

**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 Certificate of Public Convenience                )  
and Necessity To Construct a 752-MW                )  
Natural Gas-Fueled Electric Generation             )  
Facility in Buncombe County Near the                )  
City of Asheville    )

ORDER DENYING NC WARN AND  
THE CLIMATE TIMES' MOTION FOR  
AN EVIDENTIARY HEARING

BY THE CHAIRMAN: On December 16, 2015, Duke Energy Progress, LLC (DEP), filed a letter in the above-captioned docket giving notice of its intent to file an application on or after January 15, 2016, for a certificate of public convenience and necessity to construct a 752 MW natural gas-fueled electric generation facility consisting of two new natural gas-fueled 280 MW (winter rating) combined cycle units and a natural gas-fueled 192 MW (winter rating) simple cycle combustion turbine unit, each with fuel back up, in Buncombe County near the City of Asheville. In its letter, DEP states, "The Western Carolinas Modernization Project will enable the early retirement of the 379 MW (winter rating) Asheville 1 and 2 coal units on or before the commercial operation of the new combined cycle units, thereby permanently ceasing operations of all coal-fired units at the site." The notice of intent was filed pursuant to Session Law 2115-110.

On December 18, 2015, the Chairman issued an Order Scheduling Public Hearing and Requesting Investigation and Report by the Public Staff. In the order, the Chairman cited to Session Law 2115-110 which provides, in pertinent part:

Notwithstanding G.S. 62-110.1, the Commission shall provide an expedited decision on an application for a certificate to construct a generating facility that uses natural gas as the primary fuel if the application meets the requirements of this section. A public utility shall provide written notice to the Commission of the date the utility intends to file an application under this section no less than 30 days prior to the submission of the application. When the public utility applies for a certificate as provided in this section, it shall submit to the Commission an estimate of the costs of construction of the gas-fired generating unit in such detail as the Commission may require. G.S. 62-110.1(e) and G.S. 62-82(a) shall not apply to a certificate applied for under this section. The Commission shall hold a single public hearing on the application applied for under this section and require the applicant to publish a single notice of the public hearing in a newspaper of general circulation in Buncombe County. The Commission shall render its decision

on an application for a certificate, including any related transmission line located on the site of the new generation facility, within 45 days of the date the application is filed if all of the following apply:

- (1) The application for a certificate is for a generating facility to be constructed at the site of the Asheville Steam Electric Generating Plant located in Buncombe County.
- (2) The public utility will permanently cease operations of all coal-fired generating units at the site on or before the commercial operation of the generating unit that is the subject of the certificate application.
- (3) The new natural gas-fired generating facility has no more than twice the generation capacity as the coal-fired generating units to be retired.

The Chairman reasoned that in light of the 45-day decision-making deadline, good cause existed to schedule the required public hearing. The Chairman further found good cause to require the Public Staff – North Carolina Utilities Commission (Public Staff) to investigate the application and present its findings, conclusions, and recommendations to the Commission at its Regular Staff Conference on February 22, 2016.

On December 21, 2015, NC WARN and The Climate Times (Movants) filed a motion for an evidentiary hearing or, in the alternative, to deny the application as incomplete and insufficient until an evidentiary hearing is held. In the motion, the Movants assert that the Commission, Public Staff, and any intervening party will not have the opportunity to review the application in any meaningful way if the Commission decides the matter within 45 days from the filing of the application. The Movants argue that until a full evidentiary hearing is held, the Commission will not be able to come to any reasoned decision of whether the project is in the public convenience and necessary. Without citing any authority, the Movants assert that the Commission should interpret the statute so that the Commission finds DEP's application incomplete until it can complete a full evidentiary hearing.

In support of their request, the Movants state that in typical CPCN applications, the utility presents evidence subject to cross-examination, and that in controversial projects the evidentiary hearings can last days or weeks and result in comprehensive orders. The Movants predict that this application will be a controversial project. Lastly, the Movants urge the Commission to look at the full cost of the proposed project, to question the need for a 752-MW natural gas-fueled plant in the Asheville area, and to consider that natural gas prices may not remain low.

On December 31, 2015, DEP filed a response to the Movants' motion for an evidentiary hearing, wherein DEP requests that the Commission reject the Movants' motion. In support of its response, DEP states that Session Law 2015-110 directs that "the Commission shall provide an expedited decision on an application for a certificate to construct a generating facility" that meet certain requirements pursuant to the session

law. DEP further states that Session Law 2015-110 dictates that “G.S. 62-110.1(e) and G.S. 62-82(a) shall not apply to a certificate applied for under this section.” Lastly, DEP cites to the requirement in Session Law 2015-110 that the “Commission shall hold a single public hearing” and “publish a single notice of the public hearing” in a newspaper of general circulation in Buncombe County.

