

Begin forwarded message:

**From:** "John Droz, jr." <[aaprjohn@northnet.org](mailto:aaprjohn@northnet.org)>  
**Date:** August 7, 2012 6:39:02 AM EDT  
**To:** "Tim Dodge, esq" <[tim.dodge@psncuc.nc.gov](mailto:tim.dodge@psncuc.nc.gov)>  
**Cc:** "Rep. George Cleveland" <[George.Cleveland@ncleg.net](mailto:George.Cleveland@ncleg.net)>, "Sen. Phil Berger \ (President Pro Tempore\)" <[Phil.Berger@ncleg.net](mailto:Phil.Berger@ncleg.net)>, "Jeff Warren (President Pro Tem's Office)" <[Jeff.Warren@ncleg.net](mailto:Jeff.Warren@ncleg.net)>, "Sen. Jean Preston" <[Jean.Preston@ncleg.net](mailto:Jean.Preston@ncleg.net)>, "Rep. Mike Hager" <[Mike.Hager@ncleg.net](mailto:Mike.Hager@ncleg.net)>, "Rep. Paul Stam" <[Paul.Stam@ncleg.net](mailto:Paul.Stam@ncleg.net)>, "Rep. Thom Tillis \ (Speaker\)" <[Thom.Tillis@ncleg.net](mailto:Thom.Tillis@ncleg.net)>, "Sen. Harry Brown" <[Harry.Brown@ncleg.net](mailto:Harry.Brown@ncleg.net)>, "Sen. Jerry W. Tillman" <[Jerry.Tillman@ncleg.net](mailto:Jerry.Tillman@ncleg.net)>, David Rouzer <[David.Rouzer@ncleg.net](mailto:David.Rouzer@ncleg.net)>, "Rep. Pat McElraft" <[Pat.McElraft@ncleg.net](mailto:Pat.McElraft@ncleg.net)>, "Pamela Ahlin \ (Rep. Cleveland\)" <[Clevelandla@ncleg.net](mailto:Clevelandla@ncleg.net)>, George Cleveland <[gnclev@earthlink.net](mailto:gnclev@earthlink.net)>, Norm Sanderson <[Norman.Sanderson@ncleg.net](mailto:Norman.Sanderson@ncleg.net)>, "Rep. Bill Cook" <[Bill.Cook@ncleg.net](mailto:Bill.Cook@ncleg.net)>, Bert Jones <[Bert.Jones@ncleg.net](mailto:Bert.Jones@ncleg.net)>, Jeff Collins <[Jeff.Collins@ncleg.net](mailto:Jeff.Collins@ncleg.net)>, "John Blust, esq." <[John.Blust@ncleg.net](mailto:John.Blust@ncleg.net)>, Marilyn Avila <[MarilynAvila@ncleg.net](mailto:MarilynAvila@ncleg.net)>, Larry Pittman <[Larry.Pittman@ncleg.net](mailto:Larry.Pittman@ncleg.net)>, Dianna Downey <[dianna.downey@psncuc.nc.gov](mailto:dianna.downey@psncuc.nc.gov)>, Frank Iler <[Frank.Iler@ncleg.net](mailto:Frank.Iler@ncleg.net)>, Kennie Ellis <[kennie.ellis@psncuc.nc.gov](mailto:kennie.ellis@psncuc.nc.gov)>, Antoinette Wike <[antoinette.wike@psncuc.nc.gov](mailto:antoinette.wike@psncuc.nc.gov)>, Robert Gruber <[robert.gruber@psncuc.nc.gov](mailto:robert.gruber@psncuc.nc.gov)>, Bob Hinton <[bob.hinton@psncuc.nc.gov](mailto:bob.hinton@psncuc.nc.gov)>, Jay Lucas <[jay.lucas@psncuc.nc.gov](mailto:jay.lucas@psncuc.nc.gov)>, Calvin Craig <[calvin.craig@psncuc.nc.gov](mailto:calvin.craig@psncuc.nc.gov)>  
**Subject: Re: The NCUC Public Staff's Allegiance**

Tim:

Yet another month has transpired here where I have heard nothing.

I would very much appreciate your giving me full answers to what I inquired of you back in April (see below).

Thank you for your prompt attention to this significant NC matter.

regards,

john droz, jr.  
physicist & environmental advocate  
Morehead City, NC

On Jul 9, 2012, at 7:24 AM, John Droz, jr. wrote:

Tim:

I am a reasonably patient person, but I have not gotten an answer yet to the email I sent you in April (below).

This is a VERY important NC matter that I'd like to resolve in a prompt, professional manner, so please advise, ASAP.

regards,

john droz, jr.  
physicist & environmental advocate  
Morehead City, NC

On Apr 30, 2012, at 5:45 PM, John Droz, jr. wrote:

Tim:

Thank you.

regards,

john droz, jr.

On Apr 30, 2012, at 5:40 PM, Dodge, Tim R wrote:

Mr. Droz – This email is to acknowledge receipt of your April 29, 2012 email. Thank you for your interest in this issue and I will give your comments due consideration.

