NO. 350A17

SUPREME COURT OF NORTH CAROLINA

****

STATE OF NORTH CAROLINA EX REL. UTILITIES COMMISSION; PUBLIC STAFF—NORTH CAROLINA UTILITIES COMMISSION; DUKE ENERGY CAROLINAS, LLC; DUKE ENERGY PROGRESS, LLC; VIRGINIA ELECTRIC AND POWER COMPANY, d/b/a Dominion North Carolina Power,	)	From the North Carolina Utilities Commission No. SP-100, Sub 31 No. COA 16-811
Appellees,	)	
v.	)	
N.C. WASTE AWARENESS AND REDUCTION NETWORK,	)	
Appellant.	)	

****

BRIEF OF *AMICI CURIAE*

CENTER FOR BIOLOGICAL DIVERSITY, FOOD AND WATER WATCH, FRIENDS OF THE EARTH, GREENPEACE, INC., INSTITUTE FOR LOCAL SELF-RELIANCE

****

INDEX

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

North Carolina Utilities Commission

Other Authorities

ISSUES PRESENTED

1. Whether interpreting the definition of "public utility" to encompass the private contract between NC Waste Awareness and Reduction Network ("NC WARN") and the Faith Community Church ("the Church") would improperly interfere with the parties' constitutional rights to contract?

2. Whether the financing efforts of a small non-profit to encourage renewable energy development for a single entity could threaten the viability of Duke Energy's utility monopoly?

3. Whether the Court of Appeals' broad construction of the "public utility" definition improperly frustrates the legislature's renewable energy expansion policies and objectives?

STATEMENT OF THE CASE

NC WARN – a small North Carolina non-profit seeking to "reduce hazards to public health and the environment from global climate change by promoting energy efficiency and renewable energy resources" – entered into a private financing contract with the Church to allow it to generate renewable electricity on its premises. *See* NC WARN Req. For Decl. Relief (June 17, 2015) ("Decl. R. Req.") at 1-4. Under this solar

financing Power Purchase Agreement ("Solar Financing PPA"), NC WARN agreed to provide upfront capital to install and maintain a 5 kilowatt solar system on the Church's roof, which NC WARN would own and may transfer to the Church after three years. Solar Financing PPA at 1-2. In exchange, the Church agreed to make monthly payments to NC WARN, based on the amount of electricity generated – all of which would further the Church's mission to "striv[e] to be good stewards of God's earth and humble servants of God's people" through using clean, sustainable energy technology. Dec. R. Req. at 2; *see also* Solar Financing PPA.

Duke Energy Progress, LLC and Duke Energy Carolinas, LLC (collectively, "Duke"), subsidiaries of one of the nation's largest utility companies, Duke Energy Corporation, possess a regulated monopoly over the Church's electricity service area.[1] Objecting to NC WARN's contract, Duke argued that allowing NC WARN to support the Church in obtaining solar energy would "lead to a slippery slope" and risk

---

[1] *See* Statista, Largest Gas and Electric Utilities in the U.S. as of April 7, 2017, Based on Market Value (in billion U.S. dollars), https://www.statista.com/statistics/237773/the-largest-electric-utilities-in-the-us-based-on-market-value/ (last visited Nov. 13, 2017).

shifting "the electric industry from a regulated industry to one that is largely unregulated." NCUC Docket No. SP-100, SUB 31, Order Issuing Declaratory Ruling ("NCUC Order"), April 15, 2016 at 11. The North Carolina Utilities Commission ("the Commission") adopted this false premise and declared NC WARN's private contract "impermissible" under the Public Utilities Act ("Act"). *Id.* at 31-32.

