

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-7, SUB 1213
DOCKET NO. E-7, SUB 1214
DOCKET NO. E-7, SUB 1187
DOCKET NO. E-2, SUB 1193
DOCKET NO. E-2, SUB 1219

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|--------------------------|
| In the Matter of |) | ORDER ESTABLISHING |
| Applications by Duke Energy Carolinas, LLC, |) | PROCEDURES AND DATES |
| and Duke Energy Progress, LLC, for |) | FOR FILING MOTIONS |
| Adjustment of Rates and Charges Applicable |) | REQUESTING JUDICIAL |
| to Electric Utility Service in North Carolina |) | NOTICE AND ALLOWING |
| |) | FILING OF AMENDED MOTION |

BY THE PRESIDING COMMISSIONERS: Pursuant to N.C. Gen. Stat. § 62-65(b) the Commission may take judicial notice of decisions, reports, studies, and other information when the Commission determines that such information is relevant and material to a matter pending before the Commission. In addition, the statute includes guidelines for an opportunity for the parties to be heard in situations where the Commission first takes judicial notice in its order, and guidelines for the parties to be heard where the Commission proposes to take judicial notice before or during a hearing. In the first instance, parties have a right to contest the facts of which the Commission has taken judicial notice within ten days after the Commission issues its order. In the second instance, the parties are to be given a “reasonable opportunity” to contest the facts of which the Commission proposes to take judicial notice.

In the above-captioned dockets, the Commission held a consolidated hearing on the general rate case applications of Duke Energy Carolinas, LLC (DEC), and Duke Energy Progress, LLC (DEP, collectively Duke), on topics in which the evidence and issues are very similar. Further, in Docket Nos. E-7, Subs 1213, 1214, and 1187 (DEC dockets), the Commission held a DEC-specific hearing (DEC hearing), on topics that involved evidence somewhat different from that in DEP’s application, and, likewise, held a DEP-specific hearing (DEP hearing), in Docket Nos. E-2, Subs 1193 and 1219 (DEP dockets), on topics that involved evidence somewhat different from that in DEC’s application. In the DEC hearing the Commission has granted motions by the parties that stipulated into evidence testimony and exhibits introduced in the DEP hearing, and, likewise, in the DEP hearing the Commission has granted motions by the parties that stipulated into evidence testimony and exhibits introduced in the DEC hearing. In addition, the Presiding Commissioners have confirmed during the hearings that the Commission’s practice is to take judicial notice of statutes, appellate court decisions, and all prior orders of the North Carolina Utilities Commission.

On October 7, 2020, DEC filed a motion in the DEC dockets requesting that the Commission take judicial notice in the DEC dockets of certain evidence presented by DEP witnesses James Wells and Marcia Williams, testifying as a panel, during the DEP hearing on October 6, 2020. DEC stated that the evidence presented by the panel was answers to questions in response to Commission questions, along with Williams Rebuttal Exhibit 2, and opined that such evidence is generally applicable to both the DEC dockets and DEP dockets. DEC stated that the transcript of proceedings for the DEP hearing on October 6, 2020, was not yet available, and it provided an approximate location of the panel's testimony on the Commission's YouTube video recording. Further, DEC stated that it consulted with counsel for the Public Staff, the Attorney General's Office (AGO), and Sierra Club regarding DEC's request for judicial notice as to the panel's evidence, that the Public Staff and Sierra Club have indicated that they have no objection to the request, and that as of the filing of the motion counsel for DEC had not heard from counsel for the AGO.

In addition, DEC stated that it seeks guidance from the Commission as to whether the Commission will generally allow judicial notice of evidence from the DEP hearing, and, if so, when and how the parties should request such judicial notice. Finally, DEC cited several instances in which the Commission has taken judicial notice of testimony in the DEC dockets and the DEP dockets.

DISCUSSION AND CONCLUSION

The Commission fully appreciates the efficiency to be gained by taking judicial notice of relevant and material testimony and exhibits provided in one docket and accepting same as evidence in a different docket that involves identical or similar issues. That efficiency was well demonstrated during the DEP hearing by the parties stipulating into evidence large portions of the evidence introduced in the DEC hearing.

Ideally, requests for judicial notice will be filed with a statement that all parties agree to the Commission taking judicial notice, or that no party has voiced an objection to judicial notice after being provided reasonable notice and a reasonable opportunity to voice an objection. To be clear, the Commission will not require written stipulations or written statements from each party stating a lack of objection. Statements on these points by counsel for the party filing the motion made within the text of the motion will be sufficient. Further, the Commission will wait at least three business days before ruling on a motion for judicial notice when the movant states that a party objects to the motion, or the movant states that not all parties responded to the movant's communication of its intent to file the motion.

Moreover, the Commission's preference is that the request for judicial notice be made during the hearing, or at the latest at least five business days prior to the date that briefs and proposed orders are due in the docket in which the evidence is to be judicially noticed. In addition, it will be helpful if to the extent practical the parties who have requests for judicial notice can file their requests in a joint motion. Finally, it will be very helpful if parties requesting judicial notice will include a brief summary of the evidence, a brief

statement of how the evidence is relevant and material to the issues in the docket in which it is to be judicially noticed, and a citation to the transcript volume and pages where the evidence can be found.¹

Based on the foregoing and the record, the Commission finds good cause to request that DEC follow the above guidelines and submit an amended motion on or before October 23, 2020. Further, the Commission finds good cause to request that all parties having requests for judicial notice in the DEC dockets or the DEP dockets follow the above guidelines and file their requests on or before October 23, 2020, in the DEC dockets and on or before November 23, 2020, in the DEP dockets. Finally, the Commission finds good cause to inform the parties that motions requesting judicial notice filed on or after October 26, 2020, in the DEC dockets, or on or after November 30, 2020, in the DEP dockets, will not be viewed favorably.

IT IS, THEREFORE, ORDERED as follows:

1. That DEC shall be, and is hereby, allowed to submit an amended motion on or before October 23, 2020, in compliance with the guidelines set forth in this Order, requesting that the Commission take judicial notice in the DEC dockets of the testimony and exhibit of DEP witnesses Wells and Williams introduced in the DEP hearing on October 6, 2020;

2. That on or before October 23, 2020, all parties requesting that the Commission take judicial notice of evidence for introduction into the DEC dockets shall file a motion requesting same and in compliance with the guidelines set forth in this Order;

3. That on or before November 23, 2020, all parties requesting that the Commission take judicial notice of evidence for introduction into the DEP dockets shall file a motion requesting same and in compliance with the guidelines set forth in this Order;

4. That on or before three business days after a party files a motion requesting judicial notice in the DEC dockets or the DEP dockets any party having an objection to the motion may file its objection; and

¹ The Commission acknowledges that DEC was unable to provide a citation to the transcript volume and pages of the transcript that includes the DEP panel's testimony because the DEP transcript had not been completed on the date that DEC filed its motion.

5. That motions requesting judicial notice filed on or after October 26, 2020, in the DEC dockets, or on or after November 30, 2020, in the DEP dockets, will not be viewed favorably.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of October, 2020.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Kimberley A. Campbell". The signature is written in a cursive style with a large initial 'K' and a distinct 'A'.

Kimberley A. Campbell, Chief Clerk