

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 190

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Biennial Consolidated Carbon Plan and)	
Integrated Resource Plans of Duke Energy)	ORDER ACCEPTING LATE-FILED
Carolinas, LLC, and Duke Energy)	TESTIMONY OF CCEBA FOR
Progress, LLC, Pursuant to N.C.G.S.)	GOOD CAUSE SHOWN
§ 62-110.9 and § 62-110.1(c))	

BY THE PRESIDING COMMISSIONER: On March 15, 2023, the Commission initiated this proceeding to consider the biennial, consolidated Carbon Plan and Integrated Resource Plans (CPIRP) of Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC (together, Duke), pursuant to N.C. Gen. Stat. § 62-110.9 and § 62-110.1(c) and Commission Rule R8-60A.

On October 16, 2023, the Commission issued an order granting the intervention of the Carolina Clean Energy Business Association (CCEBA) in this proceeding.

On January 17, 2024, the Commission issued an Order Scheduling Public Hearings, Establishing Interventions and Testimony Due Dates and Discovery Guidelines, Requiring Public Notice, and Providing Direction Regarding Duke’s Supplemental Modeling (January 17, 2024 Procedural Order), which among other things required that the direct testimony and exhibits of the Public Staff and other intervenors be filed on or before Tuesday, May 28, 2024. See Ordering Paragraph No. 13.

Consistent with the deadline for intervenor testimony established in the Commission’s January 17, 2024 Procedural Order, on May 28, 2024, numerous parties to this proceeding filed their expert witness testimony with the Commission.

CCEBA also filed the testimony of three witnesses. The confidential version of the testimony of CCEBA witness John Michel Hagerty is reflected as having been filed on May 28, 2024, in the Commission’s docket system. However, the public version of witness Hagerty’s testimony as well as the testimony of CCEBA witnesses Nicole Miller and Sam Newell are reflected as having been filed late, on May 29, 2024, in the Commission’s docket system.

On May 29, 2024, CCEBA filed a motion requesting that the Commission deem its testimony timely-filed or in the alternative accept its late-filed testimony (Motion). In support of its request for relief, CCEBA recites the provisions of Commission Rule R1-28(h) which requires that electronic filings made after 5 p.m. will be docketed as if having been made

the following business day. CCEBA asserts that it “completed filing of the confidential testimony of CCEBA witness Michael Hagerty well before 5:00 p.m., and initiated filing of the non-confidential testimony and exhibits of CCEBA witnesses Hagerty, Newell, and Miller with adequate time to complete submittal before the 5:00 pm deadline.” Motion, ¶ 4. CCEBA further explains

[u]nfortunately, when CCEBA's paralegal attempted to submit the completed filing, the NCUC's e-filing web site generated an error (which does not appear to have been caused either by the filed documents or user error), requiring CCEBA's paralegal to restart the filing process from scratch. As a result, the electronic submittal was not completed successfully until 5:03 p.m.

Id. at ¶ 5. CCEBA concludes by explaining: “[CEBA] made good-faith attempts to comply with the 5:00 filing deadline, and would have been in compliance if not for an error with the Commission's e-docketing web site. Moreover, no party has been or will be prejudiced by CCEBA's error.” *Id.* at ¶ 7.

DISCUSSION AND CONCLUSIONS

Initially, the Commission notes references made by CCEBA's counsel about the paralegal's filing efforts that were untimely, as determined in this Order. The Commission finds it necessary to remind CCEBA's counsel that the attorney remains responsible for the competent performance of the work, which includes timely electronic filing of documents. N.C. Rules of Prof'l Conduct r.5.3 (N.C. State Bar 2017). The Commission therefore places no weight on statements by CCEBA's counsel about paralegal action and reminds counsel of his ultimate responsibility.

The Commission reiterates that the timeliness of electronically filed documents is governed by Commission Rule R1-28(h). Commission Rule R1-28(h) provides as follows:

Both paper and electronic filings must be received by the Commission by 5:00 p.m. Eastern time to be considered to be filed on that business day. A filing may be made electronically at any time, but filings submitted after 5:00 p.m. Eastern time are considered to be filed on the next business day.

Further, Commission Rule R1-28(b) sets forth a two-part process applicable to the filing of confidential testimony:

When a party files confidential information, the party must make two separate filings. The first is a complete copy of the confidential version of the filing with the word “confidential” in the description of the filing. The second is a public filing constituting a complete copy of the filing with confidential information redacted in such a way that the pagination of both the confidential and public filings is the same and with the word “redacted” included in the description of the filing.

The Commission reminds CCEBA of the Commission's recent order which holds that

the Commission's procedural orders establish firm filing deadlines, with which all parties must comply particularly when those deadlines have already been extended. Going forward, to the extent a party to a proceeding seeks relief from its failure to comply with an established filing deadline, the Commission will closely scrutinize any such request to determine whether good cause exists for granting the relief.

Order Accepting Late-Filed Comments, *Petition for Rule Change*, No. E-100, Sub 176 (N.C.U.C. May 23, 2024). Accordingly, the Commission will only accept late-filed pleadings where good cause is demonstrated by the party.

With regard to the testimony of witnesses Miller and Newell, because these filings were received after 5:00 p.m., consistent with Commission Rule R1-28(h), they are deemed to have been filed the next business day, May 29, 2024, and are therefore late-filed. With regard to the testimony of CCEBA witness Hagerty, unless both the confidential and public versions of the filing are timely filed, pursuant to Commission Rules R1-28(b) and (h), the filing will be deemed incomplete and untimely by the Commission. Such is the case with witness Hagerty's testimony. To be clear, the standard upon which filings are reviewed for timeliness is the time of receipt by the Commission – not the time when a party claims to have initiated the filing process. Accordingly, CCEBA's motion that the Commission deem its testimony timely filed is denied.

However, after consultation with the Clerk's office, the Commission has confirmed that technical difficulties with the electronic filing system occurred that might have contributed to the late filing of CCEBA's testimony. For this reason alone, the Commission finds good cause to accept the late-filed testimony of witnesses Hagerty, Miller, and Newell.

Finally, the Commission notes that CCEBA and other parties should be mindful of the Commission's rules governing electronic filing and should give themselves ample time when e-filing to ensure that the entire process is complete and the filing received and accepted into the Commission's docket system prior to 5:00 p.m. on the required day to ensure timely receipt by the Commission. As stated above, the Commission closely scrutinizes motions requesting the acceptance of late filings to determine whether good

cause exists for granting the relief, and late-filed pleadings will not be accepted unless good cause is demonstrated.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 31st day of May, 2024.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script, appearing to read "Tamika D. Conyers".

Tamika D. Conyers, Deputy Clerk