In a divided opinion, the Court of Appeals affirmed. *State ex rel. Utils. Comm'n v. N.C. Waste Awareness & Reduction Network*, 2017 N.C. App. LEXIS 759 (2017). Purporting to apply this Court's four-part test in *State ex rel. Utils. Comm'n v. Simpson*, 295 N.C. 519, 246 S.E.2d 753 (N.C.1978), the court found NC WARN's private contract to be "in direct competition" with Duke Energy, thereby jeopardizing Duke's "exclusive right[s]," and on that basis concluded that NC WARN "owns [ ] equipment" that provides electricity "to or for the public for compensation," within the meaning of N.C. GEN. STAT. § 62-3(23)(a)(1) (2017). 2017 N.C. App. LEXIS 759 at *4, 8-10.[2]

---

[2] In *Simpson*, this Court set forth a "flexible" test considering: (a) the nature of the regulated industry; (b) the type of market involved; (c) the kind of competition in that market; and (d) the effect of non-regulation on regulated incumbents, and made clear the test must be

In dissent, Judge Dillon explained that NC WARN's private contract with the Church did not constitute providing electricity to "the public," noting that this Court has never construed this phrase to encompass an agreement with a *single* customer. *Id.* at *12-21. Judge Dillon further observed that the mere fact that NC WARN is recouping its upfront financing at a rate tied to electricity generation does not transform the contract into one "for the public," *Id.,* and recognized that allowing the contract would best serve the legislature's declared policy of supporting renewable energy. *Id.* at *17.

ARGUMENT

I. FINDING NC WARN TO BE A "PUBLIC UTILITY" UNDER THE SOLAR FINANCING PPA WOULD VIOLATE NC WARN'S AND THE CHURCH'S CONSTITUTIONAL RIGHT TO CONTRACT.

A. The State and Federal Constitutions Guarantee The Fundamental Right to Contract.

This Court has long recognized that "freedom of contract is a fundamental constitutional right." *Hlasnick v. Federated Mut. Ins. Co.*, 353 N.C. 240, 243, 539 S.E.2d 274, 276 (2000); *Stephens v. Hicks*, 156 N.C. 239, 245, 72 S.E. 313, 316 (1911). The "freedom of the right to

---

applied to "accomplish the legislature's purpose and comport with its public policy." 295 N.C. at 524, 246 S.E.2d at 757.

contract has been universally considered as guaranteed to every citizen . . . [and] is both a liberty and a property right within the protection of the Fifth and Fourteenth Amendments to the Federal Constitution [] and protected by state constitutions," including Article I, section 17 of the North Carolina Constitution. *Alford v. Textile Ins. Co.*, 248 N.C. 224, 227, 103 S.E.2d 8, 10-11 (1958) (internal quotations omitted).[3]

Under North Carolina law, the legislature may only infringe on the constitutional freedom of contract "in exceptional circumstances." *Alford*, 248 N.C. at 227, 103 S.E.2d at 11. As such, "unless contrary to public policy or prohibited by statute, freedom of contract is a fundamental constitutional right." *Hlasnick*, 353 N.C. at 243, 539 S.E.2d at 276; *see also Fulcher v. Nelson*, 273 N.C. 221, 223, 159 S.E.2d 519, 521 (1968).

B. The Commission's Finding That NC WARN Was Acting As A "Public Utility" Improperly Interferes with NC WARN's And The Church's Constitutional Right To Contract.

---

[3] In the seminal case *Lochner v. New York*, the U.S. Supreme Court held that freedom of contract was a fundamental right under the liberty of the Due Process Clause in the U.S. Constitution's Fifth and Fourteenth Amendments. 198 U.S. 45 (1905).

The Solar Financing PPA constitutes a private contract legally executed in furtherance of NC WARN's and the Church's constitutional right to contract, and thus may only be interfered with in "exceptional circumstances." *Alford*, 248 N.C. at 227, 103 S.E.2d at 11. No such exceptional circumstances exist here.

As noted, under the Solar Financing PPA, NC WARN provided the upfront capital for the Church to finance and install a rooftop solar system. In exchange, the Church repays the upfront capital of the solar system through payments based on the generated electricity at a fixed rate of $0.05 per kWh, which is approximately one-half the price charged by Duke Energy. Solar Financing PPA at 3. As further consideration, both non-profit parties receive the mutual benefits of fulfilling their organizational missions of environmental stewardship and climate change mitigation through enacting clean energy solutions. Decl. R. Req. at 2.