Sincerely,

Tim R. Dodge, Staff Attorney  
Public Staff, North Carolina Utilities Commission  
4326 Mail Service Center  
Raleigh, NC 27699-4326  
Phone: 919.733.0976  
Fax: 919.733.9565  
[tim.dodge@psncuc.nc.gov](mailto:tim.dodge@psncuc.nc.gov)

**From:** John Droz, jr. [mailto:[aaprjohn@northnet.org](mailto:aaprjohn@northnet.org)]

**Sent:** Sunday, April 29, 2012 4:04 PM

**To:** Dodge, Tim R

**Cc:** Rep. George Cleveland; Sen. Phil Berger (President Pro Tempore); "Jeff Warren (President Pro Tem's Office)"; Sen. Jean Preston; Rep. Mike Hager; Rep. Paul Stam; Rep. Thom Tillis (Speaker); Sen. Harry Brown; Sen. Jerry W. Tillman; Rep. Pat McElraft; Pamela Ahlin (Rep. Cleveland); George Cleveland; Norm Sanderson; Rep. Bill Cook; Downey, Dianna; Ellis, Kennie; Wike, Antoinette; Gruber, Robert; Hinton, Bob; Lucas, Jay; Craig, Calvin

**Subject:** Re: The NCUC Public Staff's Allegiance

Tim:

Thank you for your 4/26/12 response (below) to my 3/7/12 email to you (further below). Please let me know that you get my answer here this time.

Whether or not I am a supporter of NC's RES (or certain federal tax policies) is entirely irrelevant to the issue at hand here. My concern is whether the NCUC Public Staff is fully representing their client (NC consumers and businesses) which is what is statutorily mandated. As such it is unfortunate that you introduce your comments with that as a backdrop.

Since you brought up this diversion, let me make my position clear. As an independent physicist with extensive energy expertise my "agenda" is: **the state should tackle its energy and environmental matters by using real science.** *Are you supportive of that perspective, Mr. Dodge?*

History shows us that unscientific and arbitrary political endeavors almost never work in these technical matters, and are usually an unnecessary burden on taxpayers and ratepayers. I am against totally against wasting NC taxpayer and ratepayer dollars — *are you Mr. Dodge?*

Your statement "There is no doubt that the enactment of S.L. 2007-397 contemplated an increase in the costs of electricity for the ratepayers of the State; hence the provisions allowing for the recovery of costs for renewable energy and energy efficiency projects." is revealing as you have subtly tried to combined **two** very different financial matters into one item. Let's break them apart:

- 1) Yes, the delivered cost of wind generated electricity to NC consumers and businesses will be substantially higher.
- 2) Yes, the cost of implementing wind energy into the system is a *different* cost, normally incurred by utility companies.

Utility companies objected to the extra #2 cost during the "negotiations" regarding SB-3, and the legislators agreed to allow them to pass on this "implementing" cost (within some limits) to consumers and businesses.

The bottom line of this largesse is that consumers were tagged for extra electricity costs PLUS extra grid implementation costs: a double whammy. This raises the logical question: *exactly who was representing NC consumers and businesses during this SB-3 negotiation???*

Despite your implication, the GA put no provision in SB-3 to assure that the COMBINATION of these costs were not "too onerous." The fact is that they left that responsibility to the NCUC, **and in particular, the NCUC's Public Staff, to see that delivered electricity costs (#1) were kept low.** That has yet to happen. Therein lies the problem and the reason for my writing to you in the first place.

-----

BTW, there are zero proven **net** benefits provided by the renewable's part of SB-3. If you dispute that assertion, I'd be most appreciative if you'd supply a scientific assessment showing that there are any **net benefits** provided by the renewable's part of SB-3 to NC consumers and businesses.

Even if there are such net benefits (there are not any to my knowledge), the legislature did **not** give the NCUC a blank check saying "in promoting SB-3 feel free to raise electricity rates on NC consumers and businesses as high as you like."

Furthermore, there is nothing in SB-3 (or elsewhere to my knowledge) where the GA has directed the NCUC's Public Staff to ignore their sole mandate: **to exclusively represent the interests of NC consumers and businesses, by assuring that they get safe, reliable, low cost electricity.**

However, that is exactly what has transpired here. The NCUC Public Staff has arbitrarily determined that it is more important for them to promote SB-3, *at the expense (financial and otherwise) of NC consumers and businesses.* This (IMO) is a significant abdication of your very reason for existence.

-----

*Regarding your answers to my comments (below):*

**Your answer to Comment #4: is satisfactory.**

**Your answer to Comment #5: is unsatisfactory.** Your response seems to say that the Public Staff's assessment of a wind project will only consider its compliance with NC laws. That is not a meaningful assessment, as such laws are minimal at best. As a consumer and business advocate your report to the NCUC should be a *thorough* commentary on all 1) *technical*, 2) *economic*, and 3) *environmental* consequences of a proposed wind project. *Anything less is an abdication of your statutory responsibility to act in the best interests of NC consumers and businesses.*

**Your answer to Comment #6: is unsatisfactory.** You effectively acknowledge the obvious: that promoting certain legislation *and* representing the rights of NC consumers and businesses, can be in conflict. Your stated "solution" is to "harmonize" the situation. In legal terms you are attempting to provide *dual agency* — i.e to serve two masters. Any first year law student can tell you that this is effectively impossible to do properly, as in every case where there are conflicting interests (like here) one or the other of your clients is going to be short-changed. That is exactly why I am writing here, as in this case it is NC consumers and businesses who are being substantially short-changed, whether you want to publicly admit it or not.

