

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-7, SUB 790

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Duke Energy Carolinas, LLC,)
For Approval for an Electric Generation) ORDER DENYING JOINT
Certificate of Public Convenience and) MOTION TO SUPPLEMENT
Necessity to Construct Two 800-MW State-)
Of-the-Art Coal Units for Cliffside Project)

BY THE COMMISSION: On March 21, 2007, the Commission issued in this docket an Order Granting Certificate of Public Convenience and Necessity with Conditions authorizing the construction by Duke Energy Carolinas, LLC (Duke) of one 800-MW supercritical pulverized coal (SCPC) electric generating facility to be located at the existing Cliffside Steam Station situated on the border of Cleveland and Rutherford Counties, North Carolina, together with related transmission facilities.

On April 20, 2007, Environmental Defense, North Carolina Sustainable Energy Association, North Carolina Waste Awareness and Reduction Network, Southern Alliance for Clean Energy, and Southern Environmental Law Center (Public Intervenors) filed a Joint Motion for Reconsideration of the March 21, 2007 order. Duke filed a Response to Special Interest Groups' Joint Motion for Reconsideration on May 1, 2007. On June 6, 2007, the Commission issued an Order Denying Joint Motion for Reconsideration.

Meanwhile, on May 25, 2007, the Public Intervenors filed a Joint Motion to Supplement Motion for Reconsideration. By this motion, the Public Intervenors put forth new arguments for reconsideration, citing developments that have occurred since issuance of the March 21, 2007 order. The Commission decided to treat this motion to supplement as a second motion for reconsideration and to decide it separately from the Public Intervenors' original motion for reconsideration. The Presiding Commissioner issued an order on May 29, 2007, allowing parties time to respond to the motion to supplement. Duke filed a response on June 4, 2007.

In their motion to supplement, the Public Intervenors put forth three arguments, citing developments that have occurred since issuance of the March 21 certificate order. They cite (1) a Request for Proposals for Renewable Energy Resources (RFP) issued by Duke on April 20, 2007; (2) the Energy Efficiency Plan filed by Duke on May 7, 2007, in Docket No. E-7, Sub 831; and (3) Duke's recently announced plans to change the air pollution control equipment originally designed for the Cliffside unit.

The Public Intervenors argue that Duke's recent RFP could allow the Company to diversify its resource portfolio in favor of renewables instead of conventional generation and could displace a significant portion of the need for the Cliffside unit. They state that the RFP "throws into question [Duke's] stated need for 800 MW of capacity at Cliffside in 2011." They ask that the RFP be admitted into evidence as a late-filed exhibit and that subsequent RFP developments be filed and considered "before making a final decision in this matter." The Public Intervenors next argue that Duke's recently filed Energy Efficiency Plan identifies about 1300 MW of demand reduction that can be achieved by energy efficiency by 2011, the same year in which Duke asserts that it needs 800 MW of baseload capacity at Cliffside. They state that the Plan is a "stark contrast to the Company's assertions throughout the Cliffside proceeding that it could only identify approximately 200 MW of additional energy efficiency resources over the near term." They ask the Commission to take judicial notice of the Plan or admit it as a late-filed exhibit. Finally, the Public Intervenors note that DENR recently postponed a hearing on Duke's application for an air quality permit for the Cliffside unit because Duke plans to change the proposed air pollution control equipment from what was originally designed. They say that this development could affect the cost of the proposed unit and should be taken into account in rendering a decision. They want the DENR announcement admitted as a late-filed exhibit.

The Public Intervenors request that the Commission grant the following relief with respect to the three requested late-filed exhibits:

- A. Require that Duke file the following before making a final decision on the certificate:
 - a. Information regarding the proposals received pursuant to the RFP for renewable energy resources, Duke's analysis and selection of qualifying proposals, and the impact on Duke's resource portfolio from including additional renewable resources from the selected proposals, and
 - b. An updated estimate of the cost of the Cliffside unit, taking into account its proposed changes to the planned air pollution control equipment;
- B. Allow all intervenors the opportunity to comment on the subsequent filings in this docket, and to request additional public and/or evidentiary hearings on issues raised by those submissions; and
- C. Reconsider its decision to approve construction of the Cliffside unit in light of the additional information discussed in the motions for reconsideration and all available updated cost information.

In its response, Duke argues that the Public Intervenors' Joint Motion to Supplement fails to raise any new issues that should be considered by the Commission and that the motion should be promptly denied. Duke states that the motion seeks "nothing more than delay..."

