prohibit NC WARN from doing what it is now doing. Instead of waiting for the Commission to rule upon the legality of its scheme, however, NC WARN has already admitted to generating and selling electricity to its chosen customer. NC WARN’s Request must be rejected and its blatant disregard for the law and this Commission’s authority should not be condoned.

## BACKGROUND

On June 17, 2015, NC WARN filed its Request, in which it states that it has installed a 5.2 kW electric generation facility at a Duke Energy Carolinas' customer location in Greensboro ("Greensboro customer") and executed a purchase power agreement ("PPA") pursuant to which it will sell the electricity NC WARN will generate to the customer. The PPA, already executed seven months earlier on December 19, 2014, provides that NC WARN will own, install, and maintain the generation facility, and in exchange the Greensboro customer "will purchase electricity produced by the system at a rate as determined in this agreement." (Request at ¶ 6; PPA at p.1). NC WARN characterizes its scheme to recover the cost of the installation and maintenance of its generation facility as a "funding mechanism," which it readily admits, however, is simply "the sale of electricity from the owner of a PV system to the owner of the property on which it is installed." (Request at ¶ 11). In its Request, NC WARN also states that the Greensboro customer will pay NC WARN monthly for the electricity generated by NC WARN, "with a portion of the cost supported by NC WARN." (*Id.* at ¶ 6). NC WARN states that it will also sell excess generation to Duke Energy Carolinas through its net metering tariff. (*Id.* at ¶1; PPA at p. 1, 3-4). NC WARN states that its scheme "could potentially generate a revolving revenue stream and allow NC WARN to provide similar projects to other" NC WARN electric customers in the future. (*Id.*). NC WARN notes that its scheme "may be restricted under NC law," and that if the Commission or applicable court determines that NC WARN cannot sell the electricity generated to the Greensboro customer, NC WARN will donate the electric generation system to the Greensboro customer. (*Id.* at ¶ 11; ¶7).

At the time of its June 17, 2015 Request, NC WARN noted that its electric generation facility was awaiting final interconnection approval from DEC. (Id. at ¶ 1). In response, DEC notified NC WARN by June 23, 2015 correspondence (attached hereto as DEC Exhibit 1) that NC WARN's proposed sale of electricity to the Greensboro customer or to any third party is expressly prohibited by North Carolina law, but that in light of NC WARN's stated intention to donate the generation facility to the customer if its Request were denied, DEC would continue to process the interconnection request in order not to inconvenience the Greensboro customer. DEC further notified NC WARN that its interconnection of the NC WARN generation system should in no way be construed as DEC's approval of NC WARN's proposed unlawful activity, which NC WARN acknowledged by its June 24, 2015 return correspondence (attached as DEC Exhibit 2). On September 18, 2015, NC WARN filed a Report with the Commission, which states that NC WARN has already begun the unlawful generation and sale of electricity, and has invoiced the Greensboro customer for electricity produced during the June 30, 2015 through August 27, 2015 billing period in the total amount of \$76.49, including tax.

In its September 30, 2015 Order Requesting Comments, the Commission asked that the parties address the following questions in their comments:

1. Does the Commission have the express legal authority to allow third-party sales of Commission regulated electric utility services? If so, please provide a citation to all such legal authority.

2. If the Commission has the authority to allow third-party sales of regulated electric utility service, should the Commission approve such sales by all entities desiring to engage in such sales, or limit third-party sales authority to non-profit organizations?

3. What authority, if any, does the Commission have to regulate the electric rates and other terms of electric service provided by a third-party seller?

4. To the extent that the Commission is without authority to authorize third-party sales or to the extent the Commission's express authorization is required before third-party sales may be initiated, what action should the Commission take in response to NC WARN's sales in this docket?

### COMMENTS

#### **I. The Commission Does Not Have the Legal Authority to Allow Third-Party Sales of Commission Regulated Electric Utility Services.**

Third-party sales of electricity such as those in which NC WARN engages are plainly prohibited under North Carolina law. As recently as January 27, 2015, this Commission reiterated the law in response to a specific request by the Southern Environmental Law Center that the Commission “clarify that Chapter 62 does not prohibit power purchase agreements between utility customers and non-utility solar installers,” and held as follows:

*The Commission disagrees with the SELC that Chapter 62 allows for power purchase agreements between utility customers and non-utility solar installers. Rather, the Commission concludes that Chapter 62 of the North Carolina General Statutes prohibits third-party sales of electricity by non-utility solar installers to retail customers.*

*Order Approving Pilot Programs* in Docket No. E-100, Sub 90, p. 3 (emphasis added).