**Your answer to Comment #8: is unsatisfactory.** You correctly state that there has not been a scientific assessment of wind energy that resolves its technical, economic, and environmental merits. There are two problems though, that you do not mention.

First, it is the wind developer's **obligation** to provide such a scientific assessment, as he is asking permission to be allowed on the public grid. The Public Staff (as the agent of the public) should be **demanding** such evidence, from the applicant, as a *condition* of your approval. I see no evidence of you doing anything remotely like that. *Your actions are more of you being the agent of the applicant!*

Second, the Public Staff should have been conveyed this lack of a scientific assessment as a major concern to the NCUC. Again, I see no such reservation expressed in your communication with the NCUC. That, IMO is a serious deficiency.

This business about "merchant plant" does not resonate with me. As I already mentioned, these developers are asking permission to be allowed on the public grid. Throughout the whole process their costs (and other impacts) will be borne by NC citizens and businesses — i.e. your sole client. As such the NCUC Public Staff should subject such applications to your *highest* level of review. [If certain words in NC GS-62 need to be clarified to make this more clear, please advise as to exactly which.]

**Your answer to Comment #9: is unsatisfactory.** You referred to your answers in #5 and #6, and they are unsatisfactory (see above).

**Your answer to Comment #10: is unsatisfactory.** You accurately acknowledged that wind energy is essentially entirely supported by tax and ratepayer dollars. The point of my comment #10 was to answer your claim that a wind project was a "private money" affair. It is **not** private money at all, as the public (your client) is paying the full tab. As such, the Public Staff has an *obligation* to do a thorough and objective assessment of such applications. You are doing nothing of the sort.

**Your answer to Comment #11: is unsatisfactory.** You acknowledge that there is no single NC agency that provides an objective balanced: technical, economic and environmental assessment of proposed wind projects. You claim that NC agencies "work together" to address those matters. That sounds nice, but it does not reflect the reality of what is transpiring in NC.

For example, yes the department of Commerce wrote a report about the *Desert Wind* project. However their report was primarily a regurgitation of unproven marketing information *provided by the developer*. There was nothing "objective" about it. So, despite your assurance that objective and balanced assessments of proposed NC wind projects is coming from multiple NC agencies, I am aware of nothing of the kind. Please provide any balanced objective assessment by any NC agency, regarding either the *Desert Wind* or *Pantego* projects. Again, my original point here is that this responsibility unequivocally falls on the PUBLIC STAFF. For you to say it is being done elsewhere is inaccurate and disingenuous.

You did not address the concern I expressed about the Public Staff's wind energy testimony. I did **not** say that the renewability of wind energy should be challenged by the Public Staff. I **did** say that the Public Staff should provide scientific evidence for all their claims of purported benefits of the applicant's project. This has yet to be done. This is particularly egregious when specious testimony claims are made by the Public Staff that are outside of the staff's areas of expertise.

To say that it's up to someone else to challenge the Public Staff's unscientific speculation is absurd. The Public Staff is OUR AGENT! You seem to be saying that the only way that the Public Staff will be truthful in their testimony is if we challenge our own agent! That is preposterous.

Further, if the Public Staff feels inclined to give testimony on relevant topics, why aren't they speaking about bird and bat kills, turbine health effects, property devaluation, etc.? There is proven evidence of all of that, and more. That would be how **our agent** would be expected to act. But no, you have not spoken a single word in behalf of NC consumers and businesses in these wind application hearings. *Shameful!*

**Your answer to Comment #12: is unsatisfactory.** The *example* of the Maine Public Staff was cited not because it was the exact same case, but for the *reasoning* used in their decision. I'll repeat what I originally sent you:

Eric Bryant, an attorney for the Maine Public Advocate's office, which represents the interest of utility customers, said last week that his office opposed the deal because it *could* result in "higher utility prices," thus **violating the law that required a deal to do no harm to the interests of ratepayers.**

Note that their focus was on the *interest of their client (utility ratepayers)*, rather than furthering a political agenda (Maine's RES).

My point was that **looking out for the interest of consumers and businesses is the sole job requirement of the Public Staff.** In the Maine case, the Public Staff said "no" to a proposal because it MIGHT raise electricity rates. In the NC wind cases at hand, there is 100% certainty that consumers and businesses will pay much higher electricity rates — yet our Public Staff looks the other way and doesn't say a word about this liability.

The fact that the Maine Utility Commission ignored the Public Staff's recommendation is totally irrelevant. The NCUC Public Staff should only be concerned about aggressively representing the interests of NC consumers and businesses. What the NCUC chooses to do is another matter and is not your problem.

**Re your closing comments.** This is not a matter of Senate Bill 3, federal legislation, etc. There is only one fundamental issue here:

*is the NCUC Public Staff fulfilling its obligation to be the exclusive agent of NC consumers and business regarding wind project applications?*

The answer (to date) is unequivocally **NO**. Your responses effectively acknowledge this, especially by your admitting to the NCUC Public Staff's unauthorized practice of dual agency.

