

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-7, SUB 1304

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Duke Energy Carolinas, LLC,)
Relating to Fuel and Fuel-Related Charge)
Adjustments for Electric Utilities Pursuant to)
N.C. Gen. Stat. § 62-133.2 and Commission)
Rule R8-55)

**THE PUBLIC STAFF'S
MOTION FOR ORAL
ARGUMENT AND LEAVE TO
FILE SUPPORTING BRIEFS**

NOW COMES the Public Staff of the North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Christopher J. Ayers, and hereby respectfully moves the North Carolina Utilities Commission (Commission) for an order setting the matter outlined below for oral argument and establishing a briefing schedule.

On May 8, 2024, Duke Energy Carolinas, LLC (DEC), caused to be filed the Supplemental Testimony and Exhibits of Sigourney Clark in the above-captioned proceeding. Among other things, the filing requested the Commission allow DEC to recover funds that were already the subject of the experience modification factor (EMF) in the *prior* fuel rider (Docket No. E-7, Sub 1282), essentially a true-up of the true-up.¹ DEC is requesting that the Commission create, out of whole cloth, a

¹ See, e.g., Clark testimony page 5 (“the Company is requesting a new EMF increment factor”).

new, potentially perpetual, rolling true-up mechanism.² The Public Staff contends such a mechanism is not allowed under North Carolina law.

DEC's request presents a legal issue of first impression (in a supplemental filing) that will have a substantial impact on this fuel rider proceeding, but is not well-suited for an evidentiary hearing where expert witnesses testify with respect to factual issues underlying determination of the actual costs to be recovered and resulting rate calculation. Factual witnesses for DEC, the Public Staff, and intervenors will be unable to discuss the legal issues inherent in DEC's new statutory interpretation and regulatory application. An oral argument limited to the discrete legal issue underlying DEC's request to true-up the true-up would allow the parties to efficiently put the issue before the Commission for decision and allow the Commission to put questions directly to the parties' attorneys. Confining this issue to post-hearing proposed orders and briefs would limit the extent to which the legal issue can be fully vetted. The Public Staff proposes the Commission set the matter for oral argument immediately before the start of, or immediately after the conclusion of, the evidentiary hearing in this matter scheduled for June 10, 2024.

The Public Staff further believes that submission of limited legal briefs prior to an oral argument would help frame the issue and facilitate a full exploration by the Commission. Prior to the oral argument, the Public Staff recommends the

² See, e.g., Clark testimony page 6 ("when the Company prepares its 2025 fuel proceeding, if it finds the \$998 million has been over-recovered, the Company would seek to flow any over recovery back to affected customers. Conversely, if the Company finds it has further under-recovered this amount, it would seek to recover that from customers.").

parties be permitted to file legal briefs on the limited question of whether the law allows rate adjustments arising out of an underrecovery or overrecovery of a prior EMF increment factor in the annual fuel rider.

WHEREFORE, the Public Staff respectfully requests that the Commission set the matter of DEC's request for "a new EMF increment factor" for oral argument on June 10, 2024, establish a date for filing of legal briefs prior to the oral argument, and such other and further relief as may be just and proper.

Respectfully submitted this 14th day of May, 2024.

PUBLIC STAFF

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CERTIFICATE OF SERVICE

I certify that I have caused to be served a copy of the foregoing on all the parties of record on the date set forth below in the manner set forth below on the person(s) set forth below and in accordance with the applicable jurisprudence, especially Commission Rule R1-39.

Served on May 14, 2024, via email electronic delivery by agreement of the receiving party, upon those persons identified in the filed documents or in the Commission's online docket's service list at the following addresses:

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