Here, the parties' exercise of their constitutional right to contract may not be abrogated, as it is in derogation of neither public policy nor any statute. *Hlasnick*, 353 N.C. at 243, 539 S.E.2d at 276. Indeed, with respect to public policy, as discussed *infra*, at Section III, the Solar

Financing PPA promotes the state's renewable energy objectives. With respect to statute, contrary to the Commission's view, the Act does not proscribe financing contracts for the installation of solar energy systems. N.C. GEN. STAT. §§ 62-1 *et seq.* (2017) The Solar Financing PPA is a financial contract—akin to an interest-free loan agreement between a customer and a financial institution. It is therefore entirely distinct from a power sales agreement between a customer and a public utility. The Commission has no jurisdiction under the Act or otherwise to infringe on such private financial transactions.[4]

The Commission and Court of Appeals therefore violated the constitutional contract rights of both NC WARN and the Church by finding that NC WARN became a "public utility" upon entering into the Solar Financing PPA. "In the absence of statutory proscription or public policy violation, it is beyond question that [NC WARN and the Church]

---

[4] Contrary to the Commission's ruling, NC WARN is not furnishing electricity "for compensation" – the electricity is furnished by the solar array directly to the Church (behind its meter with Duke), and the Church is simply repaying NC WARN at a rate based on the amount of electricity generated each month. Indeed, it should make no difference if, instead of being tied to the amount of electricity generated, the Church paid back the interest-free loan at a fixed rate of, for example, $100/month.

are free to contract as they deem appropriate." *Hlasnick*, 353 N.C. at 244, 539 S.E.2d at 277.

The Commission's and Court of Appeals' error can be traced to a misinterpretation of the Solar Financing PPA. This case turns on the Court's interpretation of NC WARN's role in the Solar Financing PPA—and, specifically, whether the group's provision of upfront financing to the Church, and recoupment of capital at a rate tied to the amount of subsequent electricity generation renders it a "public utility."

The Commission's and Court of Appeals' decision to deem NC WARN a "public utility" under these circumstances contradicts basic tenets of contract interpretation. As this Court has held, "[t]he heart of a contract is the intention of the parties, which is to be ascertained from the expressions used, the subject matter, the end in view, the purpose sought, and the situation of the parties at the time." *Hagler v. Hagler*, 319 N.C. 287, 294, 354 S.E.3d 228, 234 (1987) (quotations omitted); *see also Lane v. Scarborough*, 248 N.C. 407, 410, 200 S.E.2d 622, 624 (1973). Here, the explicit intention of NC WARN in executing the Solar Financing PPA is to determine whether the upfront costs of solar equipment and installation can be financed through a repayment

scheme based on the amount of electricity generated by the solar photovoltaic ("PV") panels as part of NC WARN's ongoing development of upfront funding mechanisms for solar systems. Decl. R. Req. at 1-2. The contract parties' economic situations necessitate the private financing mechanism in the Solar Financing PPA. Because upfront capital costs remain the most prodigious barrier to distributed solar system installation, the Solar Financing PPA serves to overcome this obstacle for the Church, enabling it to access rooftop solar that is currently accessible only to sufficiently well-resourced entities.[5]

Under rules of basic contract interpretation, it is clear that NC WARN's intention in entering the Solar Financing PPA was *not* to act as a "public utility" providing electricity "to or for the public for compensation." N.C. GEN. STAT. § 62-3(23)(a)(1) (2017). Instead, NC WARN's intentions and the contract's unambiguous language plainly

---

[5] The upfront installation costs for this solar PV system were approximately $20,000. Solar Financing PPA, Attachment A. Most individuals and businesses cannot afford these upfront costs outright. *See* DAVID FELDMAN & MARK BOLINGER, ON THE PATH TO SUNSHOT: EMERGING OPPORTUNITIES AND CHALLENGES IN FINANCING SOLAR iii, 19, 21 (2016), http://www.nrel.gov/docs/fy16osti/65638.pdf. ("Residential PV historically has a high upfront cost, which significantly limits the pool of customers with that amount of cash on hand.").

demonstrate that it is simply an agreement to provide upfront financing that is recouped at a rate tied to the levels of electricity generated, for the ultimate purpose of allowing a low-income Church to obtain solar energy.

