

**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,) ORDER GRANTING EXTENSION
Pursuant to N.C.G.S. § 62-133.2 and) OF TIME TO FILE EXPERT
Commission Rule R8-55 Relating to Fuel) WITNESS TESTIMONY AND
and Fuel-Related Charge Adjustments) PERMITTING PREHEARING
for Electric Utilities) LEGAL BRIEFS

BY THE PRESIDING COMMISSIONER: On February 27, 2024, Duke Energy Carolinas, LLC (DEC) filed its initial application for approval of the Fuel Program rider (Application) pursuant to N.C. Gen. Stat. § 62-133.2 and Commission Rule R8-55. In its Application, DEC initially requested Commission approval for a temporary increase in its fuel and fuel-related costs currently in effect, with the changes being effective for service rendered on and after September 1, 2024.

The Commission granted the interventions of the Carolina Utility Customers Association, Inc. (CUCA) and the Carolina Industrial Group for Fair Utility Rates III (CIGFUR) by respective orders dated March 7, 2024. The intervention of the Public Staff – North Carolina Utilities Commission is recognized as of right pursuant to N.C.G.S. § 62-15(d)(3).

On March 15, 2024, the Commission issued its Order Scheduling Hearing, Establishing Procedural and Filing Requirements, and Requiring Public Notice (Scheduling Order), which scheduled a public hearing on DEC’s Application for June 10, 2024, established deadlines for the submission of petitions to intervene by interested persons, and the filing of testimony by intervenors and rebuttal testimony by DEC, and further required public notice to customers and mandated compliance with certain discovery guidelines. Specifically, Ordering Paragraph No. 3 of the Scheduling Order established a due date of Monday, May 20, 2024, for intervenors to file direct testimony and exhibits.

On May 8, 2024, DEC filed the Supplemental Testimony and Exhibits of Sigourney Clark (Supplemental Filing). In pertinent part, DEC’s Supplemental Filing requests “a new EMF increment factor” to recover a cumulative net under-recovery originally resulting from the 2022 test period fuel balance. See Supplemental Testimony of Sigourney Clark, 5.

On May 9, 2024, the Public Staff filed a letter (Letter) in the above-captioned docket responding to DEC's Supplemental Filing. The Letter briefly stated the Public Staff's opposition to the Supplemental Filing:

. . . DEC requests, inter alia, that the Commission allow it to recover funds that were already addressed in the prior fuel rider (Docket No. E-7, Sub 1282). The methodology of recovery was set forth in an Agreement and Stipulation of Partial Settlement between DEC and the Public Staff filed May 31, 2023. Essentially, DEC is requesting that the Commission create, out of whole cloth, a new, potentially perpetual, rolling true-up mechanism that is not supported by the law or Commission Rules.

Letter, 1.

On May 14, 2024, the Public Staff filed a Motion for Oral Argument and Leave to File Supporting Briefs (Motion for Leave). The Public Staff's Motion for Leave requests that the Commission permit the parties to file prehearing legal briefs on the limited issue of the legality of DEC's proposed new EMF factor and schedule the issue for oral argument. In support of the Motion for Leave, the Public Staff states:

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.

Motion for Leave, 2.

On May 17, 2024, CUCA filed a Motion for Extension of Time to File Intervenor Testimony. CUCA states that it requires additional time, to and including May 23, 2024, to complete its testimony responding to the fuel rider proposals. Further, CUCA represents that CIGFUR supports the requested extension and that neither DEC nor the Public Staff objects to the extension.

Based on the foregoing and the entire record herein, the Presiding Commissioner finds good cause to grant CUCA's requested extension of time. Should DEC determine that it requires a reciprocal extension of time to prepare its rebuttal testimony, it may petition the Commission for a reasonable extension at the appropriate time.

Further, the Presiding Commissioner is persuaded that good cause exists to permit the parties to file prehearing legal briefs on the discrete issue of whether DEC's proposed new EMF factor conforms to the legal perimeters governing the fuel rider. The Presiding Commissioner agrees that, if the Commissioners have clarifying questions on the legal arguments proffered in the briefs, oral argument may be helpful to the Commission's consideration of this issue. Accordingly, the Presiding Commissioner is taking the Public Staff's request for oral argument under advisement at this time. Parties may include comments on whether oral arguments are needed in their legal briefs. The Commission will issue an order on its final determination on the request for oral argument at a later date.

IT IS, THEREFORE, ORDERED as follows:

1. That the direct testimony and exhibits of the Public Staff and other intervenors shall be filed on or before Thursday, May 23, 2024; and
2. That the parties may file legal briefs limited to the legality of DEC's proposed new EMF factor by no later than Wednesday, May 29, 2024.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of May, 2024.

NORTH CAROLINA UTILITIES COMMISSION



Tamika D. Conyers, Deputy Clerk