Please correct me if I am wrong, but **there is no NC statute that directs the Public Staff to be dual agents.**

**By this unauthorized practice of dual agency, the Public Staff is causing *significant* harm to their sole client: NC consumers and businesses.**

Any dual agency *necessarily* results in a degradation of the services provided to one of the clients. In this case, the NCUC Public Staff has about 95% of its focus on promoting SB-3, and about 5% in representing the best interest of NC consumers and businesses. *The bottom line is that for your efforts to be anything less than 100% for the best interest of NC consumers and businesses, is unacceptable and illegal.*

**So, as one of your clients, I am formally requesting that the NCUC Public Staff immediately cease and desist all activities that might be construed as those of a dual agent, and to exclusively focus on representing the best interests of NC consumers and businesses.**

That is the primary issue before us, and I await your commitment to fully comply with this request.

Additionally I expect that you send the NCUC a letter explaining that you abdicated your statutory requirements regarding the *Desert Wind* and *Pantego* applications, and tell them that you will be submitting a corrected position paper.

Sincerely,

john droz, jr.  
physicist & environmental advocate  
Morehead City, NC

On Apr 26, 2012, at 1:10 PM, Dodge, Tim R wrote:

Rep. Cleveland – This email is in response to your request for a response to the questions raised by Mr. John Droz in his March 7, 2012 and April 9, 2012 emails. At the outset, I would just observe that Mr. Droz does not appear to be a supporter of the State’s Renewable Energy Portfolio Standard (S.L. 2007-397, commonly referred to as Senate Bill 3), nor does he appear to be supportive of State or federal tax policies supporting the development of renewable energy. Mr. Droz is fully entitled to express his views both to you as an elected member of the General Assembly and to me as an employee of one of the State agencies charged with implementing these laws. Although I do not feel that it would be appropriate for me to comment on the political aspects of these issues, I am happy to provide the following background information to you and Mr. Droz in order to provide some context to the position taken by the Public Staff on these issues.

As you may recall, the development of Senate Bill 3 in 2007 was a long and complicated process with stakeholders representing multiple interests taking part in the discussion, including public utilities, renewable energy interests, consumer advocacy groups, environmental organizations, and others. The decision to ultimately enact the measure, however, was wholly made by the elected members of the General Assembly. There is no doubt that the enactment of S.L. 2007-397 contemplated an increase in the costs of electricity for the ratepayers of the State; hence the provisions allowing for the recovery of costs for renewable energy and energy efficiency projects. The General Assembly sought to ensure that

the costs were not too onerous, however, by including cost caps that limited the amount of costs that could be recovered from ratepayers to meet the Renewable Energy Portfolio Standard.

The General Assembly made the decision that the other policy objectives Senate Bill 3 was designed to support were worth the potential increases in electricity costs. While both the Utilities Commission and the Public Staff work to ensure that electric utilities provide safe and reliable service at the least cost possible, we have to consider the other factors the General Assembly directs us to consider, and in some cases, other factors (environmental compliance, renewable energy development, etc.) that may result in a higher cost of electricity to ratepayers of the State.

In response to Mr. Droz's specific questions or comments, I provide the following information:

Comment #4: Mr. Droz asked whether I agreed with the statement that our "client is who our primary allegiance is to." *I agree with that statement, to the extent that that allegiance remains within the bounds of all laws and policies established by the State and Federal government.*

Comment #5: Mr. Droz asked whether my comments meant that the "NCUC Public Staff can not present an objective balanced assessment of a wind energy project (which would likely result in an unfavorable review) as that would amount to "advocating a position contrary" to Senate Bill 3?" *The Public Staff attempts to make an objective, balanced assessment of all projects and proposals brought before the Commission. This includes an assessment of whether the project or proposal complies with all of the mandates and requirements established by the General Assembly, one of which is S.L. 2007-397. The mandates established by the Act are not given primacy over other laws or policies established by the General Assembly. Just because a project would potentially further the goals of S.L. 2007-397 does not mean that the Public Staff will overlook other issues that the project might raise.*

Comment #6: Mr. Droz asks how we "resolve the conflict of implementing legislative mandates when such implementation is not in the interest of your client?" *As a legislator, you certainly appreciate the differences between the roles of the legislative branch and the executive branch, and expect that State agencies will implement and abide by laws established by the General Assembly. The Public Staff takes its responsibility to uphold the laws of the State very seriously. The Public Staff does not see a singular conflict between the legislative mandates and the interests of our client, but where there are multiple goals to be achieved, the Public Staff seeks to harmonize the positions it takes in a way that balances the various goals and interests.*

Comment #8: Mr. Droz raises several issues regarding the safety, reliability, and costs of wind energy, and states that he does not feel that the Public Staff has conducted any objective, balanced assessment of these issues in the two wind cases considered by the Commission. *I believe that there are a range of perspectives on wind energy in relation to other energy resource options and that the scientific evidence on the safety, reliability, and cost of this resource is far from settled. Mr. Droz raises several excellent points in his discussion, but these are still issues that are readily being debated in the scientific community. In fact, these kinds of discussions surround all energy options (coal, nuclear, natural gas, solar, geothermal, etc.) and are not unique to wind. All energy choices have trade-offs. The fact remains, however, that the 2006 study performed by La Capra Associates for the Utilities Commission and presented to the General Assembly estimates that on-shore wind has significant potential as a new*

