

spotlight

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CONSUMER PROTECTION BLACKOUT

Why the Public Staff Should Be Reformed

S U M M A R Y : The Public Staff is an independent government agency whose role is to represent the interests of electricity consumers before the Utilities Commission. However, as recent examples demonstrate, the Public Staff is acting more like an environmental advocate than a consumer advocate. The Public Staff has recommended a major new tax on consumers, possibly as large as \$181 million annually. The Public Staff also has expressed support for wind power plants even though it would mean higher costs and an unreliable means of electricity for consumers. The agency needs major reforms so consumer interests are truly protected, including term limits on the executive director of the Public Staff.

The Public Staff is an independent state agency that is supposed to represent the interests of electricity consumers before the North Carolina Utilities Commission.¹ Unfortunately, instead of advocating for consumers, the Public Staff appears to be more concerned about the interests of environmental advocacy groups. This failure comes at a very inopportune time, as extra taxes and other costs on electricity consumers are being proposed, to a large extent, in the name of saving the environment.

This *Spotlight* will highlight two specific examples of the Public Staff ignoring its clearly defined mission. It also will identify some solutions to ensure that the Public Staff protects electricity consumers and not special environmental interests.

The Role of the Public Staff

As expressly stated in the Public Utilities Act,² the Public Staff is required by law to “represent the using and consuming public.” It “shall not be subject to the supervision, direction, or control of the Commission [Utilities Commission], the chairman, or members of the Commission.”³ In other words, the Public Staff is an independent agency that is not supposed to be influenced by the Utilities Commission.

As the advocate for public utility consumers, the Public Staff is required to represent the needs of consumers in various areas, including electricity. It

200 W. Morgan, #200
Raleigh, NC 27601
phone: 919-828-3876
fax: 919-821-5117
www.johnlocke.org

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is not the Public Staff's role to represent the interests of electric utilities, environmental groups, or even the public interest in general. The Utilities Commission, not the Public Staff, is the governmental body that weighs these various interests. Two recent examples demonstrate how the Public Staff is ignoring its mission to represent consumers.

The Public Staff: Proponent of New Taxes

The Utilities Commission is considering charging electric utility consumers an additional fee on top of existing rates.⁴ The more electricity consumers use, the higher the fee.⁵ Quite simply, it is a tax. This tax has nothing to do with paying for the actual costs of supplying electricity but instead would be used to finance something called a "public benefits fund."⁶

Instead of strongly opposing the new proposed tax as any consumer advocate would be expected to do, the Public Staff is the agency supporting the new tax.⁷ North Carolina's latest State Energy Plan, which was developed by the State Energy Office, estimated that the tax could be as high as \$181 million annually using national averages.⁸

The "public benefits fund" could be used for many unidentified projects and likely would be administered by an unelected and unaccountable third-party administrator.⁹ The last thing North Carolina needs now is another large slush fund that could be used at the whim of political interests.

The justification for a public benefits fund is primarily to help support demand-side management programs, which are designed to reduce demand for electricity. These programs are the pet projects of environmentalists.¹⁰ In North Carolina, demand-side management programs have included, for example, incentives to motivate consumers to buy residential high-efficiency heat pumps and commercial energy-efficient lighting. These programs tax consumers and then give these same consumers money back if they make the "right" choices. The programs presume that consumers are not capable of making choices that are in their own best interests, or even if they are capable, their best interests are not as important as reducing the consumption of electricity. In other words, the Public Staff is supporting a program that is meant to thwart the freely made decisions of the very constituency they are charged to represent.

In addition, demand-side management programs are an impediment to having a competitive electricity marketplace that would benefit consumers. A new electricity provider is not going to want to enter the market if it is required by law to try to reduce demand for its product.

The fact is these programs also have not worked in North Carolina. As listed in the State Energy Plan, demand-side management programs are not as prevalent as they once were because, among other things, some of the programs were not able to provide the projected savings, and the cost of peak power plants (plants designed to accommodate periods of very high electricity usage) is less than implementing these programs—in other words, it is less costly to produce electricity than to have programs that try and conserve it.¹¹ Despite these problems, the Public Staff is still pushing for a massive consumer tax to support a public benefits fund.

