

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. E-7, SUB 1276

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application by Duke Energy Carolinas,	) PUBLIC STAFF'S RESPONSE
LLC, for Adjustment of Rates and Charges	) TO THE JOINT MOTION OF
Applicable to Electric Service in North	) BLUE RIDGE <i>ET AL.</i> AND
Carolina and for Performance Based	) CIGFUR III TO STRIKE AND
Regulation	) REQUEST FOR RELIEF

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Christopher J. Ayers, and respectfully responds to the Joint Motion to Strike and Request for Relief (Motion) filed by Blue Ridge EMC, Haywood EMC, Piedmont EMC, and Rutherford EMC (collectively, Blue Ridge *et al.*), and the Carolina Industrial Group for Fair Utility Rates III (CIGFUR III, collectively with Blue Ridge *et al.*, the Movants) on October 17, 2023.

The Movants seek to strike the Supplemental Testimony of Public Staff witness David M. Williamson filed on October 13, 2023, and other relief, including: allowing all parties the opportunity to conduct discovery on witness Williamson's Second Supplemental testimony and corrections; allowing all parties to file supplemental rebuttal testimony; reconvening the evidentiary hearing to allow for cross-examination of witness Williamson; and allowing all parties the opportunity to supplement previously filed proposed orders and post-hearing briefs at least three weeks after the close of any reconvened hearing.

On March 16, 2023, the Commission issued its Order Scheduling Investigation and Hearings, Establishing Intervention and Testimony Due Dates and Discovery Guidelines, and Requiring Public Notice (Scheduling Order). In its Scheduling Order, the Commission stated that it would “determine not only the justness and reasonableness of [Duke Energy Carolinas, LLC]’s overall requested changes in rate, but also the appropriate level of rate to be established for each individual rate class.” Ordering Paragraph 5. Duke Energy Carolinas, LLC (DEC or Company) filed supplemental testimony on June 19, 2023, and July 18, 2023, to update its historical spend through May 31, 2023, and June 30, 2023, respectively, and include those capital expenditures in its final Base Case revenue requirement, which is the basis for the Company’s total requested rate increase. On August 1, 2023, the Public Staff filed a letter in the docket notifying the Commission and all parties that the Public Staff was undertaking its investigation and audit of DEC’s May and June capital expenditure updates as expeditiously as possible, but that it would not be in a position to file supplemental testimony on those updates until after the start of the evidentiary hearing. On August 22, 2023, DEC and the Public Staff filed the Agreement and Stipulation of Partial Settlement (Partial Stipulation), which enumerated the resolved and unresolved issues between the parties. The Partial Stipulation stated that it:

does not prevent the Public Staff from completing its audit of DEC’s Second and Third Supplemental Updates filed in this docket or making proposed adjustments to the updated revenue requirements based on such audit, which will be presented in the Public Staff’s Supplemental Testimony to be filed in this docket. The actual amount of the agreed-upon adjustments may differ due to the effects of the Unresolved Issues and the Public Staff’s Supplemental Testimonies.

Partial Stipulation at 5.

On August 28, 2023, the Company and the Public Staff filed the Amended Agreement and Stipulation of Partial Settlement (Amended Partial Stipulation). The evidentiary hearing on this matter commenced on Monday, August 28, 2023. At the conclusion of the hearing that day, the Presiding Commissioner stated that “the Public Staff has indicated that they want to file some supplemental testimony[]” and asked if the Commission could “be provided a list of Public Staff witnesses that desire to provide this supplemental testimony and then a date certain when that testimony would, potentially, be filed.” Tr. vol. 8, 469-70. The following morning, Tuesday, August 29, 2023, the Public Staff notified the Commission on the record “that the Public Staff will complete our investigation of the May and June updates of the Company by September 29th, and we will work with the Company to file testimony and schedules resolving the issues by October 13th.” Tr. vol. 9, 14-15. The Public Staff indicated that the witnesses who may file supplemental testimony are “Michelle Boswell and Fenge Zhang, our accounting panel; David Williamson; James McLawhorn; Dustin Metz; Jeff Thomas; Tommy Williamson; and Blaise Michna.” *Id.*

The Movants argue that witness Williamson’s supplemental testimony did not depend upon the Public Staff’s completion of its audit and could have been filed prior to his testimony at the evidentiary hearing. This argument is without merit because rate and revenue apportionment are dependent on a revenue requirement. Neither the Partial Stipulation nor the Amended Partial Stipulation resolved the issue of rate apportionment. It is a fact that rates cannot be apportioned until there is a final revenue requirement. All parties were aware that

costs were still being audited and that the final revenue requirement recommendation from the Public Staff would not come until it had completed its audit of DEC's Supplemental Updates per the Public Staff's regular updates to the parties and Commission.

The Public Staff adamantly disagrees that witness Williamson's recommendation on revenue apportionment did not depend on the Public Staff's completion of its audit of the Company's May and June updates. While the Public Staff's recommended apportionment of revenue to customer classes is calculated on a percentage basis using the Public Staff's revenue apportionment principles, it is merely a theoretical exercise until the final revenue requirement recommendation is made. A shift in the final revenue requirement amount could cause a disproportionate increase in a single customer class's rate.

The Public Staff uses its principles as guides in developing its final recommended apportionment and, until the final request is made by the Company and the Public Staff has made its final recommendation for the revenue requirement amount, it is irresponsible to speculate as to how recommended final rates should be apportioned to each customer class. Only after the Public Staff determines its final recommendation on the revenue requirement can it use its rate apportionment principles to appropriately recommend just and reasonable rates for each customer class. Witness Williamson stated as much in his direct testimony, when testifying to the transition to a different COS methodology, saying that "until a final revenue requirement is determined, it is unclear the exact level of

impact this change will have on revenue apportionment and rate design in this case.” Tr. vol. 9, 42.