Despite this clear and recent ruling by the Commission that North Carolina law prohibits third-party sales of electricity, NC WARN nonetheless knowingly chose to engage in its unlawful activity.

NC WARN has chosen to act as a “public utility” under North Carolina law, despite no authority to do so. Public utility is defined in N.C. Gen. Stat. §62-3(23)a.1. as follows:

"Public utility" means a person owning or operating in this State equipment or facilities for (1) Producing, generating, transmitting, delivering or furnishing electricity . . . for the production of light . . . to or

for the public for compensation; provided, however, that the term "public utility" shall not include persons who construct or operate an electric generating facility, the primary purpose of which facility is for such person's own use and not for the primary purpose of producing electricity . . . for sale to or for the public for compensation.

Further, N.C. Gen. Stat. §62-110 (a) provides that “no public utility shall . . . begin the construction or operation of any utility plan or system . . . without first obtaining from the Commission a certificate that the public convenience and necessity requires, or will require such construction, acquisition or operation.” NC WARN has no such certificate.<sup>1</sup> In its Request and Report, NC WARN has admitted to constructing, owning and operating equipment in North Carolina for producing, generating, delivering, and furnishing electricity to or for the public for compensation and has therefore unlawfully and willfully acted as a public utility. In its Request, NC WARN says that its “primary argument” that it is not a public utility under N.C. Gen. Stat. §62-3(23) is that it has not engaged in sales “to or for the public,” but rather, in this instance at least, to a single chosen customer. (Request at ¶ 15). However, this exact argument was rejected by the North Carolina Supreme Court in *State ex rel. Utilities Com. v. Simpson*, 295 N.C. 519, 246 S.E.2d 753 (1978).

In *Simpson*, a doctor provided a two-way radio service for ten customers in his county medical society and argued that such an offering was only to a small number and could in no way be deemed “to or for the public.” In holding that the doctor in *Simpson* was acting as a public utility and subject to regulation by the Commission, the Court held that “the public does not mean everybody all the time.” *Id.* at 522, 246 S.E.2d at 755. The

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<sup>1</sup> N.C. Gen. Stat. §62-110.1(g) exempts nonutility-owned renewable generation facilities under 2 MW from the CPCN requirement. As is this case here, however, NC WARN is acting as a public utility.

Supreme Court further explained the statutory definition in N.C. Gen. Stat § 62-30 as follows,

one offers service to the "public" when he holds himself out as willing to serve all who apply up to the capacity of his facilities. It is immaterial, in this connection, that his service is limited to a specified area and his facilities are limited in capacity. For example, the operator of a single vehicle within a single community may be a common carrier.

*Id.* at 520, 246 S.E.2d at 754. Similarly, NC WARN has held itself out as willing to serve all who apply up to the 5.2 kW capacity of its facilities, has already generated and sold electricity to the Greensboro customer, and is therefore selling to or for the public for compensation.

**A. The Commission Does Not Have the Authority to Allow Third-Party Sales of Regulated Electric Utility Service and Cannot Approve Such Sales Even to a Limited Class of Users Such as Non-Profit Organizations.**

NC WARN further states that it intends to expand its public utility service to sell electricity “only to self-selected non-profit organizations,” but does not intend to sell electricity to “all of Duke Energy’s customers” (Request at ¶ 20), and therefore argues that selling electricity to this separate class of customers under its scheme should not be considered for or to the public. Again, however, the Supreme Court in *Simpson* rejected such an argument. The Supreme Court held that the regulated industry at issue had users who fell into definable classes and that, “Were a definition of public adopted that allowed prospective offerors of services to approach these separate classes without falling under the statute, the industry could easily shift from a regulated to a largely unregulated one.” *Id.* at 525, 246 S.E.2d at 757. Likewise, here, if NC WARN were allowed to generate and sell electricity to the class of non-profit organizations, of which there are clearly many in North Carolina, what would prevent NC WARN from attempting to provide

