

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Rulemaking Proceeding to Implement)
Session Law 2007-397)
COMMENTS OF THE
COMMUNITY GROUPS
TO THE JOINT MOTION

PURSUANT TO the Commission's Order Requesting Comments on Joint Motion, August 31, 2009, now come the Citizens for a Safe Environment, the Citizens Alliance for a Clean, Healthy Economy, the Sampson Citizens for a Safe Environment and the Blue Ridge Environmental Defense League (the "Community Groups"), through the undersigned attorney, with comments on the Joint Motion of Progress Energy Carolina, inc., Duke Energy Carolinas LLC, Dominion North Carolina Power, North Carolina Electric Membership Corporation, North Carolina Eastern Municipal Power Agency and North Carolina Municipal Power Agency Number 1 (the "Join Motion"), filed with the Commission on August 14, 2009.

1. The issue of delaying or significantly modifying the poultry waste set-aside in Senate Bill 3, Session Law 2007-397, has arisen for the first time through the Joint Motion in this docket. The Community Groups, on behalf of their members, are deeply concerned about the impacts of burning poultry waste as a source of electricity. As stated in their Motion to Allow Intervention, the Community Groups had not intervened in this docket to date because until the Joint Motion was filed, the Community Groups did not have sufficient interest in the other aspects of these proceedings to do so.

2. The Community Groups agree with the power suppliers in their Joint Motion that the Commission should delay the section of the Renewable Energy and Energy Efficiency Portfolio Standard (“REPS”) requiring power suppliers to contract for a certain amount of megawatt hours of electric power from poultry waste beginning in 2012. G.S. 62-133.8(f). Pursuant to G.S. 62-133.8(i)(2), the Commission has the authority to modify or delay this provision if it is in the public interest to do so and if it finds that the suppliers demonstrate they “made a reasonable effort to meet the requirements.” For the reasons given below, the Community Groups argue that it definitely is in the public interest to modify and indefinitely postpone the poultry waste set-aside.

3. In large part, North Carolina is making strides in its efforts to develop alternative energy resources. However, it must be emphasized that not all renewable energy is clean; poultry waste for example may be renewable, but it is definitely not clean. The Community Groups support renewable energy that is clean, affordable and fair, and poultry waste promises to be none of these. Instead the incineration of poultry waste is a dirty and expensive source of power, and likely to impact those who can least afford the consequences of more pollution.

4. The availability and, as stated in the Joint Motion, the cost of the poultry waste-generated power is wholly outside the control of the power suppliers. In their motion, the power suppliers question the excessive cost of the proposed poultry waste incinerators as compared to the availability of cleaner and less costly resources, such as wind and solar. Allocating a large percentage of the renewable energy cost cap to poultry waste would leave a smaller percentage for cleaner alternatives. Displacing clean energy to support costly and dirty energy is obviously not in the public interest.

5. It is unlikely that poultry waste will be readily available as a fuel source under any circumstances. The company, Fibrowatt, is currently the only commercial initiative for providing poultry waste-fueled electricity in North Carolina and to date, there are numerous and significant hurdles that have not been met. Fibrowatt proposes to operate its poultry waste-fueled incinerators in Sampson, Surry and Montgomery Counties under limited liability corporations. In none of these proposed locations has Fibrowatt applied for its needed certificates for public convenience and necessity from the Commission pursuant to G.S. 62-110.1(a) and Commission Rule R8-63 for merchant plants. It is likely that these petitions will be actively contested as not being in the public interest.

6. In none of the proposed locations has Fibrowatt applied for its required air pollution control permits from the Division of Air Quality pursuant to G.S. 143-215.108. Poultry waste incinerators are major sources of pollution that should be closely regulated in order to protect public health and the environment.

7. In a July 9, 2008, presentation to the Renewable Energy Committee of the Environmental Management Commission (“EMC”), Brock M. Nicholson, Deputy Director of the Division of Air Quality found poultry waste incinerators to be dirtier than new coal plants of similar size.

8. The General Assembly recognized that poultry waste is a dirty form of electricity. Senate Bill 3 requires these facilities to comply with the best available control technology (“BACT”) pursuant to G.S. 62-133.8(g); this can be accomplished on a case-by-case determination, or through rulemaking by the EMC. The EMC has not taken any steps to initiate a rulemaking proceeding. Regardless of how it is determined,

pollutants from poultry waste incinerators are required to be reduced to the “maximum degree,” a standard that will make electricity from the poultry waste set-aside prohibitively expensive.

9. It has further come to the attention of the Community Groups that the Fibrowatt poultry waste facility in Minnesota (doing business as Fibrominn) recently failed a stack test in violation of its air quality permit. MN Air emission permit No. 15100038-004. The enforcement action and notice of violation are currently unresolved by the Minnesota Pollution Control Agency. In investigating the violation, the Community Groups have specific concerns about particulate emissions, mercury emissions, arsenic emissions, failure to submit required tests and the failure to pass a stack test.

10. In at least one of the counties, the rezoning of property to a heavy industrial classification intended for the Fibrowatt incinerator has been challenged. *Citizens for a Save Environment v. Sampson County et al. and Fibrocoast LLC*, Sampson County Superior Court, Case No. 08 CVS 1590.

11. The Community Groups have repeatedly questioned the impact of pollution on its members and other people in communities near poultry waste incinerators who would bear an unfair share of the pollution burden. As stated in the Motion to Allow Intervention, the members of the groups would be directly and adversely affected by the operation of the proposed incinerators because of the noxious odors and toxic emissions, increased truck traffic on rural roads and highways, the loss of the use and enjoyment of their property, the loss of property values and interference with their health, safety and general welfare. Some of the members of the Community Groups

are farmers and operate agricultural businesses that would be adversely impacted from toxic emissions from the proposed incinerators on their crops and farm property.

12. At this time, the Community Groups urge the Commission to adopt a poultry waste "time-out" that indefinitely delays the REPS requirements in G.S. 62-133.8(f). Poultry waste is a dirty and expensive way to generate electricity, and with the Commission's support and leadership, North Carolina can have both clean energy and a safe environment for everyone.

Respectfully submitted, this the 1st day of September 2009.

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CERTIFICATE OF SERVICE

I hereby certify that the persons on the service list have been served this COMMENTS OF THE COMMUNITY GROUPS ON THE JOINT MOTION (E-100, Sub 113) by deposit in the U.S. Mail, postage prepaid, or by email transmission.

This is the 1st day of September 2009.

Attorney at Law