Progress Energy

OFFICIAL COPY

FILED

JUL 11 2012

Clerk's Office
N.C. Utilities Commission

July 10, 2012

Ms. Gail Mount
Chief Clerk
N. C. Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4325

RE: Docket No. E-7, Sub 1017

Dear Ms. Mount:

Enclosed for filing in the above-referenced docket are the original and 30 copies of the Statement of Duke Energy Corporation's Chief Executive Officer James E. Rogers.

Yours very truly,

Len S. Anthony/mhm

Len S. Anthony
General Counsel
Progress Energy Carolinas, Inc.

LSA:mhm

Enclosure

STAREG2754

Clerk.Pg
AL
Slomm
Watson
Green
Duffley
Hoover
Kite
Hilburn
Sessoms
Ericson
Jones
Hodge
ExDir
3rdLegal
3rdAcctg
2ndEcon
3rdElec

Progress Energy Service Company, LLC
P.O. Box 1551
Raleigh, NC 27602

Statement of James E. Rogers

I thank the Commission for inviting me to testify. The Commission's order, and the questions the Commission has asked, give me the opportunity to explain what happened in this matter. I hope that this statement answers some of the questions the Commission has asked, especially those that require more in-depth answers. Other questions I will answer at the hearing. I would also like to respond, at the end of this statement, to the commentary on how Mr. Johnson's departure reflects on Duke's governance practices.

The Compelling Benefits of the Merger Are Unchanged

We signed the agreement for the merger of Duke Energy and Progress Energy on January 8, 2011, over 18 months ago. We thought then, and we think now, that the merger brings compelling benefits to both companies, and to our customers, employees, communities and shareholders. Among other things, the merger creates:

- Unmatched financial strength and operational scale and scope;
- An opportunity to leverage "best-in-class" practices from both companies;
- A regulated business that is a higher percentage of the overall business mix than prior to the merger;
- Significant benefits for all our customers over time; and
- An enhanced ability to grow the dividend.

The merger is also good for the Carolinas, creating the largest U.S. utility headquartered in Charlotte with a continuing significant presence in Raleigh. In particular:

- The merger results in significant benefits to all Carolinas' customers from a guarantee of $650 million in fuel and joint dispatch efficiencies and operational efficiencies, under the Joint Dispatch Agreement that has been approved by this Commission and the South Carolina Commission. Indeed, we are already dispatching under the JDA and creating customer savings as we speak.
- The combined company will continue to support the communities in which it operates at levels consistent with its past practices. Legacy Duke has supported the Raleigh community and Eastern Carolina, and we will continue to do so.
- In addition to our ongoing activities and commitments, we also will provide $15 million in low-income energy assistance and work force development and charitable contributions of approximately $16.5 million annually in North Carolina. We have also committed to invest $2 million in North Carolina GreenPower.
- The combined company will, over time, provide enhanced career development opportunities for all our employees.
- The financial strength of the combined company will enhance our ability to pursue regional nuclear development.

- And in today's rising cost environment, the new Duke Energy will be better able to serve our 7.1 million customers' energy needs in a reliable, affordable, and increasingly clean manner.

As you know, the Commission's order approving the merger contains a number of specific conditions and I want to reaffirm our commitment to each of those conditions – including our commitment to maintain a significant presence in Raleigh. Our commitment to these conditions is the same today as it was the day we made them. We will be working as hard as we can to achieve all the customer benefits that this merger provides.

The Background to Mr. Johnson's Departure

When we announced the merger on January 10, 2011, we also announced that, upon closing of the merger, Bill Johnson would become CEO of the new Duke Energy and I would become Executive Chairman. The Duke Board believed that this arrangement would be in the best interests of the new company and we did not contemplate the possibility of any other arrangement at closing. I was ready to move on from the CEO role to the Executive Chairman role, as I have been throughout the 18 months from the time of announcement to the closing.

After we signed the merger agreement, we started the process of obtaining the approvals necessary to close the merger. We expected to be able to close in late 2011. While there were some unexpected developments, including the discovery of additional delaminations at the Crystal River 3 nuclear plant, we continued to believe in the strategic logic and compelling benefits of the merger. We also continued to believe that the management arrangements were in the best interests of the new company.