utility service to another class of Duke Energy Carolinas or Duke Energy Progress customers? Indeed, other entities could begin selling electricity to other separate classes under the guise that each separate class was not in and of itself “the public.” The Supreme Court clearly addressed this issue in *Simpson*, and NC WARN’s request here, if allowed contrary to North Carolina law, could shift the electric industry “from a regulated to a largely unregulated one.” North Carolina law does not define utility services based on the specific classification of a customer. A customer is not exempted from the law or excluded as a member of the using and consuming public simply because it operates as a non-profit organization.

Importantly, in setting forth the judicial framework to determine what is for the “public,” the Supreme Court in *Simpson* held that, “The meaning of ‘public’ must in the final analysis be such as will, in the context of the regulatory circumstances, . . . accomplish the legislature's purpose and comport with its public policy.” *Id.* at 524, 246 S.E.2d 756-57. N.C. Gen. Stat. §62-2(a)(2) declares as the policy of the State of North Carolina, “To promote the inherent advantage of regulated public utilities.” The Supreme Court and this Commission have explained that the public policy basis of the requirement of a certificate of public convenience and necessity to engage in public utility activities “is the adoption, by the General Assembly, of the policy that, nothing else appearing, the public is better served by a regulated monopoly than by competing suppliers of the service.” *State ex re. Utilities Commission v. Carolina Tel. & Tel. Co.*, 267 N.C. 257, 271, 148 S.E.2d 100, 111 (1986) (“*CT&T*”); *In the Matter of Request for a Declaratory Ruling by National Spinning Company, Inc. and Wayne S. Leary, d/b/a Leary’s Consultative Services*, Docket No. SP-100, Sub 7, *Order Denying Petition for*



*Declaratory Ruling* at p. 5 (April 22, 1996). In the regulated electric public utility industry, this policy is further expressed in the Territorial Assignment Act of 1965. *National Spinning, Id.* Here, Duke Energy Carolinas has the exclusive right under North Carolina law, consistent with State policy, as the regulated public utility to serve the Greensboro customer. As part of the regulatory compact, Duke Energy Carolinas is granted the exclusive franchise to serve customers within its assigned service territory, and with that comes the obligation to serve all customers at rates and service requirements set by the Commission. NC WARN on the other hand, wants to serve only the customers it chooses at whatever rates and under whatever service requirements (if any) it alone wants, without any oversight by the Commission, Public Staff or Attorney General's Office. NC WARN's attempt to deregulate North Carolina's electric public utility industry, via a declaratory judgment request is contrary to the stated public policy of North Carolina, is beyond the Commission's authority and simply cannot be allowed.

In its Request, NC WARN cites two Commission decisions, *National Spinning* and *Progress Solar Investments*,<sup>2</sup> but each of these Commission decisions further demonstrates that NC WARN's Request has no merit. In *National Spinning*, the Commission considered a declaratory request that the proposed construction and operation of a renewables-fueled electric and steam generation facility at a DEP industrial customer by a renewables developer did not render the customer or renewables developer a public utility. In part, the proposed renewables developer ownership and operation scheme at issue in *National Spinning* was devised as a funding mechanism to qualify for

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<sup>2</sup> *In the Matter of Request by Progress Solar Investments, LLC and Progress Solar Solutions, LLC for a Determination that their Proposed Activities Would Not Cause them to be Regarded as Public Utilities under G.S. 62-3(23)*, Docket No. SP-100, Sub 24, *Order on Request for Determination of Public Utility Status* (November 25, 2009).

certain federal tax credits. *National Spinning* at p. 4. The Commission applied the *Simpson* and *CT&T* cases in denying the declaratory request and holding that the proposed arrangement was prohibited public utility activity under the N.C. Gen. Stat. §62-3(23)a1. *Id.* at 4-7. The Commission also held that the *Simpson* “slippery slope” concern, discussed *supra*, equally applied to the declaratory request in *National Spinning* in emphasizing the following:

If the Commission were to allow Petitioners to perform the activities proposed herein, other suppliers and customers will inevitably seek similar arrangements. . . . New, unregulated electric suppliers could ‘cherry pick’ the electric utilities’ best customers, leaving them with significant stranded investment. The rates that must be charged to the remaining residential, commercial and smaller industrial customers, who are not in a position to install turbine generators and purchase generation steam, would be impacted. The ultimate result could be a windfall for a relatively small number of large industries, at the expense of other customers.

