

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. E-7, SUB 1276

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Duke Energy Carolinas, LLC's Request  
to Initiate Technical Conference  
Pursuant to Commission Rule  
R1-17B(c)

PETITION TO INTERVENE OF  
RUTHERFORD ELECTRIC  
MEMBERSHIP CORPORATION AND  
NOTICE OF INTENT TO PARTICIPATE  
IN TECHNICAL CONFERENCE

NOW COMES Rutherford Electric Membership Corporation ("Rutherford EMC"), by and through the undersigned counsel, pursuant to Commission Rules R1-5 and R1-19, and files this petition to intervene and notice of intent to participate in technical conference in the above-captioned docket. In support of this petition, Rutherford EMC respectfully shows as follows:

1. Rutherford EMC is a member-owned, not for profit electric distribution cooperative, headquartered in Forest City, North Carolina.
2. The full name and mailing address of Rutherford EMC is:

Rutherford Electric Membership Corporation  
186 Hudlow Road  
Forest City, North Carolina 28043  
Attn: Dirk Burleson, General Manager  
[dburleson@remc.com](mailto:dburleson@remc.com)

3. The name and address of Rutherford EMC's attorneys in this proceeding, to whom all communications and pleadings should be addressed, is:

Christina D. Cress  
Bailey & Dixon, LLP  
434 Fayetteville St., Ste. 2500  
P.O. Box 1351 (zip 27602)  
Raleigh, NC 27601  
(919) 607-6055  
[ccress@bdixon.com](mailto:ccress@bdixon.com)

4. Rutherford EMC is a retail customer of Duke Energy Carolinas, LLC ("DEC"). In that capacity, the outcome of this proceeding has the potential to substantially impact the rates, terms, and conditions of the retail electric service Rutherford EMC receives from DEC.
5. In addition to being a retail customer of DEC, Rutherford EMC provides retail electric service to over 70,000 customers in rural western North Carolina. Rutherford EMC obtains a portion of the power it provides to its customers through a partial power purchase agreement ("PPA") with DEC. This proceeding will impact the rates, terms, and conditions pursuant to which DEC supplies electric service, which may also have a material or prejudicial impact on Rutherford EMC's interests under its partial PPA with DEC.
6. As a retail customer of DEC, Rutherford EMC has a real, direct, substantial, and pecuniary interest in this proceeding.
7. As a wholesale customer of DEC, Rutherford EMC has a real, direct, substantial, and pecuniary interest in this proceeding.
8. In this proceeding, DEC will seek to increase its base rates charged to retail customers, including Rutherford EMC, and to recover certain costs it has incurred, continues to incur, and will in the future incur through a multi-year

rate plan (“MYRP”) pursuant to the enabling statutes authorizing performance-based regulation (“PBR”), which were enacted into law through the passage of House Bill 951 (S.L. 2021-165).

9. Upon information and belief, there will also be evidence in the instant proceeding, pursuant to the requests of this Commission and the Public Staff – North Carolina Utilities Commission, regarding a potential shared allocation of certain transmission costs as between the customers of DEC and Duke Energy Progress, LLC (“DEP”) (together with DEC, the “Companies”) to address concerns raised during the Carbon Plan proceeding regarding the rate disparity between DEC and DEP’s respective retail customers as a potential interim solution pending a potential future merger of DEC and DEP. *See, e.g.*, Tr. Vol. 23, pp. 136-46, Docket No. E-100, Sub 179 (testimony of Public Staff witness James McLawhorn in response to questions from Chair Charlotte A. Mitchell and Commissioner Kimberly W. Duffley). Rutherford EMC’s belief that such an alternative allocation will be proposed in the DEC general rate case is bolstered by the fact that DEP sponsored direct testimony in its recently-filed general rate case filing with application for performance-based regulation addressing a potential alternative allocation in which the costs of certain transmission investments would be paid for by both DEP and DEC customers. *See* Direct Testimony of DEP witness Kathryn S. Taylor, pp. 17-18, Docket No. E-2, Sub 1300 (Oct. 6, 2022).

10. The possibility that the instant general rate case will involve proposals for such “[a]djustments to the governing cost allocation framework”<sup>1</sup> in the context of general rate cases before this Commission as a potential interim solution to the purported issue of disproportionate cost allocation borne between DEC and DEP related to certain transmission investments underscores the need for Rutherford EMC’s participation—as both a retail customer and a wholesale customer of DEC—through intervention in the general rate case.
11. Moreover, Public Staff witness McLawhorn testified in the Carbon Plan proceeding regarding cost and rate impacts of implementing House Bill 951 generally and the Carbon Plan provisions of HB 951 specifically.<sup>2</sup> Because the instant rate case will include a request to recover certain investments to begin implementing the Carbon Plan, Rutherford EMC’s participation would be helpful and informative on both retail rate issues and to the extent any wholesale rate issues become directly or indirectly relevant. In other words, the instant proceeding converts the resource planning aspect of Carbon Plan implementation into one or more cost recovery mechanisms.
12. The present docket involves the statutorily required technical conference process that the Commission must conduct before submission of any PBR

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<sup>1</sup> Tr. Vol. 23, p. 310, ll. 1-2, Docket No. E-100, Sub 179 (testimony of Amadou Fall on behalf of NCEMC).

