

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-7, SUB 1276

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Application of Duke Energy Carolinas, LLC,)	ORDER GRANTING PETITION
For Adjustment of Rates and Charges)	TO INTERVENE OF
Applicable to Electric Service in North)	RUTHERFORD ELECTRIC
Carolina and Performance-Based Regulation)	MEMBERSHIP CORPORATION
)	AND ESTABLISHING SCOPE OF
)	INTERVENTION

BY THE PRESIDING COMMISSIONER: On September 8, 2022, Duke Energy Carolinas, LLC (DEC) filed a notice with the Commission, pursuant to Commission Rule R1-17B(c) advising of its intent to file a general rate application that includes a performance-based regulation application as authorized under N.C. Gen. Stat. § 62-133.16 (PBR Application) no sooner than January 6, 2023. Accordingly, pursuant to Commission Rule R1-17B(c), DEC requested that the Commission initiate a technical conference regarding the projected transmission and distribution projects to be included in DEC's PBR Application.

On September 14, 2022, the Commission issued an Order Scheduling Technical Conference and Setting Procedures for Technical Conference, scheduling a technical conference regarding the projected transmission and distribution projects to be included in DEC's PBR Application for Wednesday, November 2, 2022, and further allowing interested parties to participate in the technical conference by filing a petition to intervene in this proceeding and providing notice to the Commission of the intent to participate on or before Tuesday, October 18, 2022.

On October 17, 2022, Rutherford Electric Membership Corporation (Rutherford EMC) filed a petition with the Commission seeking to intervene in the above-captioned docket. In support of the petition, Rutherford EMC states that it is a member-owned, not for profit electric distribution cooperative, headquartered in Lenoir, North Carolina, and is a retail customer of DEC. Rutherford EMC further states that it provides retail electric service to approximately 79,000 customers in rural western North Carolina and obtains the power it provides to its customers through an all-requirements power purchase agreement (PPA) with DEC. Rutherford EMC contends that "[t]his proceeding will impact the rates, terms, and conditions pursuant to which DEC supplies electric service, which may also have a material or prejudicial impact on Rutherford EMC's interests under its PPA with DEC." Petition, ¶ 5. Rutherford EMC asserts that, *both as a retail and as a wholesale customer*, it has real, direct, substantial, and pecuniary interest in this proceeding. Finally, Rutherford EMC notes that in Docket No. E-7, Sub 1146 the Commission allowed Rutherford EMC's intervention in the adjudication of DEC's then-pending general rate case proceeding "limited to the extent that the issues addressed are related to the retail service on Rutherford

EMC.” Order Granting Petition to Intervene, Docket No. E-7, Sub 1146 (Oct. 20, 2017) (Sub 1146 Order).

STANDARD OF REVIEW

“Pursuant to Commission Rule R1-19, any person having a *direct* interest in a Commission proceeding may become a party thereto by filing a verified petition[.]” Order Denying Petition to Intervene and Allowing Amicus Curiae Status, 3, Docket No. E-2, Sub 1142 (Oct. 5, 2017) (Oct. 5 Sub 1142 Order) (emphasis added). Rule R1-19(d) further provides that the Commission will grant leave to intervene where, in addition to otherwise meeting the requirements of this rule, the petition “show[s] a *real* interest in the subject matter of the proceeding.” (Emphasis added.) The Commission has also held that “[a]lthough the right of intervention under Rule R1-19 is generous, it is not unlimited. Intervention requires a *real* interest in the proceeding[.]” Order Denying Petition to Intervene, 3, Docket No. E-7, Sub 828 (Sept. 13, 2007) (emphasis original). “In deciding contested petitions to intervene, the Commission has used the terms ‘direct interest’ and ‘real interest’ interchangeably to express the principle that the petitioner’s stake in the matter must be direct, ‘not just an incidental or casual interest.’” Oct. 5 Sub 1142 Order, 3, *citing* Order Denying Petition to Intervene, Docket No. E-22, Sub 412 (May 13, 2004). The Commission has also clarified that “more than an incidental or casual interest in the subject matter is necessary for the Commission to find a nexus on which to grant a party the right to intervene.” Order Denying Petition to Intervene, 2, Docket No. W-274, Sub 160 (Nov. 18, 1997).