In sum, having entered into this agreement pursuant to its constitutional right to contract, "an attempt to declare [NC WARN] to be a public utility where it is inherently not such, is, by virtue of the guaranties of the federal Constitution, void [as] it interferes with private rights of property or contract." *State ex rel. North Carolina Utilities Com. v. New Hope Road Water Co.*, 248 N.C. 27, 30, 102 S.E.2d 377, 379 (1958). Instead, the Court should find that the contract does not constitute the delivery of electricity "to or for the public for compensation."[6]

---

[6] Because the Commission's contrary conclusion would violate the constitutional right to contract, *Amici*'s limited reading of the statute is compelled by principles of constitutional avoidance, providing a construction of the Act that does not raise these constitutional concerns. *See*, *e.g.*, *Beaufort County Bd. of Ed. v. Beaufort County Bd. of Comm'rs*, 363 N.C. 500, 505, 681 S.E.2d 278, 282 (2009) (internal quotations omitted) ("Where one of two reasonable [statutory] constructions will raise a serious constitutional question, the construction which avoids this question should be adopted").

II. THE COURT SHOULD REJECT DUKE'S CLAIM THAT NC WARN'S FINANCING CONTRACT THREATENS DUKE.

In rejecting NC WARN's arguments, the Commission credited Duke's unsupported claim that allowing a small non-profit organization to financially assist a single Church would be a slippery slope that would "negatively impact[ ] the rates of remaining residential, commercial, and smaller industrial customers as a result of significant stranded investment." NCUC Order at 16. The false premise of this line of reasoning is that allowing the Solar Financing PPA would open the floodgates to rooftop solar development and thus risk a "utility death spiral."[7]

---

[7] The "utility death spiral" is a term of art used to describe power utility arguments that expanded solar distribution – or other factors – may threaten the viability of the utility monopoly model. *See, e.g.,* Lenna Garfield, *Fears Of A 'Utility Death Spiral' Could Be Slowly Killing Solar Power*, Business Insider, July 11, 2017, http://www.businessinsider.com/utility-companies-lobbying-campaigns-solar-2017-7.

This premise has two fundamental flaws. *First*, other states have achieved levels of rooftop solar development far beyond that obtained in North Carolina, without resulting in risks of a utility death spiral. Several states are approaching (or have already exceeded) *10%* generation from distributed solar energy, while North Carolina has yet to achieve even *half of one-percent*.[8] It is thus entirely unnecessary for this Court to, for the first time, extend the scope of the "public utility" definition to a *single* contract between two parties in order to protect Duke's utility monopoly. The Court should instead follow the lead of other jurisdictions in finding that such arrangements allowing third parties to install or provide financing for rooftop solar energy do not implicate any legitimate interests of regulated monopolies. *See, e.g., SZ Enterprises LLC d/b/a Eagle Point v. Iowa Util. Bd.*, 850 N.W.2d 441 (Iowa 2014) (allowing the existence of PPAs in part because there is "no

---

[8] *See* U.S. ENERGY INFORMATION AGENCY, ELECTRIC POWER MONTHLY WITH DATA FOR AUGUST 2017 12, 137-138 (2017), https://www.eia.gov/electricity/monthly/current_month/epm.pdf (Tables 6.2.A and 6.2.B showing North Carolina small scale solar at 120.3 MW in August, 2017 out of 32,460 MW of total electricity generation (.37%), compared to 7.63% for New Jersey, 9.47% for Massachusetts, 8.14% for California, and 21.7% for Vermont).

suggestion that the integrity of the grid or economic health of regulated providers has been adversely affected in states such as California, Nevada, Arizona, and Colorado, where third-party PPAs are not considered public utilities for purposes of regulation"); *see also* Andrew Haile, *Solar Financing in North Carolina: The Untapped Potential of Power Purchase Agreements*, 95 N.C. L. REV. 1599 (2017) (discussing the value of financing agreements).