The Movants further contend that the Public Staff violated various Commission orders, rules, and the directives of Commission staff when it filed the supplemental testimony of witness Williamson. However, Movants choose to ignore the explicit ruling of the Commission, which was cited in their own Motion, to hold the evidentiary record open to receive exhibits and supplemental testimony. More specifically, at the conclusion of the hearing on September 5, 2023, the Presiding Commissioner returned to the issue of the Public Staff’s intent “to file supplemental testimony and schedules of Witnesses Boswell and Zhang, D. Williamson, McLawhorn, Metz, Thomas, T. Williamson and Michna resolving DEC’s May and June updates by October 13th, 2023[]” and ruling that the Commission would “**hold the record open for the purpose of receiving** the late-filed exhibits that have been requested by the Commissioners and **the supplemental testimony and schedules of the Public Staff on DEC’s May and June updates.**” (*emphasis added*) Tr. vol. 16, 422. At that time, the Commission preemptively addressed one of Movants’ concerns about the opportunity to file a supplemental proposed order when it stated that the Commission would allow parties additional time to “provide supplemental proposed Orders on the items or matters addressed in the supplemental testimony.” *Id.* at 423. Simply stated, the Public Staff was not in violation of any Commission order, rule, or directive of Commission staff when it filed witness Williamson’s supplemental testimony,

because the Public Staff was complying with a directive of the Commission to file supplemental testimony and exhibits on or before October 13, 2023.

Additionally, Commission Rule R1-30 allows the Commission to deviate from the strict application of its rules when compliance is “impossible or impracticable.” The Public Staff, in its August 1 letter to the docket, and corroborated by testimony at hearing, succinctly explained the unprecedented difficulty in auditing updates by the Company with a combined “total capital spend of \$1.1 billion” while also simultaneously preparing for and participating in a performance-based regulation rate case. These circumstances certainly made strict compliance with Commission Rule R1-24 impossible or impracticable. The Public Staff knows of no other way to protect customers other than to audit the \$1.1 billion as it has done in this case. Movants’ allegation that the Public Staff “unilaterally decided to treat the procedural deadlines ordered in this general rate case... as mere suggestions or guidelines[]” is false and contrary to the record. The record clearly reflects that the Public Staff, on numerous occasions, notified the Commission and parties of its intent to file supplemental testimony after the start of the evidentiary hearing due to the unique and unprecedented circumstances of this case. The Public Staff only filed such supplemental testimony after obtaining explicit leave from the Commission to do so on or before a date certain.

While the Commission is not bound by its rulings in previous dockets, the acceptance of supplemental testimony after the date specified in the Scheduling Order has been allowed in the past without the need for a motion for leave to file

the supplemental testimony.<sup>1</sup> In this docket, like many others in the past, a motion for leave is not necessary because the Commission explicitly directed that additional testimony and exhibits be filed on or before a date certain, and the record in this case was held open specifically to allow for the filing of the Public Staff's supplemental testimony and exhibits.

Movants further contend that allowing the supplemental testimony and exhibits of witness Williamson to be admitted into evidence “would cause undue prejudice” and would “violate the due process rights of other parties.” However, those allegations do not depend on the admission of that testimony into the record alone, but rather the denial of an opportunity to respond, rebut, or otherwise develop the evidentiary record further in response to the admission of this evidence. Surely, the Commission can only benefit from a robust record that contains complete facts and evidence on all issues, including revenue apportionment and rate design. The Commission previously recognized these equities in the E-2, Sub 1300 Duke Energy Progress, LLC rate case, when it allowed the admission of additional supplemental testimony and exhibits into the record and allowed parties the opportunity to respond to that evidence and to cross examine witnesses at a re-convened hearing. Thus, Movant's allegations that the admission of the evidence is prejudicial or a denial of due process are premature at best.

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<sup>1</sup> See, e.g., Docket Nos. E-2, Sub 1219, E-2, Sub 1142, E-7, Sub 1214, E-2, Sub 1146, E-2, Sub 1300.

Further, the Public Staff generally does not object to parties submitting discovery or cross-examining witness Williamson on his supplemental testimony. The Public Staff is working diligently to respond to data requests already received from CIGFUR on the supplemental testimony of Mr. Williamson. The Public Staff defers to the sound judgment of the Commission to determine what additional procedural remedies, if any, are appropriate to address the “relief in the alternative” sought by Movants.

WHEREFORE, the Public Staff respectfully requests that the Commission deny Movant’s motion to strike, accept the Supplemental Testimony of Public Staff witness Williamson into the record, and grant any further relief as the Commission deems necessary.

Respectfully submitted this the 19th day of October, 2023.

PUBLIC STAFF  
Christopher J. Ayers  
Executive Director

Lucy Edmondson  
Chief Counsel

Electronically submitted  
s/ Robert B. Josey  
Staff Attorney

s/ Nadia Luhr  
Staff Attorney

4326 Mail Service Center  
Raleigh, North Carolina 27699-4300  
Telephone: (919) 733-6110  
[robert.josey@psncuc.nc.gov](mailto:robert.josey@psncuc.nc.gov)



## CERTIFICATE OF SERVICE

I certify that a copy of this Motion has been served on all parties of record or their attorneys, or both, by United States mail, first class or better; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 19th day of October, 2023.

Electronically submitted  
/s/ Robert B. Josey  
Staff Attorney