The Public Staff: Favoring Wind Power at the Expense of Consumers

A proposed "wind farm" in Ashe County has generated a lot of media attention. This farm, which is simply an "electrical power plant," would consist of 25-28 wind turbines.¹² These turbines could be as tall as 400 feet or approximately the height of a 40-story building. The Public Staff is reported as saying that if it were not for the state's Mountain Ridge Protection Act¹³ (Ridge Law), which clearly prohibits massive wind turbines in the mountains, it would support the proposed wind project.¹⁴ It should be noted that the North Carolina coast would be the other potential site for industrial wind turbines. Unlike the mountain, however, the coast has no state law protecting it.

There are a lot of problems with this and other wind projects. The environmental problems include the killing of birds and bats, excessive land use, and aesthetic harm. Economic harms include reductions in property values and

impact on tourism. However, these concerns should not play a factor for the Public Staff. Its focus should solely be on whether this project is in the best interest of the using and consuming public.

In its testimony to the Utilities Commission regarding the proposed wind project, the Public Staff described several alleged environmental benefits of wind power. Its testimony should not have discussed *any* environmental issues—this is not the Public Staff’s role. Environmental groups do not need the Public Staff to represent them. ***The Public Staff, not even once, explains why the project would be beneficial to consumers.***¹⁵

One possible reason for this omission, besides the Public Staff thinking it is an environmental advocate, is wind power would not be beneficial to consumers. Wind turbines are only useful when the conditions are exactly right. There has to be enough wind, but not too much wind. Wind is intermittent and variable and therefore wind power is an unreliable source of energy.

If wind power is being used, there still needs to be some type of reliable back-up electricity generation. As a result, wind power does not reduce the need for conventional sources, such as coal-fired power plants.¹⁶ Wind power also is costly. Germany, which is the leading user of wind power, recently has analyzed its costs. According to the German Energy Agency, wind power is three times more costly than conventional power.¹⁷

Both Duke Power¹⁸ and Progress Energy¹⁹ have explained that wind power is not a suitable resource to meet electricity generation needs, in part because it is not reliable enough to be called upon when needed (dispatchable). Progress Energy has explained that among other reasons “because wind is not dispatchable, it is not a suitable alternative for peaking duty [responding to periods of very high electricity usage]. As a result, wind was eliminated from consideration as a potential resource to meet future generation needs.”²⁰

From the consumer perspective, wind power would cost more and is unreliable. It is hard to imagine the Public Staff having an easier time opposing something on behalf of consumers, yet it continues its support for this energy-inefficient source of power.

Recommendations

1) Consumer Oversight: There should be a formal consumer board made up of industrial and residential electricity consumers. The governor would appoint them to serve overlapping terms of four years. Individuals could only serve for one term. Their clear purpose would be to provide consumer perspectives to the Public Staff. The Public Staff would be required to consult this consumer board before it makes any major policy decisions—the goal would be to create consumer oversight of the Public Staff’s operations and policy recommendations.

2) Demonstrate Need for Recommended Price Increases: Whenever the Public Staff recommends a price increase or a policy that reasonably can be expected to lead to higher prices for consumers, it should be required to demonstrate that the increase or policy is clearly necessary to protect electricity availability, services, and other interests that are commonly shared by consumers.

The consumer board would have to approve the recommended price increase or policy by a two-thirds vote. Formal notice of the recommended price increase would have to be published in the North Carolina Register. Public hearings would be required and any citizen would be able to challenge the increase or policy in front of the consumer board.

3) Further Clarify the Public Utilities Act: The existing law is clear—the Public Staff is just not following its statutory mission. However, the statute should be tightened further to ensure that the Public Staff does not stray from its responsibilities, even if that means stating the obvious. For example, the statute should explain that “representing the using and consuming public” means to represent them in their capacity as consumers. The law does not say to represent the “public.”

It also does not mean to ascribe values and beliefs to consumers that have nothing to do with their role as consumers or to try to guess what consumers would want. The Public Staff should only worry about commonly shared consumer interests, such as service, price, and reliability.

4) Term Limits: An executive director leads the Public Staff. The individual is appointed by the governor and confirmed by a joint resolution of the General Assembly to serve a term of six years. The current executive director, Robert Gruber, has served since 1983.²¹ An individual serving 24 years in what clearly is a political position is absurd, especially in today's ethical climate in North Carolina. The executive director should serve either one term of eight years or two terms of six years.

Conclusion

The Public Staff is by law an advocate for electricity consumers, a role that it is not fulfilling. Consumers would be better off without the Public Staff if it continues to ignore its obligation to serve the interests of consumers. Unless the legislature provides some oversight and enacts needed reform, the Public Staff *and* the legislature will continue to fail consumers.

