

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-2, SUB 1193  
DOCKET NO. E-2, SUB 1219

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1193	)	
	)	
In the Matter of	)	ORDER ALLOWING THE
Application of Duke Energy Progress, LLC, for	)	ATTORNEY GENERAL'S
an Accounting Order to Defer Incremental	)	MOTION TO TAKE JUDICIAL
Storm Damage Expenses Incurred as a Result	)	NOTICE OF ADDITIONAL
of Hurricanes Florence and Michael and Winter	)	EVIDENCE, AND DENYING IN
Storm Diego	)	PART, AND DISMISSING IN
	)	PART, THE ATTORNEY
DOCKET NO. E-2, SUB 1219	)	GENERAL'S MOTION TO FILE
	)	LATE-FILED EXHIBIT AND
In the Matter of	)	SUPPLEMENTAL
Application by Duke Energy Progress, LLC, for	)	AUTHORITIES
Adjustment of Rates and Charges Applicable	)	
to Electric Utility Service in North Carolina	)	

BY THE PRESIDING COMMISSIONER: On November 19, 2020, Duke Energy Progress, LLC (DEP), filed with the Commission a Motion Requesting that the Commission Take Judicial Notice of Certain Evidence Introduced in the Duke Energy Carolinas, LLC (DEC) Specific Hearing. In summary, DEP requested that the Commission take judicial notice of certain evidence presented by witnesses David Doss and John Spanos (testifying as a panel), Sean Riley, and Steven Fetter. DEP included a chart listing and identifying the specific evidence covered by its motion and the corresponding transcript volumes and page numbers for the evidence. DEP further represented that it had consulted with the other parties and that no party objected to the relief requested by the motion.

On November 20, 2020, the Attorney General's Office (AGO) filed with the Commission a Motion Requesting that the Commission Take Judicial Notice of Additional Evidence Introduced in the DEC Specific Hearing. The AGO stated that DEP's request included witnesses Doss/Spanos testimony, at DEC Transcript Volume 23, page 23, line 8 through page 34, line 22, and Volume 23, page 57, line 14 through page 60, line 21. The AGO requested that additional testimony be included from the same section of the DEC Transcript – essentially bridging the gap between the two sections of testimony – to allow judicial notice of witnesses Doss/Spanos testimony from Volume 23, page 23, line 8 through page 67, line 22. The AGO represented that counsel from DEP did not object to the request and no other party responded to the AGO's request.

Also on November 20, 2020, the AGO filed with the Commission a Motion to File Late-Filed Exhibit and Supplemental Authorities. In summary, the AGO requested that the Commission accept into evidence, as a late filed exhibit, a transcript from a November 5, 2020 Earnings Call regarding Q3 2020, in which senior executives responded to questions from financial analysts on topics that included a brief discussion of the potential outcome of the rate cases as well as future plans for funding coal ash expenditures with debt. The AGO noted that the transcript was not available at the time of the evidentiary hearing.

In addition, the AGO in its Motion requested that the Commission accept as supplemental authorities two cases it contends relate to DEC's constitutional takings argument, *Duquesne Light Co. v. Barasch*, 486 U.S. 299, 102 L.Ed.2d 646 (1989) (*Duquesne*), and *State ex rel. Utilities Com. v. Thornburg*, 325 N.C. 463, 466, 385 S.E.2d 451, 452 (1989) (*Thornburg*). The AGO argued that these two cases were "[n]oticeably missing" from DEC's briefing.

On November 23, 2020, DEP and DEC (Duke or the Companies) filed a response to the AGO's Motion to File Late-Filed Exhibit and Supplemental Authorities. The Companies first argued that the DEC specific hearing ended on September 18, 2020, and the DEP specific hearing ended on October 6, 2020, more than two months and six weeks, respectively, before the AGO filed its motion. The Companies contended that the completion of these hearings brought to a close the evidence introduced and to be considered by the Commission, with the exception of late-filed exhibits specifically requested by the Commission. Duke further argued that the AGO sought to introduce into evidence a document that (1) did not even exist at the time of the evidentiary hearings; (2) the Commission has not sought; and (3) cannot be placed into full and proper context because the evidentiary hearings have concluded.

In response to the AGO's additional request that the Commission accept and consider supplemental authorities, the Companies first argued that the authorities were not relevant, in that they relate to "takings" arguments in a different context from these rate cases. The Companies also argued that the briefing in the DEC case has been complete since November 4, 2020, and that the AGO Motion thus acts as an improper reply brief. The Companies also stated that briefing in the DEP case is not yet complete and, as such, the AGO may submit any arguments or authorities that it wishes in its to-be-filed DEP brief.

Based on these representations and the records in these dockets, the Presiding Commissioner finds good cause to conclude as follows:

First, the AGO's Motion Requesting that the Commission Take Judicial Notice of Additional Evidence is allowed, and the Commission takes judicial notice of certain evidence introduced in the Duke Energy Carolinas, LLC (DEC) Specific Hearing,

specifically – as identified in the AGO’s Motion – Transcript Volume 23, page 23, line 8 through page 67, line 22.

Second, the AGO’s Motion to file with the Commission, as late filed exhibit, a transcript from a November 5, 2020 Earnings Call regarding Q3 2020 is denied. The Commission agrees with the Companies that the exhibit did not exist at the time of the evidentiary hearings; it is an exhibit the Commission has not otherwise sought; and there is not an appropriate opportunity for either the Companies or any other party to place it in proper context.

Third, and finally, the AGO’s Motion to supplement its authorities in the DEP rate case dockets is dismissed as untimely. The Commission agrees with the Companies that briefing in the DEP case is not yet complete and, as such, the AGO remains free to submit any arguments or authority in its to-be-filed DEP brief. As such, the AGO’s motion in these dockets case is premature.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of November, 2020.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Kimberley A. Campbell". The signature is written in a cursive, flowing style.

Kimberley A. Campbell, Chief Clerk