Both companies obtained shareholder approvals at special meetings held on August 23, 2011. In early September 2011, we reached a settlement with the North Carolina Public Staff and this Commission held hearings on the merger approval on September 20-22, 2011. We believed we were on track to close the merger later in the year, on the terms set forth in the merger agreement.

Let me say one thing as emphatically as I can: in our application with this Commission, and in our testimony and appearance in the September hearings, we stated honestly the expectation of the roles Mr. Johnson and I would have in the combined company. Our intentions were entirely consistent with what we told the Commission.

On September 30, 2011, we received a conditional approval from the Federal Energy Regulatory Commission (FERC) that raised market power issues and asked us to submit a mitigation plan. Even with this order, we believed that we could submit a mitigation plan quickly and still close by year end. And, in fact, we did file our first proposed mitigation plan with the FERC on October 17, 2011.

We continued through the fall of 2011 to move forward with the state approvals we needed, including the approval of this Commission, with the expectation that our proposed mitigation plan would be accepted by the FERC and that we would close at year end. By De-

cember, we were in good shape for a year end closing, subject to FERC approval and final approvals from the North and South Carolina Commissions. We ramped up our preparations for a year end closing.

In fact, at the Duke Board meeting on December 8, 2011, the Board gave me a retirement gift in recognition of the fact that I would be stepping down as CEO. Again, we continued to believe that the management arrangements were in the company's best interests.

On December 15, 2011, the FERC issued a new conditional approval that rejected our proposed mitigation plan and asked us to submit a new mitigation plan. This action, of course, meant that we could not close by the end of the year, and even called into question whether we would be able to close at all. Among other concerns, the initial termination date under the merger agreement was January 8, 2012. Duke and Progress mutually agreed to extend the termination date under the merger agreement to July 8, 2012.

Over the course of the first quarter of 2012, the two companies worked on putting together a revised mitigation plan that we believed would meet the FERC's concerns. Over this time period, we also began to consider the financial impact of the revised mitigation plan and the ongoing management of the set of issues at the Crystal River 3 nuclear plant in Florida, among other matters. This was a period of challenge and conflict between the two companies and highlighted the cultural differences between us. At the same time, we recognized the fundamental rationale for the merger, and the long term benefits that it offered, remained intact, assuming we could obtain FERC approval on acceptable terms.

On March 26, 2012, we filed a revised mitigation plan with the FERC. We asked the FERC to issue its order by June 8, 2012, so that we would be able to close before the July 8, 2012 termination date. We also engaged in further discussions with the North Carolina Public Staff with respect to our settlement agreement, in an effort to ensure that we could continue to meet our commitments to North Carolina in the context of the revised FERC plan. We began to plan for and target a closing date of July 1, 2012.

During this period of obtaining approvals and merger integration efforts, I became aware that individual members of the Duke Board had concerns, which I will address in a moment, about whether Mr. Johnson was the best person to lead the integration of the two companies, to bring the two companies together as one, and to realize the opportunities and address the challenges facing the combined company. However, the Board as a whole did not take this issue up on a collective basis until sometime in May, 2012 when it began to look like we had a solution to the FERC issues that could permit the merger to close.

I want to stress that I did not initiate and was not involved in any Board deliberations on this subject. I was specifically excluded from Board discussions on the matter, which began to occur in May, 2012 as the possibility of merger approval appeared more likely. Similarly, I was not involved in the combined company's Board deliberations following the closing of the merger that led to Mr. Johnson's resignation. Throughout this period, I was continuing with my plans to become Executive Chairman. Until very recently, I was well down the path of accepting offers to serve on various other boards and join other organizations.

I was advised of the nature and extent of the pre-closing Duke Board's concerns with Mr. Johnson by the lead director on June 23, 2012, and during a meeting the next day with the lead director and one other member of the Duke Board. They were in town to attend a scheduled Board meeting. They indicated that the Board had doubts about Mr. Johnson's ability to lead the combined company and asked me whether, if the combined company's Board were to make the decision to appoint me as CEO following the closing, I would be willing to accept that position.

