

**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)	ORDER DENYING MOTION FOR
Resource Plans of Duke Energy Carolinas, LLC,)	RECONSIDERATION OF JOHN
and Duke Energy Progress, LLC, Pursuant to)	GAERTNER
N.C.G.S. § 62-110.9 and § 62-110.1(c))	

BY THE PRESIDING COMMISSIONER: North Carolina General Statutes Section 62-110.9 (Carbon Plan Statute) directs the Commission to take all reasonable steps to achieve a seventy percent reduction in emissions of carbon dioxide in the State from electric generating facilities owned or operated by Duke Energy Carolinas, LLC (DEC), and Duke Energy Progress, LLC (DEP; collectively with DEC, Duke), from 2005 levels by the year 2030 and carbon neutrality by the year 2050, subject to certain discretionary limitations. In accordance with the Carbon Plan Statute, the Commission issued an Order Adopting Initial Carbon Plan and Providing Direction for Future Planning (Initial Carbon Plan Order) on December 30, 2022, in Docket No. E-100, Sub 179. The Carbon Plan Statute directs the Commission to review the plan every two years after the adoption of the Initial Carbon Plan. The Initial Carbon Plan Order provided for the consolidation of the Carbon Plan and Integrated Resource Plan (IRP) processes (CPIRP, as consolidated) and required Duke to file its first proposed biennial CPIRP by no later than September 1, 2023.

On August 17, 2023, Duke filed a verified petition seeking the Commission's approval of its proposed 2023 CPIRP, and on September 1, 2023, Duke prefiled direct testimony and exhibits of witnesses in support of its verified petition and proposed 2023 CPIRP.

On December 7, 2023, John Gaertner filed a petition with the Commission seeking to intervene in the above-captioned docket (Petition). First, Mr. Gaertner's Petition indicated that he is a "Duke Energy rate-payer" and a resident of Charlotte, North Carolina. Petition, (1). Mr. Gaertner's Petition indicated that he is not represented by counsel. *Id.* at ¶ (2). Mr. Gaertner's Petition indicated that he has "participated extensively as a reviewer of Duke Energy resource plans since 2020[.]" including Duke's "Carbon Report 2020 and associated strategy, their 2022 Carbon Plan, and their 2023 CPIRP." *Id.* at ¶ (3). His Petition also indicated that he has volunteered as a technical expert for state and regional environmental organizations and has presented findings and recommendations on Duke's resource plans at a technical conference, through op-eds in newspapers in North Carolina, in lectures and panel discussions to the public, as an author of a formal review report to Duke, through the previous 2022 Carbon Plan proceeding, and as a participant in Duke's 2023 CPIRP stakeholder process. *Id.* The Petition provided that Mr. Gaertner is "dedicated

to addressing the issues of climate change . . .” and that he has comments and recommendations for both the Commission and Duke regarding the subject matter of the proceeding. *Id.* The Petition asserted that allowing Mr. Gaertner’s intervention “will ensure that comments and recommendations are received, considered, and addressed by [the Commission] and Duke Energy in a timely manner.” *Id.* at ¶ (4).

On January 18, 2024, the Commission issued an order denying Mr. Gaertner’s petition to intervene (Order). After careful consideration and based upon application of Commission Rule R1-19 and N.C. Gen. Stat. § 1A-1, Rule 24 to the Petition, the Order concluded that Mr. Gaertner’s interest is adequately represented by existing parties, specifically, the North Carolina Utilities Commission – Public Staff and the North Carolina Attorney General’s Office that have intervened for the purpose of representing the interests of the using and consuming public, of which Mr. Gaertner is a member. Further, the Order determined that given the complexity of the legal proceeding, the technical nature of the subject matter involved, and the importance of administrative efficiency to “the Commission’s ability to oversee the development of a record of evidence, including through an expert witness hearing, review the record, make final decisions based on record evidence, and timely issue an order that complies with the ambitious deadline established by the Carbon Plan Statute,” it was appropriate to limit interventions consistent with the applicable Commission rule and State law. Order, 5. Finally, the Order noted that robust procedures had been established in the proceeding that would allow Mr. Gaertner to participate in the stakeholder process, to testify before the Commission, to file his recommendations to the Commission, and to have his evidence made part of the record.

On March 14, 2024, John Gaertner filed a second “petition to intervene.” The filing acknowledges that Mr. Gaertner’s Petition was denied by the Commission on January 18, 2024, and requests that the Commission reconsider its prior denial of his Petition.

STANDARD OF REVIEW

Given Mr. Gaertner’s request for reconsideration and the fact that the Commission has already ruled on Mr. Gaertner’s Petition, the Presiding Commissioner finds it appropriate to treat the second petition to intervene as a motion for reconsideration pursuant to N.C.G.S. § 62-80 (Motion).