*renewable resource in North Carolina, and S.L. 2007-397 lists wind as “renewable energy resource” that may be used to meet the policy objectives of the Act.*

*Also, I think it is important to re-state the point that I made in my March 6 comments, that the two previous wind energy proposals considered by the Commission were considered “merchant plant” applications pursuant to Commission Rule R8-63 and were not subject to the same level of review called for in Commission Rules R8-62 and R8-64. For the purposes of this rule, merchant plants are electric generating facilities under 300 MW in capacity, the output of which is to be sold exclusively at wholesale and the construction cost of which does not qualify for inclusion in, and would not be considered in a future determination of, the rate base of a public utility. These are basically private investors looking to build facilities on private property and to sell the electricity generated on the wholesale market. The wholesale market is largely regulated by the Federal Energy Regulatory Commission, and so our role in the review of those transactions is more limited. If, however, a North Carolina public utility that is subject to Commission regulation were to purchase the power from the facility, the Public Staff and the Commission would closely analyze the cost of the purchased power to ensure that the costs were reasonable and prudent. I agree with Mr. Droz that it is instructive that Iberdrola has not been able to obtain a power purchase agreement for their proposed Desert Wind project ((Utilities Commission Docket No. EMP-49, Sub 0) in northeastern North Carolina.*

Comment #9: Mr. Droz again asks how “Again, you do not address how the Public Staff resolves the actual situation where “compliance with the Act” is contrary to the overall interest of the using and consuming public.” See my response in comments #5 and #6 above.

Comment #10: Mr. Droz states that wind energy is enabled by substantial tax credits. *I do not dispute that wind energy facilities receive state and federal tax credits, but the availability and eligibility of tax credits for renewable energy development is very much a political issue and largely the realm of Congress and the General Assembly.*

Comment #11: Mr. Droz asks what State agencies “have the responsibility to do a critical, objective, balanced assessment of human health implications, economic claims, etc.” *There is no single agency that looks at all of these issues listed by Mr. Droz, but State agencies work together within their own areas of expertise to address issues that arise from various utility projects. For example, the State Environmental Policy Act (Chapter 113A of the General Statutes) establishes a framework to provide an opportunity for State agencies to review projects, identify any permitting requirements, and generally comment on the potential impacts of the project to the environment, health, public safety, cultural resources, and other areas. With regard to economic claims, there is no requirement that these items be critically evaluated as part of a CPCN for a merchant plant filing. In the case of the Iberdrola filing, the Department of Commerce did conduct an economic impact study. I’ve attached the executive summary of the report to this email for your review.*

*Mr. Droz also makes a reference to testimony given by the Public Staff witness in the Pantego Wind Energy proceeding (Utilities Commission Docket No. EMP-61, Sub 0). I believe Mr. Droz is referring to the testimony filed by Mr. Kennie Ellis, which is available on Page 207 of the “Transcript of Testimony heard December 6, 2011.” In that testimony, Mr. Ellis states the policy objectives established by the General*

*Assembly in Senate Bill 3 and then discusses whether the proposed facility would further those policy objectives. I encourage you to read that portion of Mr. Ellis's testimony in its entirety. Mr. Droz states that the Public Staff should provide independent scientific evidence for every claim made in its testimony. Witnesses before the Commission are required to submit statements of qualification with their testimony and are allowed to offer independent professional opinions. Further, witnesses are subject to cross-examination by any intervening party, and the Commission itself may ask questions regarding any statements made by a witness. In any case, however, it is beyond the scope of the Public Staff's responsibilities and expertise to present evidence regarding matters that have been decided by the General Assembly, such whether wind qualifies as a renewable energy resource. The Public Staff's role is to make recommendations to the Commission regarding whether a specific wind project will meet a public need and be in compliance with State and federal environmental regulations if and when it is constructed, which is largely determined by the market for power produced by the facility.*

Comment #12: Mr. Droz questions the differences in positions taken by Maine Public Advocate's office and NCUC Public Staff on wind energy proceedings considered by the State. *The Maine example that Mr. Droz cites has more to do with a merger or business restructuring proceeding between three utilities operating in Maine than it does with the science and economics of wind power, or the approval of a wind energy generating facility. As such, this case has little relevance in this discussion. The quote Mr. Droz cites states the position of the Maine Public Advocate's office on the potential for market power concentration and reduced competition resulting from the proposed business combination, which could result in higher utility prices. I have attached the entire examiner's report from January 13, 2012, to this email for your reference. Despite the opposition from the Maine Public Advocate's office and other parties, the Maine Public Utilities Commission approved the business combination on April 10, 2012. See story at: [http://www.pressherald.com/news/puc-oks-wind-deal-against-advice-of-staff\\_2012-04-11.html](http://www.pressherald.com/news/puc-oks-wind-deal-against-advice-of-staff_2012-04-11.html).*

