

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1300

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Application of Duke Energy Progress, LLC,)	ORDER GRANTING PETITION TO
for Adjustment of Rates and Charges)	INTERVENE OF HAYWOOD
Applicable to Electric Service in North Carolina)	ELECTRIC MEMBERSHIP
and Performance-Based Regulation)	CORPORATION AND
)	ESTABLISHING SCOPE OF
)	INTERVENTION

BY THE CHAIR: On October 6, 2022, Duke Energy Progress, LLC (DEP) filed an application with the Commission in the above-captioned docket requesting authority to adjust and increase its rates for retail electric service in North Carolina effective November 5, 2022. DEP also requested approval of a Performance-Based Regulation application and an accounting order approving the establishment of certain regulatory assets/liabilities.

On December 16, 2022, the Commission issued an Order Scheduling Investigation and Hearings, Establishing Intervention and Testimony Due Dates and Discovery Guidelines, and Requiring Public Notice. According to that order, interested parties must file petitions to intervene by March 17, 2023.

On March 13, 2023, Haywood Electric Membership Corporation (Haywood EMC) filed a petition with the Commission seeking to intervene in the above-captioned docket. In support of the petition, Haywood EMC states that it is a member-owned, not for profit electric distribution cooperative, headquartered in Lenoir, North Carolina, and is a retail customer of DEP. Haywood EMC further states that it provides retail electric service to over 25,000 customers in rural western North Carolina and obtains a portion of the power it provides to its customers through a partial requirements power purchase agreement (PPA) with DEP. Haywood EMC contends that "[t]his proceeding will impact the rates, terms, and conditions pursuant to which DEP supplies electric service, which may also have a material or prejudicial impact on Haywood EMC's interests under its partial requirements PPA with DEP." Haywood EMC asserts that, *both as a retail and as a wholesale customer*, it has real, direct, substantial, and pecuniary interest in this proceeding. Finally, Haywood EMC notes that in Docket No. E-2, Sub 1142 the Commission allowed Haywood EMC's intervention in the adjudication of DEP's then-pending general rate case proceeding. Order Granting Petition to Intervene, Docket No. E-2, Sub 1142 (N.C.U.C. Aug. 7, 2017) (Sub 1142 Order). Further, Haywood EMC notes that the Commission allowed intervention of Haywood EMC in Duke Energy Carolinas, LLC's (DEC's) currently pending general rate case. Order Granting Petition to

Intervene of Haywood Electric Membership Corporation and Establishing Scope of Intervention, Docket No. E-7, Sub 1276 (N.C.U.C. Oct. 28, 2022).

STANDARD OF REVIEW

“Pursuant to Commission Rule R1-19, any person having a *direct* interest in a Commission proceeding may become a party thereto by filing a verified petition[.]” Order Denying Petition to Intervene and Allowing Amicus Curiae Status, 3, Docket No. E-2, Sub 1142 (Oct. 5, 2017) (Oct. 5 Sub 1142 Order) (emphasis added). Rule R1-19(d) further provides that the Commission will grant leave to intervene where, in addition to otherwise meeting the requirements of this rule, the petition “show[s] a *real* interest in the subject matter of the proceeding.” (Emphasis added.) The Commission has also held that “[a]lthough the right of intervention under Rule R1-19 is generous, it is not unlimited. Intervention requires a *real* interest in the proceeding[.]” Order Denying Petition to Intervene, 3, Docket No. E-7, Sub 828 (Sept. 13, 2007) (emphasis original). “In deciding contested petitions to intervene, the Commission has used the terms ‘direct interest’ and ‘real interest’ interchangeably to express the principle that the petitioner’s stake in the matter must be direct, ‘not just an incidental or casual interest.’” Oct. 5 Sub 1142 Order, 3, *citing* Order Denying Petition to Intervene, Docket No. E-22, Sub 412 (May 13, 2004). The Commission has also clarified that “more than an incidental or casual interest in the subject matter is necessary for the Commission to find a nexus on which to grant a party the right to intervene.” Order Denying Petition to Intervene, 2, Docket No. W-274, Sub 160 (Nov. 18, 1997).

Whether a prospective party has a “real interest” in the subject matter of a proceeding is not a one-size fits all analysis. In analyzing whether a prospective party has a “real interest” sufficient to satisfy the rule, the Commission undertakes an individual analysis based on the specific facts offered by the petitioner. A “real interest” in the subject matter of a Commission proceeding requires that a petitioner present evidence demonstrating a personal stake in the outcome of the matter, see Commission Rule R1-19(a)(3), so as to assure that the presentation of issues, which the Commission depends on for clarity in considering the complex issues routinely before it, is well-honed and uncluttered by broader agendas. Finally, a petitioner must provide specific evidence of how its real interest stands to be “affected by the issues involved in the proceeding.” *Id.* Absent a showing by a petitioner that it can satisfy each of these criteria, the Commission finds that intervention is not warranted under Commission Rule R1-19.

DISCUSSION AND CONCLUSIONS

It is well-established that the retail customers of the state’s investor-owned utilities are directly affected by the Commission’s decisions and therefore hold a direct interest sufficient to satisfy Commission Rule R1-19. See e.g., Order Denying Petition to Intervene and Allowing Amicus Curiae Status, 6 (August 10, 2017) (Aug. 10 Sub 1142 Order) (“ . . . all three of these entities are retail customers of DEP and thus are directly affected by the Commission’s decisions.”) The Chair has considered the petition and determined that good cause exists to allow the requested intervention by Haywood EMC. The Chair has further determined that it is appropriate to limit Haywood EMC’s intervention to the addressing of issues related to retail service matters.

The Chair notes that in the past the Commission has allowed parties, including Haywood EMC, to intervene in general rate cases but has prohibited the presentation of issues related to wholesale PPAs with the utility. See Order Granting Petition to Intervene Docket No. E-7, Sub 1146 (N.C.U.C. Oct. 20, 2017), which expressly required that the intervention be limited to issues related to the retail service Haywood EMC took from DEC.

Moreover, the Commission has previously considered the intervention requests of wholesale customers related to general rate case proceedings and determined that wholesale customers do not have a sufficiently direct or real interest in the subject matter of a general rate case proceeding to warrant intervention therein:

as a general rule wholesale customers . . . do not have a sufficient interest in the costs approved and allocated in retail ratemaking dockets to justify their full participation. In retail electric rate cases the Commission makes a myriad of cost recovery and cost allocation decisions that at least touch on or may affect the wholesale rates to be charged by the utility. However, the Commission does not set wholesale rates, and the effects of its decisions in retail ratemaking typically are only incidental to the wholesale ratemaking process. Thus, they lack the force and effect that would provide a wholesale customer with sufficient interest in a retail ratemaking proceeding to justify full intervention.

Order Denying Petition to Intervene and Allowing Amicus Curiae Statue, Docket No. E-2, Sub 1142 (N.C.U.C. Aug. 10, 2017).

Based upon the foregoing and the entire record herein, the Chair finds good cause to expressly prohibit Haywood EMC from presenting any issues related to its wholesale PPA with DEP.

IT IS, THEREFORE, ORDERED as follows:

1. That Haywood EMC is hereby allowed to intervene in this proceeding, with such intervention limited to retail service issues; and 2. That the name and address of the attorney for Haywood EMC is: Christina D. Cress, Bailey & Dixon, LLP, 434 Fayetteville Street, Suite 2500, P.O. Box 1351 (zip 27602), Raleigh, NC 27601, ccress@bdixon.com.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of March, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script, reading "Tamika D. Conyers".

Tamika D. Conyers, Deputy Clerk