<sup>2</sup> “It is important for stakeholders, particularly those representing retail and wholesale customers, to understand the full costs of Duke’s operations over the next 25 years. The Proposed Carbon Plan is more than simply a plan to comply with the carbon reduction goals in Section 110.9; it is essentially a comprehensive Integrated resource Plan, expanded in scope and level of detail to encompass carbon dioxide limits and reliability. The Proposed Carbon Plan, and the Commission’s Carbon Plan that is ultimately adopted, represent a vision for the future.” Tr. Vol. 23, p. 108, Docket No. E-100, Sub 179.



application at which the electric public utility (in this case, DEC) will present information regarding projected transmission and distribution (“T&D”) expenditures to be included in its PBR application.

13. As a retail customer of DEC, Rutherford EMC has a direct, real, pecuniary, and substantial interest in the underlying T&D investments to be proposed by DEC for retail cost recovery through an MYRP, the underlying T&D investments to be proposed by DEP for retail cost recovery—inasmuch as such investments could potentially be eligible for partial cost recovery from DEC’s retail customers (including Rutherford EMC), and such potential alternative cost allocations for all such T&D investments to potentially be allocated as between DEP’s and DEC’s retail customers.
14. This proceeding constitutes a general rate case. As such, the Commission’s rules express a desire that “those affected by any proposed increase in rates or charges may have *every opportunity to be heard*” and, in furtherance of that policy goal, expressly contemplate parties exercising their right of intervention under Commission Rule R1-19. *See* Commission Rule R1-17(e) (emphasis added).
15. The Commission has in the past allowed intervention of Rutherford EMC in a DEC general rate case. *See* Order Granting Petition to Intervene, Docket No. E-7, Sub 1146 (Oct. 20, 2017) (*allowing* Rutherford EMC to intervene “limited to the extent that the issues addressed are related to the retail service of Rutherford EMC”).

16. No other party can adequately represent the interests of Rutherford EMC, and its participation in this docket is in the public interest.
17. Rutherford EMC also provides notice to the Commission of its intent to participate in the November 2 technical conference.
18. Pursuant to Commission Rule R1-39, Rutherford EMC consents to electronic service of all pleadings and other papers filed in this docket.

WHEREFORE, Rutherford EMC respectfully requests that the Commission issue an order allowing it to intervene and fully participate as an intervenor to this proceeding, including in the technical conference on November 2, 2022, and to otherwise exercise all rights of a party to this proceeding.

Respectfully submitted, this the 18<sup>th</sup> day of October, 2022.

**BAILEY & DIXON, LLP**

/s/ Christina D. Cress

Christina D. Cress

N.C. State Bar No. 45963

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*Counsel for Rutherford EMC*

**VERIFICATION**

Dirk Burleson, first being duly sworn, deposes and says: that he is General Manager of Rutherford Electric Membership Corporation ("Rutherford EMC"); that he has read the foregoing Petition to Intervene and that the same is true of his personal knowledge, except as to any matters and things therein stated on information and belief, and as to those, he believes them to be true; and that he is authorized to sign this verification of behalf of Rutherford EMC.

This the 17<sup>th</sup> day of October, 2022.

Dirk Burleson  
Dirk Burleson

STATE OF NORTH CAROLINA

COUNTY OF Rutherford

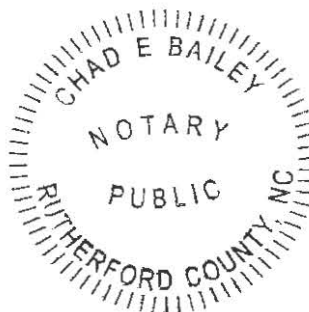
Sworn to and subscribed before me

This 17<sup>th</sup> day of October, 2022, by Dirk Burleson.

Chad E. Bailey  
Notary Public

Chad E. Bailey  
Typed or Printed Notary Public Name

My Commission Expires: 9-11-26



### CERTIFICATE OF SERVICE

The undersigned attorney for Rutherford EMC hereby certifies that she caused the foregoing *Petition to Intervene and Notice of Intent to Participate in Technical Conference* to be served upon all parties of record to this proceeding by electronic mail.

This the 18<sup>th</sup> day of October, 2022.

/s/ Christina D. Cress  
Christina D. Cress