



December 15, 2011

Commissioner Cheryl A. LaFleur

STATEMENT

FEDERAL ENERGY REGULATORY COMMISSION

Docket Nos. EC11-60-001, ER12-115-000, ER12-116-000, ER12-118-000,
ER12-119-000, ER12-120-000, ER11-3306-000, and ER11-3307-000

Statement of Commissioner Cheryl A. LaFleur on Duke-Progress Merger Order

"On December 14, 2011, we issued two orders on the proposed merger between Duke and Progress Energy. One of these orders rejected a merger mitigation plan submitted by the companies in response to a prior Commission order to reduce their market concentration in the Carolinas markets.

The decision to reject the proposed mitigation plan was not taken lightly. I recognize that the companies submitted the plan as an effort to comply with our earlier merger order, which directed them to propose mitigation measures to reduce their market concentration in the Carolinas markets. The companies proposed to virtually divest between 225 and 500 MW of Available Economic Capacity in certain seasons. However, as yesterday's order discusses in greater detail, the proposal did not adequately remedy the negative effects on competition previously identified by the Commission. Given the high levels of market concentration, as measured by the companies' HHI indices and the Commission's Delivered Price Test, we remain concerned that the proposed merger will affect the companies' ability to exercise market power.

In rejecting the mitigation proposal, the order explained why the proposal did not satisfy the Commission's market concentration concerns and mitigation requirements. In short, the proposal failed to transfer control over divested generation from the merged firm, restricted the pool of eligible buyers, and created a product that potential buyers are unlikely to be interested in purchasing. The order provided guidance on what types of mitigation measures the Commission has accepted in the past, and gave Duke and Progress an opportunity to submit a new mitigation plan that responds to our concerns.

I recognize that our December 14th orders, like the merger proposal itself, are important to the companies, their customers, other electric customers in the region, and state regulators and officials. I trust that our orders will provide all stakeholders with an understanding of the Commission's concerns and path forward for addressing them."