They said that they had reached a preliminary view that Mr. Johnson was not the best person to lead the combined company, but that no final decision had been made at that time. In fact, no final decision could be made prior to closing. The Duke Board was bound by the terms of the merger agreement, both to close the merger and to appoint Mr. Johnson as CEO upon the closing. In all events, in response to their question, I told the lead director and the other member of the Duke Board that I would be willing to step back in as CEO if the combined company's Board were to ask me to do so.

Under the merger agreement, Duke was required to appoint Mr. Johnson as CEO upon closing. The merger agreement also required Duke to complete and execute, prior to closing, an employment agreement with Mr. Johnson on the terms set forth in a term sheet that was attached as an exhibit to the merger agreement. That was done, I understand, during the week of June 25, 2012, and was basically just an execution of a document that had been developed and reviewed in the late fall of 2011 as we prepared for a year end closing.

The employment agreement specified the terms of the severance Mr. Johnson would receive in the event of a termination of his employment. Neither the merger agreement, nor Mr. Johnson's employment agreement, limited the ability of the combined company's Board to take whatever action it decided was in the company's best interest with respect to the CEO position following the closing. These provisions had been disclosed to the SEC and the Commission, as well as in attachments to the merger agreement and in the companies' joint proxy sent to our respective shareholders before our shareholder approval meetings.

As you know, the merger closed on July 2, 2012, effective at 4:02 pm, right after the stock markets closed. At that time Mr. Johnson became CEO and I became Executive Chairman in accordance with the terms of the merger agreement. The combined company's Board convened at 4:30 pm to address various routine post-closing matters. Mr. Johnson and I participated in that portion of the meeting. At about 5:00 pm, after these matters were addressed, the lead director asked to go into executive session and asked that Mr. Johnson and I leave the meeting.

My understanding is that, following discussion, the combined company's Board voted by a 10-5 vote, to ask for Mr. Johnson's resignation as CEO and to appoint me as CEO. My understanding is that each of the five new directors who had joined the Board from the Progress Board voted against this decision and that one new director who had joined from the Progress Board was not present at the meeting. Following the executive session, the lead director met in person with Mr. Johnson and informed him that the Board wanted to work out a mutual separation agreement with him. That separation agreement was signed and announced

together with the announcement of the closing, and of my appointment as CEO, at 7:00 am the next morning.

My Understanding of the Concerns Leading to Mr. Johnson's Departure

As I have stated, I was not involved in any pre-closing Duke Board deliberations on this subject, and both Mr. Johnson and I were excused from the combined company's Board deliberations that led to Mr. Johnson's resignation. However, the following reflects the concerns about Mr. Johnson that were expressed to me by members of the Duke Board.

My understanding is that there was no one precipitating factor, but rather an accumulation of a number of factors that led to a loss of confidence in Mr. Johnson's ability to lead the combined company. Lack of confidence is a broad term, I recognize, but in my experience it develops over time.

The issues that were discussed with me during the weekend of June 23-24 involved concerns about Mr. Johnson's leadership style. The pre-closing Board did not feel his style was appropriate or transferable to a leadership of the combined company. They were concerned that there was a lack of transparency in terms of the timing and flow of information, the presentation of alternative options and the assessment of risks to recommended courses of action. These factors were manifested in a leadership style they felt was autocratic and discouraging of different points of view.

They were concerned about his ability to integrate the cultures of the two companies. In particular, they were concerned about whether he supported an inclusive management team, or whether he would seek to impose the culture and leadership from Progress without finding the balance between the two cultures in a way that would bring all employees of the combined company together.

Additionally, I was aware of specific issues of concern that members of the pre-closing Duke Board had raised, such as Mr. Johnson's management of the decisions involving the Crystal River 3 nuclear power plant, and realistic assessments of the best way forward with respect to the plant. I was also aware of concerns about the lack of sufficient improvement in the operating results of the Progress nuclear fleet, and the financial performance of Progress following the merger announcement.