DEP argues that the language of Session Law 2015-110 is clear that the General Assembly intended an expedited review process for any application meeting the stated requirements of the session law. DEP contends that the Movants have provided no justification for their request that the Commission ignore the express instructions of the General Assembly. DEP further states that the Commission does not have the authority to disregard the General Assembly’s directive. As for the Movants’ contention that 45 days is not long enough to investigate and make a reasoned decision, DEP again states no evidence exists to support this claim. The Public Staff has not indicated that it is unable to conduct its investigation within the time frame set forth by the Commission. Thus, DEP urges the Commission to deny the Movants’ request for an evidentiary hearing.

The Chairman agrees with DEP that Session Law 2015-110 directs the Commission to “provide an expedited decision” when an application meets certain requirements. Session Law 2015-110 explicitly states that G.S. 62-82(a), which provides for a special procedure on the application for a certificate to construct a generating facility, shall not apply. These special procedures include, among other things, notice of the application, the requirement for and timing of an evidentiary hearing, the timing for transcripts, as well as deadlines for briefs and oral arguments. By stating that G.S. 62-82(a) does not apply, the General Assembly directed the Commission to follow the expedited procedure set forth in Session Law 2015-110 rather than the procedure generally applicable in the case of such applications. The Movants have cited no authority and provided no precedent for the Commission to ignore the requirements of Session Law 2015-110 and the Chairman disagrees with the Movants that the Commission is required to do so.

Session Law 2015-110 provides for a single public hearing. The Commission has scheduled such hearing for public testimony on January 26, 2016, at 7:00 p.m. in Asheville at the Buncombe County Courthouse. If the Commission were to grant the Movants’ request for an evidentiary hearing, the Commission would not be able to follow the General Assembly’s directive to provide an expedited decision within 45 days because, as the Movants’ note, an evidentiary hearing in a contested CPCN case can take weeks. Cognizant of this fact, the General Assembly directed the Commission to render an expedited decision in this case following only the procedure set forth in Session Law 2015-110 and not the typical notice, hearing, and other procedures set forth in G.S. 62-82(a).

The Movants, without having seen the application, argue that the Commission should interpret the session law to find DEP’s application incomplete so that the Commission may conduct an evidentiary hearing. First, the Commission cannot at this time find the application incomplete because an application has not yet been filed.

Second, to grant the Movants' request to interpret Session Law 2015-110 in such a way as to establish a lengthy evidentiary hearing process would lead to absurd results and counter the plain language of the statute. North Carolina case law has long held that a statute should not be interpreted in such a way that it leads to absurd results. Specifically, our Supreme Court has ruled that:

The legislative will is controlling. A construction which operates to defeat or impair the object of the statute must be avoided if that can reasonably be done without violence to the legislative language. Where possible, the language of the statute will be interpreted so as to avoid an absurd consequence.

State v. Hart, 287 N.C. 76, 80, 213 S.E.2d 291, 295 (1975) (citations omitted). To proceed as suggested by the Movants would frustrate and contravene the specific intent of Session Law 2015-110 that the matter be decided on an expedited basis within 45 days after the application is filed. Rather than now, as the Commission is implementing the law, the opportunity to have obtained the relief that the Movants seek appears to have been at the General Assembly during the passage of Session Law 2015-110 where the expedited process was established.

With respect to the Movants' claim that the Public Staff will not have the opportunity to meaningfully review the application, the Chairman agrees with DEP that the Public Staff has not indicated that it is unable to conduct its investigation within the established time frame. Pursuant to G.S. 62-15(d)(5), the Public Staff has the statutory duty to intervene in all certificate applications filed pursuant to G.S. 62-110.1 and provide assistance to the Commission in making its analysis. Upon request, the Public Staff shall further furnish to the Commission such reports or conduct such investigations as may be reasonably required to carry out the laws of the State. G.S. 62-15(g). The Public Staff, thus, is charged by statute by the General Assembly to represent all members of the using and consuming public, not limited groups with special interests and agendas. The Public Staff, therefore, can speak for itself as to whether it can meaningfully provide the necessary information within the time frame set forth by Session Law 2015-110, and need not rely upon Movants to speak for it.

Finally, the Chairman notes that the present case is similar to the proceeding held in Docket No. E-2, Sub 960 pursuant to G.S. 62-110.1(h), where the Commission considered an application filed by DEP for the construction of a 950 MW natural gas-fueled combined cycle generation facility in Wayne County. As in the present case, the General Assembly in that case provided that the procedures set forth in G.S. 62-82(a) would not apply and directed the Commission to render a decision within 45 days of the date the application was filed. Within this expedited review period, the Public Staff, at the Commission's request, investigated the application and presented its recommendation at the Commission's regular Staff Conference. Also, parties were allowed to intervene and were given an opportunity to be heard at the regular Staff Conference. Just as in that case, the Commission fully intends to comply with the General Assembly's directive for

an expedited decision in the present case, even with the additional requirement of the public hearing in Asheville.

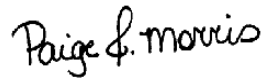
After careful consideration, the Chairman, therefore, concludes that the Movants' motion for an evidentiary hearing or, in the alternative, to deny DEP's application as incomplete until an evidentiary hearing is held should be denied.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 15<sup>th</sup> day of January, 2016.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script that reads "Paige J. Morris".

Paige J. Morris, Deputy Clerk