Second, although the Court of Appeals was concerned that NC WARN may enter into similar agreements to provide electricity to other buildings, 2017 N.C. App. LEXIS 759 at *8, there is also no evidence that such an expansion could threaten Duke. To the contrary, as the Commission recognized, under existing law, wealthy individuals and organizations are already permitted to self-generate their *own* electricity by installing rooftop solar in Duke's exclusive service area, *see* NCUC Order at 21, and thereby remove the very revenue streams Duke asserts could lead to its purported death spiral. NC WARN's financing contract projects – even if further Solar Financing PPAs are

executed – pale in comparison to the number of permitted, self-generated solar installations already in existence in North Carolina.[9]

Moreover, the pernicious result of the ruling below is simply to prevent those without the necessary upfront capital from collaborating with others to obtain the same benefits currently conferred only on the wealthy, including economic savings. In short, the Commission's Order simply exacerbates economic and energy inequities, where those who would most benefit from energy savings are deprived access precisely because of their lack of resources.

Because there is no basis to find that NC WARN's Solar Financing PPA poses any risks to Duke or the regulated utility model in North Carolina, it does not constitute the sale of electricity "to the public."[10]

---

[9] Approximately 5,000 MWh of electric generation is installed from residential rooftop solar systems. U.S. Energy Information Administration, Table 1.17.A., https://www.eia.gov/state/notes-sources.php#data-env-sp (search for "Distributed (Small-Scale) Solar Photovoltaic Generation"; then follow "EIA, Net Generation from Solar Photovoltaics by State by Sector" hyperlink under "Renewable Energy Production"). In comparison, the Church's 5 kW solar installation would generate 0.682 MWh or .01% of total generation.

[10] *See Simpson*, 295 N.C. at 524, 246 S.E.2d at 756-57. While the Court of Appeals relied on *Simpson* to rule against NC WARN, that case

III. THE SOLAR FINANCING PPA FURTHERS NORTH CAROLINA'S COMMITMENT TO RENEWABLE ENERGY DEVELOPMENT.

As noted, *see supra* n.2, this Court's test for a "public utility" is intended to be "flexible," and in "the final analysis," must "accomplish the legislature's purpose and comport with its public policy." *Simpson*, 295 N.C. 519, 524, 246 S.E.2d 753, 756-57. Applying those principles here leads to the inexorable conclusion that the Solar Financing PPA does not render NC WARN a "public utility."

The legislature has "declared to be the policy of the State of North Carolina" to "*promote the development of renewable energy.*" N.C. GEN.

---

involved service to *multiple* and undefined customers, whereas here NC WARN is only contracting with the Church. *See also State ex rel. Utilities Comm'n v. Carolina Telegraph Co.,* 267 N.C. 257, 268, 148 S.E.2d 100, 109 (1966) (service to multiple customers provided over utility infrastructure not exempt from regulation). Indeed, NC WARN's arrangement is similar to others previously *approved* by the Commission. *See, e.g.*, Decl. R. Req. at 6-7 (finding sale of solar lighting to a single customer is exempt from regulation).

The Court should also find that the *Simpson* factor concerning the "type of market" weighs in favor of NC WARN here, where the applicable market is for *rooftop solar energy financing*, not electricity. *See, e.g., State ex rel. Utilities. Com. v. Carolina Tel. & Tel. Co.*, 267 N.C. 257, 271, 148 S.E.2d 100, 111 (1966) (explaining that the market to be evaluated for purposes of considering impacts on competition is the market for "the specific service in question"). Duke fails to provide rooftop solar financing programs, much less rooftop solar systems. Decl. R. Req. at 10.

STAT. § 62-2(a)(10) (emphasis added). The Act sets forth three additional specific policy objectives, each of which would be frustrated by interpreting the Act to prohibit NC WARN's contract.

First, the legislature made clear that it sought to "[d]iversify the resources used to reliably meet the energy needs of consumers in the State." *Id.* § 62-2(a)(10)(a). The Solar Financing PPA promotes this policy by making renewable energy available to a Church which could not otherwise participate in the legislature's energy diversity objectives.