*It is also important to note that Maine has gone through significant restructuring of its electricity markets and has a very different regulatory structure than North Carolina. However, the standard of review set in the business combination case "no net harm to ratepayers", is very similar to the standard of review applied by the North Carolina Utilities Commission In its review of proposed mergers and business combinations, including the pending proposed merger between Duke Energy and Progress Energy.*

In closing, I hope this information is helpful to you. Rather than continuing this dialogue via email, I would be happy to meet with you and talk about what issues you feel have not been addressed in my comments. I encourage Mr. Droz to continue his involvement in the issues he raises and if he wishes to see federal or state tax policy changed, or propose changes to the State's renewable energy portfolio standard, to pursue these changes with policymakers such as you. Mr. Droz is also welcome to petition to intervene in proceedings before the Commission and have an opportunity to present his own witnesses and cross-examine other witnesses. If Mr. Droz has further questions regarding matters before the Commission or Public Staff, I am always happy to talk with him further about those issues.

Please let me know if you have any additional questions.

Sincerely,

Tim R. Dodge, Staff Attorney  
Public Staff, North Carolina Utilities Commission  
4326 Mail Service Center  
Raleigh, NC 27699-4326  
Phone: 919.733.0976  
Fax: 919.733.9565  
[tim.dodge@psncuc.nc.gov](mailto:tim.dodge@psncuc.nc.gov)

**From:** John Droz, jr. [<mailto:aaprjohn@northnet.org>]  
**Sent:** Wednesday, April 18, 2012 10:26 AM  
**To:** Dodge, Tim R  
**Cc:** 'Rep. George Cleveland'; Downey, Dianna; Ellis, Kennie; Wike, Antoinette; Gruber, Robert; Hinton, Bob; Lucas, Jay; Craig, Calvin  
**Subject:** Re: The NCUC Public Staff's Allegiance

Tim:

Thank you for the reply.

I don't know what to say. Nothing has changed on my end.

We had no problem sending and receiving emails before that.

Maybe there were squirrels on the cable line the days I sent those out to you?

regards,

john droz, jr.

On Apr 18, 2012, at 10:19 AM, Dodge, Tim R wrote:

Mr. Droz - I received this email. I did not receive the April 9, 2012 or the March 7, 2012 email from you. Prior to Rep. Cleveland's email this morning, the last correspondence I have in this email chain was Rep. Cleveland's March 7, 2012 response to my March 6, 2012 email.

I will check my spam filter settings to ensure that the emails were not inadvertently deleted.

**From:** John Droz, jr. [<mailto:aaprjohn@northnet.org>]  
**Sent:** Wednesday, April 18, 2012 10:12 AM

**To:** Dodge, Tim R

**Cc:** 'Rep. George Cleveland'; Downey, Dianna; Ellis, Kennie; Wike, Antoinette; Gruber, Robert; Hinton, Bob; Lucas, Jay; Craig, Calvin

**Subject:** Re: The NCUC Public Staff's Allegiance

Tim:

I have no idea to explain why you did not get my emails, other than my correspondence might have gone your SPAM folder.

My original response to you was actually on March 7th (see below).

The April 9th email was a followup asking about why I had heard nothing since March 7.

Let me know that you get this.

regards,

john droz, jr.

On Apr 18, 2012, at 10:01 AM, Dodge, Tim R wrote:

Rep. Cleveland – Thank you for your email this morning. While my name is listed on the To: line of Mr. Droz's April 9, 2012 email, I did not receive the email and was not aware of the further questions Mr. Droz raised until you brought his email to my attention this morning. I will review the information and questions provided by Mr. Droz and provide you with a response as soon as possible.

Tim R. Dodge, Staff Attorney  
Public Staff, North Carolina Utilities Commission  
4326 Mail Service Center  
Raleigh, NC 27699-4326  
Phone: 919.733.0976  
Fax: 919.733.9565  
[tim.dodge@psncuc.nc.gov](mailto:tim.dodge@psncuc.nc.gov)

**From:** Rep. George Cleveland [<mailto:George.Cleveland@ncleg.net>]

**Sent:** Wednesday, April 18, 2012 8:12 AM

**To:** John Droz, jr.; Dodge, Tim R

**Cc:** Downey, Dianna; Ellis, Kennie; Wike, Antoinette; Gruber, Robert; Sen. Phil Berger (President Pro Tempore); Jeff Warren (President Pro Tem's Office); Sen. Jean Preston; Rep. Mike Hager; Rep. Paul Stam; Rep. Thom Tillis (Speaker); Sen. Harry Brown; Sen. Jerry W. Tillman; Rep. Pat McElraft; Pamela Ahlin (Rep. Cleveland); Hinton, Bob; Lucas, Jay; Craig, Calvin; George Cleveland; Rep. Bill Cook

**Subject:** RE: The NCUC Public Staff's Allegiance

Mr. Dodge – I have also been patiently waiting for your reply to Mr. Droz's questions. I believe he has raised some very valid points as to the operation of the NCUC Public Staff that I would like answered.