Whether a prospective party has a “real interest” in the subject matter of a proceeding is not a one-size fits all analysis. In analyzing whether a prospective party has a “real interest” sufficient to satisfy the rule, the Commission undertakes an individual analysis based on the specific facts offered by the petitioner. A “real interest” in the subject matter of a Commission proceeding requires that a petitioner present evidence demonstrating a personal stake in the outcome of the matter, see Commission Rule R1-19(a)(3), so as to assure that the presentation of issues, which the Commission depends on for clarity in considering the complex issues routinely before it, is well-honed and uncluttered by broader agendas. Finally, a petitioner must provide specific evidence of how its real interest stands to be “affected by the issues involved in the proceeding.” *Id.* Absent a showing by a petitioner that it can satisfy each of these criteria, the Commission finds that intervention is not warranted under Commission Rule R1-19.

DISCUSSION AND CONCLUSIONS

It is well-established that the retail customers of the state’s investor-owned utilities are directly affected by the Commission’s decisions and therefore hold a direct interest sufficient to satisfy Commission Rule R1-19. See e.g., Order Denying Petition to Intervene and Allowing Amicus Curiae Status, 6 (August 10, 2017) (Aug. 10 Sub 1142 Order) (“ . . . all three of these entities are retail customers of DEP and thus are directly affected by the Commission’s decisions.”) The Presiding Commissioner has considered the petition and is of the opinion that good cause exists to allow the requested intervention by Rutherford EMC limited to the extent that the issues addressed are related to retail service matters.

The Presiding Commissioner notes that the Commission's Order Granting Petition to Intervene, which afforded Rutherford EMC intervention in DEC's 2017 general rate case proceeding, E-7, Sub 1146, on such a basis also expressly disallowed Rutherford EMC from presenting issues related to its wholesale PPA with DEC. Sub 1146 Order, 1.

Moreover, the Commission has previously considered the intervention requests of wholesale customers related to general rate case proceedings and determined that wholesale customers do not have a sufficiently direct or real interest in the subject matter of a general rate case proceeding to warrant intervention therein:

as a general rule wholesale customers . . . do not have a sufficient interest in the costs approved and allocated in retail ratemaking dockets to justify their full participation. In retail electric rate cases the Commission makes a myriad of cost recovery and cost allocation decisions that at least touch on or may affect the wholesale rates to be charged by the utility. However, the Commission does not set wholesale rates, and the effects of its decisions in retail ratemaking typically are only incidental to the wholesale ratemaking process. Thus, they lack the force and effect that would provide a wholesale customer with sufficient interest in a retail ratemaking proceeding to justify full intervention.

Aug.10 Sub 1142 Order, 5-6

Based upon the foregoing and the entire record herein, the Presiding Commissioner finds good cause to expressly prohibit Rutherford EMC from presenting any issues related to its wholesale PPA with DEC.

IT IS, THEREFORE, ORDERED as follows:

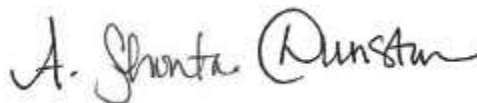
1. That Rutherford EMC is hereby allowed to intervene in this proceeding limited to retail service issues ; and

2. That the name and address of the attorney for Rutherford EMC is: Christina D. Cress, Bailey & Dixon, LLP, 434 Fayetteville Street, Suite 2500, P.O. Box 1351 (zip 27602), Raleigh, NC 27601, ccress@bdixon.com.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of October, 2022.

NORTH CAROLINA UTILITIES COMMISSION

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

A. Shonta Dunston, Chief Clerk