Second, the legislature declared its desire to "[p]rovide greater energy security through the use of indigenous energy resources available within the State." *Id.* § 62-2(a)(10)(b). The Solar Financing PPA indisputably furthers this local energy-generation goal.

Third, and perhaps most importantly here, the legislature has recognized the value of "*[e]ncourag[ing] private investment in renewable energy and energy efficiency*." *Id.* § 62-2(a)(10)(c) (emphasis added). That goal is exactly what this case concerns and what the Solar Financing PPA achieves: non-governmental entities' investment in renewable energy development. Accordingly, it is evident that *allowing* NC WARN's contract would best "accomplish the legislature's purpose

and comport with its public policy" here. *Simpson,* 295 N.C. 519, 524, 246 S.E.2d at 757.[11]

This result is also the most consistent with the legislature's other enactments encouraging renewable energy in the state, including (a) Renewable Energy and Energy Efficiency Portfolio Standard (REPS), N.C. GEN. STAT. § 62-133.8(d) (2017); (b) renewable energy certificates, N.C. GEN. STAT. § 62-133.8(i)(7) (2017); (c) the net metering program, *id.* § 62-133.8(i)(6); and (d) the renewable energy tax credit. N.C. GEN.

---

[11] The legislature also sought to advance policies that would "[p]rovide improved air quality and other benefits to energy consumers and citizens in the State." N.C. GEN. STAT. § 62-2(a)(10)(d). This evinces the legislature's clear preference for clean and inexpensive renewable energy, offered by NC WARN's contract, over the more expensive and dirtier energy on which the Church otherwise relies for its energy needs. *See infra* n.8 at Table 6.2.B (showing share of electricity in North Carolina from fossil fuels).

Moreover, as the Commission noted, North Carolina is a leader in adding renewable energy generation, NCUC Order at 27-28, but that has principally been utility-scale solar energy, rather than rooftop solar projects that provide significant additional environmental and social benefits. *See* Taber D. Allison et al., *Thinking Globally and Siting Locally – Renewable Energy and Biodiversity in a Rapidly Warming World*, 126 CLIMATIC CHANGE 1, 1-6 (2014); Hernandez, RR. et al., *Solar Energy Development Impacts On Land Cover Change and Protected Areas*, 122 PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES 13579, 13579-84 (2015).

STAT. § 105-129.16A (2017). Indeed, the Commission itself recognized the legislature's interest in promoting renewable energy development. NCUC Order at 27-28.[12]

Finally, permitting NC WARN's contract advances the public policy of avoiding unnecessary monopoly power, which the North Carolina Constitution prohibits. N.C. CONST. art. I, § 34 ("perpetuities and monopolies are contrary to the genius of a free state and shall not be allowed."). As the record in this case demonstrates, Duke's heavy-handed effort to invalidate NC WARN's contract and punish the small non-profit through extensive fines, *and even a prohibition on its speech,* does nothing to protect legitimate interests in providing just and reasonable utility rates, but simply strengthens Duke's monopoly power over the electricity market.[13]

---

[12] The legislature recently passed legislation to expressly allow solar leasing. *See* H.B. 589, S.L. 2017-192 (N.C. 2017). Because H.B. 589 did not amend the part of the "public utility" definition at issue in this case, it otherwise has no bearing here.

[13] At Duke's request, the Commission imposed, and the Court of Appeals affirmed, punishments on NC WARN in the form of $200 per day fines, unless NC WARN agrees to refund the Church (with 10% interest), to donate the solar system to the Church, and to a prior restraint on NC WARN's speech "advertising or promoting" its Solar Financing PPA. NCUC Order at 31-32.

Since the regulated utility monopoly model exists to protect *consumers*, not the utilities' profits, this Court should further the legislature's policy objectives by allowing NC WARN's Solar Financing PPA to stand.

CONCLUSION

The Court of Appeals' ruling should be reversed.

Respectfully submitted, this the 16th day of November, 2017.