George G. Cleveland

**From:** John Droz, jr. [<mailto:aaprjohn@northnet.org>]

**Sent:** Monday, April 09, 2012 08:50 AM

**To:** Tim Dodge, esq

**Cc:** Dianna Downey; Kennie Ellis; Antoinette Wike; Robert Gruber; Sen. Phil Berger (President Pro Tempore); Jeff Warren (President Pro Tem's Office); Sen. Jean Preston; Rep. Mike Hager; Rep. Paul Stam; Rep. Thom Tillis (Speaker); Sen. Harry Brown; Sen. Jerry W. Tillman; Rep. Pat McElraft; Pamela Ahlin (Rep. Cleveland); Bob Hinton; Jay Lucas; Calvin Craig; George Cleveland; Rep. George Cleveland; Rep. Bill Cook

**Subject:** Re: The NCUC Public Staff's Allegiance

Tim:

I'm sure that you're busy, but it has been a month now since I wrote you — and this matter is of *significant* importance to NC citizens and NC businesses.

Please provide a thoughtful response to each of the items I brought up in my March 7th correspondence (below).

Thank you.

john droz, jr.  
physicist & environmental advocate  
Morehead City, NC

On Mar 7, 2012, at 8:37 AM, John Droz, jr. wrote:

Tim:

Thank you for your response yesterday to my January 20th email inquiry.

Please allow me to comment on the points you raised, in the sequence you presented them:

**1)** Yes, you and some of the NCUC Public Staff did meet with me at your Raleigh office on 11/14/11. All of you were polite and gracious. *Thank you for your hospitality.*

**2)** Yes, I filed extensive objections (20± pages worth) to the proposed *Pantego* (Beaufort County) wind project. I felt that this was necessary as no NC agency was identifying the issues, limitations and liabilities of such a project. I had initially hoped that the NCUC Public Staff would take on this role, but so far that has not happened. That is why I initially contacted you and other NCUC Public Staff personnel.

3) You wrote "I respectfully disagree with Mr. Droz's characterization of the conversations". I could certainly have misunderstood something, as I'm a senior now. One of the intentions of my initial email (and its followups) was to give you the full opportunity to clear up any misunderstanding I had about our conversation. Thank you for now doing that.

4) Sorry that the term "allegiance" was confusing. I am in agreement with your statement that "the Public Staff's "client" is the using and consuming public of the State of North Carolina.". As a layman I would say your *client* is who your primary *allegiance* is to. That would be like a fiduciary agency. *Do you agree with that?*

5) I am puzzled by the meaning of this statement "The Public Staff does not have a right to advocate positions contrary to the mandates passed by the General Assembly, nor would it presume to do so. " By "contrary" do you mean "unlawful"? I know of no one asking you do do that, so that interpretation can't make sense.

Or on the other hand do you really mean that the NCUC Public Staff can not present an objective balanced assessment of a wind energy project (which would likely result in a unfavorable review) as that would amount to "advocating a position contrary" to Senate Bill 3?

As I see it:

For every application that meets the conditions of Senate Bill 3, the NCUC Public Staff should give it their full **consideration**.

Your seem to be saying (correct me if I'm misunderstanding):

For every application that meets the conditions of Senate Bill 3, the NCUC Public Staff should give it their full **support**.

There is a profound difference between these two positions, so **we need to get this clarified**.

6) You continue on that vein by saying "our role is to implement to the laws established by the Legislature". Again, that was the nature of my query: how do you resolve the conflict of *implementing legislative mandates* when such implementation is ***not in the interest of your client?***

**I do not see an answer to that fundamental conflict. This is the crux of my concern, and we need to get this resolved.**

7) You respectfully disagree with my understanding of our conversation (which I acknowledged could be mistaken) by saying "with regard to wind energy, the Public Staff's primary effort would be to implement Senate Bill 3". However, in my reading over #5 and #6 it again seems like this is exactly what you are saying.

8) You state that "The Public Staff's primary effort with regard to implementing Senate Bill 3 has always been to address the renewable energy mandates established in the Act, along with the other

purposes and goals established by the General Assembly in G.S. 62-2 (safe, reliable power, just and reasonable rates,...)" yet:

**a)** Onshore wind energy has well-researched safety risks (e.g. to the health of proximate NC citizens). I have explained this in detail in my *Pantego* submission to the NCUC, which you have a copy of. The NC Department of Health is also aware of such issues and acknowledges their legitimacy. (Contact Dr. Jeffrey Engel or Dr. Megan Davies.) So far no safety risks have been enumerated by the NCUC Public Staff for either of the wind projects they have done an assessment on.

**b)** Although wind energy is significantly (and indisputably) **less reliable** than our conventional sources of electricity, there has not been a single negative (i.e. accurate) assessment submitted by the NCUC Public Staff that identified wind reliability as a significant liability.

There are major additional (often hidden) costs to address the unreliability of wind energy (e.g. the cost of augmenting power source — usually gas). It would seem that an objective assessment by the NCUC Public Staff would fully address these, yet (so far) nothing of the kind has happened.

**c)** Not sure what you are interpreting as "reasonable rates" but onshore wind energy is **at least twice as expensive** as conventional sources [per NC utility experts <<<http://www.dailyadvance.com/news/wind-e>>> {requires subscription so attached is a screenshot, below}]. Even the "at least twice as expensive" is a significant **understatement** of the true economics, as I thoroughly explained in my *Pantego* submission to the NCUC, and which you have a copy of. I have received nothing from the NCUC Public Staff that disputes any of the facts I submitted.