Daren Bakst, J.D., LL.M., is Legal and Regulatory Policy Analyst for the John Locke Foundation.

Notes

1. N.C. Gen. Stat. § 62-15, www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_62/GS_62-15.html.
2. N.C. Gen. Stat. § 62-1 *et. seq.*, www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_62.html.
3. N.C. Gen. Stat. § 62-15(b), www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_62/GS_62-15.html.
4. Robert Gruber, Public Staff Executive Director, "Comments to the Legislative Commission on Global Climate Change Regarding Demand-Side Management Cost Recovery," Oct. 3, 2006, p. 5.
5. "Public Staff's Report on July 27, 2006 Workgroup Meeting," North Carolina Utilities Commission, Docket No. E-100 Sub 103, p. 20, ncuc.commerce.state.nc.us/cgi-bin/webview/senddoc.pgm?dispfmt=&itype=Q&authorization=&parm2=8AAAAA44260B&parm3=000123984.
6. For more details on the proposed public benefits fund, please see Daren Bakst and Geoffrey Lawrence, "Smokes, Booze, ... and Electricity?," *Spotlight* No. 301, John Locke Foundation, Nov., 30, 2006, www.johnlocke.org/acrobat/spotlights/spotlight_301-electricitysyntax.pdf.
7. *Op. cit.*, notes 4 and 5, at pages 18-19 and 26-27.
8. "North Carolina State Energy Plan," North Carolina State Energy Office, p. 75, www.energync.net/sep/docs/sep_12-04.pdf.
9. *Op. cit.*, note 4.
10. *Op. cit.*, note 5. This support is demonstrated throughout the document. See also Matthew C. Hoffman, "The Future Of Electricity Provisions," *Regulation: The Cato Review of Business & Government*, Vol. 17, No. 3, Summer 1998, Cato Institute, www.cato.org/pubs/regulation/regv17n3/reg17n3-hoffman.html.
11. *Op. cit.*, note 8, at p. 24.
12. "Application for Approval for Electric Generation Facility Consisting of 25-28 Windmills, Ashe County," North Carolina Utilities Commission, Docket No. SP-167 Sub 1, ncuc.commerce.state.nc.us/cgi-bin/webview/senddoc.pgm?dispfmt=&itype=Q&authorization=&parm2=VAAAAA40360B&parm3=000125994.
13. N.C. Gen. Stat. § 113-205 *et seq.*, www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_113A/Article_14.html.
14. John Murawski "Plan to Harvest Wind Gets Unlikely Foes," *The News and Observer* (Raleigh), Feb. 10, 2007, www.newsobserver.com/104/v-print/story/541746.html.
15. "Public Staff's Testimony of Kennie D. Ellis," Docket No. SP-167 Sub 1, ncuc.commerce.state.nc.us/cgi-bin/webview/senddoc.pgm?dispfmt=&itype=Q&authorization=&parm2=CBAAAA33070B&parm3=000125994.
16. Richard Courtney (2006), "Wind Farms Provide Negligible Useful Electricity," Washington, Center For Science and Public Policy at p. 13, www.ff.org/centers/csspp/pdf/20060331_wind.pdf.
17. Luke Harding, Alok Jha, and John Vidal, "Report Doubts Future of Wind Power," *The Guardian*, Feb. 26, 2005, www.guardian.co.uk/international/story/0,,1425850,00.html. See also Eric Rosenbloom, "A Problem with Wind Power," featured in *At Issue: What Energy Sources Should Be Pursued*, Greenhaven Press, 2005.
18. "Duke Power Annual Plan," North Carolina Utilities Commission, Docket No. E-100 Sub 98 (2003) at p. 33, ncuc.commerce.state.nc.us/cgi-bin/webview/senddoc.pgm?dispfmt=&itype=Q&authorization=&parm2=1AAAAA64230B&parm3=000120555.
19. "Progress Energy Carolinas Resource Plan," North Carolina Utilities Commission, Docket No. E-100 Sub 98 (2003) at p. 4, ncuc.commerce.state.nc.us/cgi-bin/webview/senddoc.pgm?dispfmt=&itype=Q&authorization=&parm2=RAAAAA25230B&parm3=000120555.
20. *Ibid.*
21. See the Public Staff website at www.pubstaff.commerce.state.nc.us/psexdir/psexdir.htm.