Again, from my conversations with members of the Board, it is my opinion that an accumulation of concerns and observations caused the pre-closing Duke Board to develop reservations about Mr. Johnson's role as CEO of the combined company, and led to the decision on July 2, 2012. They lost confidence in Mr. Johnson's ability to integrate the companies in a manner that would produce the benefits to customers, shareholders, employees and other stakeholders that we believe are promised by this combination of the two companies. Without that confidence, they could not see Mr. Johnson continuing in his role of CEO.

I relate these concerns reluctantly, as I have respect for Mr. Johnson and his accomplishments at Progress, and I have related them only because I am subject to your order.

Why this Commission Was Not Advised in Advance

The Commission asks why Duke did not advise the Commission or other entities about a decision to remove Mr. Johnson from the CEO position sometime before July 2, 2012. I wish we could have given such prior notice. I believe that the members of the Board understood that they could be criticized for not making such a disclosure prior to the closing of the merger if they made the decision to ask for Mr. Johnson's resignation following the closing. But ultimately, there was no decision to disclose until that decision was made on July 2, 2012. Corporate decisions are announced after they are made, not when they are being contemplated. While the members of the pre-closing Duke Board may have planned to present the issue for decision upon closing, the pre-closing Duke Board had no authority to ask for Mr. Johnson's resignation. To the contrary, Duke was contractually obligated to close the merger and appoint Mr. Johnson as CEO. Only after the merger closed did the Board have the authority to make the decision about Mr. Johnson's continuation as CEO. We did not believe and do not believe a public filing of this preliminary view of the pre-closing Board would have been appropriate or legitimate.

I also note that the Commission's order approving the merger contains a number of conditions, all designed to ensure that customers are protected and realize the substantial benefits of the merger. None of these conditions relates to the composition of the management of the company, nor would a condition mandating any specific management composition be an appropriate condition to impose. It was clear in all of Duke's filings and public disclosures prior to the merger that, following the closing, the combined company's Board had the power to ask for Mr. Johnson's resignation, or any other executive's, should it decide that doing so was in the company's best interests. We all serve at the pleasure of the Board and our employment is at will, including mine right now. The change in the CEO position does not change the benefits of the merger to customers, nor does it change any of the commitments that Duke has made and that are reflected in the Commission's approval order. Duke has reaffirmed those commitments, and those commitments apply whether Mr. Johnson was CEO, I am CEO, or any other person who may be chosen by the Board is CEO.

There is no question that the members of the pre-closing Duke Board faced a difficult situation. But they recognized that: first, Duke had a contractual obligation to close the merger and appoint Mr. Johnson as CEO; second, the Board had not and could not make any final decision with respect to Mr. Johnson's continuation as CEO until after the merger had closed; and third, completion of the merger was in the best interests of both companies and their respective customers, employees, communities and shareholders.

Duke's Governance Process in this Matter

Finally, I also want to address concerns that have been raised over Duke Energy's corporate governance process with respect to the Board's actions. Where we are today is not where we intended to be, expected to be, or wanted to be. But good corporate governance requires that the Board have confidence and trust in the CEO, especially at this critical juncture in Duke's history. The selection of the CEO is one of the most important responsibilities

of the Board, and the Board has to make that decision based on what the Board believes is in the company's best interests.

I hope that the history I have provided makes it clear that this is not a decision that I either initiated or advocated, as some have suggested. The decision was made by the independent directors acting in what they believed to be in the best interests of the company. I believe it was not an easy decision for them to make, nor a decision they wanted to make. But given the conclusions they had reached, it was a decision they felt obligated to make. Although there were differences of opinion, and a split vote on the matter, this was the decision of an independent Board.

I would also make the point that the Board's decision on this matter is a decision that is within the sole domain and authority of the Board. This Commission has focused on all the issues that it should have focused on in approving the merger. The conditions that the Commission included in its approval order provide broad and significant benefits and protections for customers. These conditions include customer savings and continued support for all our communities. In its merger with Cinergy, Duke fulfilled all the conditions set by the Commission in approving that merger, and we are equally committed to fulfilling the conditions set by the Commission in approving this merger. Again, this merger will provide significant benefits to all our constituencies, and we look forward to making those benefits a reality.