*Id.* at p. 7. Likewise, NC WARN’s Request here is fraught with the same flaws and perils and must also be denied.

The declaratory ruling request in *Progress Solar Investments* involved the proposed provision of outdoor solar lighting service on the property of a landowner or leaseholder at a fixed monthly fee that included maintenance. Under the proposal, “No generation or sale of electricity will occur, and the amount of the payment will not vary based upon the amount of illumination created by the system.” *Progress Solar Investments* at pp. 1-2. In concluding that the proposal at issue would not cause Progress Solar Investments or Progress Solar Solutions to be considered a public utility under N.C. Gen. Stat. §62-3(23)a.1. or the Commission’s rules and regulations, the Commission held that, “Unlike steam and piped gas, the light produced by the solar lighting systems cannot be used to generate electricity and thus be used indirectly to bypass the electric utilities’

exclusive franchises.” *Id.* at p. 3. In stark contrast, however, NC WARN’s Request involves the direct generation and sale of electricity to the Greensboro customer at variable rates based upon the electricity consumed and, thus, involves the provision of public utility services.

Finally, NC WARN cites the Iowa case of *SZ Enters., LLC v. Iowa Utils. Bd.*, 850 N.W.2d 441 (Iowa 2014), where the Iowa Supreme Court, interpreting Iowa statutes and applying a 1950 Arizona Supreme Court eight-factor test, affirmed the reversal of the Iowa Utilities Board’s (“IUB”) decision that the construction, operation and sale of electricity from a solar energy system by a non-utility was prohibited. The *SZ Enters.* case is irrelevant, however, because it is based upon Iowa law and precedent, which is contrary to North Carolina law and precedent. In that case the Iowa Supreme Court adopted a standard of review that gave little deference to the decision of the IUB and differs from the standard of review in North Carolina. The case also cites a Florida decision, *PW Ventures, Inc. v. Nichols*, 533 So.2d 281 (Fla. 1988), which reaches a different result. The Iowa case also acknowledges the existence of a legislative solution, which is inapplicable here.<sup>3</sup> As such, the Iowa case offers no valid support for NC WARN’s Request, and NC WARN’s sale of electricity violates North Carolina law.

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<sup>3</sup> NC WARN references legislation, H. 245, which would have legalized certain third-party sales arrangements. This bill did not advance out of committee, however, in the North Carolina General Assembly’s 2015 Session. Likewise Senate Bill 513, Edition 6, contained a provision that would have created an Economic Development Study Committee to consider, *inter alia*, whether North Carolina law should be changed to allow for some types of renewable third-party sales, but this study bill provision was removed before the bill was passed.

## II. The Commission Has Authority to Regulate the Electric Rates and Other Terms of Service Provided by a Third-Party Seller.

In general, under the *de facto* utility doctrine, the Commission has authority to regulate an entity that has unlawfully acted as a public utility without a certificate of public convenience and necessity. The Court of Appeals has held that, “If an entity is, in fact, operating as a public utility, it is subject to the regulatory powers of the Commission notwithstanding the fact that it has failed to comply with G.S. 62-110 before beginning its operation.” *State ex rel. Utilities Commission v. Mackie*, 79 N.C. App. 19, 32, 338 S.E.2d 888 (1986), *mod. and aff’d*, 318 N.C. 686, 351 S.E.2d 289 (1987). For example, the Commission has applied the *de facto* utility doctrine to regulate water providers,<sup>4</sup> electric resellers,<sup>5</sup> and common carriers of household goods<sup>6</sup> that acted, as NC WARN has here, as a public utility without authorization.

### A. The Commission Should Issue a Cease and Desist Order to NC WARN, Require NC WARN to Refund Payments to the Greensboro Customer, and Issue Civil Penalties and Other Appropriate Sanctions For Its Willful and Unlawful Acts as a De Facto Public Utility.