As to its RFP for renewable energy resources, Duke points out that the deadline for bids is not until July 2, 2007, and, therefore, Duke does not yet know

the types or amounts of capacity it may receive to evaluate or even when such resources might be available. To the extent the responses include bids for intermittent resources such as wind and solar, these are not acceptable as baseload alternatives to the Cliffside unit. Duke notes that the Commission considered the viability of renewable resources to replace the Cliffside unit in the March 21, 2007 order and stated, "Duke cannot rely upon DSM and renewables to eliminate or delay its need for additional baseload generating capacity beginning in 2011." Duke further notes that the Commission specifically held that the only viable baseload generation options for Duke in the relevant time frame are natural gas-fired combined cycle or supercritical pulverized coal. Therefore, Duke asserts that the Public Intervenors' argument with respect to the renewables RFP is simply an attempt to delay the construction and should be denied.

Duke filed its Energy Efficiency Plan in Docket No. E-7, Sub 831, on May 7, 2007. Duke argues that the Public Intervenors misunderstand the Plan when they argue that the programs contained in the Plan could eliminate the need for the Cliffside unit. The Plan expressly recognizes that it "does not obviate the need to also build additional generation including the need for the Cliffside modernization project to meet the total anticipated need of 3400 MW by 2012." This 3400 MW of capacity need by 2012 consists of the following (all numbers rounded):

Demand Growth	2500 MW (2006 Annual Plan)
Retirement of Cliffside Units 1-4	200 MW
Retirement of older coal units (as savings realized from new EE)	800 MW
Closure of existing EE programs	+ <u>700 MW</u>
	= 4200 MW needed
	- <u>800 MW</u> Cliffside Unit 6 addition
	= 3400 MW needed

Duke argues that the Public Intervenors' argument that the new energy efficiency programs in the Plan can replace the need for Cliffside is erroneous. Finally, Duke notes that the Commission has already considered whether Duke should wait and conduct additional studies prior to moving forward with Cliffside. In the March 21 order, the Commission held that

... the Commission does not believe that the benefits to be gained from requiring Duke to redo its [DSM] studies outweighs the possible delays and cost increases resulting from the loss of Duke's preliminary arrangements with vendors . . . and concludes that Duke cannot rely upon either DSM measures or additional renewable generation in the short term to eliminate or delay construction of additional supply-side resources.

Finally, with respect to the redesign of the air pollution equipment for the Cliffside unit and the Public Intervenors' fear that this change "may result in

further increased costs,” Duke states that their request for an updated cost estimate is moot because Duke filed an updated cost estimate for the Cliffside project on May 30, 2007. Duke’s filing includes the cost of the redesigned air quality system, and it states

In addition, we modified our air permit application to reflect a single unit, and we continue to refine the Air Quality Control System (AQCS) technology choice associated with the construction of Cliffside Unit 6. We believe our new design of the AQCS will meet or exceed all existing environmental requirements at lower cost than the previously-proposed design. (Emphasis added.)

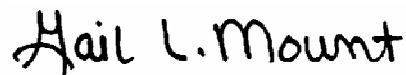
The Commission has carefully considered the motion to supplement and the response. The Commission has treated the motion to supplement as a second motion for reconsideration of the March 21, 2007 order herein, and the Commission concludes that the motion should be denied. Duke’s recent RFP will take months to produce results; the Commission has already considered a similar issue and concluded that Duke cannot rely upon DSM and renewables to eliminate or delay the baseload generating capacity to be provided by Cliffside. Duke’s Energy Efficiency Plan assumes that the Cliffside unit is necessary even if the full energy efficiency potential of the Plan is realized. Finally, with respect to the redesign of the pollution equipment, Duke has already addressed the cost implications of the redesign in filing a cost report required by the March 21 order, and no grounds for reconsideration appear.

IT IS, THEREFORE, ORDERED that the Joint Motion to Supplement Motion for Reconsideration filed herein on May 25, 2007, should be, and hereby is, denied.

ISSUED BY ORDER OF THE COMMISSION.

This the 14th day of June, 2007.

NORTH CAROLINA UTILITIES COMMISSION



Gail L. Mount, Deputy Clerk

Commissioner Robert V. Owens, Jr., votes to deny reconsideration and reaffirms the reasons set forth in his dissent to the March 21, 2007 order.

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