As provided in N.C.G.S. § 62-80, “[t]he Commission may at any time upon notice to the public utility and to the other parties of record affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision made by it.” The Commission’s decision to rescind, alter, or amend an order upon reconsideration under N.C.G.S. § 62-80 is within the Commission’s discretion. *State ex rel. Utilities Comm’n v. MCI Telecommunications Corp.*, 132 N.C. App. 625, 630, 514 S.E.2d 276, 280 (1999). However, the Commission cannot arbitrarily or capriciously rescind, alter, or amend a prior order. Rather, there must be some change in circumstances or a misapprehension or disregard of a fact that provides a basis for the Commission to rescind, alter, or amend a prior order. *State ex rel. Utilities Comm’n v. North Carolina Gas Service*, 128 N.C. App. 288, 293-94, 494 S.E.2d 621, 626, rev. denied, 348 N.C. 78, 505 S.E.2d 886 (1998) (holding

that in absence of any additional evidence or change in conditions, the Commission has no power to reopen proceeding and modify or set aside its prior order).

DISCUSSION AND CONCLUSION

Mr. Gaertner's second filing, while nearly identical to the Petition, includes a new section in which he argues that his interest is not adequately represented by other parties to the proceeding. Specifically, Mr. Gaertner argues:

After intensive study of Duke Energy's 2023 CPIRP submittal and Jan 31 Update, I foundd (sic) critical deficiencies in the plan and developed opportunities to enhance both the analytics and execution process to remedy those deficiencies. Importantly, these opportunities build upon the significant effort of Duke Energy, the Commission, and stakeholders. They are incremental improvements to the analytics and the execution process which do not call for rejection or extensive immediate re-analysis. These changes could be adopted before the NCUC order or, alternatively, through NTAs in the upcoming CPIRP cycle.

However, these changes are quite technical and require in-depth understanding of Set-based Optimization and Planning. I have identified no existing party in this proceeding that has the interest and capability to adequately represent my interest, including the AGO, the Commission Public Staff, or the E-100 Sub 190 CS docket. Direct communication with Duke Energy technical staff would not be effective now that this proceeding is docketed. I believe that direct intervention is well-suited and necessary to represent my interests.

Petition, ¶ (4).

Based upon the careful consideration of the Motion, the Presiding Commissioner concludes that Mr. Gaertner has provided no new evidence or change in conditions that provides a basis upon which the Commission may amend its previous order denying Mr. Gaertner's petition to intervene. While the Motion expounds on Mr. Gaertner's qualifications as an expert and his observations of Duke's CPIRP submittals, that information is not sufficient to persuade the Commission to reach a different conclusion as to his right to intervene in the CPIRP proceeding.

As indicated in the Order, the Initial Carbon Plan proceeding was a highly contested legal proceeding, involving sophisticated modeling and analytical tools, and complex questions related to load dynamics, system operations, generating technologies, and the associated economics. As the Order explains, the Initial Carbon Plan proceeding involved a number of technical and complex issues, as well as the intervention of 45 parties and active participation in the legal proceeding by 30 of those parties, in addition to DEC and DEP. The Initial Carbon Plan was heavily litigated, involving months of discovery and an expert witness hearing that spanned approximately three weeks.

As previously made clear in the Initial Carbon Plan proceeding and reiterated in the Order, intervention requests demand a high level of scrutiny in proceedings such as the Carbon Plan “where the Commission anticipates the intervention of numerous parties and where it faces expedited statutory deadlines” Order Granting the Environmental Working Group’s Petition to Intervene and Motion for Limited Practice, at 3, No. E-100, Sub 179 (N.C.U.C. July 12, 2022). As indicated in the Order, given the Commission’s experience gained from the Initial Carbon Plan proceeding, administrative efficiency is critical to the Commission’s ability to oversee the development of a record of evidence, including through an expert witness hearing, review the record, make final decisions based on record evidence, and timely issue an order that complies with the ambitious deadline established by the Carbon Plan Statute. The Order concluded that administrative efficiency dictated denying Mr. Gaertner’s Petition. While the Motion includes additional information regarding Mr. Gaertner’s qualifications and observations related to the CPIRP submittals, that information is not sufficient to persuade the Presiding Commissioner to reach a different conclusion, particularly as to administrative efficiency. While Mr. Gaertner may have knowledge and experience related to the subject matter of the proceeding, he is lacking in knowledge and experience related to participating in a multi-party, heavily litigated, complex, and technical legal proceeding. The Commission is not persuaded that his qualifications enable him to participate in a multi-party, heavily litigated, complex, and technical legal proceeding in a manner that does not jeopardize administrative efficiency.

However, the decisions to deny Mr. Gaertner’s Petition and Motion do not preclude his participation in the CPIRP proceeding or prevent him from providing his recommendations to the Commission. As previously indicated in the Order, the procedures established by the Commission to facilitate stakeholder and public participation in this proceeding allow Mr. Gaertner to engage directly with Duke and to provide his testimony, comments, and recommendations directly to the Commission, which will become part of the record considered by the Commission in its final decision in this proceeding.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of April, 2024.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script, reading "Tamika D. Conyers". The signature is written in dark ink and is positioned above the printed name of the signatory.

Tamika D. Conyers, Deputy Clerk