It is clear that NC WARN was aware that its generation and sale of electricity to the Greensboro customer violates North Carolina law and Commission precedent, yet it willfully chose to act in disregard of this Commission’s authority. NC WARN is represented by counsel and regularly participates as a party in Commission proceedings.

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<sup>4</sup> *see e.g.*, *State ex rel. Utilities Commission v. Carolina Water Serv.*, 165 N.C. App. 163, 598 S.E.2d 179 (2004); *State ex rel. Utilities Commission v. Buck Island, Inc.*, 162 N.C. App. 568, 592 S.E.2d 244 (2004),

<sup>5</sup> *In the Matter of Public Staff– North Carolina Utilities Commission v. Campus-Raleigh, LLC and Campus Apartments, LLC*, Docket No. M-89, Sub 8, *Order Determining Utility Status, Denying Request for Declaratory Ruling, Requiring the Cessation of Unlawful Charges for Utility Service, and Requiring Refunds* (June 1, 2012)

<sup>6</sup> *E.g.*, *In the Matter of Application for Certificate of Exemption to Transport Household Goods by Desi Ernesto Zerpa, d/b/a Metro Move*, Docket No. T-4463, Sub 0, *Order Denying Application for Certificate of Exemption and Assessing Civil Penalties* (June 28, 2013).

Despite its obligation to comply with the law and Commission authority, NC WARN entered into the PPA on December 19, 2014 in furtherance of its unlawful scheme; NC WARN issued press releases and touted its unlawful activities on its website;<sup>7</sup> NC WARN filed its Request on June 17, 2015; NC WARN was notified in writing by DEC of the unlawfulness of its intended activities on June 23, 2015; and yet rather than awaiting a Commission ruling on its Request, proceeded to willfully and unlawfully generate and sell electricity to a third party beginning on or about June 30, 2015, and, upon information and belief, has continued to unlawfully provide electric utility service to the Greensboro customer each day since and continuing to the present. The Commission should issue a cease and desist order to NC WARN to prevent it from acting as a public utility and require it to refund the Greensboro customer for its unlawful gain from the sales of electricity. Furthermore, N.C. Gen. Stat. §62-310 provides that the Commission is authorized to enforce public utility violations of the provisions of Chapter 62 of the North Carolina General Statutes or refusal to comply with its rules, orders or regulations by recovering:

a sum up to one thousand dollars (\$1,000) for each offense. Each day the public utility continues to violate any applicable provision will be deemed a new and separate offense.

The Commission has assessed civil penalties to other *de facto* utilities and, the Companies respectfully assert that the Commission should likewise sanction NC WARN here for its willful violation of the provisions of Chapter 62 and Commission rules, orders and regulations. *See Order Denying Application for Certificate of Exemption and Assessing Civil Penalties*, Docket No. T-4463, Sub 0 (June 28, 2013); *Order Ruling on*

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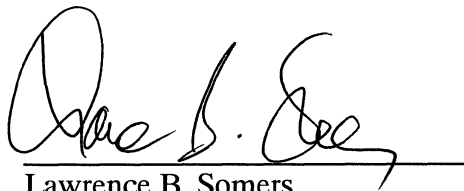
<sup>7</sup> See <http://www.ncwarn.org/solarfreedom/>

*Complaint and Show Cause Proceedings*, Docket No. T-4418, Sub 0 (July 13, 2012); *Recommended Order Dismissing Complaint and Ruling on Show Cause Proceeding*, Docket No. T-4445, Sub 2 (September 26, 2012); *Order to Cease and Desist and to Assess Penalties*, Docket No. T-4422, Sub 0 (July 27, 2009).

### **CONCLUSION**

WHEREFORE, for all the foregoing reasons, Duke Energy Carolinas and Duke Energy Progress respectfully request that the Commission deny NC WARN's Request, determine that the actions of NC WARN should be deemed to be that of a "public utility" in accordance with N.C. Gen. Stat §62-3(23), issue a cease and desist order to NC WARN, and assess civil penalties or other appropriate sanctions against NC WARN and grant such other further relief as the Commission deems just, equitable and proper.

This the 30<sup>th</sup> day of October, 2015.