As further evidence of the unreasonableness of onshore wind energy, what actually happened with the *Desert Wind* project is instructive: **all three NC utility companies refused to pay their asking price, as it was MUCH higher than their other options.**

Here is another recent real world case: where an independent study was done for a NJ state agency regarding a proposed wind development (a small offshore project). The conclusion was that the higher utility rates would have a **significantly detrimental affect on the whole state**, and result in not only a net jobs lost situation, but also a net economic loss. *Why isn't the NCUC Pubic Staff representing the interest of their client by publicizing such realities?* [See <<[http://www.state.nj.us/rpa/docs/FACWReport%20v14%20\(PUBLIC%20VERSION\).pdf](http://www.state.nj.us/rpa/docs/FACWReport%20v14%20(PUBLIC%20VERSION).pdf)>>].

So, even though you acknowledge that the staff has an obligation to protect its clients interest regarding *safety, reliability* and *cost*, I have not seen any objective, balanced assessment on *safety, reliability*, or *cost* for the two cases that the NCUC Pubic Staff has formally assessed to date. **Why not?**

**9)** You state "In all cases arising out of Senate Bill 3, the Public Staff seeks to find a way to ensure compliance with the Act in a manner consistent with the other statutory requirements and the overall interest of the using and consuming public." What if there is no reasonable way to ensure

such compliance — do you just pound a round peg into a square hole? Again, you do not address how the Public Staff resolves the actual situation where "compliance with the Act" is **contrary** to the overall interest of the using and consuming public." See points #5 and #6 above.

10) Finally you have several sentences about "none of the projects would be financed or paid for with ratepayer money". Your point evidently is that " the requirements for obtaining a CPCN are much less rigorous than those for a new generating facility that will serve and be paid for directly by retail customers".

a) I would respectfully dispute the fact that "none of the projects would be financed or paid for with ratepayer money". First, there is substantial **tax** money that enables wind energy. That tax money comes from NC citizens and businesses. These people are essentially all NC ratepayers.

Second, why do you think that that wind energy (with no fuel costs) charges a premium rate? Wind developers are reported to typically make a net 25% ROI per year — which is far higher than any utility company makes. Irregardless of the exact percentage, *NC residential and business ratepayers are absolutely paying for such projects — and through premium electricity rates.*

b) Even if your inaccurate assumption was true, where in GS 62-15 does it direct the NCUC Public Staff to use a lower ("less rigorous") standard in assessing such applications?

c) How is it **ever** in the true interest of your client for the Public Staff to support lower *safety, reliability* and *cost* standards?

11) With all due respect, it seems that your inference that the NCUC Public Staff's comments be restricted to safety, reliability, and rates, the statute seems to give you **much more authorization than that**. My reading says that the NCUC Public Staff should "**provide assistance to the Commission in making the analysis and plans required pursuant to the provisions of G.S. 62-110.1 and 62-155.**"

That would seem to allow you leeway to comment on other claims by the applicant. For example, job and economic development claims (which are a key ingredient) warrant an *objective, balanced assessment* from the Staff. Observations regarding health impacts to citizens proximate to such industrial development might also be warranted.

If you choose to interpret your mandate as **not** going beyond the very narrow "safety, rates and reliability" considerations, then please tell me what NC agency DOES have the responsibility to do a critical objective balanced assessment of human health implications, economic claims, etc. — as I have yet to see any NC agency saying a single negative thing about these wind energy applications.

However, before you insist that your charter is solely limited to "safety, reliability, and rates" please rereview the NCUC Pubic Staff's comments already submitted. For instance, on page 3 of

the *Pantego* application the Public Staff person expounds on fossil fuel reduction, air quality, global warming, interstate fuel, etc. Clearly these are beyond the "safety, reliability, and rates" constraints. Interesting, none of the NCUC Public Staff person's claims asserted in that section of the *Pantego* commentary are supported with independent scientific evidence.

**12)** Lastly you did not address my initial question: Why is there such a profound difference in the response between Maine's Utility Commission Public Staff, and North Carolina's? Is there some significant difference in their authorizing statutes?

FYI, this is an example of what is going on in other states: <<<http://www.sunjournal.com/news/state/2012/01/20/puc-staff-no-go-energy-firms-wind-deal/1143625>>>.

Note that despite having a state RPS (**stronger** than Senate Bill 3), that the Maine Public Staff took a firm stand **against** this large wind project, e.g.:

Eric Bryant, an attorney for the Maine Public Advocate's office, which represents the interest of utility customers, said last week that his office opposed the deal because it *could* result in "higher utility prices," thus violating the law that required a deal to do no harm to the interests of ratepayers.

Note that their focus was on the *interest of their client (utility ratepayers)*, rather than furthering a political agenda (Senate Bill 3).

So thank you for your response. I hope you can promptly respond to the important questions raised here.

Thank you for your assistance.

regards,

john droz, jr  
physicist & environmental advocate  
Morehead City, NC

---

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

<NC Commerce Wind Study.pdf><ME Examiner's file.doc>