By: Electronically submitted
PERRIN W. de JONG
N.C. Bar No. 42773
P.O. Box 6414
Asheville, NC 28816
Email: perrin@biologicaldiversity.org
Telephone: (828)252-4646

Attorney for *Amici Curiae*
Environmental Groups

By: 
HOWARD M. CRYSTAL
Email: hcrystal@biologicaldiversity.org
Telephone: (202) 809-6926

By: _____

ANCHUN JEAN SU
Email: jsu@biologicaldiversity.org
Telephone: (415) 770-3187

1411 K Street N.W., Suite 1300
Washington, DC 20005

Attorneys for Center for Biological Diversity

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 28(j) and 26(g) of the Rules of Appellate Procedure, counsel for *Amici Curiae* Center for Biological Diversity, Greenpeace, Food and Water Watch, and Institute for Local Self-Reliance, certifies that the foregoing brief, which is prepared using a proportional 14-point font with serifs, contains 3,748 words (excluding cover, index, table of authorities, certificate of service, and this certificate of compliance), as reported by the word-processing software used by counsel in the drafting of this brief.

Dated: November 16, 2017

Electronically submitted
Perrin W. de Jong
Counsel for *Amici Curiae* Parties

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2017, I electronically filed the foregoing Brief of *Amici Curiae* Center for Biological Diversity, Institute for Local Self-Reliance, Greenpeace, Inc., Friends of the Earth, and Food and Water Watch with the Clerk of the Supreme Court of North Carolina, and served counsel for all parties by electronic mail, addressed as follows:

Mr. Matthew D. Quinn
Attorney at Law
Law Offices of F. Bryan Brice, Jr.
127 W. Hargett Street, Suite 600
Raleigh, NC 27601
matt@attybryanbrice.com
Counsel for Appellant NC WARN

Mr. John D. Runkle
Attorney at Law
2121 Damascus Church Road
Chapel Hill, NC 27516
jrunkle@pricecreek.com
Counsel for Appellant NC WARN

Mr. Sam Watson
General Counsel
4325 Mail Service Center
Raleigh, NC 27699
swatson@ncuc.net
Counsel for State of North Carolina (ex rel. Utilities Commission)

Ms. Antoinette R. Wike
Chief Counsel
430 N. Salisbury Street
Dobbs Bldg.
4326 Mail Service Center
Raleigh, NC 27699
Antoinette.wike@psncuc.nc.gov
Counsel for Public Staff, NCUC

Mr. Dwight W. Allen
Mr. Britton H. Allen
Allen Law Offices, PLLC
1514 Glenwood Avenue, Suite 200
Raleigh, NC 27608
dallen@theallenlawoffices.com
bhallen@theallenlawoffices.com
Counsel for Appellee Duke Energy Carolinas, LLC, et al.

Mr. Lawrence B. Somers
Deputy General Counsel
Duke Energy Corporation
P.O. Box 1551, PEB 20
Raleigh, NC 27602
Bo.somers@duke-energy.com
Counsel for Appellee Duke Energy Carolinas, LLC, et al.

Mr. Horace P. Payne, Jr.
Attorney at Law
Dominion Resources Services, Inc.
P.O. Box 26532
Richmond, VA 23261
Horace.p.payne@dom.com
Counsel for Appellee Virginia Electric and Power Co., et al.

Mr. Edward Breitschwerdt
Ms. Monica E. Webb
McGuire Woods LLP
P.O. Box 27507
Raleigh, NC 27600
bbreitschwerdt@mcguirewoods.com
mwebb@mcguirewoods.com
Counsel for Appellee Virginia Electric and Power Co., et al.

Ms. Andrea R. Kells
Attorney at Law
McGuire Woods LLP
P.O. Box 27507
Raleigh, NC 27611
akells@mcguirewoods.com
Counsel for Appellee Virginia Electric and Power Co.

Mr. David T. Drooz
Staff Attorney
N.C. UTILITIES COMMISSION
4326 Mail Service Center
Raleigh, NC 27699
david.drooz@psncuc.nc.gov
Counsel for State of North Carolina (ex rel. Utilities Commission)

Dated: November 16, 2017

Electronically submitted
Perrin W. de Jong
Counsel for *Amici Curiae* Parties