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*Counsel for Duke Energy Carolinas and  
Duke Energy Progress*



DEC Exhibit 1  
Docket No. SP-100, Sub 31  
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June 23, 2015

**VIA E-Mail and U.S. Mail**

John D. Runkle  
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**RE: NC WARN's Request for Declaratory Ruling  
Docket No. SP-100, Sub 31; and  
Interconnection Request # 9240  
Faith Community Church  
417 Arlington Street, Greensboro, North Carolina**

Dear John:

I write on behalf of Duke Energy Carolinas, LLC ("Duke Energy Carolinas") regarding NC WARN's Request for Declaratory Ruling filed June 17, 2015, in connection with the referenced matter. NC WARN's filing with the North Carolina Utilities Commission ("Commission") states that NC WARN intends to generate and sell electricity to Faith Community Church through a 5.2 kW solar photovoltaic system that NC WARN has installed on the church's roof (the "Generation Facility"), and which has a pending interconnection request to Duke Energy Carolinas.

NC WARN's June 17, 2015 filing with the Commission was the first notice provided by NC WARN to Duke Energy Carolinas that NC WARN intends to sell electricity from the Generation Facility to Faith Community Church. Please be advised that any sale of electricity by NC WARN to Faith Community Church, or to any third party, is expressly prohibited by Chapter 62 of the North Carolina General Statutes and applicable court and Commission precedent.

In its filing, NC WARN states that it intends to donate the Generation Facility to Faith Community Church should its declaratory judgment request be denied. In order to not inconvenience Faith Community Church in the ultimate timely operation of the Generation Facility, Duke Energy Carolinas will continue to process the referenced interconnection request, because that is a separate issue from NC WARN's stated intentions to engage in the unlawful provision of unregulated public utility service. Any interconnection ultimately completed for the Generation Facility should in no way be

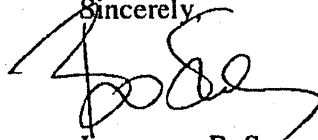
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construed as Duke Energy Carolinas' approval of NC WARN's proposed unlawful activity. Duke Energy Carolinas will assert its legal service rights in future filings with the Commission.

Thank you for your attention to this matter. If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Somers", written over the word "Sincerely,".

Lawrence B. Somers



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June 24, 2015

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Deputy General Counsel  
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Raleigh, NC 27602

RE: NC WARN's Request for Declaratory Ruling  
Docket No. SP-100, Sub 31; and  
Interconnection Request # 9240  
Faith Community Church, Greensboro, NC

Dear Bo:

I appreciate your letter of June 23 presenting Duke Energy's position on NC WARN's request for declaratory ruling. As outlined in the request, NC WARN believes its providing financing to the Church for the solar system is permissible, so it disagrees with your position that any sale of electricity to anyone else is expressly prohibited and unlawful.

Having said that, we appreciate Duke Energy's commitment to promptly inspect and interconnect the system so as not to inconvenience the Church. In setting forth the funding scheme in the power purchase agreement, we have tried to reduce all liabilities to the Church, and as you noted, have put the interconnection on a separate track. I will pass your letter on to NC WARN, the Church officials, and our contractors.

NC WARN will not construe Duke Energy's cooperation with the Church as approval of the activities outlined in the request, nor will we assert that in any proceedings on this manner.

If you have any questions or wish to discuss further, let me know.

Sincerely,

*/s/ John D. Runkle*

John D. Runkle

## CERTIFICATE OF SERVICE

I certify that a copy of the Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC in Opposition to NC WARN's Request for Declaratory Judgment in Docket No. SP-100, Sub 31 has been served by electronic mail (e-mail), hand delivery, or by depositing a copy in the United States Mail, first class postage prepaid, properly addressed to the following parties of record:

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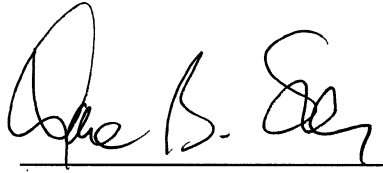
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This, the 30<sup>th</sup> day of October, 2015.

A handwritten signature in black ink, appearing to read "Lawrence B. Somers", written over a horizontal line.

Lawrence B. Somers  
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