Appeals Court Upholds Duke-Progress Deal

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RALEIGH, N.C. (AP) — A North Carolina appeals court upheld Tuesday the state's regulatory approval of the deal that made Duke Energy Corp. the country's largest electric company when it purchased Progress Energy.

The three-member Court of Appeals panel affirmed the 2012 decision by the North Carolina Utilities Commission to approve the agreement by Charlotte-based Duke Energy and Progress, headquartered in Raleigh, which came with some stipulations.

The advocacy group NC WARN challenged the commission's decision, arguing the panel did not fully consider the acquisition's impact on consumers, particularly low-income families or the estimated 2,000 or more jobs that would be eliminated. But the judges ruled unanimously the commission was not wrong in determining the deal was justified and supported by evidence. A challenge by the city of Orangeburg, S.C., also was thrown out.

"It is not this court's role to second guess the determination of the commission where its findings and conclusions are supported by the evidence," Court of Appeals Judge Doug McCullough wrote in the unanimous opinion in affirming the merger's approval.

NC WARN's attorneys have said consumers got the short end of the stick, which got brightened up with short-term gains for North Carolina rate payers and the poor. The regulatory body also didn't consider enough the risk associated with such a merger, according to the group, which is likely to appeal the decision to the state Supreme Court.

"We are still just real determined that the court require the regulators to address the key issues and make Duke show how this merger benefits the public," NC WARN Executive Director Jim Warren said in an interview. The Supreme Court isn't obligated to hear the appeal because of the 3-0 decision.

Duke Energy is pleased with Tuesday's decision on the merger, which "has been yielding significant savings to customers since it closed in July 2012," spokesman Tom Williams said in a release.

The merger was finalized after promises reached with state regulators of at least $650 million in fuel savings for customers in the merger's first five years and $15 million in the first year for workforce development and assistance to the poor in paying their power bills. NC WARN said the new company should give $27 million annually for a decade to help low-income residents.

McCullough pointed to the commission's order while saying the merger approval

"should not be the vehicle to address the energy needs of low income families," and that they'll benefit from the broader fuel savings, too.

Duke Energy CEO Lynn Good said last month the combined company already has exceeded targets with $190 million in savings through the end of 2013 by reducing fuel costs and sharing Duke and Progress power plants.

McCullough said the commission viewed the job reductions with other testimony showing a majority would be eliminated through retirement, attrition and voluntary severance. Other testimony, the judge wrote, found retained employees would benefit from the merger "as a result of a larger, more diverse company with better career opportunities, compensation, and benefits." Judges Rick Elmore and Linda Stephens joined in the opinion.

With nearly 28,000 employees, Charlotte-based Duke Energy serves 7.2 million electric customers in the Carolinas and four other states. It's the largest U.S. utility based on customers and market value.

Orangeburg challenged terms of the merger that would make it harder for the city to get discounted electricity when its current contract with S.C. Electric & Gas Co. ends in 2022. The court ruled Orangeburg doesn't have legal standing to appeal the commission's ruling because it's not affected directly by the commission's regulatory decisions on the merger.

The merger of two North Carolina-based Fortune 500 companies took a twist when the combined company fired Progress Energy CEO Bill Johnson, who for a year and a half had been promised the job heading the combined company. The firing led to additional regulator hearings about the dismissal.

Duke Energy settled separate probes by the commission and the state Attorney General's Office in late 2012. Among other items, the agreement set the retirement date of then-Duke CEO Jim Rogers and required $30 million for ratepayers and low-income assistance. NC WARN, or Waste Awareness & Reduction Network, also has challenged in court this commission settlement, saying it was wrongly done in secret.

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